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Idaho Statutes

Selected Titles — Current Text

Title 18 — Crimes and Punishments
Title 19 — Criminal Procedure
Title 23 — Alcoholic Beverages
Title 49 — Motor Vehicles

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Table of Contents

Title 18 — Crimes and Punishments
82 chapters, 879 sections

Title 19 — Criminal Procedure
61 chapters, 863 sections

Title 23 — Alcoholic Beverages
13 chapters, 281 sections

Title 49 — Motor Vehicles
25 chapters, 621 sections

Title 18 — Crimes and Punishments

CHAPTER 1

18-100 — Title, effect of prior law and statement of legislative intent

18-100. Title, effect of prior law and statement of legislative intent.

(1) This title is called the Criminal Code.

(2) Except as provided in subsection (3) of this section, this code does not apply to offenses committed prior to its effective date [April 1, 1972] and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior thereto.

(3) In any case pending on or after the effective date of this code, involving an offense committed prior to such date:

(a) procedural provisions of this code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;

(b) provisions of this code according a defense or mitigation shall apply, with the consent of the defendant;

(c) the court, with the consent of the defendant, may impose sentence under the provisions of this code applicable to the offense and the offender.

(4) The purpose of this code is to re-establish the criminal laws of the state of Idaho that existed on December 31, 1971, unless otherwise specifically amended or repealed by this act. Any provision of law that was in effect on December 31, 1971, is not repealed by inference or implication by enactment of this code.

(5) Any reference to the Penal and Correctional Code in effect on and between January 1, 1972 and March 31, 1972 (Chapter 143, Session Laws of 1971) shall be deemed to refer to a comparable provision in this code.

18-101 — Definition of terms

18-101. Definition of terms. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context: 1. The word "wilfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage. 2. The words "neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature of probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns. 3. The word "corruptly," imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person. 4. The words "malice," and "maliciously," import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law. 5. The word "knowingly," imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission. 6. The word "bribe," signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public or official capacity. 7. Where the word "person" is used in this code to designate the party whose property may be the subject of any offense, it includes this state, any other state, any territory, government, or country, which may lawfully own property within this state, and all public and private corporations or joint associations, as well as individuals.

18-101A — Definitions

18-101A. Definitions. As used in titles 18, 19 and 20, Idaho Code, and elsewhere in the Idaho Code, unless otherwise specifically provided or unless the context clearly indicates or requires otherwise, the following terms shall be defined as follows:

(1) "Correctional facility" means a facility for the confinement of prisoners or juvenile offenders. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "juvenile correctional center," "Idaho security medical program," "detention institution (facility)," "juvenile detention center (facility)," "county jail," "jail," "private prison (facility)," "private correctional facility," or those facilities that detain juvenile offenders pursuant to a contract with

the Idaho department of juvenile corrections.

(2) "In-state prisoner" means any person who has been charged with or convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, and:

(a) Who is being housed in any state, local or private correctional facility; or

(b) Who is being transported in any manner within or through the state of Idaho.

(3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

(4) "Out-of-state prisoner" or "out-of-state inmate" means any person who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and:

(a) Who is being housed in any state, local or private correctional facility in the state of Idaho; or

(b) Who is being transported in any manner within or through the state of Idaho.

(5) "Parolee" means a person who has been convicted of a felony and who has been placed on parole by the Idaho commission of pardons and parole or similar body of another state, the United States, or a foreign jurisdiction, who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

(6) "Prisoner" means a person who has been convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and:

(a) Who is being housed in any state, local or private correctional facility; or

(b) Who is being transported in any manner within or through the state of Idaho. The term shall be construed to include references to terms including, but not limited to, "inmate," "convict," "detainee," and other similar terms and shall include "out-of-state prisoner" and "out-of-state inmate."

(7) "Private correctional facility" or "private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.

(8) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(9) "Probationer" means a person who has been placed on felony probation by an Idaho court, or a court of another state, the United States, or a foreign jurisdiction, who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

(10) "Repeat offender" means, for the purposes of sections 18-8002 , 18-8002A , 18-8004C and 18-8005 , Idaho Code, a person who has been convicted of driving while intoxicated or driving under the influence of alcohol and/or drugs more than once in any five (5) year period for the purposes of sections 18-8002A and 18-8004C , Idaho Code, or any ten (10) year period for the purposes of sections 18-8002 and 18-8005 , Idaho Code.

(11) "State correctional facility" means a facility for the confinement of prisoners, owned or operated by or under the control of the state of Idaho. The term shall include references to "state prison," "state penitentiary" or "state penal institution (facility)." The term shall also include a private correctional facility housing prisoners under the custody of the board of correction.

(12) "Supervising officer" means an employee of the Idaho department of correction who is charged with or whose duties include supervision of felony parolees or felony probationers.

(13) "Juvenile offender" means a person younger than eighteen (18) years of age or who was younger than eighteen (18) years of age at the time of any act, omission, or status for which the person is being detained in a correctional facility pursuant to court order.

18-101B — Criminal laws applicable to out-of-state prisoners and personnel of private correctional facilities

18-101B. Criminal laws applicable to out-of-state prisoners and personnel of private correctional facilities.

(1) An out-of-state prisoner and personnel of a private prison contractor employed at a private correctional facility in the state of Idaho shall be subject to all criminal laws of the state of Idaho.

(2) Any offense which would be a criminal act if committed by an in-state prisoner housed in a state, local or private correctional facility, or in custody during transport within or through the state of Idaho, including escape from such facility or during transport, and any penalty for such offense, shall apply in all respects to an out-of-state prisoner.

(3) Any offense which would be a criminal act if committed by an officer, employee or agent of a state or local correctional facility, and any penalty for such offense, shall apply in all respects to the officers, employees and agents of a private correctional facility located in the state of Idaho.

18-102 — Sufficiency of intent to defraud

18-102. Sufficiency of intent to defraud. Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever.

18-103 — Civil remedies preserved

18-103. Civil remedies preserved. The omission to specify or affirm in this code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

18-104 — Proceedings to remove officers preserved

18-104. Proceedings to remove officers preserved. The omission to specify or affirm in this code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to remove, depose, or suspend any public officer, or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such removal, deposition, or suspension.

18-105 — Courts may punish for contempt

18-105. Courts may punish for contempt. This code does not affect any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt.

18-106 — Court to impose punishment

18-106. Court to impose punishment. The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

18-107 — Determination of punishment by court

18-107. Determination of punishment by court. Whenever, in this code, the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case, must be determined by the court authorized to pass sentence within such limits as may be prescribed by this code.

18-109 — Definition of crime

18-109. Definition of crime. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death.
2. Imprisonment. 3. Fine. 4. Removal from office; or 5. Disqualification to hold and enjoy any office of honor, trust or profit in this state.

18-110 — Grades of crime

18-110. Grades of crime. Crimes are divided into: 1. Felonies; and 2. Misdemeanors.

18-111 — Felony, misdemeanor and infraction defined

18-111. Felony, misdemeanor and infraction defined. A felony is a crime which is punishable with death or by imprisonment in the state prison. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding three hundred dollars ($300) and for which no period of incarceration may be imposed. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

18-111A — Felony defined further

18-111A. Felony defined further. Wherever the words felony, felony in the first degree, felony in the second degree, or felony in the third degree are used in the entire Idaho Code as well as the 1972 Session Law amendments thereto, the same shall be defined as a felony and shall be punishable, unless otherwise provided in a specific act, according to the General Felony Statute in the state of Idaho contained in section 18-112 , Idaho Code.

18-111B — Misdemeanor defined further

18-111B. Misdemeanor defined further. Wherever the words misdemeanor, petty misdemeanor or violation are used in the entire Idaho Code as well as the 1972 Session Law amendments thereto, these terms or any of them shall be construed to mean misdemeanor and shall be punished, unless otherwise provided for in a specific act, as provided under the General Misdemeanor Statute contained in section 18-113 , Idaho Code.

18-112 — Punishment for felony

18-112. Punishment for felony. Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five (5) years, or by fine not exceeding fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-112A — Fine authorized

18-112A. Fine authorized. In addition to any other punishment prescribed for felonies in specific statutes of the Idaho Code, the court may also impose a fine of up to fifty thousand dollars ($50,000). This section shall not apply if the specific felony statute provides for the imposition of a fine.

18-113 — Punishment for misdemeanor

18-113. Punishment for misdemeanor.

(1) Except in cases where a different punishment is prescribed in this code, every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000), or by both.

(2) In addition to any other punishment prescribed for misdemeanors in specific statutes of the Idaho Code, the court may also impose a fine of up to one thousand dollars ($1,000). This paragraph shall not apply if the specific misdemeanor statute provides for the imposition of a fine.

18-113A — Punishment for infraction

18-113A. Punishment for infraction. Every offense declared to be an infraction is punishable only by a penalty not exceeding three hundred dollars ($300) as provided in this section and no imprisonment. The penalty for an infraction shall be:

(1) The amount set by statute;

(2) Subject to subsection (1) of this section, the amount set as a fixed penalty for that infraction as of January 1, 2014, by the Idaho supreme court infraction rule 9, excepting subsection (38) of infraction rule 9 for "other infractions";

(3) The amount set by city or county ordinance for which the city or county has authority to impose a penalty and which is not otherwise set under subsection (1) or (2) of this section; or

(4) Fifteen dollars and fifty cents ($15.50) for an infraction without a specific penalty set under subsection (1), (2) or (3) of this section.

18-113B — Incarceration of juveniles for misdemeanor or felony offenses

18-113B. Incarceration of juveniles for misdemeanor or felony offenses.

(1) Juveniles committing offenses which lie outside the scope of the juvenile corrections act, chapter 5, title 20 , Idaho Code, and not charged under section 20-508 or 20-509 , Idaho Code, may, in the discretion of a court or arresting officer, be placed in a juvenile detention facility or juvenile shelter care facility rather than in a county jail pending arraignment or trial, if arrested or held on bond. The option of placing a juvenile in such a facility shall not affect the misdemeanor or felony status of the offense.

(2) Juveniles committing offenses which lie outside the scope of the juvenile corrections act, chapter 5, title 20 , Idaho Code, and not charged under section 20-508 or 20-509 , Idaho Code, may, in the discretion of the court, be sentenced:

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

(b) To serve time in a community sentencing alternative when a mandatory minimum period of incarceration is not required by statute. The option of placing a juvenile in such a facility shall not affect the misdemeanor or felony status of the offense.

18-114 — Union of act and intent

18-114. Union of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

18-115 — Manifestation of intent

18-115. Manifestation of intent. Intent or intention is manifested by the commission of the acts and surrounding circumstances connected with the offense.

18-116 — Intoxication no excuse for crime

18-116. Intoxication no excuse for crime. A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected or otherwise ingested the substance causing the condition.

CHAPTER 2

18-201 — Persons capable of committing crimes

18-201. Persons capable of committing crimes. All persons are capable of committing crimes, except those belonging to the following classes: 1. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. 2. Persons who committed the act charged without being conscious thereof. 3. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was not evil design, intention or culpable negligence. 4. Persons (unless the crime be punishable with death) who committed the act or made the omission charged, under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

18-202 — Territorial jurisdiction over accused persons liable to punishment

18-202. Territorial jurisdiction over accused persons liable to punishment. The following persons are liable to punishment under the laws of this state: 1. All persons who commit, in whole or in part, any crime within this state. 2. All who commit larceny or robbery out of this state, and bring to, or are found with the property stolen, in this state. 3. All who, being out of this state, cause or aid, advise or encourage, another person to commit a crime within this state and are afterwards found therein.

18-203 — Classification of parties

18-203. Classification of parties. The parties to crimes are classified as: 1. Principals; and 2. Accessories.

18-204 — Principals defined

18-204. Principals defined. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense or aid and abet in its commission, or, not being present, have advised and encouraged its commission, or who, by fraud, contrivance, or force, occasion the intoxication of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command or coercion, compel another

to commit any crime, are principals in any crime so committed.

18-205 — Accessories defined

18-205. Accessories defined. All persons are accessories who, having knowledge that a felony has been committed:

(1) Willfully withhold or conceal it from a peace officer, judge, magistrate, grand jury or trial jury; or

(2) Harbor and protect a person who committed such felony or who has been charged with or convicted thereof.

18-206 — Punishment of accessories

18-206. Punishment of accessories. Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the state prison not exceeding five (5) years, or by fine not exceeding fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-207 — Mental condition not a defense — Provision for treatment during incarceration — Reception of evidence — Notice and appointment of expert examiners

18-207. Mental condition not a defense — Provision for treatment during incarceration — Reception of evidence — Notice and appointment of expert examiners.

(1) Mental condition shall not be a defense to any charge of criminal conduct.

(2) If by the provisions of section 19-2523 , Idaho Code, the court finds that one convicted of crime suffers from any mental condition requiring treatment, such person shall be committed to the board of correction or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require. In the event a sentence of incarceration has been imposed, the defendant shall receive treatment in a facility which provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, but shall have credit for time incarcerated for treatment.

(3) Nothing herein is intended to prevent the admission of expert evidence on the issue of any state of mind which is an element of the offense, subject to the rules of evidence.

(4) No court shall, over the objection of any party, receive the evidence of any expert witness on any issue of mental condition, or permit such evidence to be placed before a jury, unless such evidence is fully subject to the adversarial process in at least the following particulars:

(a) Notice must be given at least ninety (90) days in advance of trial, or such other period as justice may require, that a party intends to raise any issue of mental condition and to call expert witnesses concerning such issue, failing which such witness shall not be permitted to testify until such time as the opposing party has a complete opportunity to consider the substance of such testimony and prepare for rebuttal through such opposing expert(s) as the party may choose.

(b) A party who expects to call an expert witness to testify on an issue of mental condition must, on a schedule to be set by the court, furnish to the opposing party a written synopsis of the findings of such expert, or a copy of a written report. The court may authorize the taking of depositions to inquire further into the substance of such reports or synopses.

(c) Raising an issue of mental condition in a criminal proceeding shall constitute a waiver of any privilege that might otherwise be interposed to bar the production of evidence on the subject and, upon request, the court shall order that the state's experts shall have access to the defendant in such cases for the purpose of having its own experts conduct an examination in preparation for any legal proceeding at which the defendant's mental condition may be in issue.

(d) The court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental condition. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19 , Idaho Code.

(e) If an examination cannot be conducted by reason of the unwillingness of the defendant to cooperate, the examiner shall so advise the court in writing. In such cases the court may deny the party refusing to cooperate the right to present evidence in support of a mental status claim unless the interest of justice requires otherwise and shall instruct the jury that it may consider the party's lack of cooperation for its effect on the credibility of the party's mental status claim.

18-210 — Lack of capacity to understand proceedings — Delay of trial

18-210. Lack of capacity to understand proceedings — Delay of trial. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.

18-211 — Examination of defendant — Appointment of psychiatrists and licensed psychologists — Hospitalization — Report

18-211. Examination of defendant — Appointment of psychiatrists and licensed psychologists — Hospitalization — Report. [effective until January 1, 2027]

(1) Whenever there is reason to doubt the defendant's fitness to proceed as set forth in section 18-210 , Idaho Code, the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one (1) qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings. The appointed examiner shall also evaluate whether the defendant lacks capacity to make informed decisions about treatment. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19 , Idaho Code.

(2) Within three (3) days, excluding Saturdays, Sundays and legal holidays, of the appointment or designation, the examiner shall determine the best location for the examination. If practical, the examination shall be conducted locally on an outpatient basis.

(3) If the examiner determines that confinement is necessary for purposes of the examination, the court may order the defendant to be confined to a jail, a hospital, or other suitable facility for that purpose for a period not exceeding thirty (30) days. The order of confinement shall require the county sheriff to transport the defendant to and from the facility and shall notify the facility of any known medical, behavioral, or security requirements of the defendant. The court, upon request, may make available to the examiner any court records relating to the defendant.

(4) In such examination, any method may be employed that is accepted by the examiner's profession for the examination of those alleged not to be competent to assist counsel in their defense.

(5) Upon completion of the examination, a report shall be submitted to the court and shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis or evaluation of the mental condition of the defendant;

(c) An opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense;

(d) An opinion whether the defendant lacks the capacity to make informed decisions about treatment. "Lack of capacity to make informed decisions about treatment" means the defendant's inability, by reason of his mental condition, to achieve a rudimentary understanding of the purpose, nature, and possible significant risks and benefits of treatment, after conscientious efforts at explanation.

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

(7) The report of the examination shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(8) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(9) In the event a defendant is suspected of being developmentally disabled, the examination shall proceed with those experts set out in subsection (7) of section 66-402 , Idaho Code.

(10) In addition to the psychiatrist, licensed psychologist, or evaluation committee, the court may appoint additional experts to examine the defendant.

(11) If, at any time during the examination process, the examiner has reason to believe that the defendant's alleged incompetency may be the result of a developmental disability and the matter has not already been referred to an evaluation committee for review, the examiner shall immediately notify the court. The court shall then appoint an evaluation committee or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee consistent with section 66-402 (7), Idaho Code.

(12) If the defendant lacks capacity to make informed decisions about treatment, as defined in section 66-317 , Idaho Code, the court may authorize consent to be given pursuant to section 66-322 , Idaho Code. If the defendant lacks capacity to make informed decisions as defined in subsection (9) of section 66-402 , Idaho Code, the court may authorize consent to be given pursuant to sections 66-404 and 66-405 , Idaho Code.

(13) If the defendant was confined solely for the purpose of examination, he shall be released from the facility within three (3) days, excluding Saturdays, Sundays and legal holidays, following notification of completion of the examination.

18-211. Examination of defendant — Appointment of psychiatrists and licensed psychologists — Hospitalization — Report. [effective January 1, 2027]

(1) Whenever there is reason to doubt the defendant's fitness to proceed as set forth in section 18-210 , Idaho Code, the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one (1) qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings. The appointed examiner shall also evaluate whether the defendant lacks capacity to make informed decisions about treatment. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19 , Idaho Code.

(2) Within three (3) days, excluding Saturdays, Sundays and legal holidays, of the appointment or designation, the examiner shall determine the best location for the examination. If practical, the examination shall be conducted locally on an outpatient basis.

(3) If the examiner determines that confinement is necessary for purposes of the examination, the court may order the defendant to be confined to a jail, a hospital, or other suitable facility for that purpose for a period not exceeding thirty (30) days. The order of confinement shall require the county sheriff to transport the defendant to and from the facility and shall notify the facility of any known medical, behavioral, or security requirements of the defendant. The court, upon request, may make available to the examiner any court records relating to the defendant.

(4) In such examination, any method may be employed that is accepted by the examiner's profession for the examination of those alleged not to be competent to assist counsel in their defense.

(5) Upon completion of the examination, a report shall be submitted to the court and shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis or evaluation of the mental condition of the defendant;

(c) An opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense;

(d) An opinion whether the defendant lacks the capacity to make informed decisions about treatment. "Lack of capacity to make informed decisions about treatment" means the defendant's inability, by reason of his mental condition, to achieve a rudimentary understanding of the purpose, nature, and possible significant risks and benefits of treatment, after conscientious efforts at explanation.

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

(7) The report of the examination shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(8) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(9) In the event a defendant is suspected of being developmentally disabled, the examination shall proceed with those experts set out in section 66-402 (6), Idaho Code.

(10) In addition to the psychiatrist, licensed psychologist, or evaluation committee, the court may appoint additional experts to examine the defendant.

(11) If, at any time during the examination process, the examiner has reason to believe that the defendant's alleged incompetency may be the result of a developmental disability and the matter has not already been referred to an evaluation committee for review, the examiner shall immediately notify the court. The court shall then appoint an evaluation committee or shall order the department of health and welfare to designate, within two (2) business days, an evaluation committee consistent with section 66-402 (6), Idaho Code.

(12) If the defendant lacks capacity to make informed decisions about treatment, as defined in section 66-317 , Idaho Code, the court may authorize consent to be given pursuant to section 66-322 , Idaho Code. If the defendant lacks capacity to make informed decisions as defined in section 66-402 (8), Idaho Code, the court may authorize consent to be given pursuant to chapter 5, title 15 , Idaho Code.

(13) If the defendant was confined solely for the purpose of examination, he shall be released from the facility within three (3) days, excluding Saturdays, Sundays and legal holidays, following notification of completion of the examination.

18-212 — Determination of fitness of defendant to proceed — Suspension of proceeding and commitment of defendant — Postcommitment hearing

18-212. Determination of fitness of defendant to proceed — Suspension of proceeding and commitment of defendant — Postcommitment hearing. [effective until January 1, 2027]

(1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. The court shall also determine, based on the examiner's findings, whether the defendant lacks capacity to make informed decisions about treatment. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 18-211 , Idaho Code, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist or licensed psychologist who submitted the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsections (5) and (6) of this section, and the court shall commit him to the custody of the director of the department of health and welfare, for a period not exceeding ninety (90) days, for care and treatment at an appropriate facility of the department of health and welfare or, if the defendant is found to be dangerously mentally ill as defined in section 66-1305 , Idaho Code, to the department of correction for a period not exceeding ninety (90) days. The order of commitment shall include the finding by the court whether the defendant lacks capacity to make informed decisions about treatment. For purposes of this section, "facility" shall mean a state hospital, institution, mental health center, or those facilities enumerated in subsection (8) of section 66-402 , Idaho Code, equipped to evaluate or rehabilitate such defendants. The order of commitment shall require the county sheriff to transport the defendant to and from the facility and require an evaluation of the defendant's mental condition at the time of admission to the facility and a progress report on the defendant's mental condition. The progress report shall include an opinion whether the defendant is fit to proceed, or if not, whether there is a substantial probability the defendant will be fit to proceed within the foreseeable future. If the report concludes that there is a substantial probability that the defendant will be fit to proceed in the foreseeable future, the court may order the continued commitment of the defendant for an additional one hundred eighty (180) days. If at any time the director of the facility to which the defendant is committed determines that the defendant is fit to proceed, such determination shall be reported to the court.

(3) If during a commitment under this section a defendant who has the capacity to make informed decisions about treatment refuses any and all treatment, or the only treatment available to restore competency for trial, the court shall, within seven (7) days, excluding weekends and holidays, of receiving notice of the defendant's refusal from the facility, conduct a hearing on whether to order involuntary treatment or order such other terms and conditions as may be determined appropriate. The burden shall be on the state to demonstrate grounds for involuntary treatment including, but not limited to: the prescribed treatment is essential to restore the defendant's competency, the medical necessity and appropriateness of the prescribed treatment, no less intrusive treatment alternative exists to render the defendant competent for trial, and other relevant information. If each of these findings is made by the court, treatment shall be ordered consistent with the findings.

(4) Each report shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant. Upon receipt of a report, the court shall determine, after a hearing if a hearing is requested, the disposition of the defendant and the proceedings against him. If the court determines that the defendant is fit to proceed, the proceeding shall be resumed. If at the end of the initial ninety (90) days the court determines that the defendant is unfit and there is not a substantial probability the defendant will be fit to proceed within the foreseeable future or if the defendant is not fit to proceed after the expiration of the additional one hundred eighty (180) days, involuntary commitment proceedings shall be instituted pursuant to either section 66-329 or 66-406 , Idaho Code, in the court in which the criminal charge is pending.

(5) In its review of commitments pursuant to section 66-337 , Idaho Code, the department of health and welfare shall determine whether the defendant is fit to proceed with trial. The department of health and welfare shall review its commitments pursuant to chapter 4, title 66 , Idaho Code, and may recommend that the defendant is fit to proceed with trial. If the district court which committed the defendant pursuant to section 66-406 , Idaho Code, agrees with the department's recommendation and finds the conditions which justified the order pursuant to section 66-406 , Idaho Code, do not continue to exist, criminal proceedings may resume. If the defendant is fit to proceed, the court in which the criminal charge is pending shall be notified and the criminal proceedings may resume. If, however, the court is of the view that so much time has elapsed, excluding any time spent free from custody by reason of the escape of the defendant, since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge.

(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped to take the defendant into custody and immediately return him to his place of confinement. 18-212. Determination of fitness of defendant to proceed — Suspension of proceeding and commitment of defendant — Postcommitment hearing. [effective January 1, 2027]

(1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. The court shall also determine, based on the examiner's findings, whether the defendant lacks capacity to make informed decisions about treatment. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 18-211 , Idaho Code, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist or licensed psychologist who submitted the report and to offer evidence upon the issue.

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(3) If during a commitment under this section a defendant who has the capacity to make informed decisions about treatment refuses any and all treatment, or the only treatment available to restore competency for trial, the court shall, within seven (7) days, excluding weekends and holidays, of receiving notice of the defendant's refusal from the facility, conduct a hearing on whether to order involuntary treatment or order such other terms and conditions as may be determined appropriate. The burden shall be on the state to demonstrate grounds for involuntary treatment including, but not limited to: the prescribed treatment is essential to restore the defendant's competency, the medical necessity and appropriateness of the prescribed treatment, no less intrusive treatment alternative exists to render the defendant competent for trial, and other relevant information. If each of these findings is made by the court, treatment shall be ordered consistent with the findings.

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is fit to proceed, the proceeding shall be resumed. If at the end of the initial ninety (90) days the court determines that the defendant is unfit and there is not a substantial probability the defendant will be fit to proceed within the foreseeable future or if the defendant is not fit to proceed after the expiration of the additional one hundred eighty (180) days, involuntary commitment proceedings shall be instituted pursuant to either section 66-329 or 66-406 , Idaho Code, in the court in which the criminal charge is pending.

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(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped to take the defendant into custody and immediately return him to his place of confinement.

18-215 — Admissibility of statements by examined person

18-215. Admissibility of statements by examined person. A statement made by a person subjected to psychiatric or psychological examination or treatment pursuant to sections 18-211 , 18-212 or 19-2522 , Idaho Code, for the purposes of such examination or treatment shall not be admissible in evidence in any criminal proceeding against him on any issue other than the defendant's ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, except that such statements of a defendant to a psychiatrist or psychologist as are relevant for impeachment purposes may be received subject to the usual rules of evidence governing matters of impeachment.

18-217 — Mental health records of offenders

18-217. Mental health records of offenders.

(1) For purposes of care, treatment or normal health care operations, records of mental health evaluation, care and treatment shall be provided upon request to and from the mental health professionals of a governmental entity and another entity providing care or treatment for any person who is:

(a) Under court commitment to a state agency pursuant to section 18-212 (4), Idaho Code;

(b) A pretrial detainee;

(c) Awaiting sentencing;

(d) In the care, custody or supervision of any correctional facility as defined in section 18-101A , Idaho Code;

(e) On probation or parole;

(f) Being supervised as part of a drug court, mental health court, juvenile detention program, work release program, or similar court program; or

(g) Applying for mental health services after release from a correctional facility.

(2) No court order or authorization from the offender to transfer the records shall be required except for records pursuant to 42 CFR part 2.

CHAPTER 3

18-302 — Punishment for acts also punishable as contempts

18-302. Punishment for acts also punishable as contempts. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

18-303 — Common law offenses — Punishment — Imprisonment for nonpayment of fine

18-303. Common law offenses — Punishment — Imprisonment for nonpayment of fine. All offenses recognized by the common law as crimes and not herein enumerated are punishable, in case of felony, by imprisonment in the state prison for a term not less than one (1) year nor more than five (5) years; and in case of misdemeanors, by imprisonment in the county jail for a term not exceeding six (6) months or less than one (1) month, or by fine not exceeding $500, or both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law and the party upon whom the fine is imposed has the ability to pay said fine, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the state prison, until the fine is paid.

18-304 — Aiding in misdemeanors

18-304. Aiding in misdemeanors. Whenever an act is declared a misdemeanor, and no punishment for counseling, aiding in, soliciting or inciting the commission of such acts is expressly prescribed by law, every person who counsels, aids, solicits or incites another in the commission of such act is guilty of a misdemeanor.

18-305 — Conviction of attempt when crime is consummated

18-305. Conviction of attempt when crime is consummated. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury, and directs such person to be tried for such crime.

18-306 — Punishment for attempts

18-306. Punishment for attempts. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

(1) If the offense so attempted is punishable by imprisonment in the state prison for life, or by death, the person guilty of such attempt is punishable by imprisonment in the state prison for a term not exceeding fifteen (15) years.

(2) If the offense so attempted is punishable by imprisonment in the state prison for five (5) years or more but for less than life imprisonment, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in the county jail, as the case may be, for a term not exceeding one-half (1/2) the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

(3) If the offense so attempted is punishable by imprisonment in the state prison for any term less than five (5) years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one (1) year.

(4) If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half (1/2) the largest fine which may be imposed upon a conviction of the offense so attempted.

(5) If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half (1/2) the longest term of imprisonment and one-half (1/2) the largest fine which may be imposed upon a conviction for the offense so attempted.

18-307 — Attempt resulting in different crime

18-307. Attempt resulting in different crime. The last two (2) sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

18-308 — Successive terms of imprisonment

18-308. Successive terms of imprisonment. When any person is convicted of two (2) or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, in the discretion of the court, may commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

18-309 — Computation of term of imprisonment

18-309. Computation of term of imprisonment.

(1) In computing the term of imprisonment, the person against whom the judgment was entered shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such

imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

(2) In computing the term of imprisonment when judgment has been withheld and is later entered or sentence has been suspended and is later imposed, the person against whom the judgment is entered or imposed shall receive credit in the judgment for any period of incarceration served as a condition of probation under the original withheld or suspended judgment.

18-310 — Imprisonment — Effect on civil rights and offices

18-310. Imprisonment — Effect on civil rights and offices.

(1) A sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced, including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may bring an action for damages or other relief in the courts of this state or have an action brought against such person; and provided further that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court.

(2) Upon final discharge, a person convicted of any Idaho felony shall be restored the full rights of citizenship, except that for persons convicted of treason or those offenses enumerated in paragraphs (a) through (hh) of this subsection the right to ship, transport, possess or receive a firearm shall not be restored. As used in this subsection, "final discharge" means satisfactory completion of imprisonment, probation and parole as the case may be.

(a) Aggravated assault (18-905 , 18-915 , Idaho Code);

(b) Aggravated battery (18-907 , 18-915 , Idaho Code);

(c) Assault with intent to commit a serious felony (18-909 , 18-915 , Idaho Code);

(d) Battery with intent to commit a serious felony (18-911 , 18-915 , Idaho Code);

(e) Burglary (18-1401 , Idaho Code);

(f) Domestic battery, felony (18-918 , Idaho Code);

(g) Enticing of children, felony (18-1509 , Idaho Code);

(h) Forcible sexual penetration by use of a foreign object (18-6604 , Idaho Code);

(i) Indecent exposure, felony (18-4116 , Idaho Code);

(j) Injury to child, felony (18-1501 , Idaho Code);

(k) Intimidating a witness, felony (18-2604 , Idaho Code);

(l) Lewd conduct with a minor or child under sixteen (18-1508 , Idaho Code);

(m) Sexual abuse of a child under sixteen (18-1506 , Idaho Code);

(n) Sexual exploitation of a child (18-1507 , Idaho Code);

(o) Felonious rescuing prisoners (18-2501 , Idaho Code);

(p) Escape by one charged with, convicted of or on probation for a felony (18-2505 , Idaho Code);

(q) Unlawful possession of a firearm (18-3316 , Idaho Code);

(r) Degrees of murder (18-4003 , Idaho Code);

(s) Voluntary manslaughter (18-4006 (1), Idaho Code);

(t) Assault with intent to murder (18-4015 , Idaho Code);

(u) Administering poison with intent to kill (18-4014 , Idaho Code);

(v) Kidnapping (18-4501 , Idaho Code);

(w) Mayhem (18-5001 , Idaho Code);

(x) Rape (18-6101 , Idaho Code);

(y) Robbery (18-6501 , Idaho Code);

(z) Ritualized abuse of a child (18-1506A , Idaho Code); (aa) Cannibalism (18-5003 , Idaho Code); (bb) Felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit

substance (37-2732 , Idaho Code); (cc) Trafficking (37-2732B , Idaho Code); (dd) Threats against state officials of the executive, legislative or judicial branch, felony (18-1353A , Idaho Code); (ee) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317 , Idaho Code); (ff) Unlawful possession of destructive devices (18-3319 , Idaho Code); (gg) Unlawful use of destructive device or bomb (18-3320 , Idaho Code); (hh) Attempt (18-306 , Idaho Code), conspiracy (18-1701 , Idaho Code), or solicitation (18-2001 , Idaho Code), to commit any of the crimes described in paragraphs (a) through (gg) of this subsection. (ii) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraphs (a) through (hh) of this subsection on or after July 1, 1991, except that persons convicted of the felonies enumerated in paragraphs (r) and (s) of this subsection, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess or receive a firearm, regardless of the date of their conviction if the conviction was the result of an offense committed by use of a firearm.

(3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to rules adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to any person convicted of murder in the first degree (18-4003 , Idaho Code), murder in the second degree (18-4003 , Idaho Code), or any felony enumerated in paragraphs (a) through (hh) of subsection (2) of this section, upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

(4) Persons convicted of felonies in other states or jurisdictions, except for persons convicted of treason, shall be allowed to register and vote in Idaho upon final discharge which means satisfactory completion of imprisonment, probation and parole as the case may be. These individuals shall not have the right restored to ship, transport, possess or receive a firearm in the same manner as an Idaho felon as provided in subsection (2) of this section.

18-312 — Convicts — Capacity as witnesses — Capacity to convey property

18-312. Convicts — Capacity as witnesses — Capacity to convey property. The provisions of the last two (2) preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.

18-313 — Protection of person of convict

18-313. Protection of person of convict. The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner, as if he were not convicted or sentenced.

18-314 — Property of convict not forfeited

18-314. Property of convict not forfeited. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deodand, or where any person shall flee from justice, are abolished.

18-315 — Omission of public duty

18-315. Omission of public duty. Every wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

18-317 — Punishment of offenses for which no penalty is fixed

18-317. Punishment of offenses for which no penalty is fixed. When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

CHAPTER 4

18-401 — Desertion and nonsupport of children or spouse

18-401. Desertion and nonsupport of children or spouse. Every person who:

(1) Having any child under the age of eighteen (18) years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

(2) Willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child or children, or ward or wards; provided however, that the practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of the duty of care to such child;

(3) Having sufficient ability to provide for a spouse's support, or who is able to earn the means for such spouse's support, who willfully abandons and leaves a spouse in a destitute condition, or who refuses or neglects to provide such spouse with necessary food, clothing, shelter, or medical attendance, unless by the spouse's misconduct he or she is justified in abandoning him or her; Shall be guilty of a felony and shall be punishable by a fine of not more than five hundred dollars ($500), or by imprisonment for not to exceed fourteen (14) years, or both.

18-402 — Orders providing for children and wife upon violation of preceding section

18-402. Orders providing for children and wife upon violation of preceding section. In any case enumerated in the previous section, the court may render one of the following orders: 1. Should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife, or to the guardian or to the custodian of the child or children, or to an individual appointed by the court as trustee. 2. Before trial, or after conviction, with the consent of the defendant, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the court and to release the defendant from custody or probation during such time as the court may direct upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect. 3. When conviction is had and a sentence to imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways or any other public work in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the county commissioners or of the highway district board within the county where such conviction and sentence is had and where such work is performed by persons under sentence to the county jail to allow an order of payment out of the current fund or maintenance road fund, to the wife, or to the guardian, or custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, or child or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person.

18-403 — Abandonment or nonsupport prima facie wilful

18-403. Abandonment or nonsupport prima facie wilful. Proof of the abandonment or nonsupport of a wife, or the desertion of a child or children, ward or wards, or the omission to furnish necessary food, clothing, shelter, or medical attendance for a child or children, ward or wards, is prima facie evidence that such abandonment or nonsupport, or omission to furnish food, clothing, shelter, or medical attendance is wilful.

18-404 — Proceedings upon violation of provisional order — Disposition of proceeds of forfeited recognizance

18-404. Proceedings upon violation of provisional order — Disposition of proceeds of forfeited recognizance. If the court be satisfied by the information or complaint and due proof, under oath, that at any time the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original indictment or information, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children.

18-405 — Rules of evidence

18-405. Rules of evidence. No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under this act, any existing provisions of law prohibiting the disclosure of confidential

communications between husband and wife, shall not apply, and both husband and wife shall be competent witnesses to testify for or against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is wilful.

CHAPTER 5

18-501 — SHORT TITLE

18-501. SHORT TITLE. This act shall be known and may be cited as the "Pain-Capable Unborn Child Protection Act."

18-502 — DEFINITIONS

18-502. DEFINITIONS. For purposes of this chapter:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

(2) "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the provisions of this chapter;

(3) "Fertilization" means the fusion of a human spermatozoon with a human ovum;

(4) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(5) "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine under chapter 18, title 54 , Idaho Code;

(6) "Postfertilization age" means the age of the unborn child as calculated from the fertilization of the human ovum;

(7) "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(8) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(9) "Unborn child" or "fetus" means an individual organism of the species homo sapiens from fertilization until live birth; and

(10) "Woman" means a female human being whether or not she has reached the age of majority.

18-503 — legislative findings

18-503. legislative findings. The legislature makes the following findings:

(1) Pain receptors (nociceptors) are present throughout the unborn child’s entire body by no later than sixteen (16) weeks after fertilization and nerves link these receptors to the brain’s thalamus and subcortical plate by no later than twenty (20) weeks.

(2) By eight (8) weeks after fertilization, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.

(3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life.

(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.

(6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty (20) weeks after fertilization.

(11) It is the purpose of the state of Idaho to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

(12) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which, in the context of determining the severability of a state statute regulating abortion, the United States supreme court noted that an explicit statement of legislative intent is of greater weight than inclusion of a severability clause standing alone, the legislature declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrases, phrase or word thereof, irrespective of the fact that any one (1) or more provisions, sections, subsections, sentences, clauses or words of this act or the application thereof to any person or circumstance, were to be declared unconstitutional.

18-504 — determination of postfertilization age

18-504. determination of postfertilization age.

(1) Except in the case of a medical emergency, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(2) Intentional or reckless failure by any physician to conform to any requirement of this section makes the physician subject to medical discipline pursuant to section 54-1814 (6), Idaho Code.

18-505 — abortion of unborn child of twenty or more weeks postfertilization age prohibited

18-505. abortion of unborn child of twenty or more weeks postfertilization age prohibited. No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks unless, in reasonable medical judgment: (1) she has a condition that so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions; or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

18-506 — reporting

18-506. reporting.

(1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the department of health and welfare, on a schedule and in accordance with forms and rules adopted and promulgated by the department:

(a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

(b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

(c) If the probable postfertilization age was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(d) The method used for the abortion.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of five hundred dollars ($500) for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue. Any physician required to report in accordance with this chapter who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Intentional or reckless failure by any physician to conform to any requirement of this section, other than late filing of a report, makes the physician subject to medical discipline under section 54-1814 (6), Idaho Code. Intentional or reckless failure by any physician to submit a complete report in accordance with a court order renders the physician subject to civil contempt and makes the physician subject to medical discipline pursuant to section 54-1814 (6), Idaho Code. Intentional or reckless falsification of any report required under this section is a misdemeanor.

(4) Within ninety (90) days after the effective date of this act, the department shall adopt and promulgate rules to assist in compliance with this section. Subsection (1) of this section shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

18-507 — criminal penalties

18-507. criminal penalties. Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the provisions of section 18-505 , Idaho Code, is guilty of a felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

18-508 — civil remedies

18-508. civil remedies.

(1) Any woman upon whom an abortion has been performed in violation of the pain-capable unborn child protection act or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in an intentional or a reckless violation of the provisions of this chapter for actual damages. Any woman upon whom an abortion has been attempted in violation of the provisions of this chapter may maintain an action against the person who attempted to perform the abortion in an intentional or a reckless violation of the provisions of this chapter for actual damages.

(2) A cause of action for injunctive relief against any person who has intentionally or recklessly violated the provisions of this chapter may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of the provisions of this chapter, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of the provisions of this chapter, by a prosecuting attorney with appropriate jurisdiction, or by the

attorney general. The injunction shall prevent the abortion provider from performing or attempting to perform further abortions in violation of the provisions of this chapter in this state.

(3) No damages may be assessed against the woman upon whom an abortion was performed or attempted to be performed.

18-509 — protection of privacy in court proceedings

18-509. protection of privacy in court proceedings. In every civil or criminal proceeding or action brought under the pain-capable unborn child protection act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under the provisions of section 18-508 , Idaho Code, shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

18-510 — litigation defense fund

18-510. litigation defense fund. There is hereby created in the state treasury the pain-capable unborn child protection act litigation fund for the purpose of providing funds to pay for any costs and expenses incurred by the state attorney general in relation to actions surrounding defense of this chapter. This fund may include appropriations, donations, gifts or grants made to the fund. Interest earned on the investment of idle moneys in the fund shall be returned to the fund. Moneys in the fund may be expended pursuant to appropriation.

CHAPTER 6

18-601 — Interpretation of state statutes and the state constitution

18-601. Interpretation of state statutes and the state constitution. The supreme court of the United States having held in the case of "Planned Parenthood v. Casey" that the states have a "profound interest" in preserving the life of preborn children, Idaho hereby expresses the fundamental importance of that "profound interest" and it is hereby declared to be the public policy of this state that all state statutes, rules and constitutional provisions shall be interpreted to prefer, by all legal means, live childbirth over abortion.

18-602 — Legislative findings and intent

18-602. Legislative findings and intent.

(1) The legislature finds:

(a) That children have a special place in society that the law should reflect;

(b) That minors too often lack maturity and make choices that do not include consideration of both immediate and long-term consequences;

(c) That the medical, emotional and psychological consequences of abortion and childbirth are serious and can be lasting, particularly when the patient is immature;

(d) That the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related;

(e) That parents, when aware that their daughter is pregnant or has had an abortion are in the best position to ensure that she receives adequate medical attention during her pregnancy or after her abortion;

(f) That except in rare cases, parents possess knowledge regarding their child which is essential for a physician to exercise the best medical judgment for that child;

(g) That when a minor is faced with the difficulties of an unplanned pregnancy, the best interests of the minor are always served when there is careful consideration of the rights of parents in rearing their child and the unique counsel and nurturing environment that parents can provide;

(h) That informed consent is always necessary for making mature health care decisions.

(2) It is the intent of the legislature in enacting section 18-609A , Idaho Code, to further the following important and compelling state interests recognized by the United States supreme court in:

(a) Protecting minors against their own immaturity;

(b) Preserving the integrity of the family unit;

(c) Defending the authority of parents to direct the rearing of children who are members of their household;

(d) Providing a pregnant minor with the advice and support of a parent during a decisional period;

(e) Providing for proper medical treatment and aftercare when the life or physical health of the pregnant minor is at serious risk in the rare instance of a sudden and unexpected medical emergency.

18-603 — Advertising medicines or other means for preventing conception, or facilitating miscarriage or abortion

18-603. Advertising medicines or other means for preventing conception, or facilitating miscarriage or abortion. Every person, except licensed physicians of this state and those licensed or registered health care providers hereinafter referred to acting under their direct supervision or medical order, who wilfully publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise to assist in the accomplishment of any such purpose, is guilty of a felony. A licensed physician or licensed or registered health care provider acting at his direction or medical order may lawfully provide examinations, prescriptions, devices and informational materials regarding prevention of conception to any person requesting the same who, in the good faith judgment of the physician or such provider, is sufficiently intelligent and mature to understand the nature and significance thereof.

18-604 — Definitions

18-604. Definitions. As used in this chapter:

(1) "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean:

(a) The use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus;

(b) The removal of a dead unborn child;

(c) The removal of an ectopic or molar pregnancy; or

(d) The treatment of a woman who is no longer pregnant.

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

(3) "Down syndrome" means a chromosomal disorder associated either with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21. Down syndrome is sometimes referred to as "trisomy 21."

(4) "Emancipated" means any minor who has been married or is in active military service.

(5) "Fetus" and "unborn child." Each term means an individual organism of the species Homo sapiens from fertilization until live birth.

(6) "First trimester of pregnancy" means the first thirteen (13) weeks of a pregnancy.

(7) "Hospital" means an acute care general hospital in this state, licensed as provided in chapter 13, title 39 , Idaho Code.

(8) "Informed consent" means a voluntary and knowing decision to undergo a specific procedure or treatment. To be voluntary, the decision must be made freely after sufficient time for contemplation and without coercion by any person. To be knowing, the decision must be based on the physician's accurate and substantially complete explanation of:

(a) A description of any proposed treatment or procedure;

(b) Any reasonably foreseeable complications and risks to the patient from such procedure, including those related to reproductive health; and

(c) The manner in which such procedure and its foreseeable complications and risks compare with those of each readily available alternative to such procedure, including childbirth and adoption. The physician must provide the information in terms that can be understood by the person making the decision, with consideration of age, level of maturity and intellectual capability.

(9) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(10) "Minor" means a woman under eighteen (18) years of age.

(11) "Pregnant" and "pregnancy." Each term shall mean the reproductive condition of having a developing fetus in the body and commences with fertilization.

(12) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state as provided in chapter 18, title 54 , Idaho Code.

(13) "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the point in time when the fetus becomes viable, and there is hereby created a legal presumption that the second trimester does not end before the commencement of the twenty-fifth week of pregnancy, upon which presumption any licensed physician may proceed in lawfully aborting a patient pursuant to section 18-608 , Idaho Code, in which case the same shall be conclusive and unrebuttable in all civil or criminal proceedings.

(14) "Third trimester of pregnancy" means that portion of a pregnancy from and after the point in time when the fetus becomes viable.

(15) Any reference to a viable fetus shall be construed to mean a fetus potentially able to live outside the mother's womb, albeit with artificial aid.

18-605 — Unlawful abortions — Procurement of — Penalty

18-605. Unlawful abortions — Procurement of — Penalty.

(1) Every person not licensed or certified to provide health care in Idaho who knowingly, except as permitted by this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent thereby to cause or perform an abortion shall be guilty of a felony and shall be fined not to exceed five thousand dollars ($5,000) and/or imprisoned in the state prison for not less than two (2) and not more than five (5) years.

(2) Any person licensed or certified to provide health care pursuant to title 54 , Idaho Code, and who knowingly, except as permitted by the provisions of this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent to cause or perform an abortion shall:

(a) For the first violation, be subject to professional discipline and be assessed a civil penalty of not less than one thousand dollars ($1,000), payable to the board granting such person's license or certification;

(b) For the second violation, have their license or certification to practice suspended for a period of not less than six (6) months and be assessed a civil penalty of not less than two thousand five hundred dollars ($2,500), payable to the board granting such person's license or certification; and

(c) For each subsequent violation, have their license or certification to practice revoked and be assessed a civil penalty of not less than five thousand dollars ($5,000), payable to the board granting such person's license or certification.

(3) Any person who is licensed or certified to provide health care pursuant to title 54 , Idaho Code, and who knowingly violates the provisions of this chapter is guilty of a felony punishable as set forth in subsection (1) of this section, separate from and in addition to the administrative penalties set forth in subsection (2) of this section.

18-606 — Unlawful abortions — Accomplice or accessory — Submitting to — Penalty

18-606. Unlawful abortions — Accomplice or accessory — Submitting to — Penalty. Except as permitted by this act:

(1) Every person who, as an accomplice or accessory to any violation of section 18-605 , induces or knowingly aids in the production or performance of an abortion; and

(2) Every woman who knowingly submits to an abortion or solicits of another, for herself, the production of an abortion, or who purposely terminates her own pregnancy otherwise than by a live birth, shall be deemed guilty of a felony and shall be fined not to exceed five thousand dollars ($5,000) and/or imprisoned in the state prison for not less than one (1) and not more than five (5) years; provided, however, that no hospital, nurse, or other health care personnel shall be deemed in violation of this section if in good faith providing services in reliance upon the directions of a physician or upon the hospital admission of a patient for such purpose on the authority of a physician.

18-607 — Abortifacients — Unauthorized sale

18-607. Abortifacients — Unauthorized sale. A person who sells, offers to sell, possesses with intent to sell, advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor as useful for that purpose, commits a misdemeanor, unless:

(1) The sale, offer or display is to a physician or druggist or to an intermediary in a chain of distribution to physicians or druggists; or

(2) The same is made upon prescription or order of a physician; or

(3) The possession is with intent to sell as authorized in paragraphs (1) and (2) of this section; or

(4) The advertising is addressed to persons named in paragraph (1) of this section and confined to trade or professional channels not likely to reach the general public.

18-608 — Certain abortions permitted — Conditions and guidelines

18-608. Certain abortions permitted — Conditions and guidelines.

(1) Abortions shall only be lawful if and when performed in a hospital or in a physician's regular office or a clinic, which office or clinic is properly staffed and equipped for the performance of such procedures and respecting which the responsible physician or physicians have made satisfactory arrangements with one (1) or more acute care hospitals within reasonable proximity thereof providing for the prompt availability of hospital care as may be required due to complications or emergencies that might arise.

(2) An abortion performed upon a woman who is in the second trimester of pregnancy shall only be lawful if the same is performed in a hospital.

(3) An abortion performed upon a woman who is in the third trimester of pregnancy shall only be lawful if the same is performed in a hospital and, in the judgment of the attending physician, corroborated by a like opinion of a consulting physician concurring therewith, either is necessary for the preservation of the life of such woman or, if not performed, such pregnancy would terminate in birth or delivery of a fetus unable to survive. Third-trimester abortions undertaken for preservation of the life of a pregnant patient, as permitted by this subsection, shall, consistent with accepted medical practice and with the well-being and safety of such patient, be performed in a manner consistent with preservation of any reasonable potential for survival of a viable fetus.

(4) Nothing in this section shall make legal any abortion that is otherwise illegal under any other law of this state, including section 18-622 , Idaho Code.

18-608A — Persons authorized to perform abortions

18-608A. Persons authorized to perform abortions. It is unlawful for any person other than a physician to cause or perform an abortion.

18-609 — Physicians and hospitals not to incur civil liability — Consent to abortion — Notice

18-609. Physicians and hospitals not to incur civil liability — Consent to abortion — Notice.

(1) Any physician may perform an abortion not prohibited by this act and any hospital or other facility described in section 18-608 , Idaho Code, may provide facilities for such procedures without, in the absence of negligence, incurring civil liability therefor to any person including, but not limited to, the pregnant patient and the prospective father of the fetus to have been born in the absence of abortion, if informed consent for such abortion has been duly given by the pregnant patient.

(2) In order to provide assistance in assuring that the consent to an abortion is truly informed consent, the director of the department of health and welfare shall publish easily comprehended, nonmisleading and medically accurate printed material to be made available at no expense to physicians, hospitals or other facilities providing abortion and abortion-related services, and which shall contain the following:

(a) Descriptions of the services available to assist a woman through a pregnancy, at childbirth and while the child is dependent, including adoption services, a comprehensive list of the names, addresses, and telephone numbers of public and private agencies that provide such services and financial aid available;

(b) Descriptions of the physical characteristics of a normal fetus, described at two (2) week intervals, beginning with the fourth week and ending with the twenty-fourth week of development, accompanied by scientifically verified photographs of a fetus during such stages of development. The description shall include information about physiological and anatomical characteristics;

(c) Descriptions of the abortion procedures used in current medical practices at the various stages of growth of the fetus and any reasonable foreseeable complications and risks to the mother, including those related to subsequent childbearing;

(d) A list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform ultrasounds free of charge and that have contacted the department annually with a request to be included in the list. The list shall be arranged geographically and shall include the name, address, hours of operation, telephone number and e-mail address of each entity;

(e) A statement that the patient has a right to view an ultrasound image and to observe the heartbeat monitoring of her unborn child and that she may obtain an ultrasound free of charge. The statement shall indicate that printed materials required by the provisions of this section contain a list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform such ultrasounds free of charge;

(f) Information directing the patient where to obtain further information and assistance in locating a health care provider whom she can consult about chemical abortion, including the interventions, if any, that may affect the effectiveness or reversal of a chemical abortion, and informs the patient that if she wants to consult with such health care providers, she should contact those health care providers before she takes the abortifacient; and

(g) A section specific to unborn children diagnosed with Down syndrome in order to help educate mothers about the development of children with Down syndrome and the resources available in both the private and public sectors to assist parents of children with Down syndrome with the delivery and care of a child born with Down syndrome. The section shall include:

(i) Easily comprehended, medically accurate information regarding the development of a child with Down syndrome, including treatment and therapy strategies available during a pregnancy and after birth; and (ii) Descriptions of the services available to assist Idaho families with children born with Down syndrome, including adoption services, support agencies, and organizations in both the public and private sectors. Such directory shall include the name, address, telephone number, website, and email address of agencies, ministries, and organizations that provide financial, medical, emotional, and spiritual support services to mothers and families with a child with Down syndrome. The department shall ensure that a Spanish language version of the informed consent materials required in this subsection is made available to women considering an abortion.

(3) (a) The department of health and welfare shall develop and maintain a stable internet website, that may be part of an existing website, to provide the information described in subsection (2) of this section. No information regarding persons using the website shall be collected or maintained. The department of health and welfare shall monitor the website on a weekly basis to prevent and correct tampering.

(b) As used in this section, "stable internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the department of health and welfare.

(c) When a pregnant patient contacts a physician by telephone or visit and inquires about obtaining an abortion, the physician or the physician’s agent before or while scheduling an abortion-related appointment must provide the woman with the address of the state-sponsored internet website on which the printed materials described in subsection (2) of this section may be viewed as required in subsection (2) of this section.

(4) Except in the case of a medical emergency, no abortion shall be performed unless, prior to the abortion, the attending physician or the attending physician’s agent certifies in writing that the materials provided by the director have been

provided to the pregnant patient at least twenty-four (24) hours before the performance of the abortion. If the materials are not available from the director of the department of health and welfare, no certification shall be required. The attending physician, or the attending physician's agent, shall provide any other information required under this act.

(5) Except in the case of medical emergency, no abortion shall be performed unless, prior to an initial consultation or any testing, and not less than twenty-four (24) hours prior to the performance of the abortion, the woman is informed by telephone or in person, by the physician who is to perform the abortion or by an agent of the physician, that ultrasound imaging and heartbeat monitoring are available to the woman enabling the pregnant woman to view her unborn child or observe the heartbeat of the unborn child. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in subsection (2)(d), (e) and (f) of this section contain telephone numbers, addresses and e-mail addresses of facilities that offer such services at no cost. If the woman contacts the abortion facility by e-mail, the physician or agent of the physician shall inform the woman of the requirements of this subsection by e-mail with the required information in a larger font than the rest of the e-mail. No fee for an abortion shall be collected prior to providing the information required in this subsection.

(6) All physicians or their agents who use ultrasound equipment in the performance of an abortion shall inform the patient that she has the right to view the ultrasound image of her unborn child before an abortion is performed. If the patient requests to view the ultrasound image, she shall be allowed to view it before an abortion is performed. The physician or agent shall also offer to provide the patient with a physical picture of the ultrasound image of her unborn child prior to the performance of the abortion, and shall provide it if requested by the patient. In addition to providing the material, the attending physician may provide the pregnant patient with such other information which in the attending physician's judgment is relevant to the pregnant patient's decision as to whether to have the abortion or carry the pregnancy to term.

(7) Within thirty (30) days after performing any abortion without certification and delivery of the materials, the attending physician, or the attending physician's agent, shall cause to be delivered to the director of the department of health and welfare, a report signed by the attending physician, preserving the patient's anonymity, denoting the medical emergency that excused compliance with the duty to deliver the materials. The director of the department of health and welfare shall compile the information annually and report to the public the total number of abortions performed in the state where delivery of the materials was excused; provided that any information so reported shall not identify any physician or patient in any manner which would reveal their identities.

(8) If section 18-608 (3), Idaho Code, applies to the abortion to be performed and the pregnant patient is an adult and for any reason unable to give a valid consent thereto, the requirement for that pregnant patient's consent shall be met as required by law for other medical or surgical procedures and shall be determined in consideration of the desires, interests and welfare of the pregnant patient.

(9) The knowing failure of the attending physician to perform any one (1) or more of the acts required under subsection (7) of this section or section 39-261 , Idaho Code, is grounds for discipline pursuant to section 54-1814 (6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the vital statistics unit of the department of health and welfare, but such failure shall not constitute a criminal act.

18-609A — Consent required for abortions for minors

18-609A. Consent required for abortions for minors.

(1) Except as otherwise provided in this section, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written consent from one (1) of the minor's parents or the minor's guardian or conservator.

(2) A judge of the district court shall, on petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that:

(a) The pregnant minor is mature and capable of giving informed consent to the proposed abortion; or

(b) The performance of an abortion would be in her best interests.

(3) The pregnant minor may participate in the court proceedings on her own behalf. The court may appoint a guardian ad litem for her. The court shall provide her with counsel unless she appears through private counsel.

(4) Proceedings in the court under this section shall be closed and have precedence over other pending matters. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions

supporting the decision and shall order a confidential record of the evidence to be maintained including the judge's own findings and conclusions. The minor may file the petition using a fictitious name. All records contained in court files of judicial proceedings arising under the provisions of this section shall be confidential and exempt from disclosure pursuant to section 74-110 , Idaho Code. Dockets and other court records shall be maintained and court proceedings undertaken so that the names and identities of the parties to actions brought pursuant to this section will not be disclosed to the public.

(5) The court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the petition is filed, and shall issue its ruling at the conclusion of the hearing. If the court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived.

(6) An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. A minor shall file her notice of appeal within five (5) days, excluding weekends and holidays, after her petition was denied by the district court. The appellate court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the notice of appeal is filed and shall issue its ruling at the conclusion of the hearing. If the appellate court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived. Filing fees are not required of the pregnant minor at either the district court or the appellate level.

(7) Parental consent or judicial authorization is not required under this section if either:

(a) The pregnant minor certifies to the attending physician that the pregnancy resulted from rape as defined in section 18-6101 , Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) A medical emergency exists for the minor and the attending physician records the symptoms and diagnosis upon which such judgment was made in the minor's medical record.

18-609F — Reporting by courts

18-609F. Reporting by courts. The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including:

(1) The total number of petitions filed pursuant to section 18-609A , Idaho Code; and

(2) The number of such petitions filed where a guardian ad litem was requested and the number where a guardian ad litem or other person acting in such capacity was appointed; and

(3) The number of petitions where counsel appeared for the minor without court appointment; and

(4) The number of petitions where counsel was requested by the minor and the number where counsel was appointed by the court; and

(5) The number of such petitions for which the right to self-consent was granted; and

(6) The number of such petitions for which the court granted its informed consent; and

(7) The number of such petitions which were denied; and

(8) The number of such petitions which were withdrawn by the minor; and

(9) For categories described in subsections (3), (4) and (7) of this section, the number of appeals taken from the court's order in each category; and

(10) For each of the categories set out in subsection (9) of this section, the number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed; and

(11) The age of the minor for each petition; and

(12) The time between the filing of the petition and the hearing of each petition; and

(13) The time between the hearing and the decision by the court for each petition; and

(14) The time between the decision and filing a notice of appeal for each case, if any; and

(15) The time of extension granted by the court in each case, if any.

18-609G — Statistical records

18-609G. Statistical records.

(1) The bureau of vital statistics of the department of health and welfare shall, in addition to other information required pursuant to section 39-261 , Idaho Code, require the complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include, at a minimum, the following:

(a) Whether the abortion was performed following the physician's receipt of:

(i) The written informed consent of a parent, guardian or conservator and the minor; or (ii) The written informed consent of an emancipated minor for herself; or (iii) The written informed consent of a minor for herself pursuant to a court order granting the minor the right to self-consent; or (iv) The court order which includes a finding that the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor; or

(v) Certification from the pregnant minor to the attending physician pursuant to section 18-609A , Idaho Code, that parental consent is not required because the pregnancy resulted from rape as defined in section 18-6101 , Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) If the abortion was performed due to a medical emergency and without consent from a parent, guardian or conservator or court order, the diagnosis upon which the attending physician determined that the abortion was immediately necessary due to a medical emergency.

(2) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this section is grounds for discipline pursuant to section 54-1814 (6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the bureau of vital statistics of the department of health and welfare, but such failure shall not constitute a criminal act.

18-610 — Refusal to consent by pregnant woman — Effect

18-610. Refusal to consent by pregnant woman — Effect. Notwithstanding any provision of law permitting valid consent for medical or surgical procedures to be given by a person or persons other than the patient, the refusal of any pregnant woman, irrespective of age or competence, to submit to an abortion shall be grounds for a physician or hospital otherwise authorized to proceed, to decline performance of an abortion and/or to submit the matter of consent to adjudication by a court of competent jurisdiction.

18-611 — FREEDOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS

18-611. FREEDOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS.

(1) As used in this section:

(a) "Abortifacient" means any drug that causes an abortion as defined in section 18-604 , Idaho Code, emergency contraception or any drug the primary purpose of which is to cause the destruction of an embryo or fetus.

(b) "Conscience" means the religious, moral or ethical principles sincerely held by any person.

(c) "Embryo" means the developing human life from fertilization until the end of the eighth week of gestation.

(d) "Fetus" means the developing human life from the start of the ninth week of gestation until birth.

(e) "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.

(f) "Health care service" means an abortion, dispensation of an abortifacient drug, human embryonic stem cell research, treatment regimens utilizing human embryonic stem cells, human embryo cloning or end of life treatment and care.

(g) "Provide" means to counsel, advise, perform, dispense, assist in or refer for any health care service.

(h) "Religious, moral or ethical principles," "sincerely held," "reasonably accommodate" and "undue hardship" shall be construed consistently with title VII of the federal civil rights act of 1964, as amended.

(2) No health care professional shall be required to provide any health care service that violates his or her conscience.

(3) Employers of health care professionals shall reasonably accommodate the conscience rights of their employees as provided in this section, upon advanced written notification by the employee. Such notice shall suffice without specification of the reason therefor. It shall be unlawful for any employer to discriminate against any health care professional based upon his or her declining to provide a health care service that violates his or her conscience, unless the employer can demonstrate that such accommodation poses an undue hardship.

(4) No health care professional or employer of the health care professional shall be civilly, criminally or administratively liable for the health care professional declining to provide health care services that violate his or her conscience, except for life-threatening situations as provided for in subsection (6) of this section.

(5) The provisions of this section do not allow a health care professional or employer of the health care professional to refuse to provide health care services because of a patient's race, color, religion, sex, age, disability or national origin.

(6) If a health care professional invokes a conscience right in a life-threatening situation where no other health care professional capable of treating the emergency is available, such health care professional shall provide treatment and care until an alternate health care professional capable of treating the emergency is found.

(7) In cases where a living will or physician's orders for scope of treatment (POST) is operative, as defined by the medical consent and natural death act, and a physician has a conscience objection to the treatment desired by the patient, the physician shall comply with the provisions of section 39-4513 (2), Idaho Code, before withdrawing care and treatment to the patient.

(8) Nothing in this section shall affect the rights of conscience provided for in section 18-612 , Idaho Code, to the extent that those rights are broader in scope than those provided for in this section.

18-612 — Refusal to perform abortions — Physicians and hospitals not liable

18-612. Refusal to perform abortions — Physicians and hospitals not liable. Nothing in this act shall be deemed to require any hospital to furnish facilities or admit any patient for any abortion if, upon determination by its governing board, it elects not to do so. Neither shall any physician be required to perform or assist in any abortion, nor shall any nurse, technician or other employee of any physician or hospital be required by law or otherwise to assist or participate in the performance or provision of any abortion if he or she, for personal, moral or religious reasons, objects thereto. Any such person in the employ or under the control of a hospital shall be deemed to have sufficiently objected to participation in such procedures only if he or she has advised such hospital in writing that he or she generally or specifically objects to assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor. No refusal to accept a patient for abortion or to perform, assist or participate in any such abortion as herein provided shall form the basis of any claim for damages or recriminatory action against the declining person, agency or institution.

18-613 — Partial-birth abortions prohibited

18-613. Partial-birth abortions prohibited.

(1) Prohibited acts. Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be subject to the penalties imposed in section 18-605 , Idaho Code. This section shall not apply to partial-birth abortions necessary to save the life of the mother when her life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) Definitions. As used in this section:

(a) "Fetus" has the same meaning as provided in section 18-604 (5), Idaho Code.

(b) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(i) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the physician knows will kill the partially delivered living fetus; and (ii) Performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

(c) "Physician" has the same meaning provided in section 18-604 , Idaho Code. However, any individual who is not a physician or not otherwise legally authorized by this state to perform abortions but who nevertheless directly performs a partial-birth abortion shall be subject to the provisions described in this section.

(3) (a) Civil actions. The father of the aborted fetus, if married to the mother of the aborted fetus at the time of the partial-birth abortion, or the maternal grandparents of the aborted fetus, if the mother is not at least eighteen (18) years of age at the time of the abortion, may bring a civil action against the defendant physician to obtain appropriate relief. Provided however, that a civil action by the father is barred if the pregnancy resulted from the father's criminal conduct or if the father consented to the abortion. Further, a civil action by the maternal grandparents is barred if the pregnancy is the result of a maternal grandparent's criminal conduct or if a maternal grandparent consented to the abortion.

(b) As used in this section, "appropriate relief" shall include:

(i) Money damages for all mental and physical injuries suffered by the plaintiff as a result of the abortion performed in violation of this section; (ii) Money damages equal to three (3) times the cost of performing the abortion procedure.

(4) (a) Hearing. A physician accused of violating this section may request a hearing before the state board of medicine on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) The findings of the board of medicine regarding the issues described in paragraph (a) of this subsection are admissible at the criminal and civil trials of the defendant physician. Upon a motion by the defendant physician, the court shall delay the beginning of the criminal and civil trials for not more than thirty (30) days to permit the hearing to take place.

(5) Immunity. A woman upon whom a partial-birth abortion is performed shall not be prosecuted for violations of this section, for conspiracy to violate this section, or for violations of section 18-603 , 18-605 or 18-606 , Idaho Code, in regard to the partial-birth abortion performed.

18-614 — Defenses to prosecution

18-614. Defenses to prosecution.

(1) No physician shall be subject to criminal or administrative liability for causing or performing an abortion upon a minor in violation of subsection (1) of section 18-609A , Idaho Code, if prior to causing or performing the abortion the physician obtains either positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence, a legible photocopy of such evidence in the physician's office file for the woman.

(2) For purposes of this section, "positive identification" means a lawfully issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card, bearing the person's photograph and date of birth, the person's valid passport or a certified copy of the person's birth certificate.

18-615 — Criminal act to coerce or attempt to coerce a woman to obtain an abortion

18-615. Criminal act to coerce or attempt to coerce a woman to obtain an abortion.

(1) A person violates the provisions of this section when, knowing that a woman is pregnant, and with the intent to induce the pregnant woman to abort, whether by a medical procedure or otherwise:

(a) Threatens to inflict physical injury or death on the pregnant woman; or

(b) Conspires to inflict physical injury or death on the pregnant woman; or

(c) Unlawfully inflicts physical injury on the pregnant woman.

(2) A pregnant woman injured by reason of a person's violation of the provisions of this section may bring a civil suit for recovery of damages for such injury, whether or not the perpetrator is criminally prosecuted or convicted. In such a civil suit, the pregnant woman shall be entitled to recover her reasonable attorney's fees and costs if she is the prevailing party.

(3) Violations of the provisions of this section are classified and punishable as follows:

(a) A violation of subsection (1)(a) or (1)(b) of this section constitutes a misdemeanor punishable by not more than six (6) months in jail, or a fine of not more than one thousand dollars ($1,000), or both.

(b) A violation of subsection (1)(c) of this section constitutes a felony punishable by imprisonment for not more than five (5) years, or a fine of not more than five thousand dollars ($5,000), or both.

(4) The term "physical injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(5) The term "woman" includes a minor female.

18-616 — Severability

18-616. Severability. If any one (1) or more provision, section, subsection, sentence, clause, phrase, or word of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed every section of this chapter and each provision, section, subsection, sentence, clause, phrase or word thereof irrespective of the fact that any one (1) or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

18-617 — CHEMICAL ABORTIONS

18-617. CHEMICAL ABORTIONS.

(1) As used in this section:

(a) "Abortifacient" means mifepristone, misoprostol and/or other chemical or drug dispensed with the intent of causing an abortion as defined in section 18-604 (1), Idaho Code. Nothing in the definition shall apply when used to treat ectopic pregnancy;

(b) "Chemical abortion" means the exclusive use of an abortifacient or combination of abortifacients to effect an abortion;

(c) "Physician" has the same meaning as provided in section 18-604 (12), Idaho Code.

(2) No physician shall give, sell, dispense, administer, prescribe or otherwise provide an abortifacient for the purpose of effecting a chemical abortion unless the physician:

(a) Has the ability to assess the duration of the pregnancy accurately in accordance with the applicable standard of care for medical practice in the state;

(b) Has determined, if clinically feasible, that the unborn child to be aborted is within the uterus and not ectopic;

(c) Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or, if the physician does not have admitting privileges at a local hospital, has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care;

(d) Informs the patient that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis. If the appropriate medical facility is other than a local hospital emergency room, the physician shall provide the patient with the name, address and telephone number of such facility in writing; and

(e) Has complied with the informed consent provisions of section 18-609 , Idaho Code.

(3) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make reasonable efforts to ensure that the patient returns for a follow-up visit so that a physician can confirm that the pregnancy has been terminated and assess the patient's medical condition.

18-618 — CiVIL CAUSES OF ACTION

18-618. CiVIL CAUSES OF ACTION.

(1) Any female upon whom an abortion has been attempted or performed, or the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was attempted or performed, or a maternal grandparent of the unborn child in the event the mother is deceased, may maintain an action for actual damages against the person who in knowing or reckless violation of section 18-617 , Idaho Code, attempted or performed the abortion. The court may, in its discretion, award punitive damages pursuant to section 6-1604 , Idaho Code, and enjoin further violations of sections 18-617 through 18-621 , Idaho Code.

(2) A cause of action for injunctive relief against any person who has knowingly or recklessly violated sections 18-617 through 18-621 , Idaho Code, may be maintained by a county prosecuting attorney with appropriate jurisdiction or by the attorney general. The injunction shall prevent the abortion provider from performing further abortions in violation of sections 18-617 through 18-621 , Idaho Code, in this state.

18-619 — Anonymity of female

18-619. Anonymity of female. In every court proceeding or action brought under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses and

counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under this section shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

18-620 — construction

18-620. construction.

(1) Nothing in sections 18-617 through 18-621 , Idaho Code, shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of sections 18-617 through 18-621 , Idaho Code, to make lawful an abortion that is currently unlawful.

18-621 — SEVERABILITY

18-621. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

18-622 — defense of life act

18-622. defense of life act.

(1) Except as provided in subsection (2) of this section, every person who performs or attempts to perform an abortion as defined in this chapter commits the crime of criminal abortion. Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than five (5) years in prison. The professional license of any health care professional who performs or attempts to perform an abortion or who assists in performing or attempting to perform an abortion in violation of this subsection shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

(2) The following shall not be considered criminal abortions for purposes of subsection (1) of this section:

(a) The abortion was performed or attempted by a physician as defined in this chapter and:

(i) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman. No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; and (ii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. No such greater risk shall be deemed to exist because the physician believes that the woman may or will take action to harm herself; or

(b) The abortion was performed or attempted by a physician as defined in this chapter during the first trimester of pregnancy and:

(i) If the woman is not a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman has reported to a law enforcement agency that she is the victim of an act of rape or incest and provided a copy of such report to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws; or (ii) If the woman is a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported to a law enforcement agency or child protective services that she is the victim of an act of rape or incest and a copy of such report has been provided to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws.

(3) If a report concerning an act of rape or incest is made to a law enforcement agency or child protective services pursuant to subsection (2)(b) of this section, then the person who made the report shall, upon request, be entitled to receive a copy of such report within seventy-two (72) hours of the report being made, provided that the report may be

redacted as necessary to avoid interference with an investigation.

(4) Medical treatment provided to a pregnant woman by a health care professional as defined in this chapter that results in the accidental death of, or unintentional injury to, the unborn child shall not be a violation of this section.

(5) Nothing in this section shall be construed to subject a pregnant woman on whom any abortion is performed or attempted to any criminal conviction and penalty.

18-623 — abortion trafficking

18-623. abortion trafficking.

(1) An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604 , Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state commits the crime of abortion trafficking. As used in this subsection, the terms "procure" and "obtain" shall not include the providing of information regarding a health benefit plan.

(2) It shall be an affirmative defense to a prosecution under subsection (1) of this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.

(3) It shall not be an affirmative defense to a prosecution under subsection (1) of this section that the abortion provider or the abortion-inducing drug provider is located in another state.

(4) The Idaho attorney general has the authority, at the attorney general's sole discretion, to prosecute a person for a criminal violation of this section if the prosecuting attorney authorized to prosecute criminal violations of this section refuses to prosecute violations of any of the provisions of this section by any person without regard to the facts or circumstances.

(5) Any person who commits the crime of abortion trafficking, as provided in subsection (1) of this section, shall be punished by imprisonment in the state prison for no less than two (2) years and no more than five (5) years.

CHAPTER 7

18-701 — Refusal of officer to make arrest

18-701. Refusal of officer to make arrest. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who wilfully refuses to receive or arrest any person charged with criminal offense, is punishable by fine not exceeding $5,000, and imprisonment in the county jail not exceeding one (1) year.

18-703 — Illegal arrests and seizures

18-703. Illegal arrests and seizures. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

18-704 — Inhuman treatment of prisoners

18-704. Inhuman treatment of prisoners. Every officer who is guilty of wilful inhumanity or oppression toward any prisoner under his care or in his custody is punishable by fine not exceeding $5,000, and removal from office.

18-705 — Resisting and obstructing officers

18-705. Resisting and obstructing officers. Every person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1,000), and imprisonment in the county jail not exceeding one (1) year.

18-706 — Unnecessary assaults by officers

18-706. Unnecessary assaults by officers. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding $5,000 and imprisonment in the county jail not exceeding one (1) year.

18-708 — Recapture of goods from legal custody

18-708. Recapture of goods from legal custody. Every person who wilfully injures or destroys, or takes, or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

18-709 — Maliciously procuring warrant

18-709. Maliciously procuring warrant. Every person who, maliciously and without probable cause, procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

18-711 — Unlawful exercise of functions of peace officers — Unlawful importation of police officers — Suppression of violence — Exceptions

18-711. Unlawful exercise of functions of peace officers — Unlawful importation of police officers — Suppression of violence — Exceptions. 1. Any person who shall in this state unlawfully exercise or attempt to exercise the functions of, or hold himself out to any one as, a deputy sheriff, marshal, policeman, constable or peace officer, or any person, whether acting in his own behalf or as an officer of the law, or as the authorized or unauthorized agent or representative of another, or of any association, corporation or company, who shall bring or cause to be brought, or aid in bringing into this state any armed or unarmed police force or detective agency or force, or any armed or unarmed body of men for the suppression of domestic violence, shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for not less than two (2) years and not more than five (5) years: provided, that the legislature, or the executive when the legislature can not be convened, may call upon the lawfully constituted authorities of the United States for the protection against invasion and domestic violence, as provided in section 4 of article 4 of the Constitution of the United States. 2. This section shall not apply to a law enforcement officer who pursuant to an interlocal cooperation plan upon receiving an emergency request from an Idaho law enforcement officer enters Idaho to give assistance; nor shall this section apply to the Idaho law enforcement officer who makes a request for emergency assistance.

18-712 — Civil liability for importing police officers or armed men

18-712. Civil liability for importing police officers or armed men. Any person, officer, company, association or corporation who shall knowingly bring, or cause to be brought, or aid in bringing, into this state any armed or unarmed police force, detective agency or force, or armed or unarmed body of men for the suppression of domestic violence, shall be liable in a civil action to any person for any injury to person or property through the action, or as the result of the coming or bringing into the state of such body of men, or any of them, whether acting together or separately in carrying out the purpose for which they were brought or came into the state.

CHAPTER 8

18-801 — Arson — Definitions

18-801. Arson — Definitions. In this chapter, the following terms have the following meanings:

(1) "Damage", in addition to its ordinary meaning, includes any charring, scorching, burning or breaking, and shall include any diminution in the value of any property as a consequence of an act;

(2) "Dwelling" means any structure used or intended for use as human habitation;

(3) "Structure" means any building of any kind, including fixtures and appurtenances attached thereto, any coliseum, bridge or carport, any tent or other portable building, or any vehicle, vessel, watercraft or aircraft;

(4) "Real property" means any land, and shall include any crops growing thereon;

(5) "Personal property" means any tangible property, including anything severed from the land;

(6) "Forest land" means any brush covered land, cut-over land, forest, prairie, grasslands, wetlands or woods;

(7) "Firefighter" means any person assisting in the suppression or extinguishment of any fire or explosion.

18-802 — Arson in first degree — Burning of dwelling or other structures where persons are normally present — Penalties

18-802. Arson in first degree — Burning of dwelling or other structures where persons are normally present — Penalties. Any person who willfully and unlawfully, by fire or explosion, damages:

(1) Any dwelling, whether occupied or not; or

(2) Any structure, whether occupied or not, in which persons are normally present, including without limitation: jails, prisons or detention centers; hospitals, nursing homes or other health care facilities; department stores, office buildings, business establishments, churches or educational institutions, or other similar structures; or

(3) Any other structure which the actor has reasonable grounds to believe is occupied by a human being; or

(4) Any real or personal property, whether the property of the actor or another, with the intent to deceive or harm any insurer or any person with a legal or financial interest in the property, or obtain any financial gain for the actor or another; is guilty of arson in the first degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than twenty-five (25) years or fined not more than one hundred thousand dollars ($100,000) or both.

18-803 — Arson in the second degree — Burning of a structure — Penalties

18-803. Arson in the second degree — Burning of a structure — Penalties. Any person who willfully and unlawfully, by fire or explosion, damages any structure, whether the property of the actor or another, not included or described in the preceding section, is guilty of arson in the second degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than fifteen (15) years or fined not more than seventy-five thousand dollars ($75,000) or both.

18-804 — Arson in the third degree — Burning of real or personal property or forest land — Penalties

18-804. Arson in the third degree — Burning of real or personal property or forest land — Penalties. Any person who willfully and unlawfully, by fire or explosion, damages:

(1) Any real or personal property of another; or

(2) Any forest land; is guilty of arson in the third degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than ten (10) years or fined not more than fifty thousand dollars ($50,000) or both.

18-805 — Aggravated arson — Penalties

18-805. Aggravated arson — Penalties. A person whose violation of sections 18-802 , 18-803 or 18-804 , Idaho Code, results, directly or indirectly, in great bodily harm, permanent disability, permanent disfigurement or death of a firefighter or any other person, regardless of intent or lack of intent to cause such harm, upon a finding of guilt thereon shall be sentenced to an extended term of imprisonment. The extended term of imprisonment shall be computed by increasing the sentence imposed for a conviction under such sections, by a period of not more than ten (10) years.

CHAPTER 9

18-901 — Assault defined

18-901. Assault defined. An assault is:

(a) An unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another; or

(b) An intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

18-902 — Assault — Punishment

18-902. Assault — Punishment. An assault is punishable by fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed three (3) months, or by both such fine and imprisonment.

18-903 — Battery defined

18-903. Battery defined. A battery is any:

(a) Willful and unlawful use of force or violence upon the person of another; or

(b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or

(c) Unlawfully and intentionally causing bodily harm to an individual.

18-904 — Battery — Punishment

18-904. Battery — Punishment. Battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed six (6) months, or both unless the victim is pregnant and this fact is known to the batterer, in which case the punishment is by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed one (1) year, or both.

18-905 — Aggravated assault defined

18-905. Aggravated assault defined. An aggravated assault is an assault:

(a) With a deadly weapon or instrument without intent to kill; or

(b) By any means or force likely to produce great bodily harm.

(c) With any vitriol, corrosive acid, or a caustic chemical of any kind.

(d) "Deadly weapon or instrument" as used in this chapter is defined to include any firearm, though unloaded or so defective that it can not be fired.

18-906 — Aggravated assault — Punishment

18-906. Aggravated assault — Punishment. An aggravated assault is punishable by imprisonment in the state prison not to exceed five (5) years or by fine not exceeding five thousand dollars ($5,000) or by both.

18-907 — Aggravated battery defined

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) There shall be 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.

18-908 — Aggravated battery — Punishment

18-908. Aggravated battery — Punishment. An aggravated battery is punishable by imprisonment in the state prison not to exceed fifteen (15) years.

18-909 — Assault with intent to commit a serious felony defined

18-909. Assault with intent to commit a serious felony defined. An assault upon another with intent to commit murder, rape, mayhem, robbery, or lewd and lascivious conduct with a minor child is an assault with the intent to commit a serious felony.

18-910 — Assault with the intent to commit a serious felony — Punishment

18-910. Assault with the intent to commit a serious felony — Punishment. An assault with the intent to commit a serious felony is punishable by imprisonment in the state prison not to exceed fifteen (15) years.

18-911 — Battery with the intent to commit a serious felony defined

18-911. Battery with the intent to commit a serious felony defined. Any battery committed with the intent to commit murder, rape, mayhem, robbery or lewd and lascivious conduct with a minor child is a battery with the intent to commit a

serious felony.

18-912 — Battery with the intent to commit a serious felony — Punishment

18-912. Battery with the intent to commit a serious felony — Punishment. A battery with the intent to commit a serious felony is punishable by imprisonment in the state prison not to exceed twenty (20) years.

18-913 — Felonious administering of drugs defined

18-913. Felonious administering of drugs defined. Any person who administers, aids in administering or orders the administering to another any chloroform, ether, laudanum or other narcotic, anaesthetic or intoxicating agent, with intent to enable or assist himself or any other person to commit a felony, is guilty of felonious administering of drugs.

18-914 — Felonious administering of drugs — Punishment

18-914. Felonious administering of drugs — Punishment. A felonious administering of drugs is punishable by imprisonment in the state prison not to exceed five (5) years or five thousand ($5,000) dollars, or both.

18-915 — Assault or battery upon certain personnel — Punishment

18-915. Assault or battery upon certain personnel — Punishment.

(1) Any person who commits a crime provided for in this chapter against or upon a justice, judge, magistrate, prosecuting attorney, public defender, peace officer, bailiff, marshal, sheriff, police officer, peace officer standards and training employee involved in peace officer decertification activities, emergency services dispatcher, correctional officer, employee of the department of correction, employee of a private prison contractor while employed at a private correctional facility in the state of Idaho, members or employees of the commission of pardons and parole, employees of the department of water resources authorized to enforce the provisions of chapter 38, title 42 , Idaho Code, employees of the department of parks and recreation authorized to enforce the provisions of chapter 42, title 67 , Idaho Code, employees of a public utility as described in section 61-129 , Idaho Code, including any employee of a consumer-owned utility, jailer, parole officer, misdemeanor probation officer, officer of the Idaho state police, fireman, social caseworkers or social work specialists of the department of health and welfare, employee of a state secure confinement facility for juveniles, employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer, emergency medical services personnel licensed under the provisions of chapter 9, title 46 , Idaho Code, a member, employee or agent of the state tax commission, United States marshal, or federally commissioned law enforcement officer or their deputies or agents, and the perpetrator knows or has reason to know of the victim's status, the punishment shall be as follows:

(a) For committing battery with intent to commit a serious felony, the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years.

(b) For committing any other crime in this chapter, the punishment shall be doubled that provided in the respective section, except as provided in subsections (2) and (3) of this section.

(2) For committing a violation of the provisions of section 18-901 or 18-903 , Idaho Code, against the person of a former or present justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a county jail, or of a private correctional facility, or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer, a juvenile probation officer, or member or employee of the commission of pardons and parole:

(a) Because of the exercise of official duties or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a private correctional facility, an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer; the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

(3) For committing a violation of the provisions of section 18-903 , Idaho Code, except unlawful touching as described in section 18-903 (b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer:

(a) Because of the exercise of official duty or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer; the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

18-915A — Removing a firearm from a law enforcement officer

18-915A. Removing a firearm from a law enforcement officer.

(1) A person may not knowingly remove or attempt to remove a firearm from the possession of another person if:

(a) The other person is lawfully acting within the course and scope of employment; and

(b) The person knows or has reason to know that the other person is employed as any of the following:

(i) A law enforcement officer who, in an official capacity, is authorized to make arrests; or (ii) An employee of the Idaho board of correction, the Idaho department of juvenile corrections, any prison, jail, detention or booking facility or private correctional facility within the state, or the commission of pardons and parole.

(2) A person who violates this section is guilty of a felony.

(3) A sentence imposed for a violation of this section may be imposed separate from and consecutive to or concurrent with a sentence for any offense based on the act or acts establishing the offense under this section.

18-915B — Propelling bodily fluid or waste at certain persons

18-915B. Propelling bodily fluid or waste at certain persons. Any person who is housed in a state, private or county correctional facility, work release center or labor camp, or who is being transported or supervised by a correctional officer or detention officer, irrespective of whether the person is a sentenced prisoner or a pretrial detainee, and who knowingly propels any bodily fluid or bodily waste at any detention officer, correctional officer, staff member, private contractor or employee of a county or state correctional facility, or authorized visitor to a county or state correctional facility, work release center or labor camp, or who knowingly introduces any bodily fluid or bodily waste into the food or drink of such officer, staff member, private contractor, employee or authorized visitor, shall be guilty of a felony punishable by imprisonment in a correctional facility for not more than five (5) years, and such sentence shall be served consecutively to any sentence currently served.

18-915C — battery against health care workers

18-915C. battery against health care workers. Any person who commits battery as defined in section 18-903 , Idaho Code, against or upon any person licensed, certified or registered by the state of Idaho to provide health care, or an employee of a hospital, medical clinic or medical practice, when the victim is in the course of performing his or her duties or because of the victim’s professional or employment status under this statute, shall be subject to imprisonment in the state prison not to exceed three (3) years.

18-916 — Abuse of school teachers

18-916. Abuse of school teachers. Every parent, guardian or other person who upbraids, insults or abuses any teacher of the public schools, in the presence and hearing of a pupil thereof, is guilty of a misdemeanor.

18-917 — Hazing

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, 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) 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.

18-917A — Student harassment — Intimidation — Bullying

18-917A. Student harassment — Intimidation — Bullying.

(1) No student or minor present on school property or at school activities shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.

(2) As used in this section, "harassment, intimidation or bullying" means any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:

(a) A reasonable person under the circumstances should know will have the effect of:

(i) Harming a student; or (ii) Damaging a student's property; or (iii) Placing a student in reasonable fear of harm to his or her person; or (iv) Placing a student in reasonable fear of damage to his or her property; or

(b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student. An act of harassment, intimidation or bullying may also be committed through the use of a landline, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

(3) A student who personally violates any provision of this section may be guilty of an infraction.

18-918 — Domestic violence

18-918. Domestic violence.

(1) For the purpose of this section:

(a) "Household member" means a person who is a spouse, former spouse, or a person who has a child in common, regardless of whether they have been married, or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.

(b) "Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force. (2)(a) Any household member who in committing a battery, as defined in section 18-903 , Idaho Code, inflicts a traumatic injury on any other household member is guilty of a felony.

(b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000) or by both fine and imprisonment. (3)(a) A household member who commits an assault, as defined in section 18-901 , Idaho Code, against another household member that does not result in traumatic injury is guilty of a misdemeanor domestic assault.

(b) A household member who commits a battery, as defined in section 18-903 , Idaho Code, against another household member that does not result in traumatic injury is guilty of a misdemeanor domestic battery.

(c) A first conviction under this subsection is punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in a county jail not to exceed one (1) year, or both. Any person who pleads guilty to or is found guilty of a violation of this subsection who previously has pled guilty to or been found guilty of a violation of this subsection, or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a

term not to exceed one (1) year or by a fine not to exceed two thousand dollars ($2,000) or by both fine and imprisonment. Any person who pleads guilty to or is found guilty of a violation of this subsection who previously has pled guilty to or been found guilty of two (2) violations of this subsection, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction shall be guilty of a felony 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.

(4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section, attempted strangulation as provided in section 18-923 , Idaho Code, or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who, within fifteen (15) years, pleads guilty to or is found guilty of any further violation of this section shall be guilty of a felony punishable by imprisonment in the state prison for a term not to exceed twenty (20) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court. (7)(a) Any person who pleads guilty to or is found guilty of a violation of this section or attempted strangulation as provided in section 18-923 , Idaho Code, shall undergo, at the person’s own expense, an evaluation by a person, agency or organization approved by the court in accordance with paragraph (c) of this subsection to determine whether the defendant should be required to obtain counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court’s list of approved evaluators, in accordance with paragraph (c) of this subsection, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19 , Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence that may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less-costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) The supreme court shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A (16), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence and victim assistance.

18-919 — Sexual exploitation by a medical care provider

18-919. Sexual exploitation by a medical care provider.

(a) Any person acting or holding himself out as a physician, surgeon, dentist, psychotherapist, chiropractor, nurse or other medical care provider as defined in this section, who engages in an act of sexual contact with a patient or client, is guilty of sexual exploitation by a medical care provider. For the purposes of this section, consent of the patient or client receiving medical care or treatment shall not be a defense. This section does not apply to sexual contact between a medical care provider and the provider's spouse, or a person in a domestic relationship who is also a patient or client. Violation of this section is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed one (1) year, or both.

(b) For the purposes of this section:

(1) "Intimate part" means the sexual organ, anus, or groin of any person, and the breast of a female.

(2) "Medical care provider" means a person who gains the trust and confidence of a patient or client for the examination and/or treatment of a medical or psychological condition, and thereby gains the ability to treat, examine and physically touch the patient or client.

(3) "Sexual contact" means the touching of an intimate part of a patient or client for the purpose of sexual arousal, gratification, or abuse, and/or the touching of an intimate part of a patient or client outside the scope of a medical examination or treatment.

(4) "Touching" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

18-920 — Violation of no contact order

18-920. Violation of no contact order.

(1) When a person is charged with or convicted of an offense under section 18-901 , 18-903 , 18-905 , 18-907 , 18-909 , 18-911 , 18-913 , 18-915 , 18-918 , 18-919 , 18-6710 , 18-6711 , 18-7905 , 18-7906 or 39-6312 , Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

(2) A violation of a no contact order is committed when:

(a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and

(b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and

(c) The person charged or convicted has had contact with the stated person in violation of an order.

(3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000), or by both fine and imprisonment. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.

(4) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.

(5) For purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

18-921 — Peace officers — Immunity

18-921. Peace officers — Immunity. No peace officer may be held criminally or civilly liable for actions or omissions in the performance of the duties of his office under this chapter, if the peace officer acts in good faith and without malice.

18-922 — Order — Transmittal to law enforcement agency

18-922. Order — Transmittal to law enforcement agency.

(1) A no contact order may be imposed either by order of the court or by an Idaho criminal rule, as a condition of bond.

(2) (a) Notice of a no contact order shall be forwarded by the clerk of the court, or by the arresting agency where the defendant is given notice of the bond condition under an Idaho court rule, on or before the next judicial day, to the appropriate law enforcement agency.

(b) Upon receipt of such notice, the law enforcement agency shall forthwith enter the order into the Idaho law enforcement telecommunications system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the Idaho law enforcement telecommunications system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident may be informed of the existence of such no contact order.

(4) A no contact order shall remain in effect for the term set by the court or an Idaho criminal rule, or until terminated by the court.

18-923 — Attempted strangulation

18-923. Attempted strangulation.

(1) Any person who willfully and unlawfully chokes or attempts to strangle a household member, or a person with whom he or she has or had a dating relationship, is guilty of a felony punishable by incarceration for up to fifteen (15) years in the state prison.

(2) No injuries are required to prove attempted strangulation.

(3) The prosecution is not required to show that the defendant intended to kill or injure the victim. The only intent required is the intent to choke or attempt to strangle.

(4) "Household member" assumes the same definition as set forth in section 18-918 (1)(a), Idaho Code.

(5) "Dating relationship" assumes the same definition as set forth in section 39-6303 (2), Idaho Code.

(6) Any person who pleads guilty to or is found guilty of a violation of this section shall undergo an evaluation, counseling and other treatment as provided in section 18-918 (7), Idaho Code.

(7) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a violation of the provisions of this section, a felony violation for domestic violence as provided in section 18-918 , Idaho Code, or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who, within fifteen (15) years, pleads guilty to or is found guilty of any further violation of this section shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed twenty (20) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(8) The maximum penalties provided in this section shall be doubled where the act for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(9) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state that substantially conforms with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

18-924 — sexual battery

18-924. sexual battery.

(1) Sexual battery is any willful physical contact, over or under the clothing, with the intimate parts of any person, when the physical contact is done without consent and with the intent to degrade, humiliate or demean the person touched or with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the actor or any other person. For purposes of this section, "intimate parts" means the genital area, groin, inner thighs, buttocks or breasts.

(2) Sexual battery is a misdemeanor and shall be punishable by up to one (1) year in jail, or a fine of up to two thousand dollars ($2,000), or both.

18-925 — aggravated sexual battery

18-925. aggravated sexual battery.

(1) Aggravated sexual battery is sexual battery as defined in section 18-924 , Idaho Code, when the forbidden contact occurs under the circumstances described in section 18-907 , Idaho Code.

(2) Aggravated sexual battery is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty (20) years.

CHAPTER 10

18-1001 — Common barratry

18-1001. Common barratry. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six (6) months and by fine not exceeding $500.

18-1002 — Proof of common barratry

18-1002. Proof of common barratry. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three (3) instances, and with a corrupt or malicious intent to vex and annoy.

18-1003 — Purchase of evidence of debt

18-1003. Purchase of evidence of debt. Every attorney, public officer, or licensed collector, who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

18-1004 — Attorney defending when partner prosecutes

18-1004. Attorney defending when partner prosecutes. Every attorney who directly or indirectly advises in relation to, or aids, or promotes the defense of, any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as prosecuting attorney, or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as prosecuting attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from, or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

18-1005 — Exception to preceding section

18-1005. Exception to preceding section. The preceding section does not prohibit an attorney from defending himself in person as attorney or counsel, when prosecuted either civilly or criminally.

CHAPTER 11

18-1101 — Bigamy defined

18-1101. Bigamy defined. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

18-1102 — Exceptions to preceding section

18-1102. Exceptions to preceding section. The last section does not extend: 1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor, 2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

18-1103 — Punishment for bigamy

18-1103. Punishment for bigamy. Bigamy is punishable by fine not exceeding $2,000 and by imprisonment in the state prison not exceeding three (3) years.

18-1104 — Marrying spouse of another

18-1104. Marrying spouse of another. Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than $2,000, or by imprisonment in the state prison not exceeding three (3) years.

CHAPTER 13

18-1301 — Bribery of judicial officers

18-1301. Bribery of judicial officers. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is guilty of a felony.

18-1302 — Receipt of bribe by officer

18-1302. Receipt of bribe by officer. Every judicial officer, juror, referee, arbitrator or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe, upon any agreement or understanding that his vote, opinion or decision upon any matters or question which is or may be brought before him for decision, shall be influenced thereby, is guilty of a felony.

18-1303 — Acceptance of rewards

18-1303. Acceptance of rewards. Every judicial officer who asks or receives any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

18-1304 — Attempt to influence jurors and arbitrators

18-1304. Attempt to influence jurors and arbitrators. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending, or about to be brought before him, either: 1. By means of any communication, oral or written, had with him, except in the regular course or proceedings; 2. By means of any book, paper or instrument exhibited, otherwise than in the regular course of proceedings; 3. By means of any threat, intimidation, persuasion or entreaty; or, 4. By means of any promise or assurance of any pecuniary or other advantage; is guilty of a felony.

18-1305 — Misconduct of jurors and arbitrators

18-1305. Misconduct of jurors and arbitrators. Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either: 1. Makes any promise or agreement to give a verdict or decision for or against any party; or, 2. Wilfully and corruptly permits any communication to be made to him, or receive any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is guilty of a felony.

18-1307 — Forfeiture of office on conviction

18-1307. Forfeiture of office on conviction. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office.

18-1308 — Offenses relating to bribery — Incriminating testimony may be required

18-1308. Offenses relating to bribery — Incriminating testimony may be required. No person shall be excused from testifying or producing documents, at the instance of the state, in any criminal cause or proceeding touching any offense relating to bribery, on the ground that the testimony required of him may incriminate him. But no person shall be prosecuted or punished on account of any transaction, manner or thing concerning which he may be so required to testify or produce evidence: provided, that no person so testifying shall be exempt from prosecution and punishment for perjury in so testifying.

18-1309 — Bribery of municipal or county officers — Penalties

18-1309. Bribery of municipal or county officers — Penalties. Every person who gives or offers a bribe to any member of any common council, board of county commissioners or board of trustees of any county, city or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before a body of which he is a member and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe and every person who gives or offers a bribe to any sheriff, deputy sheriff, policeman, constable, prosecuting attorney, or other officer charged with the enforcement of the laws of this state to receive or secure immunity from arrest, prosecution or punishment for a violation or contemplated violation of the laws of this state or any such officer who receives or offers to receive any such bribe is punishable by imprisonment in the state prison for a term not less than one (1) nor more than fourteen (14) years.

18-1351 — Bribery and corrupt practices — Definitions

18-1351. Bribery and corrupt practices — Definitions. Unless a different meaning plainly is required in this chapter:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose. "Benefit" does not include an award with economic significance of five hundred dollars ($500) or less given to a nonelected public servant by a nonprofit organization whose membership is limited to public servants as part of a public servant recognition program that is designed to recognize innovation and achievement in the workplace, provided that the organization discloses in advance on its website the nature of the program, the amount of the award, the names of any persons or entities that contributed to the award and the recipient of the award.

(2) "Confidential information" means knowledge gained through a public office, official duty or employment by a governmental entity which is not subject to disclosure to the general public and which, if utilized in financial transactions would provide the user with an advantage over those not having such information or result in harm to the governmental entity from which it was obtained.

(3) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it and other political subdivisions including, but not limited to, highway districts, planning and zoning commissions and cemetery districts, and all other governmental districts, commissions or governmental bodies not specifically mentioned in this chapter.

(4) "Harm" means loss, disadvantage or injury, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(5) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(6) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

(8) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses.

(9) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

18-1352 — Bribery in official and political matters

18-1352. Bribery in official and political matters. A person is guilty of bribery, a felony, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as public servant or party official. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

18-1353 — Threats and other improper influence in official and political matters

18-1353. Threats and other improper influence in official and political matters.

(1) Offenses defined. A person commits an offense if he:

(a) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) Grading. An offense under this section is a misdemeanor unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a felony.

18-1353A — Threats against state officials of the executive, legislative or judicial branch or elected officials of a county or city

18-1353A. Threats against state officials of the executive, legislative or judicial branch or elected officials of a county or city. Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier, any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon any state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or knowingly and willfully otherwise makes any such threat against a state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or upon any elected official of any county or city, is guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one thousand dollars ($1,000) and shall be sentenced to not to exceed one (1) year in the county jail. If such threat is made while the defendant exhibits a firearm or other dangerous or deadly weapon, the defendant shall be guilty of a felony. Upon a second or subsequent conviction of an offense under this section, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

18-1354 — Compensation for past official behavior

18-1354. Compensation for past official behavior. A person commits a misdemeanor if he solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor if he offers, confers or agrees to confer, compensation, acceptance of which is prohibited by this section.

18-1355 — Retaliation for past official action

18-1355. Retaliation for past official action. A person commits a misdemeanor if he harms another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

18-1356 — Gifts to public servants by persons subject to their jurisdiction

18-1356. Gifts to public servants by persons subject to their jurisdiction.

(1) Regulatory and law enforcement officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) Judicial and administrative officials. No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(4) Legislative and executive officials. No legislator or public servant shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction from any person known to be interested in a bill, legislation, official transaction or proceeding.

(5) Exceptions. This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(c) 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; or

(d) benefits received as a result of lobbying activities that are disclosed in reports required by chapter 7, title 74 , Idaho Code. This exception shall not apply to any activities prohibited by subsections (1) through (4) of this section.

(6) Offering benefits prohibited. No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections.

(7) Grade of offense. An offense under this section is a misdemeanor and shall be punished as provided in this chapter.

18-1357 — Compensating public servant for assisting private interests in relation to matters before him

18-1357. Compensating public servant for assisting private interests in relation to matters before him.

(1) Receiving compensation. A public servant commits a misdemeanor if he solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise.

(2) Paying compensation. A person commits a misdemeanor if he pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

18-1358 — Selling political indorsement — Special influence

18-1358. Selling political indorsement — Special influence.

(1) Selling political indorsement. A person commits a misdemeanor if he solicits, receives, agrees to receive, or agrees that any political party or other person shall receive any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or transaction for any benefit conferred by an official or agency of the government. "Approval" includes recommendations, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence.

(2) Other trading in special influence. A person commits a misdemeanor if he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship, or other relationship apart from the merits of the transaction.

(3) Paying for indorsement or special influence. A person commits a misdemeanor if he offers, confers or agrees to confer any pecuniary benefit, receipt of which is prohibited by this section.

18-1359 — Using public position for personal gain

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.

(f) Unless specifically authorized by another provision of law, commit any act prohibited of members of the legislature or any officer or employee of any branch of the state government by section 67-9230 , Idaho Code, violations of which are subject to penalties as provided in section 67-9231 , Idaho Code, which prohibition and penalties shall be deemed to extend to all public servants pursuant to the provisions of this section.

(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. The provisions of this subsection shall not apply to any person who participates in the legislative page program of the senate or the house of representatives.

(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 who is related to a local government official 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 or merit increases, benefits and bonuses or promotions if the employee:

(i) Held the position prior to the election of the local government official; or (ii) Meets the requirements of subsection (8) of this section prior to a city's population exceeding ten thousand (10,000) persons.

(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 74-403 (4), Idaho Code.

(7) The prohibitions within this section and section 18-1356 , Idaho Code, as it applies to part-time public servants, do 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 do 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. (8)(a) The prohibition of subsection (3) of this section shall not apply if all the following conditions are met:

(i) The city has a population of fewer than ten thousand (10,000) persons, based on the most recent decennial census; (ii) The position to be filled requires specific education, training, or relevant experience related to the duties of the position, and the related individual meets those qualifications; (iii) Public notice of the job opening has been made through means customarily used by the city for job postings, including posting to the city website, if applicable; (iv) The position has been publicly posted for no fewer than forty-five (45) days prior to the proposed appointment or employment, and no qualified applicants have applied during the posting period;

(v) The city has made a good faith effort to identify and consider qualified applicants, including documented outreach and follow-up with applicants to determine availability and qualifications; (vi) The city maintains a written record of: 1. All applications received; 2. The qualifications of each applicant; 3. The reasons for rejection of unqualified applicants; and 4. The rationale for the appointment or employment of the related individual; (vii) The city council approves the appointment or employment at an open meeting, and the familial relationship is publicly disclosed prior to the vote; (viii) The related, elected official does not serve as the supervisor, manager, or otherwise exercise direct authority over the work or employment conditions of the newly appointed or employed individual. The city council shall assign supervisory responsibilities to an unrelated employee or official who is not within the second degree of blood or marriage to the newly appointed or employed individual. Any performance evaluations, disciplinary actions, or decisions relating to compensation or advancement shall be made or reviewed by an unrelated supervisor or official and confirmed by the city council, with a written record maintained documenting the rationale for such actions; and (ix) Any increase in compensation for a person appointed or employed pursuant to this subsection is limited to cost-of-living adjustments or other across-the-board increases provided to all employees. Such individual shall not be eligible for discretionary increases, bonuses, or promotions unless approved by the city council in an open meeting, with the rationale for such increase made part of the record. No person appointed or employed pursuant to this subsection shall receive any benefits beyond those uniformly offered to all similarly situated employees of the city.

(b) No position shall be created solely for the purpose of employing a related individual, nor shall the provisions of this subsection be construed to impair or limit the provisions of subsection (5) of this section.

18-1360 — Penalties

18-1360. Penalties. Any public servant who violates the provisions of this chapter, unless otherwise provided, shall be guilty of a misdemeanor and may be punished by a fine not exceeding one thousand dollars ($1,000), or by incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration. In addition to any penalty imposed in this chapter, any person who violates the provisions of this chapter may be required to forfeit his office and may be ordered to make restitution of any benefit received by him to the governmental entity from which it was obtained.

18-1361 — Self-interested contracts — Exception

18-1361. Self-interested contracts — Exception. Where there are less than three (3) suppliers of a good or a service within a fifteen (15) mile radius of where the good or service is to be provided, it shall not constitute a violation of the provisions of subsection (1) (d) or (e) of section 18-1359 , Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the contract is reasonably necessary to respond to a disaster as defined in chapter 10, title 46 , Idaho Code, or if the procedures listed below are strictly observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

18-1361A — Noncompensated appointed public servant — Relatives of public servant — Exception

18-1361A. Noncompensated appointed public servant — Relatives of public servant — Exception. When a person is a public servant by reason of his appointment to a governmental entity board for which the person receives no salary or fees for his service on said board, it shall not constitute a violation of the provisions of subsection (1)(d) or (e) of section 18-1359 , Idaho Code, for a public servant or for his relative to contract with the public body of which the public servant is a member if the procedures listed below are strictly observed. For purposes of this section, "relative" shall mean any person related to the public servant by blood or marriage within the second degree.

(1) The contract is competitively bid and the public servant or his relative submits the low bid; and

(2) Neither the public servant nor his relative takes any part in the preparation of the contract or bid specifications, and the public servant takes no part in voting on or approving the contract or bid specifications; and

(3) The public servant makes full disclosure, in writing, to all members of the governing body, council or board of said public body of his interest or that of his relative and of his or his relative's intention to bid on the contract; and

(4) Neither the public servant nor his relative has violated any provision of Idaho law pertaining to competitive bidding or improper solicitation of business.

18-1362 — Cause of action

18-1362. Cause of action. A prosecuting attorney or the attorney general may bring an action in the district court of the county in which a public servant resides to enjoin a violation of the provisions of this chapter and to require the public servant to make restitution to the government of any pecuniary gain obtained. The prevailing party shall be awarded his costs and reasonable attorney fees.

CHAPTER 14

18-1401 — Burglary defined

18-1401. Burglary defined. Every person who enters any house, room, apartment, tenement, store, shop, warehouse, mill, barn, stable, outhouse, or a building, tent, vessel, vehicle, trailer, airplane, or railroad car with intent to commit any theft or any felony is guilty of burglary.

18-1401A — commercial burglary defined

18-1401A. commercial burglary defined. Any person who commits a burglary as defined in section 18-1401 , Idaho Code, with the intent to commit theft and the theft is from a commercial retailer during business hours and the amount of the theft is under three hundred dollars ($300) is guilty of commercial burglary. Any person who pleads guilty to, or is found guilty of, a violation of this section for the first time is guilty of a misdemeanor and may be sentenced to a jail sentence not to exceed six (6) months, a fine of one thousand dollars ($1,000), or both. Any person who pleads guilty to, or is found guilty of, a violation of this section who previously has been found guilty of, or has pled guilty to, a violation of the provisions of this section within five (5) years is guilty of a misdemeanor and may be sentenced to a jail sentence not to exceed one (1) year, a fine of two thousand dollars ($2,000), or both. Any person who pleads guilty to, or is found guilty of, a violation of this section who previously has been found guilty of, or has pled guilty to, two (2) or more violations of the provisions of this section within five (5) years, notwithstanding the form of the judgments or withheld judgments, shall be guilty of a felony.

18-1403 — Punishment for burglary

18-1403. Punishment for burglary. Burglary is punishable by imprisonment in the state prison for not less than one (1) nor more than ten (10) years.

18-1405 — Burglary with explosives

18-1405. Burglary with explosives. Any person who with intent to commit crime breaks and enters any building whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place within said building by use of nitroglycerin, dynamite, gunpowder or any other explosive, shall be deemed guilty of burglary with explosives. Any person duly convicted of burglary with explosives shall be sentenced to the penitentiary for a period of not less than ten (10) years, nor more than twenty-five (25) years.

18-1406 — Possession of burglarious instruments

18-1406. Possession of burglarious instruments. Every person having upon him, or in his possession, a picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building or who shall knowingly make or alter, or shall attempt to make or alter any key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair, any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in this chapter shall be deemed a building within the meaning of this section.

CHAPTER 15

18-1501 — Injury to children

18-1501. Injury to children.

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) years commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003 , Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034 , Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

(5) As used in this section, "willfully" means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.

18-1502 — Beer, wine or other alcohol age violations — Fines

18-1502. Beer, wine or other alcohol age violations — Fines.

(a) Except as provided in subsection (e) of this section, whenever a person is in violation, on the basis of his age, of any federal, state, or municipal law or ordinance pertaining to the use, possession, procurement, or attempted procurement, or dispensing of any beer, wine or other alcoholic beverage product, the violation shall constitute a misdemeanor.
(b)(1) Every person convicted of an infraction under this section shall be punished by a fine of three hundred dollars ($300).

(2) Every person convicted of a misdemeanor under this section shall be punished by a fine of not more than two thousand dollars ($2,000), or up to thirty (30) days in jail or both. The third and subsequent conviction under this section shall be punished by a fine of not more than three thousand dollars ($3,000), or up to sixty (60) days in jail or both.

(c) A conviction under this section shall not be used or considered in any manner for purposes of motor vehicle insurance.

(d) Whenever a person pleads guilty or is found guilty of violating any law pertaining to the possession, use, procurement, attempted procurement or dispensing of any beer, wine, or other alcoholic beverage, and such person was under twenty-one (21) years of age at the time of such violation, then in addition to the penalties provided in subsection (b) of this section:

(1) Upon a misdemeanor conviction, the court shall suspend the person's driving privileges for a period of not more than one (1) year. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(2) If the person's driving privileges have been previously suspended under this section, the court shall suspend the person's driving privileges for a period of not more than two (2) years. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(3) The person shall surrender his license or permit to the court.

(4) The court shall notify the motor vehicle division of the Idaho transportation department of all orders of suspension it issues pursuant to this section.

(5) The court, in its discretion, may also order the person to undergo and complete an alcohol evaluation and to complete an alcohol treatment or education program in the same manner that persons sentenced pursuant to section 18-8005 , Idaho Code, are required to undergo and complete.

(6) A person who has been found guilty of only one (1) violation of this section or section 23-604 , Idaho Code, and does not have any alcohol or drug related findings of guilt, in this state or any state, within five (5) years of the commission of a violation of this section or section 23-604 , Idaho Code, shall have such finding completely vacated and sealed by the court. The person shall have the responsibility for initiating this process, and the court shall provide a form for the convicted person to use. No fee shall be charged by the court for this process. (e)(1) For the purposes of alcohol age violations under this section, the following violations shall constitute infractions:

(i) A first violation of section 23-604 , Idaho Code; (ii) A first violation of section 23-949 , Idaho Code; and (iii) A first violation of section 23-505

(1) and (2), Idaho Code, when an individual is not in actual physical control of the vehicle.

(2) Violations under this subsection that occur following the effective date of this act that constitute misdemeanors under subsection (b)(2) of this section, shall begin as a first misdemeanor.

18-1502B — Possession of inhalants by minors

18-1502B. Possession of inhalants by minors. Whenever a person under the age of eighteen (18) years is in possession and uses an aerosol spray product or other inhalant, that is not used pursuant to the instructions or prescription of a licensed health care provider or that is not used pursuant to the manufacturer's label instructions, for the purpose of becoming under the influence of such substance; such person shall be guilty of a misdemeanor, and upon conviction, may be punished by a fine not in excess of three hundred dollars ($300), or by thirty (30) days in a juvenile detention facility or by both or may be subject to the provisions of chapter 5, title 20 , Idaho Code. For the purposes of this section, the term "inhalant" means any glue, cement or other substance containing one (1) or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol, methyl alcohol, methyl ethyl ketone, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene or xylene or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

18-1505 — Abuse, exploitation or neglect of a vulnerable adult

18-1505. Abuse, exploitation or neglect of a vulnerable adult.

(1) Any person who abuses or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(2) Any person who abuses or neglects a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is guilty of a misdemeanor.

(3) Any person who exploits a vulnerable adult is guilty of a misdemeanor, unless the monetary damage from such exploitation exceeds one thousand dollars ($1,000), in which case the person is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(4) As used in this section:

(a) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury. Intentional abuse shall be punished under subsection (1) or (2) of this section depending upon the harm inflicted. Abuse by negligent infliction shall only be punished under subsection (2) of this section.

(b) "Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(c) "Exploitation" or "exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

(d) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health or safety of the vulnerable adult.

(e) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

(5) Nothing in this section shall be construed to mean a person is abused, neglected or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

(6) Nothing in this section shall be construed to mean that an employer or supervisor of a person who abuses, exploits or neglects a vulnerable adult may be prosecuted unless there is direct evidence of a violation of this statute by the employer or supervisor.

18-1505A — Abandoning a vulnerable adult

18-1505A. Abandoning a vulnerable adult.

(1) Any person who abandons a vulnerable adult, as that term is defined in section 18-1505 , Idaho Code, in deliberate disregard of the vulnerable adult's safety or welfare, regardless of whether the vulnerable adult suffered physical harm from the act of abandonment, shall be guilty of a felony and shall be imprisoned in the state prison for a period not in excess of five (5) years, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. It shall not be a defense to prosecution under the provisions of this section that the perpetrator lacked the financial ability or means to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult.

(2) As used in this section "abandon" means the desertion or willful forsaking of a vulnerable adult by any individual, caretaker as defined by subsection (4)(b) of section 18-1505 , Idaho Code, or entity which has assumed responsibility for the care of the vulnerable adult by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the vulnerable adult has become the dependent of another or by order of a court of competent jurisdiction; provided that abandon shall not mean the termination of services to a vulnerable adult by a physician licensed under chapter 18, title 54 , Idaho Code, or anyone under his direct supervision, where the physician determines, in the exercise of his professional judgment, that termination of such services is in the best interests of the patient.

18-1505B — Sexual abuse and exploitation of a vulnerable adult

18-1505B. Sexual abuse and exploitation of a vulnerable adult.

(1) It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;

(b) Involve a vulnerable adult in any act of bestiality or sadomasochism as defined in section 18-1507 , Idaho Code; or

(c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

(2) For the purposes of this section:

(a) "Commercial purpose" means the intention, objective, anticipation or expectation of monetary gain or other material consideration, compensation, remuneration or profit.

(b) "Sexual contact" means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact;

(c) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide or other mechanically, electronically, digitally or chemically produced or reproduced visual material that shows a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct, or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling; and

(d) "Vulnerable adult" is as defined in section 18-1505 , Idaho Code.

(3) Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

(4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct as defined in section 18-1507 , Idaho Code; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material.

(5) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(6) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

18-1506 — Sexual abuse of a child under the age of sixteen years

18-1506. Sexual abuse of a child under the age of sixteen years.

(1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

(a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;

(b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508 , Idaho Code; or

(c) Induce, cause or permit a minor child to witness an act of sexual conduct.

(2) For the purposes of this section, "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purposes of this section, "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

(4) For the purposes of this section, "sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

18-1506A — Ritualized abuse of a child — Exclusions — Penalties — Definition

18-1506A. Ritualized abuse of a child — Exclusions — Penalties — Definition.

(1) A person is guilty of a felony when he commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(a) Actually or in simulation, tortures, mutilates or sacrifices any warm-blooded animal or human being;

(b) Forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(c) Forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(d) Involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(e) Places a living child into a coffin or open grave containing a human corpse or remains;

(f) Threatens death or serious harm to a child, his parents, family, pets or friends which instills a well-founded fear in the child that the threat will be carried out; or

(g) Unlawfully dissects, mutilates, or incinerates a human corpse.

(2) The provisions of this section shall not be construed to apply to:

(a) Lawful agricultural, animal husbandry, food preparation or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(b) The lawful medical practice of circumcision or any ceremony related thereto; or

(c) Any state or federally approved, licensed or funded research project.

(3) Any person convicted of a violation of this section shall be imprisoned in the state prison for a term of not more than life.

(4) For the purposes of this section, "child" means any person under eighteen (18) years of age.

18-1506B — female genital mutilation of a child — exclusions — penalties — definition

18-1506B. female genital mutilation of a child — exclusions — penalties — definition.

(1) Except as provided in subsection (4) of this section, whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a child shall be guilty of a felony.

(2) Except as provided in subsection (4) of this section, whoever knowingly gives permission for, or permits on a child, any act prohibited by subsection (1) of this section shall be guilty of a felony.

(3) Except as provided in subsection (4) of this section, whoever knowingly removes or causes, permits, or facilitates the removal of a child from this state for the purpose of facilitating any act prohibited by subsection (1) of this section shall be guilty of a felony.

(4) A surgical operation shall not be a violation of this section if the operation is:

(a) Necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner; or

(b) Performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(5) In applying subsection (4)(a) of this section, no account shall be taken of the effect on the person on whom the operation is to be performed or any belief on the part of that person, or any other person, that the operation is required as

a matter of custom or ritual.

(6) Any person convicted of a violation of this section shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.

(7) For the purposes of this section, "child" means any person under eighteen (18) years of age.

18-1506C — VULNERABLE CHILD PROTECTION

18-1506C. VULNERABLE CHILD PROTECTION.

(1) This section shall be known and may be cited as the "Vulnerable Child Protection Act."

(2) As used in this section:

(a) "Child" means any person under eighteen (18) years of age; and

(b) "Sex" is as defined in section 73-114 , Idaho Code.

(3) A medical provider shall not engage in any of the following practices upon a child for the purpose of attempting to alter the appearance of or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex:

(a) Performing surgeries that sterilize or mutilate, or artificially construct tissue with the appearance of genitalia that differs from the child's biological sex, including castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, clitoroplasty, vaginoplasty, vulvoplasty, ovariectomy, or reconstruction of the fixed part of the urethra with or without metoidioplasty, phalloplasty, scrotoplasty, or the implantation of erection or testicular prostheses;

(b) Performing a mastectomy;

(c) Administering or supplying the following medications that induce profound morphologic changes in the genitals of a child or induce transient or permanent infertility:

(i) Puberty-blocking medication to stop or delay normal puberty; (ii) Supraphysiological doses of testosterone to a female; or (iii) Supraphysiological doses of estrogen to a male; or

(d) Removing any otherwise healthy or nondiseased body part or tissue.

(4) A surgical operation or medical intervention shall not be a violation of this section if the operation or intervention is:

(a) Necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner, except that a surgical operation or medical intervention is never necessary to the health of the child on whom it is performed if it is for the purpose of attempting to alter the appearance of or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex;

(b) For the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of gender transition procedures, whether or not the procedures were performed in accordance with state and federal law; or

(c) Performed in accordance with the good faith medical decision of a parent or guardian of a child born with a medically verifiable genetic disorder of sex development, including:

(i) A child with external biological sex characteristics that are ambiguous and irresolvable, such as a child born having 46, XX chromosomes with virilization, 46, XY chromosomes with undervirilization, or with both ovarian and testicular tissue; or (ii) When a physician has otherwise diagnosed a disorder of sexual development in which the physician has determined through genetic testing that the child does not have the normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female.

(5) Any medical professional convicted of a violation of this section shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than ten (10) years.

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

18-1507 — definitions — Sexual exploitation of a child — penalties

18-1507. definitions — Sexual exploitation of a child — penalties.

(1) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

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

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) "Identifiable child:"

(i) Means a person: 1. Who was a child at the time the visual material was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual material; and 2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and (ii) Shall not be construed to require proof of the actual identity of the identifiable child.

(g) "Law enforcement officer" means any court personnel, sheriff, constable, peace officer, state police officer, correctional officer, probation officer, parole officer, prosecuting attorney, or attorney general, or their employees.

(h) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(i) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or
(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(j) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(k) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(l) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced or computer-generated visual material where such visual material:

(i) Shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including but not limited to video chat, webcam sessions or video calling; or (ii) Has been created, adapted, or modified to appear that an identifiable child is engaging in, participating in, observing, or being used for explicit sexual conduct.

(2) A person commits sexual exploitation of a child if he knowingly and willfully:

(a) Possesses or accesses through any means, including but not limited to the internet, any sexually exploitative material; or

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; or

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or

(d) Distributes through any means, including but not limited to mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

(3) The sexual exploitation of a child pursuant to subsection (2)(a) of this section is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such imprisonment and fine.

(4) The sexual exploitation of a child pursuant to subsection (2)(b), (c), and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars ($50,000), or by both such fine and imprisonment.

(5) Notwithstanding any other provisions of this section, a person eighteen (18) years of age or older who is found to be in knowing and willful possession of content created and distributed under circumstances defined in section 18-1507A

(1) or (2), Idaho Code, is guilty of a misdemeanor provided that:

(a) The minor depicted in the content distributed the content in such a way that the minor intended the person found to be in possession to receive it;

(b) The minor depicted in the content is not greater than three (3) years younger than the person found to be in possession; and

(c) The person found to be in possession of the content did not use coercion, manipulation or fraud to obtain possession of the content.

(6) Subsection (2)(a), (c), and (d) of this section shall not be construed to impose criminal or civil liability on law enforcement officers acting in good faith and in the course and scope of their official duties.

(7) 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 this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

18-1507A — Sexual exploitation of a child by electronic means

18-1507A. Sexual exploitation of a child by electronic means.

(1) A minor child who, without being induced by coercion, manipulation or fraud, creates or causes to be created any photographic, electronic or video content of said minor child that would be characterized under any of the classifications defined in section 18-1507 (1), Idaho Code, and knowingly and willfully distributes it to another person or persons through electronic or other means or causes it to appear in a form where the distributing minor has reason to believe another will view it is guilty of a misdemeanor provided that the image was communicated in a form that there was a single recipient.

(2) A minor child who, without being induced by coercion, manipulation or fraud, creates or causes to be created any photographic, electronic or video content of said minor child that would be characterized under any of the classifications defined in section 18-1507 (1), Idaho Code, and knowingly and willfully distributes it in such a way and through such a medium that the minor intended or had reason to believe that multiple parties would receive or have access to the image:

(a) Is guilty of a misdemeanor on the first adjudicated offense; and

(b) Is guilty of a felony on the second or subsequent adjudicated offense.

(3) A minor who is found to be in knowing and willful possession of the content created and sent as described in subsection (1) or (2) of this section is guilty of a misdemeanor if the content depicts a minor who is not greater than three (3) years younger than the minor who is found to be in possession. A minor who is found to be in knowing and willful possession of content described in this subsection that depicts a minor greater than three (3) years younger than themselves is guilty of a violation of section 18-1507 (2)(a), Idaho Code.

(4) A minor who is found to be in possession of content described in subsection (1) or (2) of this section who knowingly and willfully transmits or displays the image to one (1) or more third parties:

(a) Is guilty of a misdemeanor on the first adjudicated offense; and

(b) Is guilty of a felony on any second or subsequent adjudicated offense.

(5) A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes or threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.

(6) A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes the image to a parent, guardian, one having custody of the minor or a law enforcement official for the purpose of reporting the activity is not guilty of a crime under the provisions of this section.

(7) Proceedings for a violation of the provisions of this section shall fall under the jurisdiction of the juvenile corrections act pursuant to section 20-505 (1), Idaho Code.

18-1507B — criminal forfeiture

18-1507B. criminal forfeiture.

(1) Any person who enters a plea of guilty or is convicted of a felony violation of section 18-1507 , 18-1507A , 18-1509 , or 18-1509A , Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of such violation. Such proceeds shall also include any virtual or cryptocurrency; and

(b) Any property, used in any manner or part, to commit or to facilitate the commission of such violation.

(2) The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to section 18-1507 , 18-1507A , 18-1509 , or 18-1509A , Idaho Code, that the person forfeit to the state of Idaho all property described in this section. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

(3) "Property" subject to criminal forfeiture under this section means personal property, including but not limited to vehicles, real property, computer files, computer hardware and software, and electronic data employed in any manner or part in the commission of the violation.

(4) Any peace officer of this state seizing property subject to forfeiture under the provisions of this section shall cause a written inventory to be made and shall maintain custody of the same until all legal actions have been exhausted.

(5) Property subject to criminal forfeiture under this section shall not be ordered forfeited unless the prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property. The prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a forfeiture request and notice with the trial court. Any property of a person subject to the provisions of this section shall be subject to forfeiture under this section if the state of Idaho establishes by a preponderance of the evidence that:

(a) The property was acquired or used by a person during the period of the violation of section 18-1507 , 18-1507A , 18-1509 , or 18-1509A , Idaho Code, or within a reasonable time after such violation; and

(b) The property was used in the commission of the violation of section 18-1507 , 18-1507A , 18-1509 , or 18-1509A , Idaho Code. (6)(a) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (3) of this section for forfeiture under this section upon the filing of an indictment or information charging a violation of sexual exploitation of a minor for which criminal forfeiture may be ordered and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section.

(b) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (2) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(c) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this section may be used to offset ordinary and necessary expenses to the property that are required by law or that are necessary to protect the interests of the state of Idaho or third parties.

(7) Upon the filing of a forfeiture request pursuant to subsection (5) of this section, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture, the prosecuting attorney shall, if appropriate, institute proceedings pursuant to subsection (8) of this section within twenty (20) days of such event. (8)(a) Within twenty (20) days of an institution of proceedings as provided in subsection (7) of this section, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title, or interest in any of such personal property according to one (1) of the following methods:

(i) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft, or other conveyance, by mailing notice by certified mail to the last known address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained; (ii) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective last known addresses as shown on such financing statement; or (iii) Upon each co-owner or party in interest whose name and last known address is known, by mailing notice by certified mail to the last known address of such person.

(b) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest shall file a verified answer and claim to the property described in the notice.

(c) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice, and the proceeding shall have priority over other civil cases, except as provided in chapter 28, title 37 , Idaho Code.

(i) At a hearing held pursuant to this subsection, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft, or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft, or other conveyance was being used, had been used, or was intended to be used for the purposes described in subsection (1) of this section; (ii) A co-owner or claimant of any right, title, or interest in the property may prove that his right, title, or interest, whether under a lien, mortgage, security agreement, conditional sales contract, or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used, or was intended to be used for the purpose alleged; 1. In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party, or conditional sales vendor; 2. If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the prosecuting attorney. If sold at public auction, the prosecuting attorney shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated: (A) To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee, or secured party of the property, if any, up to the value of his interest in the property. (B) The balance, if any, in the following order: a. To the prosecuting attorney, for all expenditures made or incurred by him in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings, including but not limited to expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling, and investigation; and b. To the law enforcement agency of this state that seized the property for all expenditures for traveling, investigation, storage, and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this chapter. (C) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because he neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant. (D) In any case, the prosecuting attorney, may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party, or conditional sales vendor and thereby purchase the property for use to enforce the provisions of this section.

(d) The provisions of this subsection shall not apply to any seized electronic or computer hardware, and the seizing law enforcement agency shall destroy such property upon exhaustion of all legal actions.

(9) In issuing any order under the provisions of this section, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in the violation. The property forfeited shall not be unfairly disproportionate to the property actually used in violation of the provisions of this chapter.

(10) With respect to property ordered forfeited under this section, the prosecuting attorney is authorized to:

(a) Restore forfeited property to victims of a violation of this section or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this section;

(b) Compromise claims arising under this section;

(c) Award compensation to persons providing information resulting in a forfeiture under this section; and

(d) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(11) Except as provided in subsection (8) of this section and notwithstanding any other provision of law, no party claiming an interest in property subject to forfeiture under this section may:

(a) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(b) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section. (12)(a) The district courts of the state of Idaho shall have jurisdiction over:

(i) Property for which forfeiture is sought that is within the state at the time the action is filed; and (ii) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state.

(b) In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place and in the same manner as provided for the taking of depositions under rule 26 of the Idaho rules of civil procedure. (13)(a) On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented, or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on, or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(i) Payment of reasonable expenses incurred in connection with the sale; (ii) Satisfaction of exempt interests in the order of their priority; and (iii) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under this section.

(b) When property is forfeited under this section, the prosecuting attorney may:

(i) Retain it for official use by law enforcement; or (ii) Sell that which is not required to be destroyed by law and that is not harmful to the public.

(14) The provisions of this section shall be liberally construed to effectuate its purposes.

18-1507C — VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN

18-1507C. VISUAL REPRESENTATIONS OF THE SEXUAL ABUSE OF CHILDREN.

(1) A person commits a felony if he knowingly produces, distributes, receives, possesses, or accesses a visual depiction, including a video or image created using generative AI or machine learning, that:

(a) Depicts a child engaging in explicit sexual conduct; and

(b) Is obscene.

(2) A person who violates subsection (1) of this section is guilty of a felony and shall be punishable by imprisonment in the state prison for a period not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000), or by both such imprisonment and fine.

(3) It shall not be a required element of a violation of subsection (1) of this section that the child depicted actually exists.

(4) It shall be an affirmative defense to a charge of receiving or possessing a visual depiction in violation of subsection (1) of this section that the defendant:

(a) Possessed or received five (5) or fewer such visual depictions; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction:

(i) Took reasonable steps to destroy each such visual depiction; or (ii) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(5) The provisions of this section shall not be construed to impose criminal or civil liability on law enforcement officers acting in good faith and in the course and scope of their official duties.

(6) As used in this section:

(a) "Child" means a person who is less than eighteen (18) years of age.

(b) "Explicit sexual conduct" is as defined in section 18-1507 , Idaho Code.

(c) "Generative AI" means any algorithm or model that creates content such as text, images, audio, or video.

(d) "Law enforcement officer" means any court personnel, sheriff, constable, peace officer, state police officer, correctional officer, probation officer, parole officer, prosecuting attorney, or attorney general, or their employees.

(e) "Machine learning" means the use of algorithms to enable a computer to learn to perform tasks by analyzing a large dataset without being explicitly programmed.

(f) The requirement that the visual depiction must be "obscene" as provided in subsection (1)(b) of this section shall require the state to prove that subparagraphs (i), (ii), and (iii) of this paragraph apply to the visual depiction and that the defendant knew the general content, character, and nature of the visual depiction. It is not necessary for the state to prove that the defendant knew or believed the visual depiction to be legally obscene. A visual depiction is "obscene" when:

(i) The average person, applying contemporary community standards, would find that the visual depiction, taken as a whole, is in some way erotic and appeals to a degrading, unhealthy, or morbid interest in sex as distinguished from normal, healthy sexual desires; (ii) The average person, applying contemporary community standards, would find that the visual depiction depicts ultimate sexual acts, excretory functions, masturbation, or lewd exhibition of the genitals in a patently offensive way; and (iii) A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(g) "Visual depiction" includes undeveloped film and videotape, and data stored on a computer disk or by electronic means that is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means or created by generative AI or machine learning.

18-1508 — Lewd conduct with minor child under sixteen

18-1508. Lewd conduct with minor child under sixteen. Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507 , Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party, shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.

18-1508A — Sexual battery of a minor child sixteen or seventeen years of age — Penalty

18-1508A. Sexual battery of a minor child sixteen or seventeen years of age — Penalty.

(1) It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall

involve such minor child in any act of explicit sexual conduct as defined in section 18-1507 , Idaho Code; or

(b) Solicit such minor child to participate in a sexual act; or

(c) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

(2) For the purpose of subsection (1)(b) of this section, "solicit" means any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purpose of this section, "sexual contact" means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.

(4) Any person guilty of a violation of the provisions of subsection (1)(a) of this section shall be imprisoned in the state prison for a period not to exceed life.

(5) Any person guilty of a violation of the provisions of subsection (1)(b) or (c) of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

18-1508B — AGGRAVATED LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN

18-1508B. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN. [effective until January 1, 2027] Any person eighteen (18) years of age or older who commits any lewd or lascivious act or acts on or with the body or any part or member thereof of a minor child under sixteen (16) years of age but thirteen (13) years of age or older, including but not limited to genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who involves such minor child in any act of bestiality or sadomasochism as defined in section 18-1507 , Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or a third party shall be guilty of felony aggravated lewd conduct with a minor child under sixteen (16) years of age and shall be sentenced to a mandatory minimum fixed term of imprisonment of twenty-five (25) years with a possible maximum term of life if any two (2) of the following aggravating factors occurred during the commission of or to accomplish the lewd conduct:

(1) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(2) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(3) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(4) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(5) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(6) The defendant used force or coercion;

(7) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(8) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(9) The defendant’s commission of the offense involved more than one (1) victim;

(10) The defendant’s commission of the offense involved more than one (1) perpetrator;

(11) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(12) The victim was impregnated as a result of the lewd conduct;

(13) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct; or

(14) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (5), Idaho Code. 18-1508B. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN. [effective January 1, 2027] Any person eighteen (18) years of age or older who commits any lewd or lascivious act or acts on or with the body or any part or member thereof of a minor child under sixteen (16) years of age but thirteen (13) years of age or older, including but not limited to genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who involves such minor child in any act of bestiality or sadomasochism as defined in section 18-1507 , Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or a third party shall be guilty of felony aggravated lewd conduct with a minor child under sixteen (16) years of age and shall be sentenced to a mandatory minimum fixed term of imprisonment of twenty-five (25) years with a possible maximum term of life if any two (2) of the following aggravating factors occurred during the commission of or to accomplish the lewd conduct:

(1) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(2) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(3) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(4) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(5) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(6) The defendant used force or coercion;

(7) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(8) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(9) The defendant's commission of the offense involved more than one (1) victim;

(10) The defendant's commission of the offense involved more than one (1) perpetrator;

(11) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(12) The victim was impregnated as a result of the lewd conduct;

(13) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct; or

(14) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (4), Idaho Code.

18-1508C — AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UNDER

18-1508C. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UNDER. [effective until January 1, 2027] Any person eighteen (18) years of age or older who commits any lewd or lascivious act or acts on or with the body or any part or member thereof of a minor child twelve (12) years of age or under, including but not limited to genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who involves such minor child in any act of bestiality or sadomasochism as defined in section 18-1507 , Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or a third party shall be guilty of felony aggravated lewd conduct with a minor child twelve (12) years of age or under if any two (2) of the following aggravating factors occurred during the commission of or to accomplish the lewd conduct:

(1) The defendant engaged in three (3) or more incidents of lewd conduct of a child involving the same victim on separate occasions;

(2) The defendant penetrated, however slight, the oral, anal, or vaginal opening of the victim with a penis;

(3) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(4) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(5) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(6) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(7) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(8) The defendant used force or coercion;

(9) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(10) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(11) The defendant's commission of the offense involved more than one (1) victim;

(12) The defendant's commission of the offense involved more than one (1) perpetrator;

(13) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(14) The victim was impregnated as a result of the lewd conduct;

(15) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct;

(16) The defendant provided alcohol, drugs, or other intoxicating substance to the victim; or

(17) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (5), Idaho Code. 18-1508C. AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UNDER. [effective January 1, 2027] Any person eighteen (18) years of age or older who commits any lewd or lascivious act or acts on or with the body or any part or member thereof of a minor child twelve (12) years of age or under, including but not limited to genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who involves such minor child in any act of bestiality or sadomasochism as defined in section 18-1507 , Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or a third party shall be guilty of felony aggravated lewd conduct with a minor child twelve (12) years of age or under if any two (2) of the following aggravating factors occurred during the commission of or to accomplish the lewd conduct:

(1) The defendant engaged in three (3) or more incidents of lewd conduct of a child involving the same victim on separate occasions;

(2) The defendant penetrated, however slight, the oral, anal, or vaginal opening of the victim with a penis;

(3) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(4) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(5) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(6) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(7) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(8) The defendant used force or coercion;

(9) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(10) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(11) The defendant's commission of the offense involved more than one (1) victim;

(12) The defendant's commission of the offense involved more than one (1) perpetrator;

(13) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(14) The victim was impregnated as a result of the lewd conduct;

(15) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct;

(16) The defendant provided alcohol, drugs, or other intoxicating substance to the victim; or

(17) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (4), Idaho Code.

18-1508D — punishment for AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UNDER

18-1508D. punishment for AGGRAVATED LEWD CONDUCT WITH MINOR CHILD TWELVE OR UNDER. Subject to the provisions of sections 19-2515 and 19-2515A , Idaho Code, every person eighteen (18) years of age or older guilty of aggravated lewd conduct with a minor child twelve (12) years of age or under shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A , Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. If a jury, or the court if a jury is waived, finds three (3) statutory aggravating circumstances beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence. If a jury, or the court if a jury is waived, finds two (2) statutory aggravating circumstances beyond a reasonable doubt and if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than thirty (30) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service.

18-1508E — sex offender registration — term of confinement

18-1508E. sex offender registration — term of confinement. Any person convicted of an offense as provided in section 18-1508 , 18-1508B , or 18-1508C , Idaho Code, requiring sex offender registration as set forth in section 18-8304 , Idaho Code, and who is ordered to a fixed minimum term of confinement shall not, during such term of confinement, be eligible for parole, discharge, credit, reduction of sentence for good conduct, work release, or furlough.

18-1509 — Enticing of children

18-1509. Enticing of children.

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

(a) Leave the child's home or school; or

(b) Enter a vehicle or building; or

(c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view; while the person is acting without the authority of (i) the custodial parent of the child, (ii) the state of Idaho or a political subdivision thereof or (iii) one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

(2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars ($1,000) or by both such fine and imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of

not more than five (5) years.

18-1509A — Enticing a child through use of the internet or other communication device — Penalties — Jurisdiction

18-1509A. Enticing a child through use of the internet or other communication device — Penalties — Jurisdiction.

(1) A person eighteen (18) years of age or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images, or other communication to solicit, seduce, lure, persuade, or entice by words or actions, or both, a child or a person the defendant believes to be a child to engage in any sexual act with or against the person where such act would be a violation of chapter 15, 61, or 66, title 18 , Idaho Code.

(2) Any person who is convicted of a violation of this section shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years.

(3) It shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.

(4) In a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15, 61, or 66, title 18 , Idaho Code, actually occurred.

(5) The offense is committed in the state of Idaho for purposes of determining jurisdiction if the transmission that constitutes the offense either originates in or is received in the state of Idaho.

(6) As used in this section, "child" means:

(a) A person under sixteen (16) years of age; or

(b) A person who is sixteen (16) or seventeen (17) years of age when the perpetrator is at least five (5) years of age older.

18-1510 — Providing shelter to runaway children

18-1510. Providing shelter to runaway children.

(1) A person who knowingly or intentionally provides housing or other accommodations to a child seventeen (17) years of age or younger without the authority of: (a) the custodial parent or guardian of the child; (b) the state of Idaho or a political subdivision thereof; or (c) the one having legal custody of the child shall be guilty of a misdemeanor. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of emergency aid or assistance to a minor child. It shall be an affirmative defense to the provisions of this section that the person providing housing or other accommodations to the child has notified the custodial parent or guardian or the county sheriff or city police of the child’s whereabouts. It shall also be an affirmative defense to the provisions of this section that the person providing housing or other accommodations to the child notices reasonable evidence that the child has been abused by the custodial parent or guardian. (2)(a) Licensed children’s residential care facilities, registered children’s institutions, and behavioral health youth crisis centers providing emergency runaway services are not guilty of a violation of this section if:

(i) The facility attempts to contact and is unable to locate the child’s parent or legal guardian or the child refuses to disclose the contact information of the child’s parent or legal guardian; and (ii) The facility has notified the county sheriff or police of the child’s whereabouts pursuant to local laws and licensure requirements.

(b) Licensed children’s residential care facilities, registered children’s institutions, and behavioral health youth crisis centers are still required to comply with reporting requirements pursuant to section 16-1605 , Idaho Code.

(c) As used in this subsection:

(i) "Behavioral health youth crisis center" means a voluntary outpatient facility operated twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year to provide evaluation, intervention, and referral for youth seventeen (17) years of age or younger who are experiencing a crisis due to a behavioral health condition. The facility may not provide services to a youth client for more than twenty-three (23) hours and fifty-nine (59) minutes in a single episode of care. (ii) "Licensed children’s residential care facility" has the same meaning as in section 39-1202 , Idaho Code. (iii) "Registered children’s institution" has the same meaning as in section 39-1202 , Idaho Code.

(3) A person convicted of a violation of the provisions of this section shall be punished by imprisonment for a period not in excess of six (6) months, a fine not in excess of five thousand dollars ($5,000), or by both such imprisonment and fine.

Additionally, any real property utilized in violation of the provisions of this section may be declared a public nuisance pursuant to chapter 1, title 52 , Idaho Code.

18-1511 — Sale or barter of child for adoption or other purpose penalized — Allowed expenses

18-1511. Sale or barter of child for adoption or other purpose penalized — Allowed expenses.

(1) Any person or persons who shall sell or barter any child for adoption or for any other purpose shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the state penitentiary for no more than fourteen (14) years, or by a fine of no more than five thousand dollars ($5,000), or by both such fine and imprisonment.

(2) Any person or organization without a valid and unrevoked license to place children for adoption issued by the Idaho department of health and welfare or a valid and unrevoked license to practice law in Idaho shall be guilty of a misdemeanor if such person or organization:

(a) Advertises in any periodical or newspaper, by radio, or by any other public medium that the person or organization will place children for adoption;

(b) Accepts, supplies, provides, or obtains children for adoption; or

(c) Causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption.

(3) Any person, organization, association, or corporation without a valid and unrevoked license to place children for adoption issued by the Idaho department of health and welfare that places any child for adoption shall be guilty of a misdemeanor. The provisions of this subsection shall not apply to a birth parent.

(4) The provisions of this section shall not prohibit any person or adoption agency from providing, in addition to legal and medical costs, reasonable maternity and living expenses during the pregnancy and for a period not to exceed six (6) weeks postpartum based on demonstrated financial need.

(5) Any person or agency seeking to provide financial assistance in excess of two thousand dollars ($2,000) shall do so after informally submitting to a court of competent jurisdiction a verified financial plan outlining proposed expenditures. The court may approve or amend such a proposal and shall not be required to make any findings prior to an approval. The court shall take into consideration all of the needs of the birth mother from the time of conception of the child, including housing, medical, basic living, transportation, and any increases to cost of living. A prospective adoptive parent, or another person acting on behalf of a prospective adoptive parent, shall make payments for allowed expenses only to third-party vendors, as is reasonably practical. All actual expenditures shall be presented by verified affidavit at the time of the adoption finalization.

(6) The financial assistance contemplated by this section shall be considered a charitable gift, not subject to recovery under the terms of section 16-1515 , Idaho Code.

18-1512 — Medical bills payment for child to be adopted or mother an exception

18-1512. Medical bills payment for child to be adopted or mother an exception. Paying of medical bills, either for a child to be adopted or for the mother of such child, shall not be considered a violation of this act.

18-1512A — Advertising for adoption — Prohibited acts

18-1512A. Advertising for adoption — Prohibited acts.

(1) Unless the context clearly requires otherwise in this section, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast or the electronic medium.

(2) No person or entity shall cause to be published for circulation or broadcast on a radio or television station within the geographic borders of the state of Idaho an advertisement or notice of a child or children offered or wanted for adoption or shall hold himself out through such advertisement or notice as having the ability to place, locate, dispose or receive a child or children for adoption, unless the person or entity is a duly authorized agent, contractee or employee of the department of health and welfare or an authorized children’s agency or institution licensed by the department of health and welfare to care for and place children.

(3) A violation of subsection (2) of this section is a matter affecting the public interest for the purpose of applying chapter 6, title 48 , Idaho Code. A violation of subsection (2) of this section is not reasonable in relation to the development and preservation of business. A violation of subsection (2) of this section constitutes an unfair or deceptive act or practice in

trade or commerce for the purpose of applying chapter 6, title 48 , Idaho Code.

(4) Nothing herein is intended to prohibit an attorney licensed to practice in the state of Idaho from advertising his or her ability to practice or provide services related to the adoption of children.

(5) Nothing herein is intended to prohibit physicians and other health care providers who are licensed to practice in the state of Idaho from assisting or providing natural and adoptive parents with medical care necessary to initiate and complete adoptive placements.

18-1513 — Obscene materials — Dissemination to minors — Policy

18-1513. Obscene materials — Dissemination to minors — Policy. It is hereby declared to be the policy of the legislature to restrain the distribution, promotion, or dissemination of obscene material, or of material harmful to minors, or the performance of obscene performances, or performances harmful to minors. It is found that such materials and performances are a contributing factor to crime, to juvenile crime, and also a basic factor in impairing the ethical and moral development of our youth.

18-1514 — Obscene materials — Definitions

18-1514. Obscene materials — Definitions. The following definitions are applicable to this act:

(1) "Adolescent minor" means any person thirteen (13) years of age or older but less than eighteen (18) years of age.

(2) "Minor" means any person less than eighteen (18) years of age.

(3) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(4) "Sexual conduct" means any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, the breast. Breastfeeding, childbearing, medical procedures and examinations, and any other nonerotic physical contact shall not be considered sexual conduct.

(5) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(6) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed. (7)(a) "Harmful to minors" means the quality of any material when it:

(i) Taken as a whole, appeals to the prurient interest of adolescent minors as judged by the average person, applying contemporary community standards; and (ii) Depicts or describes representations or descriptions of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse which are patently offensive to prevailing standards in the adult community with respect to what is suitable material for adolescent minors and includes, but is not limited to, patently offensive representations or descriptions of: 1. Intimate sexual acts, normal or perverted, actual or simulated; or 2. Masturbation, excretory functions or lewd exhibition of the genitals or genital area.

(b) "Harmful to minors" shall not include material that, when considered as a whole, possesses serious literary, artistic, political, or scientific value for adolescent minors.

(8) "Material" means anything tangible, whether derived through the medium of reading, observation, or sound, including any picture, photograph, drawing, sculpture, motion picture, film, or similar visual representation or image or any book, pamphlet, magazine, printed matter however reproduced, or sound recording.

(9) "Promote" means to manufacture, issue, sell, give, provide, deliver, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

(10) "Knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief that warrants further inspection or inquiry.

(11) "School" means any school providing instruction for students in kindergarten through grade 12.

(12) "Sexually explicit" means the quality of any material when it contains erotic depictions of nudity, depicts sexual conduct or sado-masochistic abuse, or contains any explicit and detailed description or narrative account of sexual excitement, sexual conduct, or sado-masochistic abuse. "Sexually explicit" shall not include diagrams about anatomy for

scientific education, religious books such as the Bible and the Torah, or content relating to classical works of art.

18-1515 — Disseminating material harmful to minors — Defined — Penalty

18-1515. Disseminating material harmful to minors — Defined — Penalty. A person is guilty of disseminating material harmful to minors when: 1. He knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors or he knowingly sells or loans to a minor for monetary consideration any material that is sexually explicit and, taken as a whole, is harmful to minors. 2. With reference to a motion picture, show or other presentation that is sexually explicit and, taken as a whole, is harmful to minors, he knowingly:

(a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or

(b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or

(c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or

(d) Exhibits such motion picture, show or other presentation to a minor not for a monetary consideration; or

(e) Gives without monetary consideration to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture, show, or other presentation. Disseminating material harmful to minors is a misdemeanor punishable by confinement in the county jail not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000), or by both such fine and jail sentence.

18-1516 — Misrepresentations — Parenthood or age — Misdemeanor

18-1516. Misrepresentations — Parenthood or age — Misdemeanor. A person is guilty of a misdemeanor when: 1. He knowingly misrepresents that he is a parent or guardian of a minor for the purpose of obtaining admission of any minor to any motion picture, show, or other presentation which is harmful to minors as defined in section 18-1515 , subsection 2. 2. If he is a minor and misrepresents his age for the purpose of obtaining admission to any motion picture, show, or other presentation which is harmful to minors as defined in section 18-1515 , subsection 2.

18-1517 — Disseminating material harmful to minors — Defenses

18-1517. Disseminating material harmful to minors — Defenses. 1. In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

(a) The defendant had reasonable cause to believe that the minor involved was eighteen (18) years old or more, or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older.

(b) The minor involved was accompanied by his parent or legal guardian, or by an adult and the adult represented that he was the minor's parent or guardian or an adult and signed a written statement to that effect.

(c) The defendant was the parent or guardian of the minor involved.

(d) The defendant was a bona fide school, college, university, museum or public library, or was acting in his capacity as an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

18-1517A — Hiring, employing, etc

18-1517A. Hiring, employing, etc., minor to engage in certain acts — Penalty. Every person who, with knowledge that a person is a minor under eighteen (18) years of age, or who, while in the possession of such facts that he should reasonably know that such person is a minor under eighteen (18) years of age, hires, employs, or uses such minor to do or assist in doing any of the acts described in section 18-4103 , Idaho Code, is guilty of a misdemeanor. If such person has previously been convicted of a violation of this section he shall be guilty of a felony.

18-1517B — Children's School and Library Protection

18-1517B. Children's School and Library Protection.

(1) This section shall be known and may be cited as the "Children's School and Library Protection Act."

(2) Notwithstanding any other provision of law, a school or public library, or an agent thereof, shall not promote, give, or make available to a minor any material that is sexually explicit and, taken as a whole, is harmful to minors.

(3) Any minor who obtains material, or parent or legal guardian whose child obtained material, in violation of the provisions of subsection (2) of this section from a school or public library shall have a cause of action against such institution if:

(a) The institution gave or made available the material, or the institution failed to take reasonable steps to restrict access by minors to the material;

(b) Prior to the filing of a cause of action, the minor, parent, or legal guardian has provided written notice to the school or public library asking for the relocation of such material to a section designated for adults only within sixty (60) days of receipt of the written notice; and

(c) Upon receipt of written notice and subsequent to the expiration of sixty (60) days, the institution's library board or board of trustees failed to relocate the material to an area with adult access only.

(4) Any minor, parent, or legal guardian who prevails in an action brought under this section may recover two hundred fifty dollars ($250) in statutory damages as well as actual damages and any other relief available by law, including but not limited to injunctive relief sufficient to prevent the defendant school or public library from violating the requirements of this section.

(5) A county prosecuting attorney or the attorney general shall have a cause of action for injunctive relief against any school or public library that violates the provisions of subsection (2) of this section. The injunction shall be sufficient to prevent the defendant school or public library from violating the requirements of this section.

(6) It shall be an affirmative defense to civil liability under this section that the defendant:

(a) Had reasonable cause to believe that the minor involved was eighteen (18) years of age or older or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or

(b) Verified the minor involved was accompanied, at the time of the act, by his parent or legal guardian, or by another adult and the adult represented that he was the minor's parent or legal guardian and signed a written statement to that effect.

(7) Each school and public library shall have a policy and readily accessible form allowing a person to request review of material the person considers to be harmful to minors. Such form shall contain the definitions of "sexually explicit" and "harmful to minors," as provided in section 18-1514 , Idaho Code.

(8) Any action brought pursuant to this section by or on behalf of a minor shall be in accordance with the provisions of chapter 9, title 6 , Idaho Code, section 5-306 , Idaho Code, and rule 17 of the Idaho rules of civil procedure.

18-1518 — Tie-in sales of prohibited materials — Misdemeanor

18-1518. Tie-in sales of prohibited materials — Misdemeanor. No person shall as a condition to a sale or delivery for resale of any book, paper, magazine, periodical, or other material require that the purchaser or consignee receive for resale any article, the promotion of which is prohibited by this act. Any violation hereof is a misdemeanor.

18-1519 — Each prohibited item disseminated constitutes separate offense

18-1519. Each prohibited item disseminated constitutes separate offense. If more than one (1) article or item of material prohibited under this statute, is sold, given, advertised for sale, distributed commercially or promoted, in violation of the provisions of this act by the same person, each such sale, gift, advertisement, distribution, or promotion shall constitute a separate offense.

18-1520 — District courts — Injunctions — Trial — Orders of injunction

18-1520. District courts — Injunctions — Trial — Orders of injunction. The district courts have jurisdiction to enjoin the sale or distribution of material harmful to minors, and to direct the seizure and destruction of the same, as hereinafter specified: 1. The prosecuting attorney of any county in which a person, firm, or corporation sells, distributes or promotes, or is about to sell, distribute or promote, or has in his possession with intent to sell, distribute or promote, or is about to acquire possession with intent to sell, distribute or promote, any material harmful to minors, may maintain an action in the name of the state of Idaho for an injunction against such person, firm, or corporation in the district court of that county to prevent the sale, distribution or promotion, or further sale, distribution, or promotion, or the acquisition or possession of any material harmful to minors. 2. The person, firm or corporation sought to be enjoined shall be entitled to a trial of the issues within one (1) day after joinder of issue and a decision shall be rendered by the court within two (2) days of the

conclusion of the trial. 3. In the event that a final order or judgment of injunction be entered in favor of the state of Idaho and against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm or corporation to cease and desist from the sale of all materials adjudged to be harmful to minors. 4. Such final order or judgment of injunction shall not enjoin or prohibit a person, firm or corporation from sale, distribution or promotion of material harmful to minors to persons other than minors, nor shall it order the seizure and destruction of material harmful to minors unless the court finds and concludes that the person, firm or corporation has been selling, distributing or promoting, or intends to sell, distribute or promote such material to minors. 5. In any action brought as herein provided the state of Idaho shall not be required to file any undertaking before the issuance of an injunction order, shall not be liable for costs, and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined. 6. Every person, firm, or corporation who sells, distributes, or promotes, or acquires possession with intent to sell, distribute, or promote any material harmful to minors, after the service upon him of a summons and complaint in an action brought pursuant to this section, is chargeable with knowledge of the contents thereof.

18-1521 — Uniform enforcement — Abrogation of existing ordinances — Further local ordinances banned

18-1521. Uniform enforcement — Abrogation of existing ordinances — Further local ordinances banned. In order to make the application and enforcement of this act uniform throughout the state, it is the intent of the legislature to preempt, to the exclusion of city and county governments, the regulation of the sale, loan, distribution, dissemination, presentation or exhibition to a minor of material which is obscene or which is harmful to minors and depicts in whole or in part nudity, sexual conduct or sado-masochistic abuse. To that end, it is hereby declared that every city or county ordinance adopted before the effective date of this act which deals with the regulation of the sale, loan, distribution, dissemination, presentation or exhibition to a minor of material which is obscene or which is harmful to minors and depicts in whole or in part nudity, sexual conduct or sado-masochistic abuse, shall stand abrogated and unenforceable on or after such effective date; and that no city or county government shall have the power to adopt any ordinance relating to the regulation of the sale, loan, distribution, dissemination, presentation or exhibition to a minor of material which is obscene or which is harmful to minors and depicts in whole or in part nudity, sexual conduct or sado-masochistic abuse, on or after such effective date.

18-1522 — Unauthorized school bus entry — Notice

18-1522. Unauthorized school bus entry — Notice.

(1) A person shall be guilty of a misdemeanor if that person:

(a) Enters a school bus with intent to commit a crime;

(b) Enters a school bus and disrupts or interferes with the driver; or

(c) Enters a school bus and refuses to disembark after being ordered to do so by the driver.

(2) School districts shall place notices at the entrance to school buses which warn against unauthorized school bus entry.

18-1523 — mINORS — Tattooing, branding, TANNING DEVICES AND body piercing

18-1523. mINORS — Tattooing, branding, TANNING DEVICES AND body piercing.

(1) As used in this section:

(a) "Body piercing" means the perforation of any human body part other than an earlobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose.

(b) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument for the purpose of decoration or for some other nonmedical purpose.

(c) "Minor" means a person under the age of eighteen (18) years but does not include a person who is an emancipated minor.

(d) "Physician" means any person who holds a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathic medicine as defined by section 54-1803 , Idaho Code.

(e) "Tanning device" means equipment that emits electromagnetic radiation with wavelengths in the air between two hundred (200) and four hundred (400) nanometers used for tanning of the skin including, but not limited to, sunlamps, tanning booths or tanning beds, but not including:

(i) Devices for personal use in a private residence; (ii) Phototherapy devices providing therapeutic benefits to patients receiving medically supervised treatment prescribed by and under the direct supervision of a physician; or (iii) Devices used to apply chemicals to the skin to create an artificial tan, commonly referred to as spray, spray-on, mist-on or sunless tans.

(f) "Tattoo" means one (1) or more of the following but does not include any mark or design done for a medical purpose:

(i) An indelible mark made on the body of another person by the insertion of a pigment under the skin; or (ii) An indelible design made on the body of another person by production of scars other than by branding.

(2) No person shall knowingly tattoo, brand, facilitate use of a tanning device or perform body piercing on any minor under the age of fourteen (14) years.

(3) No person shall knowingly tattoo, brand, facilitate use of a tanning device or perform body piercing on a minor between the ages of fourteen (14) and eighteen (18) years unless such person obtains the prior written informed consent of the minor's parent or legal guardian. The minor's parent or legal guardian shall execute the written informed consent required pursuant to this subsection in the presence of the person performing the tattooing, branding or body piercing or facilitating the use of a tanning device on the minor, or in the presence of an employee or agent of such person.

(4) Notwithstanding the foregoing, it shall not be a violation of this section for a physician to use radiation devices approved by the federal food and drug administration for in-office treatment of a minor's medical condition or to facilitate a minor's use of a tanning device where such use is authorized by a physician's prescription.

(5) A person who violates this section is guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500). If there is a subsequent violation of this section within one (1) year of the initial violation, such person shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

CHAPTER 16

18-1601 — Compounding felony or misdemeanor

18-1601. Compounding felony or misdemeanor. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal, such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

(1) By imprisonment in the state prison not exceeding five (5) years, or in a county jail not exceeding one (1) year, where the crime was punishable by death or imprisonment in the state prison for life.

(2) By imprisonment in the state prison not exceeding three (3) years, or in the county jail not exceeding six (6) months where the crime was punishable by imprisonment in the state prison for any other term than for life.

(3) By imprisonment in the county jail not exceeding six (6) months, or by fine not exceeding one thousand dollars ($1,000), where the crime was a misdemeanor.

CHAPTER 17

18-1701 — Criminal conspiracy defined

18-1701. Criminal conspiracy defined. If two (2) or more persons combine or conspire to commit any crime or offense prescribed by the laws of the state of Idaho, and one (1) or more of such persons does any act to effect the object of the combination or conspiracy, each shall be punishable upon conviction in the same manner and to the same extent as is provided under the laws of the state of Idaho for the punishment of the crime or offenses that each combined to commit.

18-1702 — Mining claims — Conspiracy to usurp

18-1702. Mining claims — Conspiracy to usurp. In all cases where two (2) or more persons associate themselves together for the purpose of obtaining the possession of any lode, gulch or placer claim, then in the actual possession of another, by force and violence, or by stealth, and proceed to carry out such purpose by making threats against the party or parties in possession, or enter upon such lode or mining claim for the purpose aforesaid, or enter upon or into any lode, gulch, placer claim, quartz mill or other mining property, or, not being upon such property, make any threats, or make use

of any language, signs or gestures calculated to intimidate any person or persons at work on said property from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending is guilty of misdemeanor.

CHAPTER 18

18-1801 — Criminal contempts

18-1801. Criminal contempts. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor: 1. Disorderly, contemptuous or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court and directly tending to interrupt its proceedings or to impair the respect due to its authority. 2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law. 3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court. 4. Wilful disobedience of any process or order lawfully issued by any court. 5. Resistance wilfully offered by any person to the lawful order or process of any court. 6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

CHAPTER 19

18-1901 — Fictitious stock subscription

18-1901. Fictitious stock subscription. Every person who signs the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not the means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

18-1902 — Exhibition of false papers to public officers

18-1902. Exhibition of false papers to public officers. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board, with intent to deceive such officer or board in respect thereto, is guilty of a misdemeanor.

18-1903 — Use of false name in prospectus

18-1903. Use of false name in prospectus. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, within intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

18-1904 — Illegal dividends and reductions of capital

18-1904. Illegal dividends and reductions of capital. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either: 1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or, 2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or, 3. To discount or receive any note or other evidence of debt in payment of any instalment actually called in and required to be paid, or with the intent to provide the means of making such payment; or, 4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him or his stock; or, 5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such other corporation; Is guilty of a misdemeanor.

18-1905 — Falsification of corporate books

18-1905. Falsification of corporate books. Every director, officer or agent of any corporation or joint stock association who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making, any false entries, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three (3) nor more than ten (10) years, or by imprisonment in a county jail not exceeding one (1) year or a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

18-1906 — Fraudulent reports by officers

18-1906. Fraudulent reports by officers. Every director, officer or agent of any corporation or joint stock association who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, is guilty of a misdemeanor.

18-1907 — Refusal to permit stockholder to inspect records

18-1907. Refusal to permit stockholder to inspect records. Every officer or agent of any corporation having or keeping an office within this state who has in his custody or control any book, paper or document of such corporation and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

18-1908 — Directors deemed to have knowledge of affairs

18-1908. Directors deemed to have knowledge of affairs. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

18-1909 — Director present at meeting — Assent to illegal acts

18-1909. Director present at meeting — Assent to illegal acts. Every director of a corporation or a joint stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

18-1910 — Director not present at meeting — Assent to illegal acts

18-1910. Director not present at meeting — Assent to illegal acts. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

18-1911 — Foreign corporations subject to chapter

18-1911. Foreign corporations subject to chapter. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, territory, government or country, if it was one carrying on business or keeping an office therefor within this state.

18-1912 — Director defined

18-1912. Director defined. The term "director" as used in this chapter embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER 20

18-2001 — Definition of solicitation

18-2001. Definition of solicitation. A person is guilty of criminal solicitation to commit a crime if with the purpose of promoting or facilitating its commission he solicits, importunes, commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish complicity in its commission or attempted commission.

18-2002 — Innocence or incapacity of person solicited — No defense

18-2002. Innocence or incapacity of person solicited — No defense. It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the crime in question.

18-2003 — Renunciation of criminal purpose

18-2003. Renunciation of criminal purpose. It is an affirmative defense that the defendant, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

18-2004 — Punishment for criminal solicitation

18-2004. Punishment for criminal solicitation. Every person who is found guilty of criminal solicitation to commit a crime is punishable in the same manner and to the same extent as for an attempt to commit such crime.

18-2005 — Solicitation to halt or impede lawful forest, mining or agricultural practices

18-2005. Solicitation to halt or impede lawful forest, mining or agricultural practices. Any person who solicits any other person, or conspires with any other person to commit any crime against property or person with the specific intent to halt, impede, obstruct or interfere with the lawful management, cultivation or harvesting of trees or timber or with the lawful management or operations of agricultural or mining industries, if the act is performed to effect the object of the solicitation or conspiracy, shall be guilty of a felony; provided however, that any person who solicits any other person or conspires with any other person to stage a peaceful demonstration which is not designed, planned, or intended to involve the commission of any crime against property or person shall not be guilty of any crime under the provision of this section.

CHAPTER 22

18-2201 — Definitions

18-2201. Definitions. As use in this chapter:

(1) To "access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means, but is not limited to, an electronic device which performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a system or network.

(3) "Computer network" means, but is not limited to, the interconnection of communication lines (including microwave or other means of electronic communication) with a computer through remote terminals, or a complex consisting of two (2) or more interconnected computers.

(4) "Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.

(5) "Computer software" means, but is not limited to, computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(6) "Computer system" means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices, and software.

(7) "Property" includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value.

(8) "Services" include, but are not limited to, computer time, data processing, and storage functions.

18-2202 — Computer crime

18-2202. Computer crime.

(1) Any person who knowingly accesses, attempts to access or uses, or attempts to use any computer, computer system, computer network, or any part thereof for the purpose of: devising or executing any scheme or artifice to defraud; obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises; or committing theft; commits computer crime.

(2) Any person who knowingly and without authorization alters, damages, or destroys any computer, computer system, or computer network described in section 18-2201 , Idaho Code, or any computer software, program, documentation, or data contained in such computer, computer system, or computer network commits computer crime.

(3) Any person who knowingly and without authorization uses, accesses, or attempts to access any computer, computer system, or computer network described in section 18-2201 , Idaho Code, or any computer software, program, documentation or data contained in such computer, computer system, or computer network, commits computer crime.

(4) A violation of the provisions of subsections (1) or (2) of this section shall be a felony. A violation of the provisions of subsection (3) of this section shall be a misdemeanor.

CHAPTER 23

18-2301 — Official neglect or malfeasance

18-2301. Official neglect or malfeasance. Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars ($1,000), or by imprisonment in the state prison not exceeding five (5) years, or by both and shall in addition thereto, and regardless of whether or not criminal prosecution is undertaken, be subject to removal from office as provided in title 19 , chapter 41, Idaho Code.

18-2302 — False swearing as to qualifications as voter

18-2302. False swearing as to qualifications as voter. Every person who, upon his right to vote being challenged at any election held under the laws of this state, wilfully, corruptly and falsely swears touching his qualifications as a voter, is guilty of perjury.

18-2303 — Refusal to be sworn or to answer questions

18-2303. Refusal to be sworn or to answer questions. Every person who, after being required by the board of judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board, touching his right, or the right of any other person, to vote, is guilty of a misdemeanor.

18-2304 — Procuring illegal votes

18-2304. Procuring illegal votes. Every person who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

18-2305 — Intimidation, corruption and frauds

18-2305. Intimidation, corruption and frauds. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who can not read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

18-2306 — Illegal voting

18-2306. Illegal voting. Every person not entitled to vote who fraudulently votes and every person who votes more than once at any one (1) election or knowingly hands in two (2) or more tickets folded together shall be guilty of a felony.

18-2306A — interference with election

18-2306A. interference with election.

(1) Every person who changes any ballot after the same has been deposited in the ballot box, or who adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or by adding to or mixing with, or attempting to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election shall be guilty of a felony.

(2) Every person who carries away or destroys, or attempts to carry away or destroy, any poll list, ballots, or ballot box, for the purpose of breaking up or invalidating such election, or who willfully detains, mutilates, or destroys any election returns, or who in any manner so interferes with the officers holding such election or conducting such canvass or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted shall be guilty of a felony.

18-2306B — tampering with voting machines or vote tally systems

18-2306B. tampering with voting machines or vote tally systems. Every person who violates the provisions of section 34-2404

(1) or (2), Idaho Code, by tampering with a voting machine or vote tally system shall be guilty of a felony.

18-2307 — Attempting to vote when not qualified or to vote more than once

18-2307. Attempting to vote when not qualified or to vote more than once.

(1) It is unlawful for any alien to vote in any election held in this state solely or in part for the purpose of electing or nominating any candidate to any elective office. Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

(2) It shall be an affirmative defense to the provisions of subsection (1) of this section that an alien reasonably believed at the time of voting in violation of this section that such person was a citizen of the United States.

18-2308 — Attempt of officer to ascertain vote

18-2308. Attempt of officer to ascertain vote. Every officer, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector that has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such officer, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000).

18-2309 — Officers attempting to change result

18-2309. Officers attempting to change result. Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll list, ballot box or ballots lawfully polled, is guilty of a felony.

18-2310 — Forging or counterfeiting returns

18-2310. Forging or counterfeiting returns. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns for a precinct, town, or ward where an election was actually held, is guilty of a felony.

18-2311 — Adding to or subtracting from votes

18-2311. Adding to or subtracting from votes. Every person who wilfully adds to or subtracts from the votes actually cast at an election in any returns, or who alters such returns, is guilty of a felony.

18-2312 — Aiding and abetting election offenses

18-2312. Aiding and abetting election offenses. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the state prison not exceeding two years.

18-2313 — Riotous conduct and interference with election

18-2313. Riotous conduct and interference with election. Any person who wilfully disturbs, or is guilty of any riotous conduct at or near, any election place or voting precinct, with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with the canvassing of the votes, or with the making of the returns, is guilty of a misdemeanor.

18-2314 — Betting on elections

18-2314. Betting on elections. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

18-2315 — Election offenses not otherwise provided for

18-2315. Election offenses not otherwise provided for. Unless a different punishment is otherwise prescribed by law, every person who willfully violates any of the provisions of the laws of this state relating to elections is punishable by fine not exceeding $1,000, or by imprisonment in the state prison not exceeding five (5) years, or by both.

18-2316 — Tampering with certificates of nomination or ballots

18-2316. Tampering with certificates of nomination or ballots.

(1) No person shall falsely make, make oath to, fraudulently deface, or fraudulently destroy any certificate of nomination, or any part thereof, or file or receive for filing any certificate of nomination, or letter of withdrawal, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination that has been duly filed, or any part thereof.

(2) No person shall willfully delay the delivery of any ballots, or forge or falsely make the official endorsement on the ballot, or willfully destroy, tamper with, or change in any way any ballot that does not belong to such person.

(3) Every person violating any of the provisions of this section shall be deemed guilty of a felony and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary for a period of not less than one (1) year nor more than five (5) years.

18-2317 — Destroying or defacing supplies

18-2317. Destroying or defacing supplies. No person shall, during the election, remove or destroy any of the supplies or conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to, or on the day of election, willfully deface or destroy any list of candidates posted in accordance with the provisions of title 34 , Idaho Code, concerning elections. No person shall, during an election, tear down or deface the cards printed for the instruction of voters. Every person willfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding one thousand dollars ($1,000).

18-2318 — Electioneering at polls prohibited

18-2318. Electioneering at polls prohibited.

(1) In order to protect the freedom of voters to exercise their franchise without interference or intimidation and to ensure the administration of an election at any polling place is undisturbed, the provisions of this section shall apply on any day that ballots are being cast in person for any election. (2)(a) No person may, within a polling place, within any building in which an election is being held, or within two hundred fifty (250) feet of the primary entrance and exit used by voters at a polling place or other voting location:

(i) Do any electioneering; (ii) Circulate cards or handbills of any kind; (iii) Solicit signatures to any kind of petition; (iv) Advocate for or against any candidate or measure;

(v) Solicit votes in any manner or by any means; (vi) Give or offer to give any money or gifts; or (vii) Engage in any practice that interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(b) The restrictions set forth in this subsection shall not apply to conduct occurring on private property located adjacent to a building designated as a polling place.

(3) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(4) Nothing in this section shall be construed to prohibit poll workers and elections officials from being physically present at a voting location, distributing material that is necessary to instruct electors, or distributing materials prepared by the secretary of state or by the county clerk.

(5) Any election official may take the necessary steps to address electioneering, including but not limited to the removal of physical materials, addressing individuals deemed to be electioneering, or contacting law enforcement.

(6) The first two (2) violations of this section by a person shall be deemed an infraction punishable by a fine in the amount of three hundred dollars ($300) for each such violation. Any person who violates this section three (3) or more times is guilty of a misdemeanor.

18-2319 — Attempt to influence votes

18-2319. Attempt to influence votes. No person shall attempt to influence the vote of any elector by means of a promise or a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him, or by any other means.

18-2320 — Bribery of electors

18-2320. Bribery of electors. No person shall in any way offer a bribe to an elector to influence his vote.

18-2321 — Fraudulent permission of registration

18-2321. Fraudulent permission of registration. Any registry agent, or other person, who in any manner shall wilfully or corruptly permit any person not entitled to registration or to a certificate of registration, to be registered or have a certificate of registration, or who delays or fails to deliver the certified copies of the official register and the check list to the judges of election as required by law, or who permits any person to register after the date on which the registration books close, or who shall otherwise wilfully or corruptly violate any of the provisions of the law governing elections, the penalty for which is not herein specially prescribed, shall be punished for each and every offense by imprisonment in the penitentiary for a term of not less than one (1) year nor more than five (5) years, or by a fine of not less than $100 nor more than $2,000, or by both such fine and imprisonment in the discretion of the court.

18-2322 — Illegal registration by voter

18-2322. Illegal registration by voter. Any person who shall willfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet anyone in the commission of either of the acts in this section enumerated and described, shall be fined not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or be confined in the county jail for not less than one (1) month nor more than six (6) months, or both.

18-2323 — Placing placards in booths

18-2323. Placing placards in booths. Any person or officer of election who shall put, or permit to be put, into a voting booth, any placard, notice or device, except the sample ballots and cards of instruction as by law provided, intended or likely to call the attention of the voter to any candidate, or to urge the voter to vote for any particular candidate, or shall put, or allow anything to be put, into such booths for the use or comfort of the voter whereby the claims of any candidate

are urged upon the voter, either directly or indirectly, shall be imprisoned in the county jail not to exceed three (3) months, or fined not to exceed $500.00, or both.

18-2324 — BALLOT HARVESTING PROHIBITED — EXCEPTIONS — Penalty

18-2324. BALLOT HARVESTING PROHIBITED — EXCEPTIONS — Penalty.

(1) Except as provided in subsections (2) and (3) of this section, no person shall knowingly collect or convey another voter's voted or unvoted ballot.

(2) This section shall not apply to:

(a) A person who collects or conveys another voter's voted or unvoted ballot in the course of such person's regular duties as an elections official;

(b) A person who collects or conveys another voter's voted or unvoted ballot in the course of such person's regular duties as a United States postal service worker or other person specifically authorized by law to transmit United States mail;

(c) A person who collects or conveys another voter's voted or unvoted ballot in the course of such person's regular duties as an employee or contractor of a common carrier;

(d) A person who receives compensation from the voter in exchange for collecting or conveying the voter's voted or unvoted ballot;

(e) A person who is related to the voter, whether by adoption, marriage, or blood, within the fifth degree of consanguinity;

(f) A person who is a member of the voter's household; or

(g) A person who is a caregiver of the voter, unless the voter is under care for memory or cognitive impairment.

(3) A person who is a candidate for elective office on the ballot or who is employed by or volunteers for a political party, candidate for elective office on the ballot, or organization that supports or opposes any ballot measure or candidate for elective office on the ballot may not collect or convey voted or unvoted ballots pursuant to subsection (2)(e), (f), or (g) of this section. An individual authorized to collect and convey a voter's ballot pursuant to subsection (2)(e), (f), or (g) of this section may not collect or convey more than six (6) total voted ballots and six (6) total unvoted ballots in any election.

(4) Any person who lawfully collects or conveys another voter's voted or unvoted ballot as authorized in subsection (2) of this section shall not attempt to influence the voter in any way.

(5) A violation of the provisions of this section constitutes a felony if the person was paid by anyone other than the voter to collect and convey the voter's ballot or if the cumulative number of ballots collected or conveyed in violation of the provisions of this section is ten (10) or more in any election. Any other violation of the provisions of this section constitutes a misdemeanor.

CHAPTER 24

18-2401 — Consolidation of theft offenses

18-2401. Consolidation of theft offenses.

(1) Conduct denominated theft in this chapter constitutes a single offense superceding the separate offenses previously known as embezzlement, extortion, false pretenses, cheats, misrepresentations, larceny and receiving stolen goods.

(2) An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment, information or complaint, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

18-2402 — Definitions

18-2402. Definitions. The following definitions are applicable to this chapter:

(1) "Appropriate." To "appropriate" property of another to oneself or a third person means:

(a) To exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit; or

(b) To dispose of the property for the benefit of oneself or a third person.

(2) "Deception" means knowingly to:

(a) Create or confirm another's impression that is false and that the offender does not believe to be true; or

(b) Fail to correct a false impression that the offender previously has created or confirmed; or

(c) Prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) Sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not valid or is or is not a matter of official record; or

(e) Promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(3) "Deprive." To "deprive" another of property means:

(a) To withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) To dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(4) "Obtain" means:

(a) In relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) In relation to labor or services, to secure the performance thereof.

(5) "Obtains or exerts control" over property includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(6) "Owner." When property is taken, obtained, or withheld by one (1) person from another person, an owner thereof means any person who has a right to possession thereof superior to that of the taker, obtainer, or withholder. "Owner" includes any person who physically delivers or transfers goods or property to a purchaser through an agreement or contract in which the purchaser has entered into fraudulently by having no intention to pay any amount for the goods or property. For the purposes of this chapter and regardless of any contrary provisions of chapter 2, title 28 , Idaho Code, such owner retains a superior right to possession of such goods or property over the fraudulent purchaser.

(7) "Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency, or the state of Idaho.

(8) "Property" means anything of value. Property includes real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor or services, or otherwise of value to the owner; things growing on, affixed to, or found on land, or part of or affixed to any building; electricity, gas, steam, and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink; samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof; or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes or models thereof which constitute, represent, evidence, reflect or record a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention, or improvement.

(9) "Service" includes but is not limited to labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, (a communication system) the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument that evidences a right to receive a service is not in itself service but constitutes property within the meaning of subsection (8) of this section.

(10) "Stolen property" means property over which control has been obtained by theft.

(11) "Value." The value of property shall be ascertained as follows:

(a) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

(b) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:
1. The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be

deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied. 2. The value of a ticket or equivalent instrument that evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument that the issuer charges the general public. 3. The value of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in paragraphs (a) and (b) of this subsection, its value shall be deemed to be one thousand dollars ($1,000) or less.

(d) For the purpose of establishing value of any written instrument, the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another owner may be named in the complaint, information or indictment.

18-2403 — Theft

18-2403. Theft.

(1) A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Theft includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subsection (1) of this section, committed in any of the following ways:

(a) By deception obtains or exerts control over property of the owner;

(b) By conduct heretofore defined or known as larceny; common law larceny by trick; embezzlement; extortion; obtaining property, money or labor under false pretenses; or receiving stolen goods;

(c) By acquiring lost property. A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner; or a person commits theft of lost or mislaid property when he: 1. Knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and 2. Fails to take reasonable measures to restore the property to the owner; and 3. Intends to deprive the owner permanently of the use or benefit of the property.

(d) By false promise: 1. A person obtains property by false promise when pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct. 2. In any prosecution for theft based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are consistent with guilty intent or belief and inconsistent with innocent intent or belief, and excluding to a moral certainty every reasonable hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: 1. Cause physical injury to some person in the future; or 2. Cause damage to property; or 3. Engage in other conduct constituting a crime; or 4. Accuse some person of a crime or cause criminal charges to be instituted against him; or 5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or 6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or 7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or 8. Use or abuse his position as a public servant by performing some act 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; or 9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

(3) A person commits theft when he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the intent of depriving the owner thereof.

(4) A person commits theft when he knowingly receives, retains, conceals, obtains control over, possesses, or disposes of stolen property, knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and

(a) Intends to deprive the owner permanently of the use or benefit of the property; or

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(5) Theft of labor or services or use of property.

(a) A person commits theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(b) A person commits theft when after renting or leasing a motor vehicle or other equipment under an agreement in writing which provides for the return of the vehicle or other equipment to a particular place at a particular time, he willfully or intentionally fails to return the vehicle or other equipment to that place within forty-eight (48) hours after the time specified.

(c) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

18-2404 — Prima facie evidence — Theft by lessee

18-2404. Prima facie evidence — Theft by lessee. It shall be prima facie evidence that a person knowingly obtains or exerts unauthorized control over property of the owner when a lessee of the personal property of another, leased or rented by written instrument:

(1) Fails or refuses to return such personal property to its owner after the lease or rental agreement has expired:

(a) Within ten (10) days; and

(b) Within forty-eight (48) hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement; or

(2) When the lease or rent of such personal property is obtained by presentation of identification to the lessor or renter thereof which is false, fictitious, or knowingly not current to name, address, place of employment, or other identification.

18-2405 — Proof of fraudulent intent in procuring food, lodging or other accommodations

18-2405. Proof of fraudulent intent in procuring food, lodging or other accommodations. Proof that lodging, food or other accommodation was obtained by any deception or false pretense, or by any false or fictitious show or pretense of any baggage or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed, or attempted to remove, his or her baggage, shall be prima facie proof of the intent necessary for the theft of the same.

18-2406 — Defenses

18-2406. Defenses.

(1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) Where the property involved is that of the offender's spouse, no prosecution for theft may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

(3) In any prosecution for theft committed by trespassory taking or the offense previously known as embezzlement, it is an affirmative defense that the property was appropriated openly and avowedly, and under a claim of right made in good faith. It is not a defense to a theft committed by such conduct that the accused intended to restore the property taken, but may be considered by the court to mitigate punishment if the property is voluntarily and actually restored (or tendered) prior to the filing of any complaint or indictment relating thereto, and this provision does not excuse the unlawful retention

of the property of another to offset or pay demands held against such other person.

(4) In any prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

(5) It is no defense to a prosecution for theft under a provision of this chapter that the defendant, by reason of the same conduct, also committed an act specified as a crime in another chapter of title 18 , or another title of the Idaho Code.

18-2407 — Grading of theft

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 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; 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.

18-2408 — Punishment for theft

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., 9. or 10. 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.

18-2409 — Pleading and proof

18-2409. Pleading and proof.

(1) Where it is an element of the crime charged that property was taken from the person or obtained by extortion, an indictment, complaint or information for theft must so specify. In all other cases, an indictment, information or complaint for theft is sufficient if it alleges that the defendant stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of theft involved.

(2) Proof that the defendant engaged in any conduct constituting theft as defined in section 18-2403 , Idaho Code, is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An indictment, complaint or information charging theft by extortion must be supported by proof establishing theft by extortion.

18-2410 — Prohibiting defacing, altering or obliterating numbers — Sales prohibited — Penalty

18-2410. Prohibiting defacing, altering or obliterating numbers — Sales prohibited — Penalty.

(1) Any person who, with intent to deceive or defraud others, shall deface, alter, remove, cover, destroy or obliterate the manufacturer's serial or identification number on any item of property shall be guilty of a felony.

(2) Any person or persons who, with intent to deceive or defraud others, knowingly disposes of, sells, trades or barters, or offers to dispose of, sell, trade or barter any item of property on which the manufacturer's serial or identification number has been defaced, altered, removed, covered or obliterated shall be guilty of a felony.

(3) Any violation of the provisions of this act shall be punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment of not more than five (5) years in the state penitentiary or both.

18-2411 — Unlawful use of theft detection shielding devices

18-2411. Unlawful use of theft detection shielding devices.

(1) A person commits unlawful use of a theft detection shielding device when he knowingly manufacturers, sells, offers for sale or distributes any laminated, or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(2) A person commits unlawful possession of a theft detection shielding device when he knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.

(3) A person commits unlawful possession of a theft detection device remover when he knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.

(4) A person commits the offense of unlawful removal of a theft detection device when he intentionally removes the device from a product prior to purchase.

(5) A person who commits unlawful use of a theft detection shielding device, unlawful possession of a theft detection shielding device, unlawful possession of a theft detection device remover or unlawful removal of a theft detection device shall be guilty of a misdemeanor for a first offense of a violation of the provisions of this section. Any person who pleads guilty to or is found guilty of a violation of the provisions of this section, or any substantially conforming statute in another state or local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony and shall be punished by a fine not to exceed one thousand dollars ($1,000) or shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years or both.

18-2415 — Scanning — Reencoding

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.

18-2416 — Short title

18-2416. Short title. This act may be known and cited as the "Unused Merchandise Ownership Protection Act."

18-2417 — Definitions

18-2417. Definitions. As used in the unused merchandise ownership protection act:

(1) "Open market" may include a "swap meet," an "indoor swap meet" or a "flea market" and means an event at which two (2) or more persons offer personal property for sale or exchange and either:

(a) A fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or

(b) The event is held more than two (2) times in a twelve (12) month period;

(2) "Unused merchandise" means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container; and

(3) "Vendor of unused merchandise" means a person who offers unused merchandise for sale or exchange at an open market.

18-2418 — Prohibited sales — Certain merchandise

18-2418. Prohibited sales — Certain merchandise.

(1) It is a violation of the unused merchandise ownership protection act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise that the vendor is authorized to sell.

(2) As used in this section:

(a) "Baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two (2) years of age;

(b) "Cosmetic" means unused merchandise, other than soap, that is:

(i) Intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; or (ii) Intended for use as a component of any articles enumerated in subparagraph (i) of this paragraph;

(c) "Drug" means unused merchandise, other than food, that:

(i) Is recognized in an official compendium; (ii) Affects the structure or any function of the body of man or other animals; or (iii) Is intended for use as a component of subparagraph (i) or (ii) of this paragraph, but does not include medical devices or their component parts or accessories;

(d) "Medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, and that is:

(i) Recognized in an official compendium; (ii) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or (iii) Intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and

(e) "Official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

18-2419 — Recordkeeping requirements — Violations

18-2419. Recordkeeping requirements — Violations.

(1) A vendor of unused merchandise shall maintain receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two (2) years after the merchandise is sold. Each receipt shall specify:

(a) The date of the purchase;

(b) The name and address of the person from whom the unused merchandise was acquired;

(c) A description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;

(d) The amount paid for the unused merchandise; and

(e) The signature of the buyer and the seller of the unused merchandise.

(2) It is a violation of the unused merchandise ownership protection act for a person to knowingly:

(a) Falsify, obliterate or destroy any receipt required to be kept pursuant to this section;

(b) At the request of a police officer, fail or refuse to produce any receipt required to be kept pursuant to this section; and

(c) Fail to maintain any receipt as required by this section.

18-2420 — Exemptions

18-2420. Exemptions.

(1) The following persons are exempt from the provisions of the unused merchandise ownership protection act:

(a) A vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;

(b) A vendor at an industry or association trade show;

(c) A vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and

(d) A vendor selling by sample, catalog or brochure for future delivery.

(2) The requirements of the unused merchandise ownership protection act do not apply to sales or offers for sale of the following unused merchandise:

(a) Firewood, sand, gravel, flagstone, building stone or other natural product;

(b) Live animals;

(c) Vehicles subject to registration pursuant to title 49 , Idaho Code;

(d) Food intended for human consumption at the open market immediately after sale;

(e) Merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;

(f) Food offered for sale that was grown, harvested or produced by the vendor or the vendor's principal; and

(g) Art, crafts or handicrafts that were produced by the vendor or the vendor's principal.

18-2421 — Penalties

18-2421. Penalties. A person who violates any provision of the unused merchandise ownership protection act is guilty of a misdemeanor for the first offense. Any person who pleads guilty to or is found guilty of a violation of the unused merchandise ownership protection act, or any substantially conforming statute in another state or any local jurisdiction, for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years, or shall be fined an amount not to exceed twenty-five thousand dollars ($25,000) or both.

CHAPTER 25

18-2501 — Rescuing prisoners

18-2501. Rescuing prisoners. Every person who rescues, or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

(1) If such prisoner was in custody upon a conviction of felony punishable by death, by imprisonment in the state prison not less than one (1) nor more than fourteen (14) years.

(2) If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the state prison not less than six (6) months nor more than five (5) years.

(3) If such prisoner was in custody upon a charge of felony, by a fine not exceeding one thousand dollars ($1,000) and imprisonment in the county jail not exceeding one (1) year.

(4) If such prisoner was in custody, otherwise than upon a charge or conviction of felony, by fine not exceeding one thousand dollars ($1,000) and imprisonment in the county jail not exceeding six (6) months.

18-2502 — Officers assisting in escape

18-2502. Officers assisting in escape. Any sheriff, deputy sheriff, peace officer, correctional officer or other employee of a correctional facility, as defined in section 18-101A , Idaho Code, including a private correctional facility, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten (10) years, and fine not exceeding ten thousand dollars ($10,000). Every such officer or person who negligently suffers such escape is guilty of a misdemeanor.

18-2504 — Private persons assisting in escape

18-2504. Private persons assisting in escape. Every person who wilfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person, to escape, or in an attempt to escape, from such prison or custody, is guilty of a felony.

18-2505 — Escape by one charged with, convicted of, or on probation for a felony — Escape by a juvenile from custody

18-2505. Escape by one charged with, convicted of, or on probation for a felony — Escape by a juvenile from custody.

(1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any correctional facility, as defined in section 18-101A , Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such

correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking or monitoring, or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care. A person may not be charged with the crime of escape for leaving the aforementioned area of restriction unless the person was notified in writing by the court at the time of setting of bail, release or sentencing of the consequences of violating this section by intentionally leaving the area of restriction.

(2) Any person who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a felony if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20 , Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section 20-508 or 20-509 , Idaho Code, or was eighteen (18) years of age or older at the time of the escape or attempted escape, the person shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

18-2506 — Escape by one charged with or convicted of a misdemeanor — Escape by a juvenile from custody

18-2506. Escape by one charged with or convicted of a misdemeanor — Escape by a juvenile from custody.

(1) (a) Every prisoner charged with or convicted of a misdemeanor who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a misdemeanor. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking or monitoring, or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care. A person may not be charged with the crime of escape for leaving the aforementioned area of restriction unless the person was notified in writing by the court at the time of setting of bail, release or sentencing of the consequences of violating this section by intentionally leaving the area of restriction.

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a felony.

(2) Any person who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a misdemeanor if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of an officer or person, shall be subject to proceedings under the provisions of chapter 5, title 20 , Idaho Code, for an act which would be a misdemeanor if committed by an adult, or, if the escape or attempted escape was undertaken as provided in subsection (1)(b) of this section, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section 20-508 or 20-509 , Idaho Code, or was eighteen (18) years of age or older at the time of the escape or attempted escape, the person shall be guilty of a misdemeanor, or if subsection (1)(b) of this section applies, of a felony and, in either case, shall be subject to adult criminal proceedings.

18-2507 — Expense of prosecution — How paid

18-2507. Expense of prosecution — How paid. Whenever a person is prosecuted under any of the provisions of section 18-2505 , Idaho Code, and whenever a prisoner in the custody of the board of correction housed in a state correctional facility, as defined in section 18-101A , Idaho Code, shall be prosecuted for any crime committed therein, the clerk of the district court shall make out a statement of all the costs incurred by the county for the prosecution of such case, and for the guarding and keeping of such prisoner, and when certified by the judge who tried the case, such statement shall be submitted to and reviewed by the board of examiners. If approved, the board of examiners shall submit the claim to the Idaho department of correction who shall pay the claim to the treasurer of the county where the trial was conducted. The provisions of this section shall apply to prosecution of a prisoner in the custody of the board of correction and housed in a

private correctional facility unless otherwise provided for in any contract between the state of Idaho and the private prison contractor entered into pursuant to chapter 2, title 20 , Idaho Code. Costs of prosecution of all other prisoners housed in a private correctional facility shall be recoverable from the private prison contractor, as provided in section 20-809 , Idaho Code.

18-2508 — persons committed to public institutions — Enticing to escape or harboring unlawful

18-2508. persons committed to public institutions — Enticing to escape or harboring unlawful.

(1) It shall be unlawful for any person to knowingly entice the escape of or harbor any person committed to or confined in any institution maintained by the state for the treatment, education or welfare of persons committed to or confined therein.

(2) Any person who violates the provisions of subsection (1) of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine not exceeding one thousand dollars ($1,000) or imprisonment in the county jail for a period not exceeding one (1) year, or both.

18-2510 — possession, introduction or removal of certain articles into or from correctional facilities

18-2510. possession, introduction or removal of certain articles into or from correctional facilities.

(1) No person including a prisoner, except as authorized by law or with permission of the facility head, shall knowingly:

(a) Introduce, or attempt to introduce, contraband into a correctional facility or the grounds of a correctional facility; or

(b) Convey, or attempt to convey, contraband to a prisoner confined in a correctional facility; or

(c) Possess, or attempt to possess, contraband within a correctional facility; or

(d) Receive, obtain or remove, or attempt to receive, obtain or remove, contraband from a correctional facility.

(2) Any person including a prisoner who violates any provision of subsection (1) of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not exceeding one thousand dollars ($1,000), or by both such imprisonment and fine.

(3) No person including a prisoner, except as authorized by law or with permission of the facility head, shall knowingly:

(a) Introduce, or attempt to introduce, major contraband into a correctional facility or the grounds of a correctional facility; or

(b) Convey, or attempt to convey, major contraband to a prisoner confined in a correctional facility; or

(c) Possess, or attempt to possess, major contraband within a correctional facility; or

(d) Receive, obtain or remove, or attempt to receive, obtain or remove, major contraband from a correctional facility.

(4) Any person including a prisoner who violates any provision of subsection (3) of this section shall be guilty of a felony and on conviction shall be punished by imprisonment in the state prison for a period not exceeding five (5) years or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine.

(5) As used in this section:

(a) "Contraband" means any article or thing that a prisoner confined in a correctional facility is prohibited by statute, rule or policy from obtaining or possessing and the use of which could endanger the safety or security of the correctional facility, any person therein or the public.

(b) "Correctional facility" means a correctional facility as defined in section 18-101A , Idaho Code.

(c) "Major contraband" means:

(i) Any controlled substance as defined in section 37-2701 (e), Idaho Code; (ii) Any tobacco product in excess of three (3) ounces; (iii) Any firearm or dangerous weapon including explosives or combustibles or any plans or materials that may be used in the making or manufacturing of such weapons, explosives or devices; (iv) Any telecommunication equipment or component hardware including, but not limited to, any device carried, worn or stored that is designed or intended to receive or transmit verbal or written messages, access or store data or connect electronically to the internet or any other electronic device that allows communications in any form. Such devices include, but are not limited to, cellular telephones, portable two-way pagers, hand-held radios, global position satellite system equipment, subscriber identity module (SIM) cards, portable memory chips, batteries, chargers, blackberry-type devices or smart phones, personal digital assistants or PDA's and laptop computers. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities that has been approved by the

facility head for investigative or institutional security purposes or for conducting other official business;

(v) Any object or instrument intended or reasonably likely to be used in the planning or aiding in an escape or attempted escape from a correctional facility.

(d) "Prisoner" means a prisoner or a juvenile offender as those terms are defined in section 18-101A , Idaho Code.

CHAPTER 26

18-2601 — Falsifying evidence — Offering forged or fraudulent documents in evidence

18-2601. Falsifying evidence — Offering forged or fraudulent documents in evidence. Every person who, upon any trial, proceeding, inquiry or investigation whatever authorized or permitted by law, offers in evidence as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or antedated, is guilty of felony.

18-2602 — Preparing false evidence

18-2602. Preparing false evidence. Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced, for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of felony.

18-2603 — Destruction, alteration or concealment of evidence

18-2603. Destruction, alteration or concealment of evidence. Every person who, knowing that any book, paper, record, instrument in writing, or other object, matter or thing, is about to be produced, used or discovered as evidence upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, wilfully destroys, alters or conceals the same, with intent thereby to prevent it from being produced, used or discovered, is guilty of a misdemeanor, unless the trial, proceeding, inquiry or investigation is criminal in nature and involves a felony offense, in which case said person is guilty of a felony and subject to a maximum fine of ten thousand dollars ($10,000) and a maximum sentence of five (5) years in prison.

18-2604 — Intimidating a witness

18-2604. Intimidating a witness.

(1) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, influences, impedes, deters, threatens, harasses, obstructs or prevents a witness, including a child witness, or any person who may be called as a witness or any person he believes may be called as a witness in any civil proceeding from testifying freely, fully and truthfully in that civil proceeding is guilty of a misdemeanor.

(2) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, threatens or harasses any person because such person has testified or because he believes that such person has testified in any civil proceedings is guilty of a misdemeanor.

(3) Any person who, by direct or indirect force, or by any threats to person or property, or by any manner wilfully intimidates, influences, impedes, deters, threatens, harasses, obstructs or prevents, a witness, including a child witness, or any person who may be called as a witness or any person he believes may be called as a witness in any criminal proceeding or juvenile evidentiary hearing from testifying freely, fully and truthfully in that criminal proceeding or juvenile evidentiary hearing is guilty of a felony.

(4) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, threatens or harasses any person because such person has testified or because he believes that such person has testified in any criminal proceeding or juvenile evidentiary hearing is guilty of a felony.

(5) The fact that a person was not actually prevented from testifying shall not be a defense to a charge brought under subsection (1), (2), (3) or (4) of this section.

18-2605 — Bribing witnesses

18-2605. Bribing witnesses. Every person who gives or offers, or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false or to withhold true testimony, is guilty of a misdemeanor.

18-2606 — Receiving of bribe by witness

18-2606. Receiving of bribe by witness. Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

CHAPTER 27

18-2701 — Bribery of executive officers

18-2701. Bribery of executive officers. Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion or other proceeding as such officer, is guilty of a felony.

18-2702 — Asking or receiving bribes

18-2702. Asking or receiving bribes. Every executive officer or person elected or appointed to an executive office who asks, receives or agrees to receive, any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is guilty of a felony and forfeits his office.

18-2704 — Asking or receiving rewards

18-2704. Asking or receiving rewards. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

18-2705 — Officers not to purchase scrip

18-2705. Officers not to purchase scrip. Every officer or person prohibited by the laws of this state from becoming a purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than $1,000 or by imprisonment in the state prison not more than five years.

18-2706 — Presentation of fraudulent accounts

18-2706. Presentation of fraudulent accounts. Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town, city, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher or writing, is guilty of a felony.

18-2707 — Buying appointments

18-2707. Buying appointments. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

18-2708 — Making appointments for reward

18-2708. Making appointments for reward. Every public officer who for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding $5,000, and in addition thereto forfeits his office.

18-2709 — Intrusion into office — Holding over

18-2709. Intrusion into office — Holding over. Every person who wilfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, wilfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

18-2710 — Withholding books and records from successor

18-2710. Withholding books and records from successor. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, wilfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents or other writings appertaining or belonging to his office, or mutilates, destroys or takes away the

same, is guilty of a felony.

18-2711 — Application of chapter

18-2711. Application of chapter. The various provisions of this chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

18-2712 — Disqualified person holding office

18-2712. Disqualified person holding office. Every person not a legal voter and possessing all the qualifications prescribed for voters, or who is under any disqualification created by the laws of this state, who holds or exercises any office, is guilty of a misdemeanor.

CHAPTER 29

18-2901 — False imprisonment defined

18-2901. False imprisonment defined. False imprisonment is the unlawful violation of the personal liberty of another.

18-2902 — Punishment

18-2902. Punishment. False imprisonment is punishable by fine not exceeding $5000, or by imprisonment in the county jail not more than one (1) year, or both.

CHAPTER 30

18-3001 — False personation

18-3001. False personation. Every person who falsely personates another, and in such assumed character, either: 1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or 2. Verifies, publishes, acknowledges or proves in the name of another person, any written instrument, with the intent that the same may be recorded, delivered and used as true; or 3. Does any act whereby, if it were done by the person falsely personated, he might in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person; Is punishable by imprisonment in the county jail not exceeding two (2) years, or by a fine not exceeding $5000.

18-3002 — Receiving money or property under false personation

18-3002. Receiving money or property under false personation. Every person who falsely personates another, and in such assumed character receives any money or property knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or that of another person, or to deprive the owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

18-3003 — Marriage under false personation

18-3003. Marriage under false personation. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

18-3004 — Solemnizing marriage without authority

18-3004. Solemnizing marriage without authority. Every person who undertakes or pretends to join others in marriage, knowing that he is not by law authorized so to do, or knowing of any legal impediment to the proposed marriage, is guilty of a misdemeanor.

18-3005 — Intimidation by false assertion of authority

18-3005. Intimidation by false assertion of authority.

(1) Any person who either:

(a) Deliberately impersonates or falsely acts as a public officer or tribunal, public employee or any law enforcement authority in connection with or relating to any actual or purported legal process affecting persons or property; or

(b) Simulates legal process including, but not limited to, actions affecting title to real or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings; knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent; or

(c) While acting falsely in asserting authority of law takes action against persons or property; or

(d) While acting falsely in asserting authority of law attempts in any way to influence, intimidate, or hinder a public official or law enforcement officer in the discharge of his official duties by means of, but not limited to, threats of or actual physical abuse, harassment, or through the use of simulated legal process; Is punishable by imprisonment in the county jail for a period not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000) or both.

(2) (a) Nothing in this section shall make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority; and

(b) Nothing in this section shall prohibit individuals from assembling freely to express opinions or designate group affiliation or association; and

(c) Nothing in this section shall prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

CHAPTER 31

18-3101 — pyramid promotional schemes prohibited — Penalties — Sale of interest voidable — Scope of remedy

18-3101. pyramid promotional schemes prohibited — Penalties — Sale of interest voidable — Scope of remedy.

(1) It is illegal and prohibited for any person, or any agent or employee thereof, to establish, promote, offer, operate, advertise or grant participation in any pyramid promotional scheme.

(2) As used in this section:

(a) "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request at the termination of a participant's business relationship with the plan or operation and based upon commercially reasonable terms, current and marketable inventory purchased and maintained by the participant for resale, use or consumption, provided such plan or operation clearly describes the program in its recruiting literature, sales manual, or contracts with participants, including the manner in which the repurchase is exercised and disclosure of any inventory that is not eligible for repurchase under the program.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months from the date of original purchase at not less than ninety percent (90%) of the original net cost to the participant, less appropriate set-offs and legal claims, if any. In the case of service products, the repurchase of such service products shall be on a pro rata basis, unless clearly disclosed otherwise to the participant, in order to qualify as "commercially reasonable terms."

(c) "Compensation" means a payment of any money, thing of value, or financial benefit.

(d) "Consideration" means a payment of any money, or the purchase of goods, services, or intangible property but shall not include: 1. The purchase of goods or services furnished at cost to be used in making sales and not for resale. 2. Time and effort spent in pursuit of sales or recruiting activities.

(e) "Current and marketable" includes inventory that, in the case of consumable or durable goods, is unopened, unused and within its commercially reasonable use of shelf-life period. In the case of services and intangible property, including internet sites, "current and marketable" means the unexpired portion of any contract or agreement. The term "current and marketable" does not include inventory that has been clearly described to the participant prior to purchase as a seasonal, discontinued, or special promotion product not subject to the plan or operation's inventory repurchase program.

(f) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that the plan or operation requires independent salespersons to purchase.

(g) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount that unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption, or to use or consume, in a reasonable time period.

(h) "Participant" means a natural person who joins a plan or operation.

(i) "Person" means a natural person, partnership, corporation, trust, estate, business trust, joint venture, unincorporated association, or any other legal or commercial entity.

(j) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to be a participant.

(k) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services or intangible property to participants or by participants to others.

(3) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a pyramid promotional scheme.

(4) Any person, or any agent or employee thereof who willfully and knowingly promotes, offers, advertises, or grants participation in a pyramid promotional scheme shall be guilty of a felony.

(5) All pyramid promotional schemes offered by the same person, or agents or employees thereof, or any person controlled by or affiliated with such person, for the same type of consideration, at substantially the same period of time and for the same general purpose, shall be deemed to be one (1) integrated pyramid promotional scheme, even though such pyramid promotional schemes may be given different names or other designations.

(6) Nothing in this section or in any rule promulgated pursuant to this section shall be construed to prohibit a plan or operation, or to define such plan or operation as a pyramid promotional scheme, based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property by participants for personal use, consumption or resale, provided the plan or operation implements an appropriate inventory repurchase program and does not promote inventory loading.

(7) Any violation of this section shall also be deemed an unfair and deceptive practice in violation of the Idaho consumer protection act. Any person aggrieved by a violation of this section can recover monetary damages pursuant to the Idaho consumer protection act.

(8) The rights and remedies that are granted under the provisions of this section to purchasers in pyramid promotional schemes are independent of and in addition to any other right or remedy available to them in law or equity, and nothing contained herein shall be construed to diminish or abrogate any such right or remedy.

18-3105 — False statement by commission merchant, broker, agent, factor or consignee to principal or consignor

18-3105. False statement by commission merchant, broker, agent, factor or consignee to principal or consignor. Every commission merchant, broker, agent, factor or consignee who shall wilfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or entrusted to, such commission merchant, agent, broker, factor or consignee, for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding $300.00, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

18-3106 — Drawing check without funds — Drawing check with insufficient funds — Prima facie evidence of intent — Standing of person having acquired rights — Probation conditions

18-3106. Drawing check without funds — Drawing check with insufficient funds — Prima facie evidence of intent — Standing of person having acquired rights — Probation conditions.

(a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment in full of such check, draft or order upon its presentation, although no express representation is made with reference thereto, shall upon conviction be punished by imprisonment in the state prison for a term not to exceed three (3) years or by a fine not to exceed fifty thousand dollars ($50,000) or by both such fine and imprisonment.

(b) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud shall make, draw, utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money in the sum of two hundred fifty dollars ($250) or more, or any series of transactions as defined in subsection (f) of this section, upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has some but not sufficient funds in or credit with such bank or depositary, or person, or firm, or corporation, for the full payment of such check, draft or order or series of transactions upon presentation, although no express representation is made with reference thereto, shall upon conviction be punished by imprisonment in the state prison for a term not to exceed three (3) years, or by a fine not to exceed fifty thousand dollars ($50,000), or by both such fine and imprisonment.

(c) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, shall make, draw, utter or deliver, or cause to be made, drawn, uttered, or delivered, any check, draft or order for payment of money, in a sum less than two hundred fifty dollars ($250), which is not part of a series of transactions as defined in subsection (f) of this section, upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has some but not sufficient funds in or credit with such bank or depositary, or firm, or person, or corporation, for the full payment of such check, draft or order upon its presentation, although no express representation is made with reference thereto, shall upon conviction for a first offense be punished by imprisonment in the county jail for a term not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both such fine and imprisonment; and upon a second conviction the person so convicted shall be punished by imprisonment in the county jail for a term not exceeding one (1) year, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment; provided, however, that upon a third or subsequent conviction, the person so convicted shall be punished by imprisonment in the state prison for a term not exceeding three (3) years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both such fine and imprisonment.

(d) As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment in full of such check, draft or order upon its presentation. This prima facie intent to defraud and knowledge of no funds or insufficient funds, as the case may be, shall not be negated by evidence that the check draft or order was for payment of a preexisting debt, including open accounts. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depositary, or person, or firm, or corporation upon whom such check, draft or order is drawn for the payment of such check, draft or order.

(e) Any person having acquired rights with respect to a check which is not paid because the drawer has no funds, no account or insufficient funds, shall have standing to file a complaint under this section, regardless of whether he is the payee, holder or bearer of the check.

(f) For purposes of this section a "series of transactions" means a series of checks, drafts or orders for the payment of money which are less than two hundred fifty dollars ($250.00) individually but in the aggregate total two hundred fifty dollars ($250) or more, and which are made, uttered, drawn or delivered in violation of this section as part of a common scheme or plan.

(g) If a sentence of probation is ordered for violation of this section, the court as a condition of probation may require the defendant to make restitution on all checks issued and which are unpaid at the date of commencement of the probation in addition to any other terms and conditions appropriate for the treatment and rehabilitation of the defendant.

18-3122 — Definitions

18-3122. Definitions. The following words and phrases used in this chapter mean:

(1) "Authorized credit card merchant" means a person or organization who is authorized by an issuer to furnish money, goods, services or anything of value upon presentation of a financial transaction card or a financial transaction card account number by a card holder, and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card and/or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom, or for whose benefit, a financial transaction card is issued by an issuer.

(4) "Credit card sales draft" means:

(a) Any sales slip, draft, voucher or other written or electronic record of a sale of goods, services or anything else of value made or purported to be made to or at the request of a card holder with a financial transaction card, financial transaction card account number or personal identification code; or

(b) Any evidence, however manifested, of any right or purported right to collect from a card holder funds due or purported to be due with respect to any sale or purported sale.

(5) "Expired financial transaction card" means any financial transaction card which is no longer valid because the terms agreed to have been cancelled or have elapsed.

(6) "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.

(7) "Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

(8) "Issuer" means a business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(9) "Personal identification code" means any numerical and/or alphabetical code assigned to the card holder of a financial transaction card by the issuer to permit the authorized electronic use of that FTC.

(10) "Personal identifying information" means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, checking account number, savings account number, financial transaction card number, or personal identification code of an individual person, or any other numbers or information which can be used to access a person's financial resources.

(11) "Revoked financial transaction card" means an FTC which is no longer valid because permission to use it has been suspended or terminated by the issuer with actual notice having been made upon the card holder.

18-3123 — Forgery of a financial transaction card

18-3123. Forgery of a financial transaction card. Any person who, with intent to defraud, counterfeits, falsely makes, embosses, or encodes magnetically or electronically any FTC, or who with intent to defraud, uses the financial transaction card account number or personal identification code of a card holder in the creation of a fictitious or counterfeit credit card sales draft, signs the name of another, or a fictitious name to an FTC, sales slip, sales draft, credit card sales draft, or any instrument for the payment of money which evidences an FTC transaction, shall be guilty of forgery and shall be punished under the current forgery statutes of the state of Idaho.

18-3124 — Fraudulent use of a financial transaction card or number

18-3124. Fraudulent use of a financial transaction card or number. It is a violation of the provisions of this section for any person with the intent to defraud:

(1) To use an FTC or FTC number to knowingly and willfully exceed the actual balance of the demand deposit account or time deposit account;

(2) To use an FTC or FTC number to willfully exceed an authorized credit line in the amount of one thousand dollars ($1,000) or more, or fifty percent (50%) of such authorized credit line, whichever is greater;

(3) To willfully deposit into his account or any other account by means of an automatic banking device, any false, forged, fictitious, altered or counterfeit check draft, money order, or any other such document;

(4) To knowingly sell or attempt to sell credit card sales drafts to an authorized credit card merchant or any other person or organization, for any consideration whether at a discount or otherwise, or present or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, or purchase or attempt to purchase any credit card sales draft for presentation to the issuer or an authorized credit card merchant for payment or collection if:

(a) Such draft is counterfeit or fictitious;

(b) The purported sale evidenced by such credit card sales draft did not take place;

(c) The purported sale was not authorized by the card holder;

(d) The items or services purported to be sold as evidenced by such credit card sales draft are not delivered or rendered to the card holder or person intended to receive them; or

(e) If purportedly delivered or rendered, such goods or services are of materially lesser value or quality from that intended by the purchaser, or are materially different from goods or services represented by the seller or his agent to the purchaser, or have substantial discrepancies from goods or services impliedly represented by the purchase price when compared with the actual goods or services purportedly delivered or rendered.

(5) To knowingly keep or maintain in any manner carbon or other impressions or copies of credit card sales drafts, and to use such impressions or copies for the purpose of creating any fictitious or counterfeit credit sales draft, or to engage in any other activity prohibited in this section.

18-3125 — Criminal possession of financial transaction card, financial transaction number and FTC forgery devices

18-3125. Criminal possession of financial transaction card, financial transaction number and FTC forgery devices. It is a felony punishable as provided in subsection (3) of section 18-3128 , Idaho Code, for any person:

(1) To acquire an FTC or FTC number from another without the consent of the card holder or the issuer with the intent to use to defraud, or to, with the knowledge that it has been so acquired, receive an FTC or FTC number with the intent to use to defraud, or to sell, or to transfer the FTC or FTC number to another person with the knowledge that it is to be used to defraud;

(2) To acquire an FTC or FTC number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the card holder, and to retain possession with the intent to use to defraud or to sell or transfer to another person with the knowledge that it is to be used to defraud;

(3) To, with the intent to defraud, knowingly possess a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(4) To, with the intent to defraud, knowingly obtain or attempt to obtain credit or purchase or attempt to purchase any goods, property or service, by use of any false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or FTC account number;

(5) To, with the intent to defraud, knowingly produce to another person or procure, a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(6) To, with the intent to defraud and while making an application for an FTC to an issuer, knowingly make or cause to be made, a false written or oral statement or representation respecting his name, personal identifying information, occupation, financial condition, assets, or to materially undervalue any indebtedness for the purpose of influencing the issuer to issue an FTC.

18-3125A — Unauthorized factoring of credit card sales drafts

18-3125A. Unauthorized factoring of credit card sales drafts. It is unlawful for any person to knowingly and with intent to defraud, employ, solicit or otherwise cause an authorized credit card merchant, or for the authorized credit card merchant itself, to present to the issuer for payment any credit card sales draft pertaining to any sale or purported sale of goods or services which was not made by such authorized credit card merchant in the ordinary course of business, except with the express authorization of the issuer.

18-3126 — Misappropriation of personal identifying information

18-3126. Misappropriation of personal identifying information. It is unlawful for any person to obtain or record personal identifying information of another person without the authorization of that person, with the intent that the information be used to obtain, or attempt to obtain, credit, money, goods or services without the consent of that person.

18-3126A — Acquisition of personal identifying information by false authority

18-3126A. Acquisition of personal identifying information by false authority. It is unlawful for any person to falsely assume or pretend to be a member of the armed forces of the United States or an officer or employee acting under authority of the United States or any department, agency or office thereof or of the state of Idaho or any department, agency or office thereof, and in such pretended character, seek, demand, obtain or attempt to obtain personal identifying information of another person.

18-3127 — Receiving or possessing fraudulently obtained goods or services

18-3127. Receiving or possessing fraudulently obtained goods or services. It is unlawful for any person to receive, retain, conceal, possess or dispose of personal property, cash or other representative of value, who knows or has reason to believe the property, cash or other representative of value has been obtained by fraud as set forth in sections 18-3123 , 18-3124 , 18-3125A and 18-3126 , Idaho Code.

18-3128 — Penalty for violation

18-3128. Penalty for violation.

(1) Any person found guilty of a violation of section 18-3124 , 18-3125A or 18-3127 , Idaho Code, is guilty of a misdemeanor. In the event that the retail value of the goods obtained or attempted to be obtained through any violation of the provisions of section 18-3124 , 18-3125A or 18-3127 , Idaho Code, exceeds three hundred dollars ($300), any such violation will constitute a felony, and will be punished as provided in this section. Any person found guilty of a violation of section 18-3125 , 18-3126 or 18-3126A , Idaho Code, is guilty of a felony.

(2) For purposes of this section, the punishment for a misdemeanor shall be a fine of up to one thousand dollars ($1,000) or up to one (1) year in the county jail, or both such fine and imprisonment.

(3) For purposes of this section, the punishment for a felony shall be a fine of up to fifty thousand dollars ($50,000) or imprisonment in the state prison not exceeding five (5) years, or both such fine and imprisonment.

CHAPTER 32

18-3201 — Officer stealing, mutilating or falsifying public records

18-3201. Officer stealing, mutilating or falsifying public records. Any public officer, law enforcement officer, or subordinate thereof, who wilfully destroys, alters, falsifies or commits the theft of the whole or any part of any police report or any record kept as part of the official governmental records of the state or any county or municipality in the state, shall be guilty of a felony and is punishable by imprisonment in the state prison for not more than fourteen (14) years.

18-3202 — Private person stealing, mutilating or falsifying public records

18-3202. Private person stealing, mutilating or falsifying public records. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison not exceeding five (5) years, or in a county jail not exceeding one (1) year, or by a fine not exceeding one thousand dollars ($1,000), or by both.

18-3203 — Offering false or forged instrument for record

18-3203. Offering false or forged instrument for record. Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of a felony.

18-3204 — False certificates or other instruments from officers

18-3204. False certificates or other instruments from officers. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

18-3205 — Destroying legal notices

18-3205. Destroying legal notices. Every person who intentionally defaces, obliterates, tears down or destroys any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement or notification set up at any place in this state, by authority of any law of the United States or of this state, or by order of any court, before the expiration of the time for which the same was to remain set up, is guilty of a misdemeanor.

18-3206 — Mutilating written instruments

18-3206. Mutilating written instruments. A person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the state prison for not less than one (1) nor more than five (5) years.

CHAPTER 33

18-3301 — Deadly weapon — Possession with intent to assault

18-3301. Deadly weapon — Possession with intent to assault. Every person having upon him any deadly weapon with intent to assault another is guilty of a misdemeanor.

18-3302 — concealed weapons

18-3302. concealed weapons. [effective until January 1, 2027]

(1) The legislature hereby finds that the people of Idaho have reserved for themselves the right to keep and bear arms while granting the legislature the authority to regulate the carrying of weapons concealed. The provisions of this chapter regulating the carrying of weapons must be strictly construed so as to give maximum scope to the rights retained by the people.

(2) As used in this chapter:

(a) "Concealed weapon" means any deadly weapon carried on or about the person in a manner not discernible by ordinary observation;

(b) "Deadly weapon" means:

(i) Any dirk, dirk knife, bowie knife, dagger or firearm; (ii) Any other weapon, device, instrument, material or substance that is designed and manufactured to be readily capable of causing death or serious bodily injury; or (iii) Any other weapon, device, instrument, material or substance that is intended by the person to be readily capable of causing death or serious bodily injury.

(c) The term "deadly weapon" does not include:

(i) Any knife, cleaver or other instrument that is intended by the person to be used in the processing, preparation or eating of food; (ii) Any knife with a blade six (6) inches or less; or (iii) Any taser, stun-gun, pepper spray or mace;

(d) "Firearm" means any weapon that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;

(e) "Loaded" means:

(i) For a firearm capable of using fixed ammunition, that live ammunition is present in: 1. The chamber or chambers of the firearm; 2. Any internal magazine of the firearm; or 3. A detachable magazine inserted in the firearm; (ii) For a firearm that is not capable of using fixed ammunition, that the firearm contains: 1. A propellant charge; and 2. A priming cap or primer cap.

(3) No person shall carry concealed weapons on or about his person without a license to carry concealed weapons, except:

(a) In the person’s place of abode or fixed place of business;

(b) On property in which the person has any ownership or leasehold interest;

(c) On private property where the person has permission to carry concealed weapons from any person with an ownership or leasehold interest;

(d) Outside the limits of or confines of any city, if the person is eighteen (18) years of age or older and is not otherwise disqualified from being issued a license under subsection (11) of this section.

(4) Subsection (3) of this section shall not apply to restrict or prohibit the carrying or possession of:

(a) Any deadly weapon located in plain view;

(b) Any lawfully possessed shotgun or rifle;

(c) Any deadly weapon concealed in a motor vehicle;

(d) A firearm that is not loaded and is secured in a case;

(e) A firearm that is disassembled or permanently altered such that it is not readily operable; and

(f) Any deadly weapon concealed by a person who:

(i) Is over eighteen (18) years of age; (ii) Is a citizen of the United States or a current member of the armed forces of the United States; and (iii) Is not disqualified from being issued a license under paragraphs (b) through (n) of subsection (11) of this section.

(5) The requirement to secure a license to carry concealed weapons under this section shall not apply to the following persons:

(a) Officials of a city, county or the state of Idaho;

(b) Any publicly elected Idaho official;

(c) Members of the armed forces of the United States or of the national guard when in performance of official duties;

(d) Criminal investigators of the attorney general's office and criminal investigators of a prosecuting attorney's office, prosecutors and their deputies;

(e) Any peace officer as defined in section 19-5101 (d), Idaho Code, in good standing;

(f) Retired peace officers or detention deputies with at least ten (10) years of service with the state or a political subdivision as a peace officer or detention deputy and who have been certified by the peace officer standards and training council;

(g) Any person who has physical possession of his valid license or permit authorizing him to carry concealed weapons from another state; and

(h) Any person who has physical possession of a valid license or permit from a local law enforcement agency or court of the United States authorizing him to carry concealed weapons.

(6) The sheriff of the county of the applicant's residence or, if the applicant has obtained a protection order pursuant to chapter 63, title 39 , Idaho Code, the sheriff of a county where the applicant is temporarily residing may issue a temporary emergency license for good cause pending review of an application made under subsection (7) of this section. Temporary emergency licenses must be easily distinguishable from regular licenses. A temporary emergency license shall be valid for not more than ninety (90) days.

(7) The sheriff of a county, on behalf of the state of Idaho, must, within ninety (90) days after the filing of a license application by any person who is not disqualified as provided herein from possessing or receiving a firearm under state or federal law, issue a license to the person to carry concealed weapons on his person within this state. Such license shall be valid for five (5) years from the date of issuance.

(8) The sheriff must make license applications readily available at the office of the sheriff, at other public offices in his or her jurisdiction and on the website of the Idaho state police. The license application shall be in a form to be prescribed by the director of the Idaho state police and must meet the following requirements:

(a) The license application shall require the applicant's name, address, description, signature, date of birth, place of birth, military status, citizenship and the driver's license number or state identification card number if used for identification in applying for the license. Provided however, that if the applicant is not a United States citizen and is legally in the United States, the application must also require any alien or admission number issued to the applicant by United States immigration and customs enforcement or any successor agency;

(b) The license application may ask the applicant to disclose his social security number but must indicate that disclosure of the applicant's social security number is optional; and

(c) The license application must contain a warning that substantially reads as follows: CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

(9) The sheriff may require the applicant to demonstrate familiarity with a firearm and must accept any one (1) of the following as evidence of the applicant's familiarity with a firearm:

(a) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state;

(b) Completion of any national rifle association firearms safety or training course or any national rifle association hunter education course or any equivalent course;

(c) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school utilizing instructors certified by the national rifle association or the Idaho state police;

(d) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or offered for any division or subdivision of a law enforcement agency or security enforcement agency;

(e) Evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

(f) A current license to carry concealed weapons pursuant to this section, unless the license has been revoked for cause;

(g) Completion of any firearms training or safety course or class conducted by a state-certified or national rifle association-certified firearms instructor; or

(h) Other training that the sheriff deems appropriate.

(10) Any person applying for original issuance of a license to carry concealed weapons must submit his fingerprints with the completed license application. Within five (5) days after the filing of an application, the sheriff must forward the applicant's completed license application and fingerprints to the Idaho state police. The Idaho state police must conduct a national fingerprint-based records check, an inquiry through the national instant criminal background check system and a check of any applicable state database, including a check for any mental health records for conditions or commitments that would disqualify a person from possessing a firearm under state or federal law, and return the results to the sheriff within sixty (60) days. If the applicant is not a United States citizen, an immigration alien query must also be conducted through United States immigration and customs enforcement or any successor agency. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in subsection (11) of this section. The sheriff may deny a license to carry concealed weapons to an alien if background information is not attainable or verifiable.

(11) A license to carry concealed weapons shall not be issued to any person who:

(a) Is under twenty-one (21) years of age, except as otherwise provided in this section;

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year;

(c) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year;

(d) Is a fugitive from justice;

(e) Is an unlawful user of marijuana or any depressant, stimulant or narcotic drug, or any controlled substance as defined in 21 U.S.C. 802;

(f) Is currently suffering from or has been adjudicated as having suffered from any of the following conditions, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210 , Idaho Code; (ii) Mentally ill as defined in section 66-317 , Idaho Code; (iii) Gravely disabled as defined in section 66-317 , Idaho Code; or (iv) An incapacitated person as defined in section 15-5-101 , Idaho Code;

(g) Has been discharged from the armed forces under dishonorable conditions;

(h) Has received a withheld judgment or suspended sentence for a crime punishable by imprisonment for a term exceeding one (1) year, unless the person has successfully completed probation;

(i) Has received a period of probation after having been adjudicated guilty of, or received a withheld judgment for, a misdemeanor offense that has as an element the intentional use, attempted use or threatened use of physical force against the person or property of another, unless the person has successfully completed probation;

(j) Is an alien illegally in the United States;

(k) Is a person who having been a citizen of the United States has renounced his or her citizenship;

(l) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime that would disqualify him from obtaining a concealed weapons license;

(m) Is subject to a protection order issued under chapter 63, title 39 , Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person, or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; or

(n) Is for any other reason ineligible to own, possess or receive a firearm under the provisions of Idaho or federal law.

(12) In making a determination in relation to an applicant's eligibility under subsection (11) of this section, the sheriff shall not consider:

(a) A conviction, guilty plea or adjudication that has been nullified by expungement, pardon, setting aside or other comparable procedure by the jurisdiction where the conviction, guilty plea or adjudication occurred or in respect of which conviction, guilty plea or adjudication the applicant's civil right to bear arms either specifically or in combination with other civil rights has been restored under operation of law or legal process; or

(b) Except as provided for in subsection (11)(f) of this section, an adjudication of mental defect, incapacity or illness or an involuntary commitment to a mental institution if the applicant's civil right to bear arms has been restored under operation of law or legal process.

(13) A license to carry concealed weapons must be in a form substantially similar to that of the Idaho driver's license and must meet the following specifications:

(a) The license must provide the licensee's name, address, date of birth and the driver's license number or state identification card number if used for identification in applying for the license;

(b) The license must bear the licensee's signature and picture; and

(c) The license must provide the date of issuance and the date on which the license expires.

(14) Upon issuing a license under the provisions of this section, the sheriff must notify the Idaho state police within three (3) business days on a form or in a manner prescribed by the Idaho state police. Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 74-105 , Idaho Code.

(15) The fee for original issuance of a license shall be twenty dollars ($20.00), which the sheriff must retain for the purpose of performing the duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department, and the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state. The sheriff must provide the applicant with a copy of the results of the fingerprint-based records check upon request of the applicant.

(16) The fee for renewal of the license shall be fifteen dollars ($15.00), which the sheriff must retain for the purpose of performing the duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state.

(17) Every license that is not, as provided by law, suspended, revoked or disqualified in this state shall be renewable at any time during the ninety (90) day period before its expiration or within ninety (90) days after the expiration date. The sheriff must mail renewal notices ninety (90) days prior to the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff must submit the application to the Idaho state police for a records check of state and national databases. The Idaho state police must conduct the records check and return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria provided in this section. A renewal license shall be valid for a period of five (5) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license must pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee unless waived by the sheriff, except that any licensee serving on active duty in the armed forces of the United States during the renewal period shall not be required to pay a late renewal penalty upon renewing ninety-one (91) days to one hundred eighty (180) days

after the expiration date of the license. After one hundred eighty-one (181) days, the licensee must submit an initial application for a license and pay the fees prescribed in subsection (15) of this section. The renewal fee and any penalty shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter. Upon renewing a license under the provisions of this section, the sheriff must notify the Idaho state police within five (5) days on a form or in a manner prescribed by the Idaho state police.

(18) No city, county or other political subdivision of this state shall modify or add to the requirements of this section, nor shall a city, county or political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this section must be awarded costs, including reasonable attorney's fees incurred in connection with the legal action.

(19) A county sheriff, deputy sheriff or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his duties in compliance with this section.

(20) The sheriff of a county shall issue a license to carry a concealed weapon to those individuals between the ages of eighteen (18) and twenty-one (21) years who, except for the age requirement contained in section 18-3302K (4), Idaho Code, would otherwise meet the requirements for issuance of a license under section 18-3302K , Idaho Code. Licenses issued to individuals between the ages of eighteen (18) and twenty-one (21) years under this subsection shall be easily distinguishable from licenses issued pursuant to subsection (7) of this section. A license issued pursuant to this subsection after July 1, 2016, shall expire on the twenty-first birthday of the licensee. A licensee, upon attaining the age of twenty-one (21) years, shall be allowed to renew the license under the procedure contained in section 18-3302K (9), Idaho Code. Such renewal license shall be issued as an enhanced license pursuant to the provisions of section 18-3302K , Idaho Code.

(21) A person carrying a concealed weapon in violation of the provisions of this section shall be guilty of a misdemeanor.

(22) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license subsequent to a hearing in accordance with the provisions of chapter 52, title 67 , Idaho Code, for any of the following reasons:

(a) Fraud or intentional misrepresentation in the obtaining of a license;

(b) Misuse of a license, including lending or giving a license to another person, duplicating a license or using a license with the intent to unlawfully cause harm to a person or property;

(c) The doing of an act or existence of a condition that would have been grounds for the denial of the license by the sheriff;

(d) The violation of any of the terms of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime that would have disqualified him from initially receiving a license.

(23) A person twenty-one (21) years of age or older who presents a valid license to carry concealed weapons is exempt from any requirement to undergo a records check at the time of purchase or transfer of a firearm from a federally licensed firearms dealer. Provided however, a temporary emergency license issued pursuant to subsection (6) of this section shall not exempt the holder of the license from any records check requirement.

(24) The attorney general must contact the appropriate officials in other states for the purpose of establishing, to the extent possible, recognition and reciprocity of the license to carry concealed weapons by other states, whether by formal agreement or otherwise. The Idaho state police must keep a copy and maintain a record of all such agreements and reciprocity recognitions, which must be made available to the public.

(25) Nothing in subsection (3) or (4) of this section shall be construed to limit the existing rights of a private property owner, private tenant, private employer, or private business entity. The provisions of this subsection shall not apply to any property owned by the state of Idaho or its political subdivisions that is normally and habitually open to the public. Such limitation on the application of this subsection shall supersede Herndon v. City of Sandpoint , 531 P.3d 1125 (Idaho 2023).

(a) Such limitation on the application of this subsection shall apply whether such property is leased, rented, licensed, loaned, permitted, or occupied, whether for consideration or not.

(b) Any restriction on the carrying of concealed weapons pursuant to this subsection may only be invoked for public property owned by the state or its political subdivisions when the use of such property is for a private event by invitation only, for a commercial event that charges admission, or for any other event with restricted access whether admission is charged or not. For any such private event, commercial event, or other event, it must appear to a reasonable person that the general public does not have unrestricted access to the designated public property, or any subset of such property, that is normally and habitually open to the public.

(c) Nothing in this subsection relieves any political subdivision of the state of Idaho of its duties to convey or manage public property in accordance with Idaho law.

(d) Nothing in this subsection alters or amends the provisions of section 18-3302C or 18-3309 , Idaho Code.

(26) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this section. 18-3302. concealed weapons. [effective January 1, 2027]

(1) The legislature hereby finds that the people of Idaho have reserved for themselves the right to keep and bear arms while granting the legislature the authority to regulate the carrying of weapons concealed. The provisions of this chapter regulating the carrying of weapons must be strictly construed so as to give maximum scope to the rights retained by the people.

(2) As used in this chapter:

(a) "Concealed weapon" means any deadly weapon carried on or about the person in a manner not discernible by ordinary observation;

(b) "Deadly weapon" means:

(i) Any dirk, dirk knife, bowie knife, dagger or firearm; (ii) Any other weapon, device, instrument, material or substance that is designed and manufactured to be readily capable of causing death or serious bodily injury; or (iii) Any other weapon, device, instrument, material or substance that is intended by the person to be readily capable of causing death or serious bodily injury.

(c) The term "deadly weapon" does not include:

(i) Any knife, cleaver or other instrument that is intended by the person to be used in the processing, preparation or eating of food; (ii) Any knife with a blade six (6) inches or less; or (iii) Any taser, stun-gun, pepper spray or mace;

(d) "Firearm" means any weapon that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;

(e) "Loaded" means:

(i) For a firearm capable of using fixed ammunition, that live ammunition is present in: 1. The chamber or chambers of the firearm; 2. Any internal magazine of the firearm; or 3. A detachable magazine inserted in the firearm; (ii) For a firearm that is not capable of using fixed ammunition, that the firearm contains: 1. A propellant charge; and 2. A priming cap or primer cap.

(3) No person shall carry concealed weapons on or about his person without a license to carry concealed weapons, except:

(a) In the person’s place of abode or fixed place of business;

(b) On property in which the person has any ownership or leasehold interest;

(c) On private property where the person has permission to carry concealed weapons from any person with an ownership or leasehold interest;

(d) Outside the limits of or confines of any city, if the person is eighteen (18) years of age or older and is not otherwise disqualified from being issued a license under subsection (11) of this section.

(4) Subsection (3) of this section shall not apply to restrict or prohibit the carrying or possession of:

(a) Any deadly weapon located in plain view;

(b) Any lawfully possessed shotgun or rifle;

(c) Any deadly weapon concealed in a motor vehicle;

(d) A firearm that is not loaded and is secured in a case;

(e) A firearm that is disassembled or permanently altered such that it is not readily operable; and

(f) Any deadly weapon concealed by a person who:

(i) Is over eighteen (18) years of age; (ii) Is a citizen of the United States or a current member of the armed forces of the United States; and (iii) Is not disqualified from being issued a license under paragraphs (b) through (n) of subsection (11) of this section.

(5) The requirement to secure a license to carry concealed weapons under this section shall not apply to the following persons:

(a) Officials of a city, county or the state of Idaho;

(b) Any publicly elected Idaho official;

(c) Members of the armed forces of the United States or of the national guard when in performance of official duties;

(d) Criminal investigators of the attorney general's office and criminal investigators of a prosecuting attorney's office, prosecutors and their deputies;

(e) Any peace officer as defined in section 19-5101 (d), Idaho Code, in good standing;

(f) Retired peace officers or detention deputies with at least ten (10) years of service with the state or a political subdivision as a peace officer or detention deputy and who have been certified by the peace officer standards and training council;

(g) Any person who has physical possession of his valid license or permit authorizing him to carry concealed weapons from another state; and

(h) Any person who has physical possession of a valid license or permit from a local law enforcement agency or court of the United States authorizing him to carry concealed weapons.

(6) The sheriff of the county of the applicant's residence or, if the applicant has obtained a protection order pursuant to chapter 63, title 39 , Idaho Code, the sheriff of a county where the applicant is temporarily residing may issue a temporary emergency license for good cause pending review of an application made under subsection (7) of this section. Temporary emergency licenses must be easily distinguishable from regular licenses. A temporary emergency license shall be valid for not more than ninety (90) days.

(7) The sheriff of a county, on behalf of the state of Idaho, must, within ninety (90) days after the filing of a license application by any person who is not disqualified as provided herein from possessing or receiving a firearm under state or federal law, issue a license to the person to carry concealed weapons on his person within this state. Such license shall be valid for five (5) years from the date of issuance.

(8) The sheriff must make license applications readily available at the office of the sheriff, at other public offices in his or her jurisdiction and on the website of the Idaho state police. The license application shall be in a form to be prescribed by the director of the Idaho state police and must meet the following requirements:

(a) The license application shall require the applicant's name, address, description, signature, date of birth, place of birth, military status, citizenship and the driver's license number or state identification card number if used for identification in applying for the license. Provided however, that if the applicant is not a United States citizen and is legally in the United States, the application must also require any alien or admission number issued to the applicant by United States immigration and customs enforcement or any successor agency;

(b) The license application may ask the applicant to disclose his social security number but must indicate that disclosure of the applicant's social security number is optional; and

(c) The license application must contain a warning that substantially reads as follows: CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

(9) The sheriff may require the applicant to demonstrate familiarity with a firearm and must accept any one (1) of the following as evidence of the applicant's familiarity with a firearm:

(a) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state;

(b) Completion of any national rifle association firearms safety or training course or any national rifle association hunter education course or any equivalent course;

(c) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school utilizing instructors certified by the national rifle association or the Idaho state police;

(d) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or offered for any division or subdivision of a law enforcement agency or security enforcement agency;

(e) Evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

(f) A current license to carry concealed weapons pursuant to this section, unless the license has been revoked for cause;

(g) Completion of any firearms training or safety course or class conducted by a state-certified or national rifle association-certified firearms instructor; or

(h) Other training that the sheriff deems appropriate.

(10) Any person applying for original issuance of a license to carry concealed weapons must submit his fingerprints with the completed license application. Within five (5) days after the filing of an application, the sheriff must forward the applicant's completed license application and fingerprints to the Idaho state police. The Idaho state police must conduct a national fingerprint-based records check, an inquiry through the national instant criminal background check system and a check of any applicable state database, including a check for any mental health records for conditions or commitments that would disqualify a person from possessing a firearm under state or federal law, and return the results to the sheriff within sixty (60) days. If the applicant is not a United States citizen, an immigration alien query must also be conducted through United States immigration and customs enforcement or any successor agency. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in subsection (11) of this section. The sheriff may deny a license to carry concealed weapons to an alien if background information is not attainable or verifiable.

(11) A license to carry concealed weapons shall not be issued to any person who:

(a) Is under twenty-one (21) years of age, except as otherwise provided in this section;

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year;

(c) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year;

(d) Is a fugitive from justice;

(e) Is an unlawful user of marijuana or any depressant, stimulant or narcotic drug, or any controlled substance as defined in 21 U.S.C. 802;

(f) Is currently suffering from or has been adjudicated as having suffered from any of the following conditions, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210 , Idaho Code; (ii) Mentally ill as defined in section 66-317 , Idaho Code; (iii) Gravely disabled as defined in section 66-317 , Idaho Code; or (iv) An incapacitated person as defined in section 15-1-201 , Idaho Code;

(g) Has been discharged from the armed forces under dishonorable conditions;

(h) Has received a withheld judgment or suspended sentence for a crime punishable by imprisonment for a term exceeding one (1) year, unless the person has successfully completed probation;

(i) Has received a period of probation after having been adjudicated guilty of, or received a withheld judgment for, a misdemeanor offense that has as an element the intentional use, attempted use or threatened use of physical force against the person or property of another, unless the person has successfully completed probation;

(j) Is an alien illegally in the United States;

(k) Is a person who having been a citizen of the United States has renounced his or her citizenship;

(l) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime that would disqualify him from obtaining a concealed weapons license;

(m) Is subject to a protection order issued under chapter 63, title 39 , Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person, or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; or

(n) Is for any other reason ineligible to own, possess or receive a firearm under the provisions of Idaho or federal law.

(12) In making a determination in relation to an applicant's eligibility under subsection (11) of this section, the sheriff shall not consider:

(a) A conviction, guilty plea or adjudication that has been nullified by expungement, pardon, setting aside or other comparable procedure by the jurisdiction where the conviction, guilty plea or adjudication occurred or in respect of which conviction, guilty plea or adjudication the applicant's civil right to bear arms either specifically or in combination with other civil rights has been restored under operation of law or legal process; or

(b) Except as provided for in subsection (11)(f) of this section, an adjudication of mental defect, incapacity or illness or an involuntary commitment to a mental institution if the applicant's civil right to bear arms has been restored under operation of law or legal process.

(13) A license to carry concealed weapons must be in a form substantially similar to that of the Idaho driver's license and must meet the following specifications:

(a) The license must provide the licensee's name, address, date of birth and the driver's license number or state identification card number if used for identification in applying for the license;

(b) The license must bear the licensee's signature and picture; and

(c) The license must provide the date of issuance and the date on which the license expires.

(14) Upon issuing a license under the provisions of this section, the sheriff must notify the Idaho state police within three (3) business days on a form or in a manner prescribed by the Idaho state police. Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 74-105 , Idaho Code.

(15) The fee for original issuance of a license shall be twenty dollars ($20.00), which the sheriff must retain for the purpose of performing the duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department, and the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state. The sheriff must provide the applicant with a copy of the results of the fingerprint-based records check upon request of the applicant.

(16) The fee for renewal of the license shall be fifteen dollars ($15.00), which the sheriff must retain for the purpose of performing the duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state.

(17) Every license that is not, as provided by law, suspended, revoked or disqualified in this state shall be renewable at any time during the ninety (90) day period before its expiration or within ninety (90) days after the expiration date. The sheriff must mail renewal notices ninety (90) days prior to the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff must submit the application to the Idaho state police for a records check of state and national databases. The Idaho state police must conduct the records check and return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria provided in this section. A renewal license shall be valid for a period of five (5) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license must pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee unless waived by the sheriff, except that any licensee serving on active duty in the armed forces of the United States during the renewal period shall not be required to pay a late renewal penalty upon renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license. After one hundred eighty-one (181) days, the licensee must submit an initial application for a license and pay the fees prescribed in subsection (15) of this section. The renewal fee and any penalty

shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter. Upon renewing a license under the provisions of this section, the sheriff must notify the Idaho state police within five (5) days on a form or in a manner prescribed by the Idaho state police.

(18) No city, county or other political subdivision of this state shall modify or add to the requirements of this section, nor shall a city, county or political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this section must be awarded costs, including reasonable attorney's fees incurred in connection with the legal action.

(19) A county sheriff, deputy sheriff or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his duties in compliance with this section.

(20) The sheriff of a county shall issue a license to carry a concealed weapon to those individuals between the ages of eighteen (18) and twenty-one (21) years who, except for the age requirement contained in section 18-3302K (4), Idaho Code, would otherwise meet the requirements for issuance of a license under section 18-3302K , Idaho Code. Licenses issued to individuals between the ages of eighteen (18) and twenty-one (21) years under this subsection shall be easily distinguishable from licenses issued pursuant to subsection (7) of this section. A license issued pursuant to this subsection after July 1, 2016, shall expire on the twenty-first birthday of the licensee. A licensee, upon attaining the age of twenty-one (21) years, shall be allowed to renew the license under the procedure contained in section 18-3302K (9), Idaho Code. Such renewal license shall be issued as an enhanced license pursuant to the provisions of section 18-3302K , Idaho Code.

(21) A person carrying a concealed weapon in violation of the provisions of this section shall be guilty of a misdemeanor.

(22) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license subsequent to a hearing in accordance with the provisions of chapter 52, title 67 , Idaho Code, for any of the following reasons:

(a) Fraud or intentional misrepresentation in the obtaining of a license;

(b) Misuse of a license, including lending or giving a license to another person, duplicating a license or using a license with the intent to unlawfully cause harm to a person or property;

(c) The doing of an act or existence of a condition that would have been grounds for the denial of the license by the sheriff;

(d) The violation of any of the terms of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime that would have disqualified him from initially receiving a license.

(23) A person twenty-one (21) years of age or older who presents a valid license to carry concealed weapons is exempt from any requirement to undergo a records check at the time of purchase or transfer of a firearm from a federally licensed firearms dealer. Provided however, a temporary emergency license issued pursuant to subsection (6) of this section shall not exempt the holder of the license from any records check requirement.

(24) The attorney general must contact the appropriate officials in other states for the purpose of establishing, to the extent possible, recognition and reciprocity of the license to carry concealed weapons by other states, whether by formal agreement or otherwise. The Idaho state police must keep a copy and maintain a record of all such agreements and reciprocity recognitions, which must be made available to the public.

(25) Nothing in subsection (3) or (4) of this section shall be construed to limit the existing rights of a private property owner, private tenant, private employer, or private business entity. The provisions of this subsection shall not apply to any property owned by the state of Idaho or its political subdivisions that is normally and habitually open to the public. Such limitation on the application of this subsection shall supersede Herndon v. City of Sandpoint , 531 P.3d 1125 (Idaho 2023).

(a) Such limitation on the application of this subsection shall apply whether such property is leased, rented, licensed, loaned, permitted, or occupied, whether for consideration or not.

(b) Any restriction on the carrying of concealed weapons pursuant to this subsection may only be invoked for public property owned by the state or its political subdivisions when the use of such property is for a private event by invitation only, for a commercial event that charges admission, or for any other event with restricted access whether admission is charged or not. For any such private event, commercial event, or other event, it must appear to a reasonable person that the general public does not have unrestricted access to the designated public property, or any subset of such property, that is normally and habitually open to the public.

(c) Nothing in this subsection relieves any political subdivision of the state of Idaho of its duties to convey or manage public property in accordance with Idaho law.

(d) Nothing in this subsection alters or amends the provisions of section 18-3302C or 18-3309 , Idaho Code.

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

18-3302A — Sale of weapons to minors

18-3302A. Sale of weapons to minors. It shall be unlawful to directly or indirectly sell to any minor under the age of eighteen (18) years any weapon without the written consent of the parent or guardian of the minor. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not in excess of one thousand dollars ($1,000), by imprisonment in the county jail for a term not in excess of six (6) months, or by both such fine and imprisonment. As used in this section, "weapon" shall mean any dirk, dirk knife, bowie knife, dagger, pistol, revolver or gun.

18-3302B — Carrying concealed weapons under the influence of alcohol or drugs

18-3302B. Carrying concealed weapons under the influence of alcohol or drugs.

(1) It shall be unlawful for any person to carry a concealed weapon on or about his person when intoxicated or under the influence of an intoxicating drink or drug. Any violation of the provisions of this section shall be a misdemeanor.

(2) In addition to any other penalty, any person who enters a plea of guilty, who is found guilty or who is convicted of a violation of subsection (1) of this section when such violation occurs on a college or university campus shall have any and all licenses issued pursuant to section 18-3302 , 18-3302H or 18-3302K , Idaho Code, revoked for a period of three (3) years and such person shall be ineligible to obtain or renew any such license or use any other license recognized by this state for the same period.

18-3302C — Prohibited conduct

18-3302C. Prohibited conduct. Any person obtaining a license under the provisions of section 18-3302 , Idaho Code, or carrying a concealed deadly weapon pursuant to the provisions of section 18-3302 (4)(f), Idaho Code, shall not:

(1) Carry a concealed weapon in a courthouse; juvenile detention facility or jail; public or private school, except as provided in subsection (4)(g) of section 18-3302D , Idaho Code; provided that this subsection shall not apply to:

(a) Peace officers while acting within the scope of their employment;

(b) Security personnel while actually engaged in their employment; or

(c) Any person who is authorized to carry a weapon by a person, board or other entity having authority over the building or facility; or

(2) Provide information on the application for a permit to carry a concealed weapon knowing the same to be untrue. Any person violating the provisions of this section shall be guilty of a misdemeanor.

18-3302D — Possessing weapons or firearms on school property

18-3302D. Possessing weapons or firearms on school property.

(1) (a) It shall be unlawful and is a misdemeanor for any person to possess a firearm or other deadly or dangerous weapon while on the property of a school or in those portions of any building, stadium or other structure on school grounds which, at the time of the violation, were being used for an activity sponsored by or through a school in this state or while riding school provided transportation.

(b) The provisions of this section regarding the possession of a firearm or other deadly or dangerous weapon on school property shall also apply to students of schools while attending or participating in any school-sponsored activity, program

or event regardless of location.

(2) Definitions. As used in this section:

(a) "Deadly or dangerous weapon" means any weapon as defined in 18 U.S.C. 930;

(b) "Firearm" means any firearm as defined in 18 U.S.C. 921;

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

(d) "Possess" means to bring an object, or to cause it to be brought, onto the property of a public or private elementary or secondary school, or onto a vehicle being used for school-provided transportation, or to exercise dominion and control over an object located anywhere on such property or vehicle. For purposes of subsection (1)(b) of this section, "possess" shall also mean to bring an object onto the site of a school-sponsored activity, program or event, regardless of location, or to exercise dominion and control over an object located anywhere on such a site;

(e) "School" means a private or public elementary or secondary school.

(3) Right to search students or minors. For purposes of enforcing the provisions of this section, employees of a school district shall have the right to search all students or minors, including their belongings and lockers, that are reasonably believed to be in violation of the provisions of this section, or applicable school rule or district policy, regarding the possessing of a firearm or other deadly or dangerous weapon.

(4) The provisions of this section shall not apply to the following persons:

(a) A peace officer;

(b) A qualified retired law enforcement officer licensed under section 18-3302H , Idaho Code;

(c) A person who lawfully possesses a firearm or deadly or dangerous weapon as an appropriate part of a program, an event, activity or other circumstance approved by the board of trustees or governing board;

(d) A person or persons complying with the provisions of section 19-202A , Idaho Code;

(e) Any adult over eighteen (18) years of age and not enrolled in a public or private elementary or secondary school who has lawful possession of a firearm or other deadly or dangerous weapon, secured and locked in his vehicle in an unobtrusive, nonthreatening manner;

(f) A person who lawfully possesses a firearm or other deadly or dangerous weapon in a private vehicle while delivering minor children, students or school employees to and from school or a school activity; or

(g) Notwithstanding the provisions of section 18-3302C , Idaho Code, a person or an employee of the school or school district who is authorized to carry a firearm with the permission of the board of trustees of the school district or the governing board.

(5) Penalties. Persons who are found guilty of violating the provisions of this section may be sentenced to a jail term of not more than one (1) year or fined an amount not in excess of one thousand dollars ($1,000) or both. If a violator is a student and under the age of eighteen (18) years, the court may place the violator on probation and suspend the juvenile detention or fine or both as long as the violator is enrolled in a program of study recognized by the court that, upon successful completion, will grant the violator a general equivalency diploma (GED) or a high school diploma or other educational program authorized by the court. Upon successful completion of the terms imposed by the court, the court shall discharge the offender from serving the remainder of the sentence. If the violator does not complete, is suspended from, or otherwise withdraws from the program of study imposed by the court, the court, upon receiving such information, shall order the violator to commence serving the sentence provided for in this section.

18-3302E — Possession of a weapon by a minor

18-3302E. Possession of a weapon by a minor.

(1) It shall be unlawful for any person under the age of eighteen (18) years to possess or have in possession any weapon, as defined in section 18-3302A , Idaho Code, unless he:

(a) Has the written permission of his parent or guardian to possess the weapon; or

(b) Is accompanied by his parent or guardian while he has the weapon in his possession.

(2) Any minor under the age of twelve (12) years in possession of a weapon shall be accompanied by an adult.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor.

18-3302F — Prohibition of possession of certain weapons by a minor

18-3302F. Prohibition of possession of certain weapons by a minor.

(1) It shall be unlawful for any person under the age of eighteen (18) years to possess or have in possession any handgun.

(2) Except as provided by federal law, a minor under the age of eighteen (18) years may not possess the following:

(a) A sawed-off rifle or sawed-off shotgun; or

(b) A full automatic weapon.

(3) Any person who violates the provisions of subsection (2) (a) of this section is guilty of a misdemeanor.

(4) Any person who violates the provisions of subsection (2) (b) of this section is guilty of a felony.

(5) For purposes of this section:

(a) "Full automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one (1) bullet, or other missile without reloading, by a single function of the trigger.

(b) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve (12) inches. Excluded from this definition are handguns firing a metallic projectile, such as a BB or pellet, through the force of air pressure, CO pressure, or spring action or any spot marker gun.

(6) Any person who provides a handgun to a minor when the possession of the handgun by the minor is a violation of the provisions of this section is guilty of a misdemeanor.

18-3302G — Exceptions

18-3302G. Exceptions. The provisions of section 18-3302E , Idaho Code, regarding the possession of a weapon by a minor or section 18-3302F , Idaho Code, regarding possession of handguns by minors shall not apply to any of the following:

(1) Patrons firing at lawfully operated target concessions at amusement parks and similar locations provided that the firearms to be used are firmly chained or affixed to the counters;

(2) Any person in attendance at a hunter's safety course or a firearm's safety course;

(3) Any person engaging in practice or any other lawful use of a firearm at an established range or any other area where the discharge of a firearm is not prohibited by state or local law;

(4) Any person engaging in an organized competition involving the use of a firearm, or participating in or practicing for such competition;

(5) Any minor under eighteen (18) years of age who is on real property with the permission of the owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian or the owner, licensee, or lessee to possess a firearm not otherwise in violation of the law;

(6) Any resident or nonresident hunters with a valid hunting license or other persons who are lawfully engaged in hunting; and

(7) Any person traveling to or from any activity described in subsection (2), (3), (4), (5) or (6) of this section with an unloaded firearm in his possession.

18-3302H — Carrying of concealed firearms by qualified retired law enforcement officers

18-3302H. Carrying of concealed firearms by qualified retired law enforcement officers.

(1) A county sheriff shall issue a license to carry a concealed firearm to a qualified retired law enforcement officer provided that the provisions of this section are met.

(2) As used in this section:

(a) "Firearm" means a handgun and does not include:

(i) Any machine gun, as defined in 26 U.S.C. section 5845(b); (ii) Any firearm silencer, as defined in 18 U.S.C. section 921; or (iii) Any destructive device, as defined in 18 U.S.C. section 921.

(b) "Qualified retired law enforcement officer" means an individual who:

(i) Retired in good standing from service with a public agency as a law enforcement officer, provided that such retirement was for reasons other than mental instability; (ii) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest; (iii) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of ten (10) years or more, or retired from service with such agency after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency; (iv) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(v) During the most recent twelve (12) month period has met, at his own expense, the standards for training and qualification of this state, as required at the discretion of the sheriff under paragraph (d) of this subsection or the agency from which he retired for active law enforcement officers, to carry a concealed firearm; (vi) Is not chronically under the influence of alcohol, or under the influence of another intoxicating or hallucinatory drug or substance in violation of any provision of federal or state law; (vii) Is not prohibited by federal law from receiving a firearm; (viii) Has a current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; (ix) Provides by his affidavit, in triplicate, sworn and signed by him under penalty of perjury, that he meets all of the conditions set forth in this subsection (2);

(x) Pays the fees charged by the sheriff pursuant to this section; and (xi) Completes the original application or renewal application as provided by this section.

(c) "Retired in good standing" means that at the time of his retirement, he was not under investigation, or subject to discipline, for any violation of this state's law enforcement code of conduct.

(d) "Standards for training and qualification in this state" means that when issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following methods, provided the sheriff may require an applicant to complete more than one (1) firearms safety or training course:

(i) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state; (ii) Completion of any national rifle association firearms safety or training course, or any national rifle association hunter education course; (iii) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the Idaho state police; (iv) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency;

(v) Presentation of evidence of equivalent experience with a firearm through participation in organized shooting competitions or military service; (vi) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor; or (vii) Any other firearms safety training that the sheriff may deem appropriate.

(3) The original and renewal license applications under this section shall be in triplicate, in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, social security number, military status, identification of the law enforcement agency from which the applicant retired, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. In implementing the provisions of this section, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(4) The fee for original issuance of a license under this section shall be twenty dollars ($20.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the cost of processing and the cost of materials for the license, which shall also be paid to the sheriff.

(5) An original or renewed license issued pursuant to this section shall be in a form substantially similar to that of the Idaho driver's license and shall be valid for a period of one (1) year. The license shall bear the signature, name, address, date of birth, picture of the licensee, expiration date, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license, and shall state that the licensee is a qualified retired law enforcement officer. Upon issuing a license under the provisions of this section, the sheriff shall notify the Idaho state police on a form or in a manner prescribed by the director of the Idaho state police.

(6) A qualified retired law enforcement licensee under this section may renew his license if he applies for renewal at any time before or within ninety (90) days after the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete a renewal application pursuant to subsection (3) of this section and an affidavit pursuant to subsection (2) of this section. A renewed license shall take effect upon the expiration date of the prior license.

(7) The fee for renewal of the license, which must be paid on a yearly basis, shall be twelve dollars ($12.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the processing costs and the cost of materials for the license, which shall also be paid to the sheriff. A licensee renewing after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee. The renewal penalty fee, if any, shall be paid to the sheriff.

(8) A current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer, together with a license issued by the sheriff pursuant to this section, shall serve as a license to carry a firearm for a qualified retired law enforcement officer under 18 U.S.C. section 926C.

(9) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license issued under this section pursuant to the provisions of section 18-3302 (22), Idaho Code.

(10) A county sheriff, deputy sheriff, or county employee who issues a license to carry a concealed weapon pursuant to this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(11) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor shall a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action shall be brought in the county in which the application was made.

(13) In lieu of or in addition to qualification to carry a concealed firearm under this section, a retired law enforcement officer may apply for a license to carry concealed weapons under section 18-3302 , Idaho Code.

(14) Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 74-102 , Idaho Code.

18-3302I — Threatening violence upon school grounds — firearms and other deadly or dangerous weapons

18-3302I. Threatening violence upon school grounds — firearms and other deadly or dangerous weapons.

(1) (a) Any person, including a student, who willfully threatens by word, electronic means or act to use a firearm or other deadly or dangerous weapon to do violence to any person on school grounds or to disrupt the normal operations of an educational institution by making a threat of violence is guilty of a misdemeanor.

(b) Any person, including a student, who knowingly has in his possession a firearm or other deadly or dangerous weapon, or who makes, alters or repairs any firearm or other deadly or dangerous weapon, in the furtherance of carrying out a threat made by word, electronic means or act to do violence to any person on school grounds or to disrupt the normal operations of an educational institution by making a threat of violence is guilty of a felony.

(2) Definitions. As used in this section:

(a) "Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury;

(b) "On school grounds" means in or on property owned or operated by a school district, public charter school or private school.

18-3302J — Preemption of firearms regulation

18-3302J. Preemption of firearms regulation.

(1) The legislature finds that uniform laws regulating firearms are necessary to protect the individual citizen’s right to bear arms guaranteed by amendment 2 of the United States Constitution and section 11, article I of the constitution of the state of Idaho. It is the legislature’s intent to wholly occupy the field of firearms regulation within this state.

(2) Except as expressly authorized by state statute, no county, city, agency, board or any other political subdivision of this state may adopt or enforce any law, rule, regulation, ordinance, executive order, or policy which regulates in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying or storage of firearms or any

element relating to firearms and components thereof, including ammunition. Any such law, rule, regulation, ordinance, executive order, or policy shall be void, unenforceable, and subject to a permanent injunction against the political subdivision, as provided in subsection (7) of this section. It shall not be a defense to a violation of this subsection that the political subdivision was acting in good faith or on the advice of counsel.

(3) A county may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within its boundaries. Ordinances adopted under this subsection may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or persons or property;

(b) A person discharging a firearm in the course of lawful hunting;

(c) A landowner and guests of the landowner discharging a firearm, when the discharge will not endanger persons or property;

(d) A person lawfully discharging a firearm on a sport shooting range as defined in section 55-2604 , Idaho Code; or

(e) A person discharging a firearm in the course of target shooting on public land if the discharge will not endanger persons or property.

(4) A city may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within its boundaries. Ordinances adopted under this subsection may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or persons or property; or

(b) A person lawfully discharging a firearm on a sport shooting range as defined in section 55-2604 , Idaho Code.

(5) This section shall not be construed to affect:

(a) The authority of the department of fish and game to make rules or regulations concerning the management of any wildlife of this state, as set forth in section 36-104 , Idaho Code; and

(b) The authority of counties and cities to regulate the location and construction of sport shooting ranges, subject to the limitations contained in chapter 26, title 55 , Idaho Code.

(6) Any county, city, agency, board, or any other political subdivision of this state that willfully and knowingly violates the provisions of this section shall be subject to a civil penalty of ten thousand dollars ($10,000) per violation.

(7) The attorney general or any person or organization whose membership is adversely affected by a law, rule, regulation, ordinance, executive order, or policy that violates the provisions of this section may maintain an action for damages, declaratory relief, or permanent injunctive relief. The plaintiff shall be awarded reasonable costs and attorney's fees upon prevailing or if the law, rule, regulation, ordinance, executive order, or policy is repealed or rescinded after the action was filed but prior to a final determination by the court. Any person or organization who wishes to maintain an action pursuant to the provisions of this subsection shall, prior to filing, provide advanced written notice to the attorney general who shall have thirty (30) days to investigate if a violation has occurred. If a violation is found, the attorney general shall notify the offending jurisdiction that it has thirty (30) days to cure the violation, and if the jurisdiction fails to do so within thirty (30) days, the cause of action may proceed.

(8) The provisions of this section are hereby declared to be severable. And if any provision is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

18-3302K — ISSUANCE OF ENHANCED LICENSES TO CARRY CONCEALED WEAPONS

18-3302K. ISSUANCE OF ENHANCED LICENSES TO CARRY CONCEALED WEAPONS.

(1) The sheriff of a county, on behalf of the state of Idaho, must, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law and has otherwise complied with the requirements of this section, issue an enhanced license to the person to carry concealed weapons on his person. Licenses issued under this section shall be valid for five (5) years from the date of issue.

(2) The sheriff must make license applications readily available at the office of the sheriff, at other public offices in his jurisdiction and on the website of the Idaho state police. The license application must be in a form to be prescribed by the director of the Idaho state police and must meet the following requirements:

(a) The license application shall require the applicant's name, address, description, signature, date of birth, place of birth, military status, citizenship and the driver's license number or state identification card number if used for identification in applying for the license. If the applicant is not a U.S. citizen, the application shall also require any alien or admission

number issued to the applicant by U.S. immigration and customs enforcement, or any successor agency;

(b) The license application may ask the applicant to disclose his social security number but must indicate that disclosure of the applicant's social security number is optional; and

(c) The license application must contain a warning that substantially reads as follows: CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

(3) Any person who is applying for original issuance of a license to carry concealed weapons must submit his fingerprints with the completed application. Within five (5) days after the filing of an application, the sheriff must forward the applicant's completed license application and fingerprints to the Idaho state police. The Idaho state police must conduct a national fingerprint-based records check, an inquiry through the national instant criminal background check system, and a check of any applicable state database, including a check for any mental health records for conditions or commitments that would disqualify a person from possessing a firearm under state or federal law, and must return the results to the sheriff within sixty (60) days. If the applicant is not a U.S. citizen, an immigration alien query must also be conducted through U.S. immigration and customs enforcement or any successor agency. The sheriff shall not issue a license before receiving and reviewing the results of the records check.

(4) The sheriff must deny an enhanced license to carry a concealed weapon if the applicant is disqualified under any of the criteria listed in section 18-3302 (11), Idaho Code, or does not meet all of the following qualifications:

(a) Is over the age of twenty-one (21) years;

(b) Has been a legal resident of the state of Idaho for at least six (6) consecutive months before filing an application under this section or holds a current license or permit to carry concealed weapons issued by his state of residence; and

(c) Has successfully completed, within the twelve (12) months immediately preceding filing an application, a qualifying handgun course as specified in this paragraph and taught by a certified instructor who is not prohibited from possessing firearms under state or federal law. A copy of the certificate of successful completion of the handgun course, in a form to be prescribed by the director of the Idaho state police and signed by the course instructor, must be submitted to the sheriff at the time of filing an application under this section. Certified instructors of handgun courses when filing an application under this section shall not be required to submit such certificates but must submit a copy of their current instructor's credential. The sheriff must accept as a qualifying handgun course a personal protection course offered by the national rifle association or an equivalent, provided that all personal protection or equivalent courses must meet the following requirements:

(i) The course instructor is certified by the national rifle association, or by another nationally recognized organization that customarily certifies firearms instructors, as an instructor in personal protection with handguns, or the course instructor is certified by the Idaho peace officers standards and training council as a firearms instructor; (ii) The course is at least eight (8) hours in duration; (iii) The course is taught face to face and not by electronic or other means; and (iv) The course includes instruction in: 1. Idaho law relating to firearms and the use of deadly force, provided that such instruction is delivered by any of the following whose name and credential must appear on the certificate: (A) An active, senior or emeritus member of the Idaho state bar; (B) A law enforcement officer, active or retired, who currently possesses or possessed at the time of his retirement an intermediate or higher Idaho peace officers standards and training certificate; or (C) An instructor certified by the national rifle association, or equivalent, who has instructed an approved course for enhanced concealed carry for at least eight (8) years; 2. The basic concepts of the safe and responsible use of handguns; 3. Self-defense principles; and 4. Live fire training, including the firing of at least ninety-eight (98) rounds by the student. An instructor must provide a copy of the syllabus and a written description of the course of fire used in a qualifying handgun course that includes the name of the individual instructing the legal portion of the course to the sheriff upon request.

(5) A license to carry concealed weapons must be in a form substantially similar to that of the Idaho driver's license and must meet the following specifications:

(a) The license must provide the licensee's name, address, date of birth and the driver's license number or state identification card number if used for identification in applying for the license;

(b) The license must bear the licensee's signature and picture;

(c) The license must provide the date of issuance and the date on which the license expires; and

(d) The license must be clearly distinguishable from a license issued pursuant to section 18-3302 , Idaho Code, and must be marked "Idaho enhanced concealed weapons license" on its face.

(6) Upon issuing a license under the provisions of this section, the sheriff must notify the Idaho state police within three (3) days on a form or in a manner prescribed by the Idaho state police. Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 74-105 , Idaho Code.

(7) The fee for original issuance of an enhanced license shall be twenty dollars ($20.00), which the sheriff must retain for the purpose of performing the duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, as well as the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state. The sheriff must provide the applicant with a copy of the results of the fingerprint-based records check upon request of the applicant.

(8) The fee for renewal of the enhanced license shall be fifteen dollars ($15.00), which the sheriff must retain for the purpose of performing duties required in this section. The sheriff may collect the actual cost of any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, as well as the actual cost of materials for the license lawfully required by any state agency or department, which costs must be paid to the state.

(9) Every license that is not, as provided by law, suspended, revoked or disqualified in this state shall be renewable at any time during the ninety (90) day period before its expiration or within ninety (90) days after the expiration date. The sheriff must mail renewal notices ninety (90) days prior to the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff must submit the application to the Idaho state police. The Idaho state police must conduct the same records checks as required for an initial license under subsection (3) of this section and must return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving and reviewing the results of the records check and must deny a license if the applicant is disqualified under any of the criteria provided in this section. A renewal license shall be valid for a period of five (5) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license must pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee, except that any licensee serving on active duty in the armed forces of the United States during the renewal period shall not be required to pay a late renewal penalty upon renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license. After one hundred eighty-one (181) days, the licensee shall be required to submit an initial application for an enhanced license and pay the fees prescribed in subsection (7) of this section. The renewal fee and any penalty shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter. Upon renewing a license under the provisions of this section, the sheriff must notify the Idaho state police within five (5) days on a form or in a manner prescribed by the Idaho state police.

(10) No city, county or other political subdivision of this state shall modify or add to the requirements of this section, nor shall a city, county or political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this section must be awarded costs, including reasonable attorney’s fees, incurred in connection with the legal action.

(11) A county sheriff, deputy sheriff or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his or her duties in compliance with this section.

(12) The sheriff shall have the power to revoke a license issued pursuant to this section subsequent to a hearing in accordance with the provisions of chapter 52, title 67 , Idaho Code, for any of the following reasons, provided that the sheriff must notify the Idaho state police within three (3) days on a form or in a manner prescribed by the Idaho state police of any such revocation:

(a) Fraud or intentional misrepresentation in the obtaining of a license;

(b) Misuse of a license, including lending or giving a license to another person, duplicating a license or using a license with the intent to unlawfully cause harm to a person or property;

(c) The doing of an act or existence of a condition that would have been grounds for the denial of the license by the sheriff;

(d) The violation of any of the provisions of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime that would have disqualified him from initially receiving a license.

(13) An applicant who provides information on the application for an enhanced license to carry a concealed weapon knowing the same to be untrue shall be guilty of a misdemeanor.

(14) The attorney general must contact the appropriate officials in other states for the purpose of establishing, to the extent possible, recognition and reciprocity of the enhanced license to carry a concealed weapon by other states, whether by formal agreement or otherwise. The Idaho state police or the attorney general must keep a copy and maintain a record of all such agreements and reciprocity recognitions that must be made available to the public.

(15) Any license issued pursuant to this section is valid throughout the state of Idaho and shall be considered an authorized state license.

(16) The Idaho state police must maintain a computerized record system that is accessible to law enforcement agencies in any state for the purpose of verifying current enhanced licensee status. Information maintained in the record system shall be confidential and exempt from disclosure under section 74-105 , Idaho Code, except that any law enforcement officer or law enforcement agency, whether inside or outside the state of Idaho, may access the record system for the purpose of verifying current enhanced licensee status.

18-3303 — Exhibition or use of deadly weapon

18-3303. Exhibition or use of deadly weapon. Every person who, not in necessary self-defense, in the presence of two (2) or more persons, draws or exhibits any deadly weapon in a rude, angry and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

18-3304 — Aiming firearms at others

18-3304. Aiming firearms at others. Any person who shall intentionally, without malice, point or aim any firearm at or toward any other person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars ($1,000) and not less than five dollars ($5.00).

18-3305 — Discharge of arms aimed at another

18-3305. Discharge of arms aimed at another. Any person who shall discharge, without injury to any person, any firearm, while intentionally, without malice, aimed at or toward any person, shall be guilty of a misdemeanor, and shall be liable to a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail not to exceed six (6) months, or both, at the discretion of the court.

18-3306 — Injuring another by discharge of aimed firearms

18-3306. Injuring another by discharge of aimed firearms. Any person who shall maim or injure any other person by the discharge of any firearm pointed or aimed, intentionally but without malice, at any such person, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for a period of not more than one (1) year; and if death ensue from such wounding or maiming, such person so offending shall be deemed guilty of the crime of manslaughter.

18-3307 — Civil liability for injury by firearm

18-3307. Civil liability for injury by firearm. Any party maimed or wounded by the discharge of any firearm aforesaid, or the heirs or representatives of any person who may be killed by such discharge, may have an action against the party offending, for damages, which shall be found by a jury, and such damages, when found, may in the discretion of the court before which such action is brought, be doubled.

18-3308 — Selling explosives, ammunition or firearms to minors

18-3308. Selling explosives, ammunition or firearms to minors. No person, firm, association or corporation shall sell or give to any minor under the age of sixteen (16) years any powder, commonly called gunpowder, of any description, or any dynamite or other explosive, or any shells or fixed ammunition of any kind, except shells loaded for use in shotguns and for use in rifles of twenty-two (22) caliber or smaller, or any firearms of any description, without the written consent of the parents or guardian of such minor first had and obtained. Any person, firm, association or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

18-3309 — AUThORiTY OF Governing boards of public colleges and universities regarding firearms

18-3309. AUThORiTY OF Governing boards of public colleges and universities regarding firearms.

(1) The board of regents of the university of Idaho, the boards of trustees of the state colleges and universities, the board for career technical education and the boards of trustees of each of the community colleges established under chapter 21, title 33 , Idaho Code, hereby have the authority to prescribe rules and regulations relating to firearms.

(2) Notwithstanding any other provision of state law, this authority shall not extend to regulating or prohibiting the otherwise lawful possession, carrying or transporting of firearms or ammunition by persons licensed under section 18-3302H or 18-3302K , Idaho Code.

(a) However, a person issued a license under the provisions of section 18-3302K , Idaho Code, shall not carry a concealed weapon:

(i) Within a student dormitory or residence hall; or (ii) Within any building of a public entertainment facility, provided that proper signage is conspicuously posted at each point of public ingress to the facility notifying attendees of any restriction on the possession of firearms in the facility during the game or event.

(b) As used in this section:

(i) "Public entertainment facility" means an arena, stadium, amphitheater, auditorium, theater or similar facility with a seating capacity of at least one thousand (1,000) persons that is owned or operated by the board of regents of the university of Idaho, a board of trustees of a state college or university, the state board for career technical education or a board of trustees of a community college established under chapter 21, title 33 , Idaho Code, that is primarily designed and used for artistic, theatrical, cultural, charitable, musical, sporting or entertainment events, but does not include publicly accessible outdoor grounds or rights-of-way appurtenant to the facility, including parking lots within the facility used for the parking of motor vehicles. (ii) "Student dormitory or residence hall" means a building owned or operated by the board of regents of the university of Idaho, a board of trustees of a state college or university, the state board for career technical education or a board of trustees of a community college established under chapter 21, title 33 , Idaho Code, located on or within the campus area owned by the university or college to house persons residing on campus as students, but does not include off-campus housing or publicly accessible outdoor grounds or rights-of-way appurtenant to the building, including parking lots within the building used for the parking of motor vehicles.

(c) The provisions of subsection (2)(a) of this section shall not apply to the following persons:

(i) A person or persons complying with the provisions of section 19-202A , Idaho Code; (ii) A person or an employee who is authorized to carry a firearm by the university or college board of trustees, board of regents, governing board or a person or entity with authority over the building or facility; (iii) A person who possesses a firearm for authorized use in an approved program, event, activity or other circumstance approved by a person or entity with authority over the building or facility; (iv) A person who possesses a firearm in a private vehicle while delivering students, employees or other persons to and from a university, college or public entertainment facility;

(v) An on-duty or off-duty certified peace officer; or (vi) A qualified retired law enforcement officer licensed under section 18-3302H , Idaho Code.

(3) Any rule, regulation or policy that is contrary to this section is null and void.

18-3310 — Shipping loaded firearms

18-3310. Shipping loaded firearms. Every person who ships, or causes to be shipped, or delivers or causes to be delivered, to any railroad, express or stage company, or to any other common carrier, for shipment as baggage or otherwise, any loaded pistol, revolver, rifle, shotgun or other firearm, is guilty of a misdemeanor.

18-3311 — Keeping gunpowder or other explosives in towns

18-3311. Keeping gunpowder or other explosives in towns. Every person who makes or keeps gunpowder, nitroglycerin, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

18-3312 — Injuring another by careless handling and discharge of firearms

18-3312. Injuring another by careless handling and discharge of firearms. Any person who handles, uses or operates any firearm in a careless, reckless or negligent manner, or without due caution and circumspection, whereby the same is fired or discharged and maims, wounds or injures any other person or persons, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

18-3313 — False reports of explosives in public or private places a felony — Penalty

18-3313. False reports of explosives in public or private places a felony — Penalty. Any person who reports, or causes any report to be made, to any police officer, sheriff, employee of a police department or sheriff's office, employee of a 911 emergency communications system or emergency vehicle dispatch center, employee of a fire department or fire service, prosecuting attorney, newspaper, radio station, television station, deputy sheriff, deputy prosecuting attorney, member of the state police, employee of an airline, employee of an airport, employee of a railroad or bus line, employee of a telephone company, occupants of a building, employee of a school district, or news reporter in the employ of a newspaper or radio or television station that a bomb or other explosive has been placed or secreted in a public or private place knowing that such report is false is guilty of a felony, and upon conviction thereof, shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

18-3313A — FALSE REPORTS OF VIOLENCE OR EMERGENCY IN PUBLIC OR PRIVATE PLACES — PENALTY

18-3313A. FALSE REPORTS OF VIOLENCE OR EMERGENCY IN PUBLIC OR PRIVATE PLACES — PENALTY.

(1) Excluding explosives as set forth in section 18-3313 , Idaho Code, any person who reports, or causes any report to be made, to any police officer, sheriff, employee of a police department or sheriff's office, employee of a 911 communications system or emergency vehicle dispatch center, employee of a fire department or fire service, prosecuting attorney, newspaper, radio station, television station, deputy sheriff, deputy prosecuting attorney, member of the state police, employee of an airline, employee of an airport, employee of a railroad or bus line, employee of a telephone company, occupants of a building, employee of a school district, or news reporter in the employ of a newspaper or radio or television station that an emergency exists in a public or private place, knowing that the report is false, is guilty of a misdemeanor and shall be sentenced to a term of imprisonment not to exceed one (1) year or a fine of no more than five thousand dollars ($5,000), or both.

(2) A person is guilty of a felony and shall be sentenced to a term of imprisonment not to exceed five (5) years or a fine of no more than twenty-five thousand dollars ($25,000), or both, if:

(a) The damages caused by a violation of this section exceed one thousand dollars ($1,000); or

(b) Any person suffers great bodily harm, permanent disfigurement, or permanent disability due to a violation of this section.

(3) A person is guilty of a felony and shall be sentenced to a term of imprisonment not to exceed ten (10) years and shall be fined in an amount no more than twenty-five thousand dollars ($25,000) if a violation of this section results in the death of any person.

(4) For purposes of this section, "private place" or "private places" shall include but are not limited to:

(a) Habitation, including but not limited to any building, inhabitable structure, or conveyance of any kind, whether the building, inhabitable structure, or conveyance is temporary or permanent, mobile or immobile, including a tent, and is designed to be occupied by people lodging at night, and includes a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest, and includes the curtilage of any such dwelling;

(b) A place of business or employment, including but not limited to a commercial enterprise or establishment owned by a person as all or part of the person's livelihood or that is under the owner's control or under control of an employee or agent of the owner with responsibility for protecting persons and property and shall include the interior and exterior premises of the place of business or employment;

(c) A vehicle, including but not limited to any motorized vehicle that is self-propelled and designed for use on public highways to transport people or property; and

(d) Any other place, area, structure, enclosure, or location where a person retains, or is otherwise provided with, the expectation of privacy pursuant to state law, including political subdivisions thereof, or federal or constitutional law.

18-3314 — Resident's purchase of firearm out-of-state

18-3314. Resident's purchase of firearm out-of-state. Residents of the state of Idaho may purchase rifles and shotguns in a state other than Idaho, provided that such residents conform to the applicable provisions of the federal gun control act of 1968, and regulations thereunder, and provided further, that such residents conform to the provisions of law applicable to such a purchase in Idaho and in the state in which the purchase is made.

18-3315 — nonresident — Purchase of firearm in Idaho

18-3315. nonresident — Purchase of firearm in Idaho. Residents of a state other than the state of Idaho may purchase rifles and shotguns in Idaho, provided that such residents conform to the applicable provisions of the federal gun control act of 1968, and regulations thereunder, and provided further, that such residents conform to the provisions of law applicable to such purchase in Idaho and in the state in which such persons reside.

18-3315A — Prohibition of federal regulation of certain firEarms

18-3315A. Prohibition of federal regulation of certain firEarms.

(1) As used in this section:

(a) "Borders of Idaho" means the boundaries of Idaho described in chapter 1, title 31 , Idaho Code.

(b) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm including, but not limited to, telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition, ammunition carriers and lights for target illumination.

(c) "Generic and insignificant parts" includes, but is not limited to, springs, screws, nuts and pins.

(d) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness including, but not limited to, forging, casting, machining or other processes for working materials.

(2) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Idaho and that remains within the borders of Idaho is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured in Idaho from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

(3) It is declared by the legislature that generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories or ammunition, and their importation into Idaho and incorporation into a firearm, a firearm accessory or ammunition manufactured in Idaho does not subject the firearm, firearm accessory or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories and ammunition under interstate commerce as if they were actually firearms, firearms accessories or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories and ammunition made in Idaho from those materials. Firearms accessories that are imported into Idaho from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Idaho.

(4) Subsections (2) and (3) of this section do not apply to:

(a) A firearm that cannot be carried and used by one (1) person;

(b) A firearm that has a bore diameter greater than one and one-half (1 1/2) inches and that uses smokeless powder, not black powder, as a propellant;

(c) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(d) A firearm that discharges two (2) or more rounds of ammunition with one (1) activation of the trigger or other firing device.

(5) A firearm manufactured or sold in Idaho under this section shall have the words "Made in Idaho" clearly stamped on a central metallic part, such as the receiver or frame.

(6) This section applies to firearms, firearms accessories and ammunition that are manufactured as defined in subsection (1) and retained in Idaho after October 1, 2010.

18-3315B — PROHIBITION OF REGULATION OF CERTAIN FIREARMS

18-3315B. PROHIBITION OF REGULATION OF CERTAIN FIREARMS.

(1) Other than compliance with an order of the court, any official, agent, or employee of an Idaho government entity who knowingly and willfully orders an official, agent, or employee of an Idaho government entity to enforce any executive order, agency order, treaty, law, rule, or regulation of the United States government as provided in subsection (2) of this section upon a firearm, a firearm accessory, firearm component, or ammunition shall, on a first violation, be liable for a civil penalty not to exceed one thousand dollars ($1,000), which shall be paid into the general fund of the state, and on a second or subsequent violation shall be guilty of a misdemeanor. If a public officer or person commits a violation of section 18-315 or 18-703 , Idaho Code, the public officer or person shall be punished as provided in those sections. Nothing in this section shall be construed to affect the law of search and seizure as set forth in section 17, article I of the constitution of the state of Idaho or as set forth in the fourth, fifth, and fourteenth amendments to the United States constitution. Notwithstanding anything to the contrary contained elsewhere in this act, no private cause of action exists under this section.

(2) No federal executive order, agency order, treaty, law, statute, rule, or regulation issued, enacted, or promulgated on or after the effective date of this act will be knowingly and willfully ordered to be enforced by any official, agent, or employee of an Idaho government entity if contrary to the provisions of section 11, article I of the constitution of the state of Idaho.

(3) "Enforcement," "enforce," or "enforced" shall not be construed to include the performance of any act solely for the purpose of facilitating the transfer of firearms under federal law. Any order of enforcement not excluded by the provisions of this subsection that occurs on and after the effective date of this act shall be and is a breach of the oath of office of the official, agent, or employee of the state or a political subdivision of the state.

(4) All Idaho government entities are prohibited from using any personnel, funds, or other resources to enforce, administer, or support the enforcement of any executive order, agency order, treaty, law, rule, or regulation of the United States government enacted or promulgated on or after the effective date of this act upon a firearm, firearm component, firearm accessory, or ammunition if contrary to the provisions of section 11, article I of the constitution of the state of Idaho.

(5) The provisions of this section may be enforced by the Idaho attorney general. The legislature of the state of Idaho may bring legal action for declaratory or injunctive relief to ensure compliance with the provisions of this section. The prevailing party in any such action may recover reasonable attorney’s fees and costs from the nonprevailing party.

(6) With the exception of failure to comply with an order of the court, any official, agent, or employee of an Idaho government entity shall not be subject to civil liability for failure to enforce, support, or assist with the enforcement of any executive order, agency order, treaty, law, rule, or regulation of the United States government that is contrary to section 11, article I of the constitution of the state of Idaho or the second amendment to the United States constitution.

(7) As used in this section:

(a) "Firearm accessory" means an item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, braces, ammunition, ammunition carriers, and lights for target illumination.

(b) "Firearm component" means a component for making firearms, a component for making ammunition, reloading materials and equipment, machinery, design plans, software, and tools for manufacturing firearms and their ammunition.

(c) "Idaho government entity" means the state of Idaho and its departments and agencies and any political subdivision of the state of Idaho and other local government entities and agencies.

(8) Nothing in this "Idaho Firearm and Firearm Accessories and Components Protection Act" is intended nor shall be construed to replace or change the effective date or protections provided by the "Idaho Federal Firearm, Magazine and Register Ban Enforcement Act" as enacted in 2014 and that created this section. To the maximum extent possible, this "Idaho Firearm and Firearm Accessories and Components Protection Act" is intended to add to and expand upon the protections provided by the 2014 act and to provide the greatest possible protection to the rights of Idaho citizens.

18-3316 — Unlawful possession of a firearm

18-3316. Unlawful possession of a firearm.

(1) A person who previously has been convicted of a felony who purchases, owns, possesses, or has under his custody or control any firearm shall be guilty of a felony and shall be imprisoned in the state prison for a period of time not to exceed five (5) years and by a fine not to exceed five thousand dollars ($5,000).

(2) For the purpose of subsection (1) of this section, "convicted of a felony" shall include a person who has entered a plea of guilty, nolo contendere or has been found guilty of any of the crimes enumerated in section 18-310 , Idaho Code, or to a comparable felony crime in another state, territory, commonwealth, or other jurisdiction of the United States.

(3) Subsection (1) of this section shall not apply to a person whose conviction has been nullified by expungement, pardon, setting aside the conviction or other comparable procedure by the jurisdiction where the felony conviction occurred; or whose civil right to bear arms either specifically or in combination with other civil rights has been restored by any other provision of Idaho law.

18-3317 — Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home

18-3317. Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home. It shall be unlawful for any person to intentionally and unlawfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, inhabited mobile home, inhabited travel trailer, or inhabited camper. Any person violating the provisions of this section shall be guilty of a felony, punishable by imprisonment in the state prison for a term not to exceed fifteen (15) years. As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

18-3318 — Definitions

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

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

(2) "Destructive device" means:

(a) Any explosive, incendiary or poisonous gas:

(i) Bomb; (ii) Grenade; (iii) Rocket having a propellant charge of more than four (4) ounces; (iv) Missile having an explosive or incendiary charge of more than one-fourth (1/4) ounce;

(v) Mine; (vi) Similar device.

(b) Any type of weapon, by whatever name known, which will, or which may be imminently converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than .700 inches in diameter, except rifled and unrifled shotguns or shotgun shells.

(c) Components of a destructive device only when the individual charged has taken steps to place the components in proximity to each other, or has partially assembled components from which a completed destructive device can be readily assembled.

(d) The term "destructive device" shall not include:

(i) Any device which is neither designed nor redesigned for use as a weapon; (ii) Any device which, although originally designed for use as a weapon, has been redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; (iii) Otherwise lawfully owned surplus military ordnance; (iv) Antiques or reproductions thereof and rifles held for

sporting, recreational, investment or display purposes;

(v) Rifle, pistol or shotgun ammunition and their components.

(3) "Hoax destructive device" means any object that:

(a) Under the circumstances, reasonably appears to be a destructive device as defined in subsection (2) of this section, but is an inoperative imitation of a destructive device; or

(b) Is proclaimed to contain a destructive device as defined in subsection (2) of this section, but does not in fact contain a destructive device.

(4) "Shrapnel" means any metal, ceramic, glass, hard plastic or other material of sufficient hardness to puncture human skin when propelled by force of the bomb or destructive device to which it is attached or in which it is contained.

18-3319 — Unlawful possession of bombs or destructive devices

18-3319. Unlawful possession of bombs or destructive devices.

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

(2) Any person who knowingly possesses an assembled bomb or assembled destructive device and who:

(a) Has been convicted of a felony; or

(b) Has been found guilty of any crime where such conviction results in the person being prohibited from possessing or owning firearms; or

(c) Is in possession or control of any substance or paraphernalia in violation of section 37-2732B , 37-2734A or 37-2734B , Idaho Code, or the felony provisions of section 37-2732 , Idaho Code; is guilty of a felony, punishable by up to a five thousand dollar ($5,000) fine and five (5) years in prison.

(3) Any person who possesses a bomb or destructive device which by its design will propel shrapnel is guilty of a felony, punishable by up to a five thousand dollar ($5,000) fine and five (5) years in prison.

18-3319A — unlawful acts — hoax destructive device

18-3319A. unlawful acts — hoax destructive device.

(1) A person is guilty of a felony if such person intentionally causes a reasonable person to be in fear of serious bodily injury or death by:

(a) Possessing, manufacturing, selling, giving, mailing, sending or causing to be sent to another person a hoax destructive device; or

(b) Placing or causing to be placed a hoax destructive device at any location; or

(c) Conspiring to use, using or causing to be used a hoax destructive device in the commission of or an attempt to commit a felony.

(2) A violation of the provisions of paragraph (a) or (b) of subsection (1) of this section is punishable by imprisonment in the state prison not to exceed five (5) years.

(3) A violation of the provisions of paragraph (c) of subsection (1) of this section is punishable by imprisonment in the state prison not to exceed fifteen (15) years and by a fine not exceeding fifteen thousand dollars ($15,000).

18-3320 — Unlawful use of destructive device or bomb

18-3320. Unlawful use of destructive device or bomb. Any person who knowingly, intentionally, or recklessly:

(1) Conspires to use, uses or causes to be used a destructive device or bomb in the commission of or an attempt to commit a felony; or

(2) With the intent to injure the person or property of another, transports a bomb or destructive device; or

(3) Injures another or conspires or attempts to injure another in his person or property through the use of a destructive device or bomb is guilty of a felony, punishable by up to a twenty-five thousand dollar ($25,000) fine and life in prison.

18-3320A — Disposal of destructive devices or bombs

18-3320A. Disposal of destructive devices or bombs. Any destructive device or bomb that has been lawfully seized by a law enforcement agency may be destroyed in a reasonable manner. An official record listing the destructive device or bomb destroyed and the location of destruction shall be kept on file at the office of the seizing agency. In the event of such destruction, a photograph, videotape, or similar record of the device or bomb shall be preserved for evidentiary purposes. The destruction of a destructive device or bomb before a preliminary hearing, trial, or both shall not be a bar to prosecution for any violation of law.

18-3321 — Persons exempt

18-3321. Persons exempt. Unless the intent to injure the person or property of another has been established, the provisions in section 18-3319 , Idaho Code, shall not apply to:

(1) Any public safety officer or member of the armed forces of the United States or national guard while acting in his official capacity;

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

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

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

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

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

18-3322 — Use of weapons of mass destruction — Definition

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.

18-3323 — Biological weapons — Definitions

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.

18-3324 — Use of chemical weapons — Definitions

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.

18-3325 — Prohibition — Possession — Use of conducted energy device — Penalties

18-3325. Prohibition — Possession — Use of conducted energy device — Penalties.

(1) It shall be a misdemeanor to possess a conducted energy device by:

(a) Any person found guilty of a felony who is not finally discharged from a sentence of imprisonment, probation or parole; or

(b) Any person who, having been found guilty of a felony, has not had his or her civil right to ship, transport, possess or receive a firearm restored.

(2) Use of a conducted energy device during the commission of a felony offense shall constitute a separate felony offense.

(3) Use of a conducted energy device during the commission of any of the following misdemeanor crimes of violence: sections 18-901 , 18-903 , 18-917 or 18-918 , Idaho Code, shall result in double the penalties provided for in Idaho Code regarding those crimes.

(4) A sentence imposed for a violation of the provisions of this section shall be imposed separate from and consecutive to the sentence for any offense based on the act establishing the offense under this section.

(5) For purposes of this section, "conducted energy device" means any item that emits an electrical current, impulse, wave or beam, which current, impulse, wave or beam is designed to incapacitate, injure or kill.

18-3326 — second amendment financial privacy act — Legislative intent

18-3326. second amendment financial privacy act — Legislative intent.

(1) The legislature finds that:

(a) The second amendment to the United States constitution guarantees the people the right to keep and bear arms;

(b) Section 11, article I of the constitution of the state of Idaho provides that the "people have the right to keep and bear arms, which right shall not be abridged;… No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition";

(c) In September 2022, the world’s three (3) largest payment card networks publicly announced they would assign a unique merchant category code to firearm retailers accepting payment cards for purchases, after twenty-eight (28) members of congress sent a public letter to networks, pressuring them to adopt the new code;

(d) In the letter to payment card networks, federal lawmakers stated that the new merchant category code for firearms retailers would be "the first step towards facilitating the collection of valuable financial data that could help law enforcement in countering the financing of terrorism efforts," expressing a clear government expectation that networks will utilize the new merchant category code to conduct mass surveillance of constitutionally protected firearms and ammunition purchases in cooperation with law enforcement;

(e) The new merchant category code will allow payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in Idaho, paving the way for both unprecedented surveillance of second amendment activity and unprecedented information sharing between payment networks and the government; and

(f) This potential for cooperative surveillance and tracking of lawful firearm and ammunition purchases will have a significant chilling effect on citizens wishing to exercise their federal and state constitutional rights to keep and bear arms in Idaho.

(2) Based on the findings described in subsection (1) of this section, it is the intent of the legislature to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and ammunition purchases and sales within Idaho’s jurisdiction.

(3) This section and section 18-3326A , Idaho Code, shall be construed as generally applicable consumer financial protection law and shall not prevent or significantly interfere with the duly authorized powers of any bank or directly or indirectly discriminate against any bank based on its charter or structure. This section and section 18-3326A , Idaho Code, shall not apply to any financial institution as defined in section 18-3326A , Idaho Code, or any person, company, entity, or organization regulated by the Idaho department of finance or otherwise subject to the jurisdiction, rules, or regulations of the federal deposit insurance corporation.

18-3326A — second amendment financial privacy act

18-3326A. second amendment financial privacy act.

(1) For purposes of this section:

(a) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm;

(b) "Assign" or "assignment" means a payment network’s policy, process, or practice that labels, links, or otherwise associates a firearms code with a merchant or payment card transaction in a manner that allows the payment network or any other entity facilitating or processing the payment card transaction to identify whether a merchant is a firearms retailer or whether a transaction involves the sale of firearms or ammunition;

(c) "Customer" means any person engaged in a payment card transaction that a financial institution facilitates or processes and any person or the person’s duly authorized representative who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary in relation to an account maintained in such person’s name;

(d) "Disclosure" means the transfer, publication, or distribution of protected financial information to another person for any purpose other than to process or facilitate a payment card transaction;

(e) "Financial institution" means:

(i) A bank, savings and loan association, trust company, or credit union chartered pursuant to any state or federal law, a regulated consumer lender, a money service business, payment card issuer, or other institutions that are by law under the jurisdiction and supervision of the department of finance or the federal deposit insurance corporation; and (ii) An entity involved in facilitating or processing a payment card transaction, including but not limited to a bank, acquirer, gateway, payment card network, or payment card issuer;

(f) "Financial record" means:

(i) The original or a copy of any record or document held by a payment network pertaining to a customer of a financial institution utilizing the payment network, including any record of a transaction conducted by means of a customer bank communication terminal or other electronic device; (ii) A financial record held by a payment network related to a payment card transaction that the financial institution has processed or facilitated; and (iii) Any information derived from such records or documents;

(g) "Firearm" means any weapon that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;

(h) "Firearm accessory or component" means:

(i) Any device specifically adapted to enable the wearing or carrying about one's person or the storage or mounting in or on any conveyance of a firearm and any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm; (ii) Any item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination; and (iii) Any component for making ammunition, reloading materials and equipment, machinery, and tools for manufacturing ammunition;

(i) "Firearms code" means any code or other indicator a payment network assigns to a merchant or to a payment card transaction that identifies whether a merchant is a firearms retailer or whether the payment card transaction involves the purchase of a firearm, firearm accessories or components, or ammunition. The term includes but is not limited to a merchant category code assigned to a retailer by a payment card network or other financial institution;

(j) "Firearms dealer" means any person engaged in the lawful business of selling or trading firearms or antique firearms, as those terms are defined in 18 U.S.C. 921, or ammunition to be used in firearms or antique firearms;

(k) "Government entity" means any state or local government agency or instrumentality thereof located in Idaho;

(l) "Merchant" means a person or entity that accepts payment cards from customers for the purchase of goods or services. The term includes a firearms retailer that accepts payment cards for the lawful purchase of firearms, firearm accessories or components, or ammunition;

(m) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to purchase goods or services from a merchant;

(n) "Payment network" means a debit or credit network through which funds may be transferred, such as credit card associations, electronic funds transfer networks, or other organizations, or associations, that issue or sponsor a financial transaction device. A payment network does not include any financial institution as defined in this section; and

(o) "Protected financial information" means any record of a sale, purchase, return, or refund involving a payment card that is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignment of a firearms code. A customer's protected financial information refers to protected financial information appearing in the financial records of a customer.

(2) Except for those records kept during the regular course of a criminal investigation and prosecution or as otherwise required by law, a state government entity or local government, special district, or other political subdivision or official, agent, or employee of the state or other government entity or any other person, public or private, other than the owner or owner's representative, may not knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(3) A payment network or its agent may not require the usage of a firearms code in a way that distinguishes a firearms retailer physically located in the state of Idaho from Idaho general merchandise retailers or sporting goods retailers.

(4) A payment network may not discriminate against a firearms retailer by:

(a) Declining a lawful payment card transaction based solely on the assignment or non-assignment of a firearms code to the merchant or transaction;

(b) Limiting or declining to do business with a customer, potential customer, or merchant based on the assignment or non-assignment of a firearms code to previous lawful transactions involving the customer, potential customer, or merchant;

(c) Charging a higher transaction or interchange fee to any merchant or for a lawful transaction based on the assignment or non-assignment of a firearms code; or

(d) Otherwise taking any action against a customer or merchant that is intended to suppress lawful commerce involving firearms, firearm accessories or components, or ammunition, which action is based solely or in part on the customer's or merchant's business involving firearms, firearm accessories or components, or ammunition.

(5) Except as otherwise required by law, a payment network may not disclose a financial record, including a firearms code that was collected in violation of this section.

(6) The attorney general may investigate alleged violations of this section and, upon finding a violation, shall provide written notice to any individual or entity, public or private, believed to be in violation of this section. Written notice to any commercial entity shall be made to the entity's registered agent. Upon receipt of such written notice from the attorney general, the entity shall have thirty (30) calendar days to cease the requirement for usage of the firearms code. At the attorney general's discretion, an entity may be granted up to an additional one hundred twenty (120) days to cease the requirement for usage of the firearms code. (7)(a) Either a firearms retailer physically located within Idaho whose business was the subject of an alleged violation of this section or a customer who transacted at a firearms retailer physically located in Idaho whose business was the subject of an alleged violation of this section may petition the attorney general to investigate the alleged violation.

(b) If the attorney general does not commence an action within ninety (90) days of receiving the petition pursuant to this subsection, then the firearms retailer or customer may file an action in a court of competent jurisdiction to enjoin the individual or entity from requiring the firearms code in violation of this section.

(8) If an individual or entity is found to be requiring the usage of a firearms code by any merchant physically located in Idaho in violation of this section and fails to cease the requirement for usage of the firearms code by any firearms retailer physically located in Idaho after the expiration of thirty (30) calendar days from the receipt of written notice by the attorney general's office, the attorney general shall pursue an injunction against any individual or entity, public or private, alleged to be in violation of this section. The attorney general shall pursue an injunction pursuant to this section in a court of competent jurisdiction in the judicial district where the alleged violation occurred against the individual or entity in alleged violation of this section.

(a) If a court finds that an individual or entity continues to be in violation of this section after thirty (30) calendar days from receiving written notice from the attorney general or from a finding by the court of a violation of this section, then the court shall enjoin the individual or entity from continuing to require the usage of the firearms code.

(b) If an individual or entity knowingly and willfully fails to comply with an injunction as provided in this section within thirty (30) days after being served with the injunction, then the court shall impose a civil penalty in a sum not to exceed ten thousand dollars ($10,000) per violation of an injunction issued pursuant to this section, committed after the expiration of the thirty (30) calendar day period after the entity or individual, public or private, was served with the injunction. In assessing such a penalty, the court shall consider factors including the financial resources of the violator and the harm or risk of harm to second amendment rights resulting from the violation. Any order assessing a penalty for violation of this section shall be stayed pending appeal of the order.

(c) In addition to the remedies provided in this section, the attorney general or a petitioner who prevails in an action under this section shall recover costs, reasonable attorney's fees, and any other remedy the court deems appropriate.

(9) It shall not be a defense to an action filed pursuant to this section that such information was disclosed to a federal government entity, unless such disclosure or action was made based on a good faith conclusion that the disclosure or action was required by federal law or regulation.

18-3327 — Consistency in Knife regulation

18-3327. Consistency in Knife regulation.

(1) Except as provided in sections 18-3302 and 18-3302A , Idaho Code, a city, county, or other political subdivision of this state shall not enact any ordinance, rule, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife making components in this state.

(2) Notwithstanding the provisions of subsection (1) of this section, the following entities may regulate the possession of a knife:

(a) Public schools, including public charter schools;

(b) Any court of record for any courthouse;

(c) All law enforcement facilities;

(d) All places of involuntary confinement, including:

(i) Prisons and jails established pursuant to title 20 , Idaho Code; and (ii) Entities managed and operated pursuant to section 56-203 , Idaho Code; and

(e) A city, county, or other political subdivision of the state in order to regulate child care facility safety standards.

(3) A city, county, or other political subdivision of this state shall not enact any rule or ordinance relating to the manufacture of a knife that is more restrictive than any rule or ordinance relating to the manufacture of any other commercial goods.

(4) Except as provided in sections 18-3302 and 18-3302A , Idaho Code, any rule or ordinance of a city, county, or political subdivision of this state that contradicts the provisions of this section shall be null, void, and of no force and effect.

CHAPTER 34

18-3401 — Public mutilation of flag

18-3401. Public mutilation of flag. Any person who publicly mutilates, defaces, or tramples upon or burns, with intent to insult, the flag, standard, colors or ensign of the United States or of the state of Idaho shall be guilty of a misdemeanor.

CHAPTER 35

18-3502 — Unlawful re-entry of land after ouster

18-3502. Unlawful re-entry of land after ouster. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward unlawfully returns to settle, reside upon or take possession of such lands, is guilty of a misdemeanor.

CHAPTER 36

18-3601 — Forgery defined

18-3601. Forgery defined. Every person who, with intent to defraud another, falsely makes, alters, forges or counterfeits, any charter, letters, patent, deed lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, federal reserve note, United States currency or United States money, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any state controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit action demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court, is guilty of forgery.

18-3602 — False entries in books of record

18-3602. False entries in books of record. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

18-3603 — Public seals — Forging or counterfeiting

18-3603. Public seals — Forging or counterfeiting. Every person who, with intent to defraud another, forges, or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or of any other state, or territory, government, or country, or who falsely makes, forges or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and wilfully conceals the same, is guilty of forgery.

18-3604 — Punishment for forgery

18-3604. Punishment for forgery. Forgery is punishable by imprisonment in the state prison for not less than one (1) nor more than fourteen (14) years.

18-3605 — Possession of forged notes or bank bills or check or checks

18-3605. Possession of forged notes or bank bills or check or checks. Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, or check or checks, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill or check made in the form or similitude of any promissory note or bill or check for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill or check, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the state prison for not less than one (1) nor more than fourteen (14) years.

18-3606 — Fictitious bills, notes, and checks — Making, passing, uttering, or publishing

18-3606. Fictitious bills, notes, and checks — Making, passing, uttering, or publishing. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is guilty of forgery and punishable as provided by section 18-3604 .

18-3607 — Counterfeiting coin or bullion

18-3607. Counterfeiting coin or bullion. Every person who counterfeits any of the species of gold or silver coin current in this state, or any kind of species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

18-3608 — Punishment for counterfeiting

18-3608. Punishment for counterfeiting. Counterfeiting is punishable by imprisonment in the state prison for not less than one (1) nor more than fourteen (14) years.

18-3609 — Possession of counterfeit coin

18-3609. Possession of counterfeit coin. Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one (1) nor more than fourteen (14) years.

18-3610 — Possession of counterfeiting apparatus

18-3610. Possession of counterfeiting apparatus. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, metal, machine, or other thing whatever, made use of in counterfeiting coin, current in this state, or in counterfeiting gold dust, gold or silver bars, bullion, lump, pieces or nuggets, or in counterfeiting bank notes, bank

bills, financial transaction cards, cashier's checks, money orders, travelers checks, or any check, draft or order for the payment of money upon any bank or depository drawn on any person, firm or corporation, is punishable by imprisonment in the state prison not less than one (1) nor more than fourteen (14) years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

18-3611 — Counterfeiting railroad ticket

18-3611. Counterfeiting railroad ticket. Every person who counterfeits, forges, or alters, any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one (1) year, or by fine not exceeding $1000, or by both such imprisonment and fine.

18-3612 — Restoring canceled railroad tickets

18-3612. Restoring canceled railroad tickets. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the cuts, marks, punch holes, or other evidence of cancelation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessee thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding $1000, or by both such imprisonment and fine.

18-3613 — Simulation of switch and car keys

18-3613. Simulation of switch and car keys. It shall be unlawful for any person by himself or another, without the written order or consent of such common carrier, to make, simulate, sell or dispose of any key belonging to or which might be used to open or unlock any switch, lock, car lock, or locks, used upon or belonging to any switch or car of any kind owned, controlled or operated by any common carrier in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months.

18-3614 — Forging or counterfeiting trade-marks

18-3614. Forging or counterfeiting trade-marks. Every person who wilfully forges or counterfeits or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

18-3615 — Sale of counterfeit goods

18-3615. Sale of counterfeit goods. Every person who sells or keeps for sale any goods upon or to which any counterfeited trade-mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

18-3616 — Forged and counterfeit trade-marks defined

18-3616. Forged and counterfeit trade-marks defined. The phrases "forged trade-mark" and "counterfeited trade-marks," or their equivalents, as used in this chapter include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive.

18-3617 — Trademark defined

18-3617. Trademark defined. The phrase "trademark" as used in the three (3) preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

18-3619 — Slugs or counterfeited coins — Penalty for use in vending machines or coin-boxes

18-3619. Slugs or counterfeited coins — Penalty for use in vending machines or coin-boxes. Any person who, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, accept or receive, from or by means of any such machine, coin-box telephone or other receptacle, any article of value or service or the use or enjoyment of any telephone, telegraph or other facility or service, without depositing in, delivering to and payment into such machine, coin-box telephone or receptacle the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such machine, coin-box telephone or other receptacle, shall be fined not more than two hundred dollars ($200.00), or imprisoned not more than sixty (60) days, or both.

18-3620 — Slugs or counterfeited coins — Penalty for manufacture or sale

18-3620. Slugs or counterfeited coins — Penalty for manufacture or sale. Any person who knowingly or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee or user thereof shall manufacture for sale, sell or give away any token, slug, blank, disc, tag, planchet, false, mutilated, sweated or counterfeited coin or any device or substance whatsoever intended or calculated to be placed, deposited or used or which may be so placed, deposited or used in any vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance or connection with the sale, use or enjoyment of the property or service or the use or enjoyment of any telephone, telegraph or other facilities or service, shall be fined not more than two hundred dollars ($200.00), or imprisoned not more than sixty (60) days, or both.

18-3621 — making false statements to detain real property

18-3621. making false statements to detain real property. Any person who, with the intent to detain or remain on real property, knowingly and willfully presents to another person a false document purporting to be a valid lease agreement, deed, or other instrument conveying real property rights commits a misdemeanor.

18-3622 — fraudulent sale or lease of residential real property

18-3622. fraudulent sale or lease of residential real property. A person who lists or advertises residential real property for sale knowing that the purported seller has no legal title or authority to sell the property or who rents or leases the property to another person knowing that he has no lawful ownership in the property or leasehold interest in the property commits a felony.

CHAPTER 38

18-3801 — Gambling defined

18-3801. Gambling defined. "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, the operation of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat or keno, but does not include:

(1) Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entrants; or

(2) Bona fide business transactions which are valid under the law of contracts; or

(3) Games that award only additional play; or

(4) Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; or

(5) Other acts or transactions now or hereafter expressly authorized by law.

18-3802 — Gambling prohibited

18-3802. Gambling prohibited.

(1) A person is guilty of gambling if he:

(a) Participates in gambling; or

(b) Knowingly permits any gambling to be played, conducted or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part.

(2) Gambling is a misdemeanor.

18-3809 — Bookmaking and pool selling

18-3809. Bookmaking and pool selling. Any person who for gain, hire or profit engages in pool selling or bookmaking at any time or place within this state; or any person who keeps or occupies any room, shed, tenement, tent, booth or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this state, with books, papers, paraphernalia, or mechanical device, for the purpose of engaging in pool selling or bookmaking, or recording or registering bets or wagers; or who sells pools or makes books upon the result of any trial or contest of skill, speed or power of endurance of man or beast for gain, hire or reward; or any person who, for gain, hire or reward, receives, registers, records and forwards to any other place, within or without this state, any money, consideration or thing of value for the purpose of having it there bet or wagered by or for any person, who at such place sells pools or makes books upon any such event, or any person who, being the owner, lessee or occupant of any such room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or any grounds within this state, knowingly and willfully permits the same to be occupied and used for any of the purposes aforesaid, unless unable to legally prevent the same; or any person who aids, assists or abets in any manner in any of said acts which are hereby forbidden, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment.

18-3810 — Slot machines — Possession unlawful — Exception

18-3810. Slot machines — Possession unlawful — Exception.

(1) Except as otherwise provided in this section, it shall be a misdemeanor for any person to use, possess, operate, keep, sell, or maintain for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever.

(2) The provisions of section 18-3804 , Idaho Code, shall not apply to antique slot machines. For the purpose of this section, an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

(3) Antique slot machines may be sold, possessed or located for purposes of display only and not for operation.

(4) An antique slot machine may not be operated for any purpose.

CHAPTER 39

18-3905 — Transportation of hazardous waste

18-3905. Transportation of hazardous waste.

(1) Whenever hazardous waste, as defined in section 39-4403 , Idaho Code, is being transported on highways or roads of this state, it shall be transported in a manner which will not endanger the health, welfare or safety of the citizens of the state of Idaho and it shall be transported in compliance with the laws of the state of Idaho and rules and regulations promulgated thereto.

(2) Any person who transports hazardous waste or any generator of hazardous waste or other person who causes hazardous waste to be transported on highways or roads of this state in a manner which will endanger the health, welfare or safety of the citizens of the state of Idaho, or who transports or causes hazardous waste to be transported on highways or roads of this state in a manner which is not in compliance with the laws of the state of Idaho and any rules and regulations promulgated pursuant thereto shall be guilty of a misdemeanor and shall be subject to a fine of not more than ten thousand dollars ($10,000), imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. This penalty shall be in addition to any other civil or criminal penalties which may be provided by law.

18-3906 — Placing debris on highways

18-3906. Placing debris on highways.

(1) It shall constitute an infraction for any person to throw from any vehicle, place, deposit or permit to be deposited upon or alongside of any highway, street, alley or easement used by the public for public travel, any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, hoops, cans, barbed wire, boards, trash or garbage, lighted material, or other waste substance, and is punishable by a fine of one hundred fifty dollars ($150). A second conviction under this section within two (2) years of the commission of the prior offense for which the person was convicted shall constitute an infraction and be punishable by a fine not exceeding three hundred dollars ($300). A third conviction under this section within three (3) years of the first offense for which the person was convicted shall constitute a misdemeanor and be punishable by a fine not exceeding one thousand dollars ($1,000) and by imprisonment in the county jail not exceeding thirty (30) days. For the purposes of this section, the terms "highway," "street," "alley" or "easement" shall be construed to include the entire right-of-way of such highway, street, alley or easement. The Idaho transportation department is directed to post along state highways, at convenient and appropriate places, notices of the context of said law.

(2) Notwithstanding the provisions of section 19-4705 , Idaho Code, the court may order that fifty dollars ($50.00) of the fine imposed under the provisions of this section be paid by the defendant to the person or persons, other than the officer making the arrest, who, in the judgment of the court, provided information that led directly to the arrest and conviction of the defendant.

(3) It shall constitute a misdemeanor for any person to willfully throw, deposit, or place, or to lose and willfully leave upon or alongside of any highway or street used by the public for public travel, any debris, substance, object or material that impedes traffic or creates a hazardous driving condition, and is punishable by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding six (6) months, or by both.

18-3907 — Obstruction of highways

18-3907. Obstruction of highways. Any person who obstructs, injures or damages any public road, street or highway, either by placing obstruction therein or by digging in, deepening or deviating the water of any stream, or by placing any obstruction in any ditch or stream within or along any public road, street or highway, or by placing or constructing any obstruction, ditch or embankments upon his own or other lands, so as to make or cause any water to flow upon or impair any public road, street or highway, or rides or drives upon and along the sidewalk of any road, street or highway, whenever such sidewalk has been graded or graveled, located or designated by any order of the board of commissioners or city council, or prepared in any other manner dedicating and designating the same for and to that particular use and purpose, either by the property owner or by the public, or in any other manner injures or obstructs any public road, street or highway, is guilty of a misdemeanor.

18-3908 — Flooding highways

18-3908. Flooding highways. Any person who runs water either by flooding or sprinkler irrigation across any public highway, road or street, without first constructing a good and sufficient ditch or ditches to convey the same, or who fails to bridge such ditch or ditches, or to keep such bridge or ditches in good repair, or to ensure that the flow from the sprinkler does not flood the public highway, road or street and all persons, companies or corporations who suffer any water used by them for the purpose of irrigation, or any other purposes, to flow into or upon any public highway, road or street, in any other manner than that authorized by law, are guilty of an infraction on the first offense, and shall be guilty of a misdemeanor for each offense thereafter per calendar year, and upon conviction thereof shall be fined fifty dollars ($50.00), and for a second offense, double said fine and costs; and it is hereby made the duty of all road supervisors, constables and marshals, to make complaint before the proper court, for violations of this section, whenever notified or having knowledge thereof. A person may not be charged under the provisions of this chapter if the flooding from a sprinkler or other water conveyance system is a result of mechanical failure, wind or other climatic condition, or other circumstances outside of the control of the person.

18-3910 — Evasion of toll

18-3910. Evasion of toll. Every person not exempt from paying tolls who crosses on any ferry or toll bridge, or passes through any toll gate, lawfully kept, without paying the toll therefor and with intent to avoid such payment is punishable by fine not exceeding $20.00.

18-3911 — Wild flowers or shrubs along highway — Removal or transport illegal

18-3911. Wild flowers or shrubs along highway — Removal or transport illegal.

(1) It is the duty of all citizens of this state to protect the wild flowers of this state referred to in this section from needless destruction and waste.

(2) It shall be unlawful for any person in this state to wilfully and negligently cut, dig up, trim, pick, or remove, any plant, flower, shrub, bush, fruit or other vegetation growing upon the right of way of any public highway within this state.

(3) It shall be unlawful for any person to export from this state, or to sell or offer for sale or transport bulbs, corms, rhizomes, roots or plants of native wild flowers or shrubs of the state of any of the following genera: a. Tiger lily … Lilium Columbianum b. Queen Cup … Clintonia uniflora c. Trillium (both species) d. Lady's Slipper … Cypripedium montanum e. Stream orchis … Epipactis Gigantea f. Coral root … Corallorhiza (all species) g. Columbine … Aquilegia formosa h. Syringa or mock orange … Philadelphus lewisii i. Dogwood … Cornus nuttallii and canadensis j. Indian Pipe Family (all members) k. Rhododendron (all species) l. Twin Flower … Linnaea americana m. Mission bells or rive root … Fritillaria lanceolata n. Bitter root … Lewisia rediviva o. Angel slipper, fairy slipper … Calypso bulbosa

(4) It shall be unlawful for any person to sell or transport or offer for sale the bulbs, corms, rhizomes, roots or parts of any of the plants or shrubs mentioned in subsections (2) and (3) of this section which have been dug, pulled up or gathered upon any highway.

(5) The provisions of this section shall not be construed to apply to any employee of the federal government or of the state of Idaho or of any political subdivision of the state engaged in work upon any state, county or public road or highway while performing such work under the supervision of the federal government, the state or any political subdivision thereof.

(6) The provisions of this section shall not be construed to apply to the owner of any tract or tracts of land, or to his agents or employee, as to such tract or tracts, or to any shrub, plant or other vegetation which is declared by law to be a public nuisance.

(7) Nothing in this section shall be construed as prohibiting the digging, pulling, gathering or sending out of this state, at such times the Idaho transportation department may approve, any propagated plants or shrubs mentioned in subsections (2) and (3) of this section, in such quantity and at such times as the agency or persons having control of the land, public or private, may determine and approve.

18-3912 — Prosecution of violators — Duty of transportation department

18-3912. Prosecution of violators — Duty of transportation department. Insofar as the state highway system is concerned, it shall be the duty of the Idaho transportation department and of all its employees to present evidence of any violation of the provisions of this act to the prosecuting attorney of the county in which any such violations occur. Such prosecuting attorney shall prosecute any person guilty of a violation of the provisions of this act.

18-3913 — Wild flowers protected — Amended list — Duty of department of fish and game

18-3913. Wild flowers protected — Amended list — Duty of department of fish and game.

(a) In order to further protect native wild flowers and shrubs from needless destruction and waste, the department of fish and game may, after investigation and public hearings and in accordance with the provisions of this act, establish and amend a list of wild flowers and shrubs in addition to those listed in section 18-3911 (3), Idaho Code. The provisions of this act will then apply to such "established" or "amended" list.

(b) In determining additions to the list of wild flowers set forth herein, the department of fish and game may take into consideration:

(1) The laws and regulations of the United States and other states.

(2) The effect on the scenic beauty of public roads and public land.

(3) The necessity to preserve and protect native plants whenever it appears that they might possibly become extinct.

18-3914 — Violation a misdemeanor

18-3914. Violation a misdemeanor. A violation of this chapter and regulations authorized by this act is a misdemeanor unless the violation is defined as an infraction.

CHAPTER 40

18-4001 — Murder defined

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.

18-4002 — Express and implied malice

18-4002. Express and implied malice. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

18-4003 — Degrees of murder

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 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.

18-4004 — Punishment for murder

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

18-4004A — Notice of intent to seek death penalty

18-4004A. Notice of intent to seek death penalty.

(1) A sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty with the court and served the notice upon the defendant or his attorney of record no later than sixty (60) days after entry of a plea for murder in the first degree and no later than thirty (30) days after entry of a plea for aggravated lewd conduct with a minor child twelve (12) years of age or under. Any notice of intent to seek the death

penalty shall include a listing of the statutory aggravating circumstances that the state will rely on in seeking the death penalty. The state may amend its notice upon a showing of good cause at any time prior to trial. A notice of intent to seek the death penalty may be withdrawn at any time prior to the imposition of sentence. However, upon a showing of good cause, and a stipulation by the state and the defendant and his attorney of record the court may extend the time for the filing of the notice of intent to seek the death penalty for a reasonable period of time.

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

18-4005 — Petit treason abolished

18-4005. Petit treason abolished. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

18-4006 — Manslaughter defined

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 those acts specified in section 18-4003 (d), Idaho Code; 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) of this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection (3)(b) 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).

18-4007 — Punishment for manslaughter

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.

(b) For a violation of section 18-4006 (3)(b), Idaho Code:

(i) For a person who has not previously been found guilty of or pled guilty to a violation of the provisions of section 18-8004 or 18-8006 , Idaho Code, or any substantially conforming foreign criminal violation, as described in section 18-8005 (10), Idaho Code, 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. (ii) For a person who has previously been found guilty of or pled guilty once to a violation of the provisions of section 18-8004 or 18-8006 , Idaho Code, or any substantially conforming foreign criminal violation, as described in section 18-8005 (10), Idaho Code, notwithstanding the form of the judgment or withheld judgment, by a fine of not more than twenty thousand dollars ($20,000) and by a sentence to the custody of the state board of correction for a mandatory minimum fixed term of imprisonment of five (5) years, not to exceed twenty-five (25) years. (iii) For a person who has previously been found

guilty of or pled guilty two (2) or more times to a violation of the provisions of section 18-8004 or 18-8006 , Idaho Code, or any substantially conforming foreign criminal violation, as described in section 18-8005 (10), Idaho Code, notwithstanding the form of the judgment or withheld judgment, by a fine of not more than twenty thousand dollars ($20,000) and by a sentence to the custody of the state board of correction for a mandatory minimum fixed term of imprisonment of ten (10) years, not to exceed twenty-five (25) years.

(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.

(d) In addition to the foregoing, any person convicted of a violation of section 18-4006 (3), Idaho Code, that 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. In setting the amount of support, the court shall consider all relevant factors. 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.

(e) 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.

18-4009 — Justifiable homicide by any person

18-4009. Justifiable homicide by any person.

(1) Homicide is justifiable when committed by any person in any of the following cases:

(a) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person;

(b) When committed in defense of habitation, a place of business or employment, occupied vehicle, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation, place of business or employment or occupied vehicle of another for the purpose of offering violence to any person therein;

(c) When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

(d) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

(2) For purposes of subsection (1)(b) of this section, a person who unlawfully and by force or by stealth enters or attempts to enter a habitation, place of business or employment or occupied vehicle is presumed to be doing so with the intent to commit a felony.

(3) For purposes of this section:

(a) "Habitation" means any building, inhabitable structure or conveyance of any kind, whether the building, inhabitable structure or conveyance is temporary or permanent, mobile or immobile, including a tent, and is designed to be occupied by people lodging therein at night, and includes a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest, and includes the curtilage of any such dwelling.

(b) "Place of business or employment" means a commercial enterprise or establishment owned by a person as all or part of the person's livelihood or is under the owner's control or under control of an employee or agent of the owner with responsibility for protecting persons and property and shall include the interior and exterior premises of the place of business or employment.

(c) "Vehicle" means any motorized vehicle that is self-propelled and designed for use on public highways to transport people or property.

18-4011 — Justifiable homicide by officer

18-4011. Justifiable homicide by officer. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either: 1. In obedience to any judgment of a competent court; or 2. When reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including suppression of riot or keeping and preserving the peace. Use of deadly force shall not be justified in overcoming actual resistance unless the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons; or 3. When reasonably necessary in preventing rescue or escape or in retaking inmates who have been rescued or have escaped from any jail, or when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the inmate, or persons assisting his escape, or the person suspected of or charged with the commission of a felony poses a threat of death or serious physical injury to the officer or other persons.

18-4012 — Excusable homicide

18-4012. Excusable homicide. Homicide is excusable in the following cases: 1. When committed by accident and misfortune in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent. 2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat when no undue advantage is taken nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

18-4013 — Discharge of defendant when homicide justifiable or excusable

18-4013. Discharge of defendant when homicide justifiable or excusable. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

18-4014 — Administering poison with intent to kill

18-4014. Administering poison with intent to kill. Every person who, with intent to kill, administers or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the state prison not less than ten (10) years, and the imprisonment may be extended to life.

18-4015 — Assault with intent to murder

18-4015. Assault with intent to murder. Every person who assaults another with intent to commit murder, is punishable by imprisonment in the state prison not less than one (1) nor more than fourteen (14) years.

18-4016 — Definition of human embryo and fetus — Prohibiting the prosecution of certain persons

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.

18-4017 — causing a suicide — assisting in a suicide — injunctive RELIEF — REVOCATION OF LICENSE — EXCEPTIONS

18-4017. causing a suicide — assisting in a suicide — injunctive RELIEF — REVOCATION OF LICENSE — EXCEPTIONS.

(1) A person is guilty of a felony if such person, with the purpose of assisting another person to commit or to attempt to commit suicide, knowingly and intentionally either:

(a) Provides the physical means by which another person commits or attempts to commit suicide; or

(b) Participates in a physical act by which another person commits or attempts to commit suicide.

(2) Any person convicted of or who pleads guilty to a violation of the provisions of subsection (1) of this section shall be sentenced to the custody of the state board of correction for a period not to exceed five (5) years.

(3) The licensing authority that issued a license or certification to a health care professional who is convicted of or who pleads guilty to a violation of the provisions of subsection (1) of this section, or who has had a judgment of contempt of court for violating an injunction issued pursuant to the provisions of subsection (4) of this section, may revoke the license or certification of such health care professional upon receipt of:

(a) A copy of the record of the criminal conviction or plea of guilty for a felony in violation of the provisions of subsection (1) of this section; or

(b) A copy of the record of a judgment of contempt of court for violating an injunction issued pursuant to the provisions of subsection (4) of this section.

(4) Upon proper application to the court, injunctive relief against any person who is reasonably believed to be about to violate, or who is in the course of violating, the provisions of subsection (1) of this section may be obtained by any person who is:

(a) The spouse, parent, child or sibling of the person who would commit suicide;

(b) A court appointed guardian of the person who would commit suicide;

(c) Entitled to inherit from the person who would commit suicide;

(d) A health care provider of the person who would commit suicide; or

(e) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

(5) The following shall not be deemed a violation of the provisions of this section:

(a) A health care professional who administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort, even if any such medication or procedure may hasten or increase the risk of death, unless such medications or procedures are knowingly and intentionally administered, prescribed or dispensed to cause death.

(b) A health care professional who withholds or withdraws treatment or procedures in compliance with a living will and durable power of attorney for health care, a health care directive, a physician orders for scope of treatment form or any other similar document that satisfies the elements set forth in chapter 45, title 39 , Idaho Code, or upon a refusal to consent or withdrawal of consent by the patient, or if the patient is unable to give or refuse consent, and does not have a living will and durable power of attorney for health care, a health care directive, a physician orders for scope of treatment form or any other similar document that satisfies the elements set forth in chapter 45, title 39 , Idaho Code, by a person authorized to refuse or withdraw consent pursuant to section 39-4504 , Idaho Code, shall not be deemed to have violated the provisions of this section.

(6) As used in this section:

(a) "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.

(b) "Suicide" means the act or instance of taking one's own life.

CHAPTER 41

18-4101 — Definitions

18-4101. Definitions. The following definitions are applicable to this act: (A) "Obscene material" means any matter:

(1) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(2) Which depicts or describes patently offensive representations or descriptions of:

(a) Ultimate sexual acts, normal or perverted, actual or simulated; or

(b) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, possesses serious literary, artistic, political or scientific value. In prosecutions under this act, where circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value. (B) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of

candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group. (C) "Matter" or "material" means any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials. (D) "Person" means any individual, partnership, firm, association, corporation, or other legal entity; or any agent or servant thereof. (E) "Distribute" means to transfer possession of, whether with or without consideration, by any means. (F) "Knowingly" means having actual or constructive knowledge of the character of the subject matter or live conduct. A person shall be deemed to have constructive knowledge of the character of the subject matter or live conduct if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the matter, and the failure to inspect the contents is either for the purpose of avoiding such disclosure or is due to reckless conduct. (G) "Reckless conduct" is conduct which consciously disregards a substantial and unjustifiable risk that matter may be obscene. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that an average law-abiding person would observe in the actor's situation under like circumstances. (H) "Exhibit" means to show or display. (I) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, where:

(1) The average person, applying contemporary community standards, would find such conduct, when considered as a whole, appeals to the prurient interest; and

(2) The conduct is patently offensive because it consists of:

(a) Ultimate sexual acts, normal or perverted, actual or simulated; or

(b) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any conduct which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value. In prosecutions under this act, where circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value. Nothing herein contained is intended to include or proscribe the breastfeeding of a child or the expression of breast milk for the purpose of feeding a child.

18-4102 — Affirmative defense

18-4102. Affirmative defense. It is not innocent but calculated purveyance which is prohibited. This act shall not apply to any persons who may possess or distribute obscene matter or participate in conduct otherwise proscribed by this act when such possession, distribution, or conduct occurs: (A) within the scope of employment of law enforcement and judicial activities; or (B) within the scope of employment of bona fide school, college, university, museum or public library activities or within the scope of employment of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization; or (C) within the scope of employment as a moving picture machine operator, assistant operator, usher, or ticket taker in a motion picture theater in connection with a motion picture film or show exhibited in such theater, if such operator or assistant operator has no financial interest in the motion picture theater wherein he is so employed other than his wages received or owed, and such person consents to give testimony regarding such employment in all judicial proceedings brought under this act, when granted immunity by the trial judge; or (D) under like circumstances of justification where the possession, distribution or conduct possesses serious literary, artistic, political or scientific value. If this issue is not presented by the prosecution's evidence, the defendant may raise the same as an affirmative defense by presenting some evidence thereon. Where raised, the prosecution must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue.

18-4103 — General sale or distribution, etc

18-4103. General sale or distribution, etc., of obscene matter — Penalty. Every person in this state who knowingly: brings or causes to be brought into this state for sale or distribution; or in this state prepares for distribution, publishes, prints, exhibits, distributes, or offers to distribute; or has in his possession with intent to distribute, exhibit, or offer to distribute, any obscene matter is guilty of a misdemeanor. Each sale, distribution, etc., is a separate violation.

18-4103A — Advertisement, promotion of sale, etc

18-4103A. Advertisement, promotion of sale, etc., of matter represented to be obscene — Penalty. Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material for, or who otherwise advertises or promotes the sale, distribution, or exhibition of matter represented or held out by him to be obscene, whether or not such matter exists in fact, or is obscene, is guilty of a misdemeanor.

18-4104 — Participation in, or production or presentation of, obscene live conduct in public place — Penalty

18-4104. Participation in, or production or presentation of, obscene live conduct in public place — Penalty. (A) Every person who knowingly engages or participates in, manages, produces, sponsors, presents, or exhibits obscene live conduct to or before an assembly or audience consisting of at least one (1) person or spectator in any public place, or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor. (B) Every person who procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits, or procures, counsels, or assists in the exhibition of a motion picture, television production, or other mechanical reproduction containing such conduct, is guilty of a misdemeanor.

18-4105 — Public display of offensive sexual material — Penalty

18-4105. Public display of offensive sexual material — Penalty. Any person who knowingly exhibits or displays or permits to be exhibited or displayed any of the following in such a manner that such exhibit or display is easily visible from any street, sidewalk, thoroughfare, or other public area; or is visible from any transportation facility; or is visible from any residence when the person knows that the owner or occupant of such residence objects to such exhibit or display:

(a) Human genitals or pubic area without a full opaque covering, or any graphic or pictorial depiction thereof, or any depiction of covered male genitals in a discernibly erect state;

(b) An actual or simulated sex act, or sexual contact between humans and animals, or masturbation, or any graphic or pictorial display thereof; or

(c) Any depiction of sado-masochistic abuse, as defined in section 18-1514 , Idaho Code, is guilty of a misdemeanor.

18-4105A — Requiring purchaser or consignee to receive obscene matter as condition to sale, etc

18-4105A. Requiring purchaser or consignee to receive obscene matter as condition to sale, etc. — Penalty. Every person, who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be obscene, or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter, is guilty of a misdemeanor.

18-4106 — Distribution to minors — Law governing

18-4106. Distribution to minors — Law governing. Notwithstanding any of the provisions of this act, the distribution of obscene matter to minors shall be governed by sections 18-1513 to 18-1521 , Idaho Code.

18-4107 — Conspiracy — Penalty

18-4107. Conspiracy — Penalty. A conspiracy of two (2) or more persons to commit any of the crimes proscribed by this act is punishable as a felony. Any court having jurisdiction of the conspiracy crime has concurrent jurisdiction to try all misdemeanor crimes committed in furtherance of the conspiracy.

18-4108 — Special verdict

18-4108. Special verdict. The jury, or the court if a jury trial is waived, shall render a general verdict, and must also render a special verdict as to whether the matter named in the charge is obscene. The special verdict or findings on the issue of obscenity may be: "We find the …. (title or description of matter or live conduct) to be obscene," or "We find the …. (title or description of matter or live conduct) not to be obscene." A special verdict shall not be admissible as evidence in any other proceeding, nor shall it be res judicata of any question in any other proceeding.

18-4109 — Punishment for violations

18-4109. Punishment for violations. The following punishments are applicable to this act: Every person who violates sections 18-4103 , 18-4104 or 18-4105 , Idaho Code, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment for each separate violation. If such person has twice been convicted within the immediately preceding two (2) years for any offense contained in chapter 41, title 18 , Idaho Code, and these convictions were for offenses which occurred ten (10) or more days apart, a third or subsequent violation of sections 18-4103 , 18-4104 or 18-4105 , Idaho Code, within this two (2) year period is punishable as a felony.

18-4110 — Expert witness testimony

18-4110. Expert witness testimony. In any prosecution for a violation of the provisions of this act, neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter which is the subject of any such prosecution.

18-4111 — Search warrant for seizure of obscene material

18-4111. Search warrant for seizure of obscene material. (A) An affidavit for a search warrant shall be filed with the magistrate describing the matter sought to be seized in detail. Where practical, the matter alleged to be obscene shall be attached to the affidavit for search warrant so as to afford the magistrate the opportunity to examine such material. (B) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the matter sought to be seized, if attached, by an examination of the affidavit describing the matter, or by such other manner or means that he deems necessary, if probable cause exists to believe that the matter is obscene and that probable cause exists for the immediate issuance of a search warrant. Upon making such determination, he shall issue a search warrant ordering the seizure of the matter described in the affidavit for a search warrant according to the provisions of Idaho criminal rules of procedure. (C) In the event that a search warrant is issued and matter alleged to be obscene is seized under the provisions of this section, any person alleged to be in possession of the said matter or claiming ownership of the matter at the time of its possession or seizure may file a notice in writing with the magistrate within ten (10) days of the date of the seizure alleging that the matter is not obscene and the magistrate shall set a hearing within one (1) day after request therefore, or at such time as the requesting party might agree, and at such hearing evidence may be presented as to the obscenity or nonobscenity of the matter seized and at the conclusion of such hearing, the magistrate shall make a further determination of whether probable cause exists to believe that the matter is obscene or nonobscene. A decision as to whether there is probable cause to believe the seized material to be obscene shall be rendered by the court within two (2) days of the conclusion of said hearing. If at such hearing the magistrate finds that no probable cause exists to believe that the matter is obscene, then the matter shall be returned to the person or persons from whom it was seized. (D) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, as provided for in section 18-4112 , Idaho Code, in which case it shall not be returned. (E) When a search warrant is issued under the provisions of this section, only that matter described in the complaint shall be seized by the executing peace officer or officers. (F) Procedures under this section for the seizure of allegedly obscene matter shall be cumulative of all other lawful means of obtaining evidence as provided by the laws of this state. Nothing contained in this section shall prevent the obtaining of alleged obscene matter by purchase or under injunction proceedings as authorized by this act or by any other statute of the state of Idaho.

18-4112 — Contraband

18-4112. Contraband. Destruction of obscene matter or advertisement of matter represented to be obscene: (A) Obscene matter and advertisements for matter represented to be obscene are contraband and shall be destroyed. (B) Upon the conviction of the accused or rendition of a court order declaring such matter to be contraband and subject to confiscation, the court shall, when such judgments become final, and all appeal procedures have terminated, order, upon five (5) days' notice to the defendant, any matter or advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the prosecuting attorney or any law enforcement agency, to be destroyed, and the court shall cause to be destroyed any such material in its possession or under its control, retaining only such copies as are necessary for law enforcement purposes.

18-4113 — Uniform enforcement — Abrogation of existing ordinances — Further local ordinances banned

18-4113. Uniform enforcement — Abrogation of existing ordinances — Further local ordinances banned. In order to make the application and enforcement of this act uniform throughout the state, it is the intent of the legislature to preempt, to the exclusion of city and county governments, the regulation of the sale, loan, distribution, dissemination, presentation, or

exhibition of material or live conduct which is obscene. To that end, it is hereby declared that every city or county ordinance adopted before the effective date of this act which deals with the sale, loan, distribution, dissemination, presentation, or exhibition of material or live conduct which is obscene shall stand abrogated and unenforceable on or after such effective date; and that no city or county government shall have the power to adopt any ordinance relating to the regulation of the sale, loan, distribution, dissemination, presentation, or exhibition of material or live conduct which is obscene on or after such effective date.

18-4114 — Enforcement by injunction, etc

18-4114. Enforcement by injunction, etc. The district courts of this state and the judges thereof shall have full power, authority, and jurisdiction, upon application by any county prosecutor or city attorney within their respective jurisdictions, or the attorney general, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this act. Such restraining orders or injunctions may issue to prevent any person from violating any of the provisions of this act, in addition to those powers provided under title 52 of tthe Idaho Code. However, no restraining order or injunction shall issue except upon notice to the person sought to be enjoined. Such person shall be entitled to a trial of the issues within one (1) day after filing of an answer to the complaint and a decision shall be rendered by the court within two (2) days of the conclusion of the trial. In the event that a final order or judgment of injunction be entered against the person sought to be enjoined, such final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any obscene matter in his possession which is subject to such injunction and such sheriff shall be directed to seize and destroy such matter.

18-4115 — Partial invalidity — Severability

18-4115. Partial invalidity — Severability. If any phrase, clause, sentence, section, or provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision, or application of this act which can be given effect without the invalid phrase, clause, sentence, section, provision, or application and to this end the provisions of this act are declared to be severable.

18-4116 — Indecent exposure

18-4116. Indecent exposure.

(1) A person is guilty of a misdemeanor if the person willfully and lewdly, either:

(a) Exposes his or her genitals; exposes developed female breasts, including the areola and nipple; exposes adult male breasts, including the areola and nipple, that have been medically or hormonally altered to appear like developing or developed female breasts; exposes artificial breasts, including the areola and nipple, intended to resemble female breasts; or displays toys or products intended to resemble male or female genitals in any public place or in any place where there is present another person or persons who are offended thereby; or

(b) Procures, counsels, or assists any person so to expose his or her genitals; to expose developed female breasts, including the areola and nipple; to expose adult male breasts, including the areola and nipple, that have been medically or hormonally altered to appear like developing or developed female breasts; to expose artificial breasts, including the areola and nipple, intended to resemble female breasts; or to display toys or products intended to resemble male or female genitals where there is present another person or persons who are offended thereby.

(2) Any person who pleads guilty to or is found guilty of a violation of subsection (1) of this section or a similar statute in another state or any local jurisdiction for a third time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and may be imprisoned in the state prison for a period not to exceed five (5) years.

(3) The provisions of this section shall not apply to the breastfeeding of a child or the expression of breast milk for the purpose of feeding a child.

18-4117 — entering a restroom or changing room of the opposite sex

18-4117. entering a restroom or changing room of the opposite sex.

(1) Any person who knowingly and willfully enters a restroom or changing room in a government-owned building or a place of public accommodation, as defined in section 67-5902 , Idaho Code, that is designated for use by the opposite biological sex of such person shall be guilty of a misdemeanor and may be imprisoned in the county jail for a period not to

exceed one (1) year. Any person who pleads guilty to or is found guilty of a violation of this section, a similar statute in another state, or any similar local ordinance for a second time within five (5) years of the first conviction, notwithstanding the form of judgment or withheld judgment, shall be guilty of a felony and may be imprisoned in the state prison for a period not to exceed five (5) years.

(2) The provisions of subsection (1) of this section shall not apply to an individual who enters a restroom or changing room designated for the opposite sex in any of the following circumstances:

(a) To perform custodial services or maintenance;

(b) To render medical assistance;

(c) To provide law enforcement assistance or to supervise any arrestee, detainee, or inmate in a custodial setting;

(d) To provide services or render aid during a natural disaster, during a declared emergency, or when necessary to prevent a serious threat to good order or safety;

(e) To use a single-user facility designated for the opposite sex, if such single-user facility is the only facility reasonably available at the time of the person's use of the facility;

(f) To use restroom facilities when the person is in dire need of urinating or defecating and such facility is the only facility reasonably available at the time of the person's use;

(g) To use restrooms, changing rooms, and sleeping quarters that have been temporarily designated for use by people of that person's biological sex;

(h) To provide coaching or athletic training during athletic events;

(i) To accompany and render assistance to a person who is in need of assistance when the person rendering assistance is:

(i) A family member or a legal guardian; or (ii) The designee of the person in need of assistance and the designee is not a member of the designated sex for the single-sex restroom, changing facility, or sleeping quarters; or

(j) To a minor child who is in need of assistance and, for the purpose of receiving that assistance, is accompanied by a family member, a legal guardian, or the individual's designee who is a member of the designated sex for the single-sex restroom or changing facility.

(3) As used in this section, "changing room" means a facility in which a person may be in a state of undress in the presence of others, including a locker room, changing room, or shower room.

CHAPTER 42

18-4202 — Acting as physician while intoxicated

18-4202. Acting as physician while intoxicated. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

CHAPTER 43

18-4301 — Interference with ditches, canals, laterals, drains or reservoirs

18-4301. Interference with ditches, canals, laterals, drains or reservoirs. Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, lateral, drain, flume or reservoir, used for the purpose of holding, draining or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb, any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, lateral, drain, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of water, is guilty of a misdemeanor.

18-4302 — Wasting water used for irrigation

18-4302. Wasting water used for irrigation. Any person or persons, who shall wilfully or wantonly waste any of the waters of any stream, the waters of which are used for irrigation, to the detriment of any claimant of such water for irrigation purposes, by diverting the same for an unnecessary use or purpose, or by allowing such water to waste by running into

depressions or dry channels so that the same cannot be used for irrigation, nor reach the original channel of the stream from which it has been diverted, are guilty of a misdemeanor.

18-4303 — Obstruction of overflow, gauge or waterway in dam

18-4303. Obstruction of overflow, gauge or waterway in dam. Any person or persons who shall obstruct any overflow, gauge or waterway, placed in any dam by order of any water master, so as to impede the flow of water over such dam as regulated by the water master, shall be guilty of a misdemeanor.

18-4304 — Wrongful diversion of water

18-4304. Wrongful diversion of water. Any person who without the consent of the water master of the district, diverts any water from a ditch or channel where it has been placed, or caused or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam, or in any way impedes or increases the flow of water in any stream or ditch diverting water from a stream, while the same is under the charge of a water master, or who cuts away any embankment of a stream, whereby the water of such stream is diverted, or breaks, injures, or removes any gate, flume or other device used for the equitable distribution of the water of such stream by the water master, shall be guilty of a misdemeanor.

18-4305 — Interference with headgate — Cutting banks of stream

18-4305. Interference with headgate — Cutting banks of stream. If any obstruction shall be wilfully and maliciously placed on any overflow gauge in any stream of water which is used for irrigation and is under control of a water master, and such obstruction retards or impedes the free overflow of the water of such stream, thereby increasing the pressure against a headgate through which water is diverted by means of such dam, or if any headgate regulated by a water master shall be removed, broken, injured or interfered with so as to disturb the distribution of the water as regulated by the water master, or if any bank of the natural stream, the water of which is being used for irrigation and is being distributed by a water master, shall be cut away so as to increase the flow of water from such stream, thereby interfering with the distribution of the water as regulated by a water master, the person or persons so interrupting the flow of said water as aforesaid, shall be guilty of a misdemeanor.

18-4306 — Injuries to ditches, canals, laterals, drains and appurtenances

18-4306. Injuries to ditches, canals, laterals, drains and appurtenances. Any person or persons, who shall willfully cut, break, damage, or in any way interfere with any ditch, canal, lateral, drain, headgate, or any other works in or appurtenant thereto, the property of another person, irrigation district, drainage district, canal company, corporation, or association of persons, and whereby water is conducted to any place for beneficial use or purposes, and when said canal, headgate, ditch, lateral, drain, dam, or appurtenance is being used or is to be used for said conduct or drainage of water, shall be guilty of a misdemeanor.

18-4307 — Injury to measuring devices

18-4307. Injury to measuring devices. Any person or persons who shall cut, break, injure, destroy, enlarge, change, or alter any headgate, sluiceway, weir, water box, or other measuring device, the property of any irrigation district, corporation or association of persons, or in the possession of, or in the use of, said irrigation district, corporation, or association, or the property of another, shall be guilty of a misdemeanor. Any person or persons who shall change, alter, destroy, disturb, enlarge, or interfere with any headgate, dam, weir, water box, or other measuring device, made, placed, used or regulated by any duly appointed, elected, or authorized water master, deputy water master, ditch walker, ditch rider, engineer, or other authorized agent of any irrigation company, corporation or association or person, when said measuring device is being used or is to be used for the measurement of water, shall be guilty of a misdemeanor.

18-4308 — change of ditch, canal, lateral, drain, or buried irrigation conduit

18-4308. change of ditch, canal, lateral, drain, or buried irrigation conduit. Any person who relocates or places in pipe, culvert, or other conduit or buries a ditch, canal, lateral, or drain contrary to the provisions of section 42-1203 , Idaho Code, shall be guilty of a misdemeanor.

18-4309 — Unauthorized tampering with measuring devices

18-4309. Unauthorized tampering with measuring devices. Every person who shall willfully waste water for irrigation, or who shall willfully open, close, change or disturb, or interfere with, any headgate or water box or valve or measuring or regulating device, without authority, shall be guilty of a misdemeanor. The water masters or their assistants, within their

district, shall have power to arrest any person or persons offending and turn them over to the sheriff or the nearest peace officer of the county in which such offense is committed, and immediately upon delivering such person so arrested into the custody of either of such officers, it shall be the duty of the water master making such arrest to make complaint, in writing and under oath, before the magistrate judge of such county, against the person so arrested.

18-4310 — Neglect to deliver water — Interference with delivery

18-4310. Neglect to deliver water — Interference with delivery. Any person who willfully and wrongfully prevents or interferes with the proper delivery of water to the person or persons having a right thereto shall be guilty of a misdemeanor.

CHAPTER 44

18-4401 — Grand juror acting after challenge against him

18-4401. Grand juror acting after challenge against him. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part, in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

18-4402 — Disclosing indictment before arrest of defendant

18-4402. Disclosing indictment before arrest of defendant. Every grand juror, prosecuting attorney, clerk, judge or other officer who, except by issuing or in executing a warrant of arrest, wilfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

18-4403 — Disclosing proceedings before grand jury

18-4403. Disclosing proceedings before grand jury. Every grand juror who, except when required by a court, wilfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

18-4404 — Tampering with jury list

18-4404. Tampering with jury list. Every person who adds any names to the list of persons selected to serve as jurors, either by placing the same in the jury box or otherwise, or extracts any name therefrom, or destroys the jury box or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

18-4405 — Certifying to false jury lists

18-4405. Certifying to false jury lists. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly or wilfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury box the same names that are on the certified list, and no more and no less than are on such list, is guilty of a felony.

CHAPTER 45

18-4501 — kidnapping defined

18-4501. kidnapping defined. Every person who wilfully: 1. Seizes, confines, inveigles or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of this state, or in any way held to service or kept or detained against his will; or, 2. Leads, takes, entices away or detains a child under the age of sixteen (16) years, with intent to keep or conceal it from its custodial parent, guardian or other person having lawful care or control thereof, or with intent to steal any article upon the person of the child; or, 3. Abducts, entices or by force or fraud unlawfully takes or carries away another at or from a place without the state, or procures, advises, aids or abets such an abduction, enticing, taking or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state; or, 4. Seizes, confines, inveigles, leads, takes, entices away or

kidnaps another against his will to extort money, property or any other thing of value or obtain money, property or reward or any other thing of value for the return or disposition of such person is guilty of kidnapping.

18-4502 — First degree kidnapping — Ransom

18-4502. First degree kidnapping — Ransom. Any kidnapping committed for the purpose of obtaining money, property or any other thing of value for the return or disposition of such person kidnapped, or committed for the purpose of raping, or committing serious bodily injury upon the person kidnapped, or committing any lewd and lascivious act upon any child under the age of sixteen (16) years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of any person, shall be kidnapping in the first degree.

18-4503 — Second degree kidnapping when not for ransom

18-4503. Second degree kidnapping when not for ransom. Every other kidnapping committed shall be kidnapping in the second degree.

18-4504 — Punishment — Liberation of kidnapped person

18-4504. Punishment — Liberation of kidnapped person. 1. Every person guilty of kidnapping in the first degree shall suffer death or be punished by imprisonment in the state prison for life, provided a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4504A , Idaho Code, and provided further that the sentence of death shall not be imposed if prior to its imposition the kidnapped person has been liberated unharmed. 2. Kidnapping in the second degree is punishable by imprisonment in the state prison not less than one (1) nor more than twenty-five (25) years.

18-4504A — Notice of intent to seek death penalty

18-4504A. Notice of intent to seek death penalty. A sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty with the court and served the notice upon the defendant or his attorney of record no later than thirty (30) days after entry of a plea. A notice of intent to seek the death penalty may be withdrawn at any time prior to the imposition of sentence.

18-4505 — Inquiry into mitigating or aggravating circumstances — Sentence in kidnapping cases — Statutory aggravating circumstances — Judicial findings

18-4505. Inquiry into mitigating or aggravating circumstances — Sentence in kidnapping cases — Statutory aggravating circumstances — Judicial findings. 1. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral or written suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct. 2. Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless a notice of intent to seek the death penalty was filed and served as provided in section 18-4504A , Idaho Code, and the court finds at least one (1) statutory aggravating circumstance. Where the court finds a statutory aggravating circumstance the court shall sentence the defendant to death unless the court finds that mitigating circumstances which may be presented outweigh the gravity of any aggravating circumstance found and make imposition of death unjust. 3. In all cases in which the death penalty may be imposed, the court shall, after conviction, order a presentence investigation to be conducted according to such procedures as are prescribed by law and shall thereafter convene a sentencing hearing for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. At such hearing, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Should any party present aggravating or mitigating evidence which has not previously been disclosed to the opposing party or parties, the court shall, upon request, adjourn the hearing until the party desiring to do so has had a reasonable opportunity to respond to such evidence. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing. Evidence offered at trial but not admitted may be repeated or amplified if necessary to complete the record. 4. Upon the conclusion of the evidence and arguments in mitigation and aggravation the court shall make written findings setting forth any statutory aggravating circumstance found. Further, the court shall set forth in writing any mitigating factors considered and, if the court finds that mitigating circumstances outweigh the gravity of any aggravating circumstance found so as to make unjust the imposition of the death penalty, the court shall detail in writing its reasons for so finding. 5. Upon making the prescribed findings, the court shall impose sentence within the limits fixed by law. 6. The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable

doubt before a sentence of death can be imposed:

(a) The victim of the kidnapping was subjected by the kidnapper or those acting in concert with him to torture, maiming or the intentional infliction of grievous mental or physical injury.

(b) The defendant knowingly created a great risk of death to any person, including the kidnapped.

(c) The kidnapping was committed for remuneration or the promise of remuneration or the defendant employed another to commit the kidnapping for remuneration or the promise of remuneration.

(d) The kidnapping was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(e) The kidnapping was committed for the purpose of murdering or maiming a witness or potential witness in a judicial proceeding.

18-4506 — Child custody interference defined — Defenses — Punishment

18-4506. Child custody interference defined — Defenses — Punishment. 1. A person commits child custody interference if the person, whether a parent or other, or agent of that person, intentionally and without lawful authority:

(a) Takes, entices away, keeps or withholds any minor child from a parent or another person or institution having custody, joint custody, visitation or other parental rights, whether such rights arise from temporary or permanent custody order, or from the equal custodial rights of each parent in the absence of a custody order; or

(b) Takes, entices away, keeps or withholds a minor child from a parent after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights. 2. It shall be an affirmative defense to a violation of the provisions of subsection 1. of this section that:

(a) The action is taken to protect the child from imminent physical harm;

(b) The action is taken by a parent fleeing from imminent physical harm to himself;

(c) The action is consented to by the lawful custodian of the child; or

(d) The child is returned within twenty-four (24) hours after expiration of an authorized visitation privilege. 3. A violation of the provisions of subsection 1. of this section shall be a felony, unless the defendant did not take the child outside the state, and the child was voluntarily returned unharmed prior to the defendant’s arrest in which case the violation shall be reduced to a misdemeanor. 4. Any reasonable expenses incurred by a lawful custodian in locating or attempting to locate a child taken in violation of the provisions of subsection 1. of this section may be assessed against the defendant at the court’s discretion in accordance with chapter 53, title 19 , Idaho Code.

18-4507 — Short title

18-4507. Short title. Sections 18-4507 , 18-4508 , 18-4509 , 18-4510 and 18-4511 , Idaho Code, may be cited as the "Missing Child Reporting Act."

18-4508 — Definitions

18-4508. Definitions. As used in sections 18-4507 , 18-4508 , 18-4509 , 18-4510 and 18-4511 , Idaho Code:

(1) "Law enforcement agency" means any law enforcement agency of the state or any political subdivision of the state, including the Idaho state police and any municipal or county sheriff department.

(2) "Missing child" means an individual who is less than eighteen (18) years of age who is reported to any law enforcement agency as abducted or lost.

(3) "Runaway child" means an individual who is less than eighteen (18) years of age who is reported to any law enforcement agency as a runaway.

(4) "State registrar" means the employee so designated by the director of the department of health and welfare.

18-4509 — Missing child reports — Law enforcement agencies — Duties

18-4509. Missing child reports — Law enforcement agencies — Duties.

(1) Upon receiving a report of a missing or runaway child, a law enforcement agency shall immediately enter identifying and descriptive information about the child into the national crime information center computer. Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the system.

(2) If the local law enforcement agency has reason to believe that a missing or runaway child is enrolled in an Idaho elementary or secondary school, it shall notify that school of the report, at which time the school shall flag the missing child's record pursuant to section 18-4511 , Idaho Code.

(3) The Idaho state police shall report the entries made by local law enforcement in the national crime information center to the state registrar. Upon learning of the return of a missing or runaway child, the Idaho state police shall so notify the state registrar of this state if the child was born in Idaho, or the appropriate officer in the state where the child was born, and the school informed under the provisions of subsection (2) of this section.

(4) The Idaho state police shall by rule determine the frequency, manner and form of notices and reports required by this act.

(5) Immediately after a missing or runaway child is returned, the law enforcement agency having jurisdiction over the investigation shall clear the entry from the national crime information center computer.

18-4510 — Birth records of missing children — State registrar's duties

18-4510. Birth records of missing children — State registrar's duties. 1. Upon notification by a law enforcement agency that a child born in the state is missing or has run away, the state registrar shall flag the child's birth certificate record in such a manner that whenever a copy of the birth certificate or information concerning the birth record is requested, the state director shall be alerted to the fact that the certificate is that of a missing or runaway child. 2. In response to any inquiry, the state registrar or any clerk appointed by him or any employee of vital statistics shall not provide a copy of a birth certificate or information concerning the birth record of any missing or runaway child whose birth record has been flagged pursuant to this section, and shall immediately notify the law enforcement agency having jurisdiction over the investigation of the missing or runaway child. Inquiries shall be handled in the following manner:

(a) When a copy of the birth certificate of a missing or runaway child whose record has been flagged is requested in person, the employee receiving the request shall immediately notify his supervisor or the state registrar. The person making the request shall complete a form supplying his name, address, telephone number and relationship to the missing or runaway child and the name, address and birth date of the missing or runaway child. The driver's license of the person making the request, if available, shall be photocopied and returned to him. He shall be informed that the birth certificate will be mailed to him when it is released. The employee shall note the physical description of the person making the request, and, upon that person's departure from the vital statistics office, the supervisor or state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and provide it with the information obtained pursuant to subsection 2(a) of this section. The state registrar shall retain the form completed by the person making the request.

(b) When a copy of the birth certificate of a missing or runaway child whose birth record has been flagged is requested in writing, the state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and shall provide a copy of the written request. The state registrar shall retain the original written request. 3. Upon notification by a law enforcement agency that a missing or runaway child has been returned or when the child reaches his eighteenth birthday, the state registrar shall remove the flag from the child's birth record.

18-4511 — School duties — Records of missing child — Identification upon enrollment — Transfer of student records

18-4511. School duties — Records of missing child — Identification upon enrollment — Transfer of student records.

(1) Upon notification by the Idaho state police of a missing or runaway child report, the school in which the child is currently enrolled shall flag the record of that child in such a manner that whenever a copy of or information regarding the record is requested, the school shall be alerted to the fact that the record is that of a missing or runaway child. The school shall immediately report to the local law enforcement agency any request concerning flagged records or knowledge as to the whereabouts of the missing or runaway child. Upon notification by the Idaho state police of the return of the missing or runaway child, the school shall remove the flag from the child's record.

(2) Upon enrollment of a student for the first time in a public or private elementary or secondary school, the school shall notify in writing the person enrolling the student that within thirty (30) days he must provide either a certified copy of the student's birth certificate or other reliable proof of the student's identity and birthdate, which proof shall be accompanied by an affidavit explaining the inability to produce a copy of the birth certificate. Other reliable proof of the student's identity and birthdate may include a passport, visa or other governmental documentation of the child's identity.

(a) Upon the failure of a person enrolling a student to comply with the provisions of this subsection, the school shall immediately notify the local law enforcement agency of such failure, and shall notify the person enrolling the student, in writing, that he has ten (10) additional days to comply.

(b) The school shall immediately report to the local law enforcement agency any documentation or affidavit received pursuant to this subsection which appears inaccurate or suspicious in form or content.

(3) Within fourteen (14) days after enrolling a transfer student, the public or private elementary or secondary school shall request directly from the student's previous school a certified copy of his record. The requesting school shall exercise due diligence in obtaining the copy of the record requested. A student transferring schools within the same school district need not provide proof of identity and birthdate if the student's record already contains such verified information. Any public or private elementary or secondary school which is requested to forward a copy of a transferred student's record to the student's new school shall comply within ten (10) days of receipt of the request, unless the record has been flagged pursuant to subsection (1) of this section, in which case the copy shall not be forwarded and the school shall notify the local law enforcement agency of the request for a flagged record; provided however, that any private school accredited by the state board of education which has an agreement allowing retention of a student's record when such student's tuition or fees have not been paid may comply with the provisions of this subsection by notifying the student's new school that the transferred student's records are being held for nonpayment of tuition or fees. However, such private school shall be required to notify the local law enforcement agency if the student's record has been flagged pursuant to the provisions of subsection (1) of this section, even if the student's tuition and fees have not been paid.

(4) It shall be the duty of the local law enforcement agency to immediately investigate each report received from a school of a failure to comply with the provisions of subsection (2) or (3) of this section.

(5) Failure of a parent, or person in custody of a child, or a person enrolling a student, to comply with the documentation requirements of this section after a lawful request by a law enforcement agency, or to cooperate with a law enforcement investigation lawfully conducted pursuant to this section, shall constitute a misdemeanor.

18-4512 — Missing persons clearinghouse

18-4512. Missing persons clearinghouse.

(1) The Idaho state police shall establish a missing persons clearinghouse as a resource center of information and assistance regarding missing and unidentified persons.

(2) The director of the Idaho state police shall appoint a coordinator to manage appropriate programs for addressing the problem of missing persons, which may include the following:

(a) Collecting and maintaining computerized data and investigative information on missing and unidentified persons in Idaho;

(b) Establishing access to the national crime information center and to other sources of automated information;

(c) Distributing information to public and private nonprofit agencies that will assist in the location and recovery of missing persons;

(d) Operating a toll-free telephone hotline for accepting reports relating to missing persons;

(e) Publishing a directory of missing persons;

(f) Compiling statistics on missing persons cases handled and resolved each year;

(g) Developing and conducting training on issues relating to missing persons;

(h) Developing and distributing educational and other information regarding the prevention of abduction and sexual exploitation of children.

(3) The Idaho state police may accept gifts and grants from governmental agencies and private nonprofit organizations to achieve the purposes of the clearinghouse.

(4) The Idaho state police shall publish an annual report on the activities and achievements of the clearinghouse.

(5) The Idaho state police shall determine, by rule, the type and content of information to be collected by the clearinghouse and the manner of collecting and disseminating that information.

(6) The clearinghouse coordinator, in cooperation with the office of the superintendent of public instruction, shall develop a coordinated plan for the distribution of information to teachers and students in the school districts of the state regarding

missing and runaway children. The superintendent of public instruction shall encourage local school districts to cooperate by providing the Idaho state police with information on any missing and runaway children that may be identified within the district.

CHAPTER 46

18-4616 — Defacing marks on logs or lumber

18-4616. Defacing marks on logs or lumber. Every person who cuts out, alters, mutilates, changes, disfigures, or defaces any legally recorded mark or marks made upon any log, lumber, or wood, or re-marks or puts a false mark thereon with intent to prevent the owner from discovering its identity, or places any mark upon, or cuts, saws, manufactures, or in any manner appropriates to his own use, or to the use of any other person, any prize log or timber, is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000), or imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. In any prosecution for a violation of the provisions of this section relating to prize logs it shall be sufficient to prove that such logs are prize logs without further proof of ownership.

18-4617 — Stealing rides on trains

18-4617. Stealing rides on trains. Every person who shall, at any place within this state, ride or attempt to ride upon any locomotive engine, railroad car, railroad train, or trains of any character, in or upon any part thereof, for the purpose or with the intent of stealing a ride thereon, or who shall at any place, within this state, climb upon, hold to, or in any manner attach himself to, any locomotive engine or railroad car or railroad train or trains of any character, while the same are in motion, shall be guilty of a misdemeanor: provided, that this section shall not apply to any employee of a railroad company operating such train, locomotive or car, nor to any person operating such train, locomotive or car, nor to any person having business with, or acting under legal authority of, such railroad company.

18-4618 — Stealing rides on trains — Authority of conductors and engineers to arrest

18-4618. Stealing rides on trains — Authority of conductors and engineers to arrest. Authority is hereby given to and conferred upon railroad conductors and engineers of railroad trains, to immediately arrest, without warrant or other process, any person or persons violating the preceding section, and deliver such persons to any peace officer: provided, that nothing in this section contained shall be construed to restrict the authority or duty of the regular officer within the state of making arrests for said offense.

18-4619 — Stealing rides — Venue of action

18-4619. Stealing rides — Venue of action. Any person charged with a violation of section 18-4617 may be tried in any county in this state through which such train carrying such person may pass, or in the county in which such violation may have occurred or may be discovered.

18-4620 — Stealing rides — Punishment

18-4620. Stealing rides — Punishment. Every person who shall be convicted of a violation of any of the offenses mentioned in section 18-4617 shall be punished by imprisonment in the county jail for a period not exceeding thirty days, or by a fine of not more than $60.00, or by both such fine and imprisonment.

18-4621 — Stealing electric current — Tampering with meters

18-4621. Stealing electric current — Tampering with meters. Whoever shall without permission or authority of any person, firm or corporation engaged in the generation or distribution of electricity, make connections, or cause connections to be made, by wire or wires or by any other device, with the wires, cables or conductors, or any of them, of any such person, firm or corporation, for the purpose of obtaining or diverting electric current from such wires, cables or conductors; or whoever shall, without permission or authority from any person, firm or corporation using any meter or meters erected or set up for the purpose of registering or recording the amount of electric current supplied to any customer of such person, firm or corporation within this state, connect or cause to be connected by wire or any other device, any such meter or meters, or change or shunt the wiring leading to or from any such meter or meters, or by any device or appliance or means whatsoever tamper with any such meter or meters in such manner that such meter or meters do not measure or record the full amount of electric current supplied to such customer, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment: provided, that nothing herein contained shall

be deemed to affect the right of any person, firm or corporation to recover by action in any court of competent jurisdiction damages for any injury done by such unlawful acts.

18-4622 — Stealing electric current — Accessories liable as principals

18-4622. Stealing electric current — Accessories liable as principals. Any person or persons aiding, abetting or counseling the acts, or any of them, mentioned in the preceding section, shall, upon conviction thereof, be equally guilty with the principals and subject to the same penalties.

18-4623 — Stealing electric current — Evidence of guilt

18-4623. Stealing electric current — Evidence of guilt. In all prosecutions under the two (2) preceding sections, proof that any of the acts herein forbidden were done on or about the premises owned or occupied by the defendant charged with the commission of such offense, or that he received the benefit of any such electric current on account of the commission of such acts, shall be prima facie evidence of the guilt of such defendant.

18-4624 — Taken or converted merchandise as theft

18-4624. Taken or converted merchandise as theft. A person steals property and commits theft by the alteration, transfer or removal of any label, price tag, marking, indicia of value or any other markings which aid in the determination of value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment, for the purpose of attempting to purchase such merchandise either personally or in consort with another, at less than the retail price with the intention of depriving the merchant of the value of such merchandise.

18-4625 — Taken or converted merchandise — Evidence

18-4625. Taken or converted merchandise — Evidence. In any prosecution for a violation of this chapter, photographs of the goods or merchandise alleged to have been taken or converted shall be deemed competent evidence of such goods or merchandise and shall be admissible in any proceeding, hearing or trial to the same extent as if such goods and merchandise had been introduced as evidence. Such photographs shall bear a written description of the goods or merchandise alleged to have been taken or converted, the name of the owner of such goods or merchandise, or the store or establishment wherein the alleged offense occurred, the name of the accused, the name of the arresting peace officer, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting peace officer, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred.

18-4626 — Willful concealment of goods, wares or merchandise — Defense for detention

18-4626. Willful concealment of goods, wares or merchandise — Defense for detention.

(a) Whoever, without authority, willfully conceals the goods, wares or merchandise of any store or merchant, while still upon the premises of such store or merchant, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. Goods, wares or merchandise found concealed upon the person shall be prima facie evidence of a willful concealment.

(b) Any owner, his authorized employee or agent of any store or merchant, apprehending or detaining a person on or in the immediate vicinity of the premises of any store or merchant, for the purpose of investigation or questioning as to the ownership of any goods, wares or merchandise, shall have as a defense in any action, civil or criminal, that such detention of the person or persons was in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the store or merchant, his authorized employee or agent, and that such peace officer, owner, employee or agent had probable cause to believe that the person so detained was committing or attempting to commit an offense as set forth in subsection (a) of this section. "Reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the store or merchant relative to ownership of the merchandise.

18-4627 — Transportation of coniferous trees — Proof of ownership required

18-4627. Transportation of coniferous trees — Proof of ownership required. It shall be unlawful for any person to transport on the highways of this state, outside of incorporated cities, more than two (2) coniferous trees without proof of ownership. Such proof of ownership shall consist of one (1) or more of the following:

(1) A tag designating the grower or producer, and/or the vendor of the tree; such tag shall be attached firmly to the branches or trunk of the tree;

(2) A permit issued by the proper state or federal agencies which shall specify:

(a) The date of its execution;

(b) The name of the permittee;

(c) The location or area where the trees were harvested; and

(d) The amount or number of trees authorized to be cut.

(3) A bill of sale showing title thereto, which shall specify:

(a) The date of its execution;

(b) The name and address of the vendor or donor of the trees;

(c) The name and address of the vendee or donee of the trees;

(d) The number of trees, by species, sold or transferred by the bill of sale; and

(e) The property from which the trees were taken.

(4) A United States department of agriculture and/or a state of Idaho marketing service grade inspection tag shall be acceptable as proof of ownership when such tags specify:

(a) The date of inspection;

(b) The name and address of the grower or producer; and

(c) The species and grade of the trees. The foregoing provisions do not apply to:

(1) The transportation of trees in the course of transplantation, with their roots intact.

(2) The transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed.

(3) The transportation of coniferous trees by the owner of the land from which they were taken or his agent.

18-4628 — Transportation of forest products — Proof of ownership required — Exceptions

18-4628. Transportation of forest products — Proof of ownership required — Exceptions.

(a) It shall be unlawful and constitute a misdemeanor for any person, firm, company, or business to transport on the public highways of this state any load of forest products, including coniferous trees, Christmas trees, sawlogs, poles, cedar products, pulp logs, fuelwood, etc., without proof of ownership. Such proof of ownership shall consist of one or more of the following:

(1) A permit, contract, or other legal instrument issued by the landowner or proper state or federal agencies which shall specify:

(a) Date of execution;

(b) Name and address of permittee;

(c) Location or area by legal description where forest products were harvested;

(d) Estimated amount, volume, species, and class of forest products authorized to be cut and removed;

(e) Delivery or scaling point;

(f) Name and address of purchaser of forest products if different than permittee.

(2) A bill of sale showing title thereto, which shall specify:

(a) Date of execution;

(b) Name and address of the vendor or donor of the forest products;

(c) Name and address of the vendee or donee of the forest products;

(d) Number, volume, species, and class of forest products sold or transferred by the bill of sale;

(e) Property, legal description, from which the forest products were cut and removed.

(3) A log or product load receipt or ticket issued by the seller (and) is a contract or permit condition authorizing removal of forest products. After scaling, load receipts or tickets shall be acceptable as proof of ownership when such tickets or load

receipts specify:

(a) Name of sale and purchaser;

(b) Date load removed;

(c) Name of truck driver;

(d) Sale contract/permit number;

(e) Number, volume, species and class of forest products covered by the load receipts or tickets.

(b) The foregoing provisions shall not apply to:

(1) Transportation of wood chips, sawdust and bark;

(2) Transportation of forest products by the owner of the land from which forest products were taken or his agent;

(3) Transportation of two (2) or less coniferous trees; or

(4) Transportation of trees in the course of transplantation with their roots intact.

18-4628A — Penalty for purchase without proof of ownership

18-4628A. Penalty for purchase without proof of ownership. It is unlawful and a misdemeanor for any person, firm, company, or business to purchase any load of forest products, including coniferous trees, Christmas trees, sawlogs, poles, cedar products, pulp logs, fuelwood, etc., without proof of ownership as specified in subsection (a) of section 18-4628 , Idaho Code, or to fail to retain a copy of that proof of ownership for a period of at least one (1) year from the date of purchase.

18-4629 — Penalty for transportation of forest products without a permit, contract, bill of sale, or product load receipt

18-4629. Penalty for transportation of forest products without a permit, contract, bill of sale, or product load receipt. Violation of the provisions of this section 18-4628 , Idaho Code, shall constitute a misdemeanor and, upon conviction, be punishable by a fine of not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both.

18-4630 — Illegal use of documents

18-4630. Illegal use of documents. It is unlawful for any person, firm, company, or business to use any of the following documents for fraudulent or illegal purposes:

(a) Log or product load receipt or ticket, permit, contract, or other instrument under the transportation of forest products act, sections 18-4627 through 18-4630 , Idaho Code;

(b) Certificates of compliance under the Idaho forestry act, sections 38-101 through 38-133 , Idaho Code;

(c) Certificate of notification under the Idaho forest practices act, sections 38-1301 through 38-1312 , Idaho Code. Any person, firm, company, or business which knowingly uses any of the above mentioned documents in a fraudulent or illegal manner is guilty of a felony.

18-4631 — Forest sabotage — Penalty

18-4631. Forest sabotage — Penalty.

(1) Every person who maliciously drives or places, in any tree, saw-log, shingle-bolt or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws, knowing that the tree is intended to be harvested or that the saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber or other wood product, is guilty of a felony.

(2) Any person who violates the provisons of subsection (1) of this section and causes great bodily injury to another person other than an accomplice shall be sentenced to an extended term of imprisonment pursuant to section 19-2520B , Idaho Code.

CHAPTER 47

18-4701 — Alteration of bills

18-4701. Alteration of bills. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

18-4702 — Alteration of enrolled copies

18-4702. Alteration of enrolled copies. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the legislature, is guilty of felony.

18-4703 — Offering bribes to legislators

18-4703. Offering bribes to legislators. Every person who gives or offers to give a bribe to any member of the legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is guilty of a felony.

18-4704 — Legislators receiving bribes

18-4704. Legislators receiving bribes. Every member of either of the houses composing the legislature of this state who asks, receives or agrees to receive, any bribe, upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give, any official vote in consideration that another member of the legislature shall give any such vote either upon the same or another question, is guilty of a felony.

18-4705 — Refusal to testify before legislature

18-4705. Refusal to testify before legislature. Every person who, being summoned to attend as witness before either house of the legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons, and every person who, being present before either house of the legislature or any committee thereof, wilfully refuses to be sworn or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers or documents in his possession or under his control, is guilty of a misdemeanor.

18-4706 — Disqualification to hold office on conviction

18-4706. Disqualification to hold office on conviction. Every member of the legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state.

CHAPTER 48

18-4801 — Libel defined

18-4801. Libel defined. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

18-4802 — Punishment for libel

18-4802. Punishment for libel. Every person who wilfully, and with a malicious intent to injure another, publishes, or procures to be published, any libel, is punishable by fine not exceeding $5000, or imprisonment in the county jail not exceeding six (6) months.

18-4803 — Truth may be proved — Malice — Jury to determine law and fact

18-4803. Truth may be proved — Malice — Jury to determine law and fact. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury has the right to determine the

law and the fact.

18-4804 — Malice presumed

18-4804. Malice presumed. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

18-4805 — Sufficiency of publication

18-4805. Sufficiency of publication. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

18-4806 — Liability of authors, editors and proprietors

18-4806. Liability of authors, editors and proprietors. Each author, editor and proprietor of any book, newspaper or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

18-4807 — Report of public proceeding

18-4807. Report of public proceeding. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

18-4808 — Limitation on privilege in reporting public proceedings

18-4808. Limitation on privilege in reporting public proceedings. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

18-4809 — Threats to publish libel — Extortion

18-4809. Threats to publish libel — Extortion. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

CHAPTER 49

18-4901 — Lottery defined

18-4901. Lottery defined. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. The pari-mutuel system used in racing shall not constitute a lottery, so long as it is conducted in conformity with the provisions of chapter 25, title 54 , Idaho Code.

18-4902 — Engaging in lottery

18-4902. Engaging in lottery. Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

18-4903 — Traffic in lottery tickets

18-4903. Traffic in lottery tickets. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share or interest, or any paper, certificate or instrument, purporting, or understood to be, or to represent any ticket, chance, share or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

18-4904 — Assisting in lottery

18-4904. Assisting in lottery. Every person who aids or assists, either by printing, writing, publishing, or otherwise, in setting up, managing or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, or in

advertising an illegal lottery, is guilty of a misdemeanor.

18-4905 — Maintaining lottery office

18-4905. Maintaining lottery office. Every person who opens, sets up, or keeps by himself or any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing or otherwise, advertises or publishes the setting up, opening or using of any such office, is guilty of a misdemeanor.

18-4906 — Lottery insurance

18-4906. Lottery insurance. Every person who insures or receives consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn, or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to pay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn, at any particular time, in any particular order, or who promises or agrees to pay any sum of money, or deliver any goods, things in action, or property, or forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

18-4907 — Search, seizure, and confiscation

18-4907. Search, seizure, and confiscation. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the state. And whenever any judge shall have knowledge or receive satisfactory information of the violation of any of the provisions of this chapter within his district or county, it shall be his duty forthwith to issue his warrant, directed to the sheriff or constable, to seize and bring before him such moneys and property offered for sale or distribution. And, upon the conviction of any person or persons for violation of any of the provisions of this chapter, any property so seized as provided in this section, shall be sold by the sheriff or constable at public auction and the proceeds thereof paid over to the county treasurer of said county for the county school fund.

18-4908 — Permitting premises to be used for lottery

18-4908. Permitting premises to be used for lottery. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

18-4909 — Exceptions

18-4909. Exceptions. The provisions of this chapter shall not apply to government land drawings, or to Carey act land drawings, or to the partitioning or division of real property and improvements thereon between joint owners or tenants in common by lot or any other method that such joint owners or tenants in common or their representative may agree upon. The provisions of this chapter shall not apply to advertising and promotional activities, whether or not conducted by mass media techniques, in which prizes may be awarded.

CHAPTER 50

18-5001 — Mayhem defined

18-5001. Mayhem defined. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures or renders it useless, or cuts out or disables the tongue, puts out an eye, slits the nose, ear or lip, is guilty of mayhem.

18-5002 — Punishment for mayhem

18-5002. Punishment for mayhem. Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years.

18-5003 — Cannibalism defined — Punishment

18-5003. Cannibalism defined — Punishment.

(1) Any person who wilfully ingests the flesh or blood of a human being is guilty of cannibalism.

(2) It shall be an affirmative defense to a violation of the provisions of this section that the action was taken under extreme life-threatening conditions as the only apparent means of survival.

(3) Cannibalism is punishable by imprisonment in the state prison not exceeding fourteen (14) years.

CHAPTER 54

18-5401 — Perjury defined

18-5401. Perjury defined. Every person who, having taken an oath that he will testify, declare, depose, or certify truly, before any competent tribunal, legislative committee, officer, or person in any of the cases in which such an oath may by law be administered, wilfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

18-5402 — Oath defined

18-5402. Oath defined. The term "oath" as used in section 18-5401 , Idaho Code, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated, including a certification or declaration under penalty of perjury permitted by the law of this state, whether subscribed within or without this state.

18-5403 — Oath of office — Portion relating to future duties not included

18-5403. Oath of office — Portion relating to future duties not included. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two (2) preceding sections.

18-5404 — Irregularity in administering oath no defense

18-5404. Irregularity in administering oath no defense. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

18-5405 — Incompetency of witness no defense

18-5405. Incompetency of witness no defense. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

18-5406 — Ignorance of materiality no defense

18-5406. Ignorance of materiality no defense. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

18-5407 — Deposition, when complete

18-5407. Deposition, when complete. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

18-5408 — Unqualified statement of unknown fact

18-5408. Unqualified statement of unknown fact. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

18-5409 — Punishment for perjury

18-5409. Punishment for perjury. Perjury is punishable by imprisonment in the state prison not less than one (1) or more than fourteen (14) years.

18-5410 — Subornation of perjury

18-5410. Subornation of perjury. Every person who wilfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

18-5411 — Perjury resulting in execution of innocent person

18-5411. Perjury resulting in execution of innocent person. Every person who, by wilful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death.

18-5412 — Defendant's testimony may be used to prove perjury

18-5412. Defendant's testimony may be used to prove perjury. The various sections of this code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

18-5413 — Providing false information to law enforcement officers, government agencies, or specified professionals

18-5413. Providing false information to law enforcement officers, government agencies, or specified professionals.

(1) A person is guilty of a misdemeanor if he knowingly gives or causes to be given false information to any law enforcement officer, any state or local government agency or personnel, or to any person licensed in this state to practice social work, psychology or counseling, concerning the commission of an offense, knowing that the offense did not occur or knowing that he has no information relating to the offense or danger.

(2) A person is guilty of a misdemeanor if he knowingly gives or causes to be given false information regarding his or another's identity to any law enforcement officer investigating the commission of an offense.

18-5414 — Intentionally making false statements

18-5414. Intentionally making false statements. A person is guilty of a misdemeanor if he willfully and intentionally gives or causes to be given false information to any court, court personnel, court clerk or any state or local government agency or personnel in the application or request for a domestic violence protective order pursuant to chapter 63, title 39 , Idaho Code.

18-5415 — false report of child abuse, abandonment, or neglect

18-5415. false report of child abuse, abandonment, or neglect. Any person who intentionally and willfully makes a report of child abuse, abandonment, or neglect to a law enforcement agency or the department of health and welfare knowing such report to be false shall be guilty of a misdemeanor.

CHAPTER 55

18-5501 — Poisoning food, medicine or wells

18-5501. Poisoning food, medicine or wells. Every person who wilfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who wilfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the state prison for a term of not less than one (1) nor more than ten (10) years.

18-5502 — Denatured alcohol — Regulation of sale and transfer

18-5502. Denatured alcohol — Regulation of sale and transfer. Denatured alcohol may be sold, given away, or transferred, in this state by any registered pharmacists, or other person. It shall be unlawful for any person to sell, give away, or transfer, denatured alcohol, preparations or compounds thereof, in any quantity, unless the container from which such denatured alcohol, preparation or compound thereof, is taken and the container in which it is delivered to the purchaser or transferee, has thereon printed in red ink the words "Denatured Alcohol," "Caution," "Poison," the name and address of the vendor or transferor, the percentage strength of grain alcohol in the contents of the container, the names of at least two readily obtainable antidotes, and the words "must not be used externally or internally," and the following caution as required by the United States government: "Completely denatured alcohol is a violent poison. It can not be applied externally to human or animal tissue without seriously injurious results. It can not be taken internally without inducing blindness and general physical decay, ultimately resulting in death." Provided nothing herein contained shall prohibit the transfer of denatured alcohol, preparation or compound thereof, direct from a container, labeled as above provided, to the radiator of any motor vehicle for anti-freeze purposes.

18-5503 — Punishment for violation of preceding section

18-5503. Punishment for violation of preceding section. Any person or persons violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six months (6), or by both such fine and

imprisonment.

CHAPTER 56

18-5601 — DEFINITIONS

18-5601. DEFINITIONS. As used in this chapter:

(1) "Benefits of such proceeds" includes but is not limited to any real or personal property obtained with or by use of proceeds as defined in this chapter; any debt, rent, or other financial obligation paid with proceeds as defined in this chapter; and any service obtained in exchange for proceeds as defined in this chapter.

(2) "Child" means a person under eighteen (18) years of age.

(3) "Commercial sexual activity" means the exchange, or the attempted exchange, of sexual contact for a fee.

(4) "Fee" means any money, service, item of real or personal property, contraband, or thing of value.

(5) "Intimate body parts" includes human genitals, pubic area, buttocks, or breasts.

(6) "Proceeds" means any money, services, item of real or personal property, contraband, or thing of value paid or exchanged for sexual contact.

(7) "Sexual contact" means any touching of the intimate body parts of another person for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual-genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.

18-5602 — Procurement — Definition and penalty

18-5602. Procurement — Definition and penalty. Any person who induces, compels, entices, or procures another person to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment for a period of no less than two (2) years and no more than twenty (20) years or by a fine of no less than one thousand dollars ($1,000) and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5603 — Receiving pay for procurement

18-5603. Receiving pay for procurement. Any person who knowingly receives a fee to procure a third person to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment for a period of no less than two (2) years and no more than twenty (20) years or by a fine of no less than one thousand dollars ($1,000) and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5604 — Paying for procurement

18-5604. Paying for procurement. Any person who pays another a fee to procure a third person to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment for no less than two (2) years and no more than twenty (20) years or by a fine of no less than one thousand dollars ($1,000) and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5605 — Detention for commercial sexual activity

18-5605. Detention for commercial sexual activity. Anyone who holds, detains, or restrains or who attempts to hold, detain or restrain another person for the purpose of compelling such person to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment for no less than two (2) years and no more than twenty (20) years or by a fine of no less than one thousand dollars ($1,000) and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5606 — receiving proceeds of illegal sexual activity

18-5606. receiving proceeds of illegal sexual activity.

(1) Any person who knowingly receives or accepts any proceeds, or the benefits of such proceeds, derived from another person engaging in sexual contact shall be guilty of a felony punishable by imprisonment for a period of not more than twenty (20) years or by a fine of not more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

(2) The person who provides sexual contact in exchange for proceeds, as set forth in subsection (1) of this section, and such person’s minor children or legal dependents incapable of self-support shall not be criminally liable pursuant to this

section.

18-5607 — INTERSTATE TRAFFICKING IN COMMERCIAL SEXUAL ACTIVITY

18-5607. INTERSTATE TRAFFICKING IN COMMERCIAL SEXUAL ACTIVITY. Any person who imports a person or persons into this state, or who exports a person or persons from this state, for the purpose of commercial sexual activity, or any person who induces, entices, or procures such activity, shall be guilty of a felony punishable by imprisonment for a period of no less than two (2) years and no more than twenty (20) years, or by a fine of no less than one thousand dollars ($1,000), and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5608 — Place OF COMMERCIAL SEXUAL ACTIVITY

18-5608. Place OF COMMERCIAL SEXUAL ACTIVITY. Any person maintaining, controlling or supporting a place where commercial sexual activity is carried on by one (1) or more persons under the control, management, or supervision of another shall be guilty of a felony punishable by imprisonment for no less than two (2) years and no more than twenty (20) years or by a fine of no less than one thousand dollars ($1,000) and no more than fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5609 — Inducing a child into commercial sexual activity — Penalties

18-5609. Inducing a child into commercial sexual activity — Penalties. Every person who induces or attempts to induce a child to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment in the state penitentiary for a period of not less than two (2) years, which may be extended to life imprisonment, or by a fine not exceeding fifty thousand dollars ($50,000), or by both such fine and imprisonment.

18-5610 — utilizing a child for commercial sexual activity — penalties

18-5610. utilizing a child for commercial sexual activity — penalties. Every person who engages in commercial sexual activity with a child shall be guilty of a felony punishable by imprisonment in the state penitentiary for a period of not less than two (2) years, which may be extended to life imprisonment, or by a fine not exceeding fifty thousand dollars ($50,000), or by both such imprisonment and fine.

18-5611 — Inducing a child to engage in commercial sexual activity — Penalties

18-5611. Inducing a child to engage in commercial sexual activity — Penalties. Any person who induces or attempts to induce a child to patronize a third person in commercial sexual activity shall be guilty of a felony.

18-5612 — property subject to criminal forfeiture

18-5612. property subject to criminal forfeiture.

(1) Any person who is found guilty of, who enters a plea of guilty or who is convicted of a violation of section 18-5602 , 18-5603 , 18-5604 , 18-5605 , 18-5606 , 18-5608 , 18-5609 , 18-5610 , 18-5611 , 18-5613 , or 18-5614 , Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and

(b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

(2) The court, in imposing sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304 , Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

18-5613 — providing commercial sexual activity

18-5613. providing commercial sexual activity.

(1) A person is guilty of providing commercial sexual activity when such person:

(a) Engages in, offers to engage in, or agrees to engage in sexual contact in return for a fee; or

(b) Loiters in or within view of any public place for the purpose of being hired to engage in sexual contact.

(2) Providing commercial sexual activity shall be a misdemeanor, provided, however, that on a third or subsequent conviction for commercial sexual activity, it shall be a felony. For purposes of this subsection, a prior conviction for prostitution counts as a conviction for providing commercial sexual activity.

(3) It shall be an affirmative defense to providing commercial sexual activity that the defendant was at the time of the alleged crime the victim of conduct prohibited by section 18-8607 , Idaho Code.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, the provisions of this section do not apply to a child who is alleged to have engaged in conduct that would, if committed by an adult, violate the provisions of this section. A commercially sexually exploited child under this subsection may be taken into shelter care by a peace officer pursuant to section 16-1608 , Idaho Code, if the conditions allowing emergency removal are met.

18-5614 — soliciting commercial sexual activity

18-5614. soliciting commercial sexual activity.

(1) A person is guilty of soliciting commercial sexual activity when he or she:

(a) Pays, offers, or agrees to pay another person a fee for the purpose of engaging in sexual contact; or

(b) Offers a third person to engage in, or agrees to provide a third person to engage in, sexual contact in return for a fee.

(2) Soliciting commercial sexual activity shall be a misdemeanor, provided that a second or subsequent conviction therefor shall be a felony. Any person convicted of a misdemeanor violation of this section shall be sentenced to a minimum period of confinement of five (5) days in jail and may be sentenced to up to one (1) year in jail or fined up to two thousand dollars ($2,000), or both. The minimum period of confinement shall be served in a county jail, and a court shall not have the power to suspend, withhold, retain jurisdiction over, or commute the minimum period of confinement imposed pursuant to this section.

18-5618 — property subject to forfeiture

18-5618. property subject to forfeiture. Property subject to criminal forfeiture under this chapter includes:

(1) "Real property" including things growing on, affixed to or found on the land; and

(2) "Tangible and intangible personal property" including rights, privileges, interests, claims and securities.

18-5619 — inventory

18-5619. inventory. Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and shall maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the Idaho state police. Upon completion of the forfeiture action, pursuant to this chapter, a final inventory shall be made that indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the Idaho state police.

18-5620 — FORFEITURE REQUEST — REBUTTABLE PRESUMPTION

18-5620. FORFEITURE REQUEST — REBUTTABLE PRESUMPTION.

(1) Property subject to criminal forfeiture under the provisions of this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 18-5612 , Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

(2) There is a rebuttable presumption that any property of a person subject to the provisions of section 18-5612 , Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

(a) The property was acquired by a person during the period of the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-5612 , Idaho Code, or within a reasonable time after such violation; and

(b) There was no likely source for such property other than the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-5612 , Idaho Code.

18-5621 — PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS

18-5621. PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS.

(1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 18-5612 , Idaho Code, for forfeiture under the provisions of this chapter upon the filing of an indictment or information charging a violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-5612 , Idaho Code, and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property that are required by law or that are necessary to protect the interests of the state of Idaho or third parties.

18-5622 — INSTITUTION OF PROCEEDINGS — THIRD PARTIES

18-5622. INSTITUTION OF PROCEEDINGS — THIRD PARTIES. Upon the filing of a part II forfeiture request pursuant to section 18-5620 , Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section 18-5612 , Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to section 18-5623 or 18-5624 , Idaho Code, or both, within five (5) days of such event.

18-5623 — PERSONAL PROPERTY — RIGHTS OF THIRD PARTIES

18-5623. PERSONAL PROPERTY — RIGHTS OF THIRD PARTIES.

(1) Within five (5) days of any of the events specified in section 18-5622 , Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained;

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement; or

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 18-5612 , Idaho Code.

(b) A co-owner or claimant of any right, title or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge

or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged.

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor. (ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general or appropriate prosecuting attorney shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated: 1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property; 2. The balance, if any, in the following order: (A) To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation. (B) To the law enforcement agency of this state that seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under the provisions of this chapter. (C) The remainder, if any, to the crime victims compensation account as established in section 72-1009 , Idaho Code.

(4) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(5) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

18-5624 — REAL PROPERTY — RIGHTS OF THIRD PARTIES

18-5624. REAL PROPERTY — RIGHTS OF THIRD PARTIES.

(1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 18-5620 , Idaho Code. The request shall be served in the same manner as complaints subject to Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used or had been used in any manner in violation of the provisions of section 18-5612 , Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property; (ii) The balance, if any, in the following order: 1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums. 2. The remainder, if any, to the crime victims compensation account as established in section 72-1009 , Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

18-5625 — proportionality

18-5625. proportionality. In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the relevant provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

18-5626 — authority of the attorney general

18-5626. authority of the attorney general. With respect to property ordered forfeited under the provisions of this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

(1) Restore forfeited property to victims of a violation of relevant provisions of this chapter, or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this chapter;

(2) Compromise claims arising under this chapter;

(3) Award compensation to persons providing information resulting in a forfeiture under this chapter; and

(4) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

18-5627 — BAR ON INTERVENTION

18-5627. BAR ON INTERVENTION. Except as provided in sections 18-5623 and 18-5624 , Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under the provisions of this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

18-5628 — JURISDICTION — DEPOSITIONS

18-5628. JURISDICTION — DEPOSITIONS. The district courts of the state of Idaho shall have jurisdiction over:

(1) Property for which forfeiture is sought that is within the state at the time the action is filed; or

(2) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state. In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 27 of the Idaho rules of civil procedure.

18-5629 — disposition of property

18-5629. disposition of property. On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(1) Payment of reasonable expenses incurred in connection with the sale.

(2) Satisfaction of exempt interests in the order of their priority.

(3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under the provisions of this chapter. When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney may:

(a) Retain it for official use; and/or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public, pursuant to section 18-5623 or 18-5624 , Idaho Code.

18-5630 — FORFEITURE OF SUBSTITUTE PROPERTY

18-5630. FORFEITURE OF SUBSTITUTE PROPERTY. If any of the property described in section 18-5612 , Idaho Code, as a result of any act or omission of the defendant:

(1) Cannot be located upon the exercise of due diligence;

(2) Has been transferred or sold to, or deposited with, a third party;

(3) Has been placed beyond the jurisdiction of the court;

(4) Has been substantially diminished in value; or

(5) Has been commingled with other property that cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 18-5612 , Idaho Code.

18-5631 — construction

18-5631. construction. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes.

CHAPTER 57

18-5701 — Misuse of public moneys by public officers and public employees

18-5701. Misuse of public moneys by public officers and public employees. No public officer or public employee shall:

(1) Without authority of law, appropriate public moneys or any portion thereof to his own use, or to the use of another; or

(2) Loan public moneys or any portion thereof; or, having the possession or control of any public moneys, make a profit, directly or indirectly out of public moneys, or use public moneys for any purpose not authorized by law; or

(3) Fail to keep public moneys in his possession until disbursed or paid out by authority of law when legally required to do so; or

(4) Deposit public moneys or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law; or

(5) Change or convert public moneys or any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or

(6) Knowingly keep any false account, or make any false entry or erasure in any account of or relating to public moneys; or fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

(7) Willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such public moneys by competent authority; or

(8) Willfully omit to transfer public moneys when such transfer is required by law; or

(9) Willfully omit or refuse to pay over to any public officer, employee or person authorized by law to receive the same, any public moneys received by him under any duty imposed by law so to pay over the same; or

(10) Knowingly use any public moneys, or financial transaction card, financial transaction card account number or credit account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys for any personal purpose or for any purpose other than for the use or benefit of the governmental entity.

18-5702 — Grading and punishment for misuse of funds

18-5702. Grading and punishment for misuse of funds.

(1) Any public employee who is not charged with the receipt, safekeeping or disbursement of public moneys and who misuses public moneys in violation of section 18-5701 , Idaho Code, is guilty of 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, if the amount of public moneys misused is less than three hundred dollars ($300).

(2) Any public officer or public employee charged with the receipt, safekeeping or disbursement of public moneys, who misuses public moneys in violation of section 18-5701 , Idaho Code, is guilty of a felony punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison for not more than five (5) years, or by both, if the amount of public moneys misused is less than three hundred dollars ($300).

(3) Except as otherwise provided in subsections (1) and (2) of this section, any public officer or public employee who misuses public moneys in violation of section 18-5701 , Idaho Code, is guilty of a felony punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.

(4) (a) When any series of violations of section 18-5701 , Idaho Code, comprised of separate incidents of misuse of public moneys in amounts less than three hundred dollars ($300) are part of a common scheme or plan, the incidents may be aggregated in one (1) count and the sum of the value of all of the incidents shall be the value considered in determining whether the amount exceeds three hundred dollars ($300).

(b) Any public officer or public employee who pleads guilty to or is found guilty of a violation of section 18-5701 , Idaho Code, more than one (1) time, irrespective of the form of the judgment(s) or withheld judgment(s), and who would otherwise be subject to a lesser punishment under subsection (1) or (2) of this section is guilty of a felony punishable as provided in subsection (3) of this section.

(5) In addition to any penalty imposed in this section, any public officer or public employee who pleads guilty to or is found guilty of a violation of section 18-5701 , Idaho Code, irrespective of the form of the judgment(s) or withheld judgment(s) shall:

(a) Be terminated for cause from the public office or employment subject to any procedures applicable to such termination; and

(b) Make restitution of any public moneys misused, and any profits made therefrom, as ordered by the court; and

(c) Notwithstanding section 18-310 , Idaho Code, and except as otherwise provided by law, be disqualified from holding any position as a public officer or public employee if such position is charged with the receipt, safekeeping or

disbursement of public moneys; and

(d) In the discretion of the court, and unless otherwise prohibited by law, be ordered to apply for distribution of any retirement moneys held by any entity on behalf of the person, in order that such moneys shall be used to make restitution to the public entity or its insurer, unless other funds are otherwise available.

18-5703 — Definitions

18-5703. Definitions. As used in this chapter:

(1) "Financial transaction card" means:

(a) 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 cardholder 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 cardholder 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

(b) Any instrument or device used in providing the cardholder 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.

(2) "Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

(3) "Governmental entity" means:

(a) The state of Idaho, including all branches, departments, divisions, agencies, boards, commissions and other governmental bodies of the state; and

(b) Counties, cities, districts and all other political subdivisions of the state of Idaho.

(4) "Public employee" means any person who is not a public officer and is employed by a governmental entity.

(5) "Public moneys" includes all bonds and evidences of indebtedness, fees, fines, forfeitures, and all other moneys belonging to or in the charge of a governmental entity or held by a public officer or public employee in his official capacity, and all financial transaction cards, financial transaction card account numbers and credit accounts issued to or for the benefit of the governmental entity.

(6) "Public officer" means any person holding public office of a governmental entity:

(a) As an elected official, by virtue of an election process, including persons appointed to a vacant elected office; or

(b) As an appointed official by virtue of a formal appointment as required by law.

CHAPTER 58

18-5801 — Use of a life jacket or flotation device in a swimming pool

18-5801. Use of a life jacket or flotation device in a swimming pool. No person shall prohibit the use of a life jacket or other flotation device in a swimming pool by an individual who, as evidenced by a statement signed by a licensed physician, suffers from a physical disability or condition which necessitates the use of the life jacket or other flotation device. Any person violating the provisions of this section shall be guilty of a misdemeanor.

18-5803 — Exposure of animal carcasses

18-5803. Exposure of animal carcasses. Every person who puts the carcass of any dead animal, or the offal of any slaughter pen, corral or butcher shop, into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one-fourth (1/4) of a mile of any city, town or village, is guilty of a misdemeanor.

18-5804 — Slaughter and sale of famished animals

18-5804. Slaughter and sale of famished animals. Every person who slaughters, offers or exposes for sale to the public any animal or animals that have been confined for forty-eight (48) hours or more without proper food, or twenty (20) hours

without water, is guilty of a misdemeanor.

18-5807 — Leaving carcasses near highways, dwellings and streams, and pollution of water used for domestic purposes

18-5807. Leaving carcasses near highways, dwellings and streams, and pollution of water used for domestic purposes. Any person who shall knowingly leave the carcass of any animal within a quarter of a mile of any inhabited dwelling, or on, along or within a quarter of a mile of any public highway or stream of water, for a longer period than twenty-four hours, without burying the same, and by such exposure or burial within 200 feet of any stream, canal, ditch, flume, or other irrigation works shall pollute or contaminate, so as to render unfit for domestic use, any natural stream of water, or the water in any canal, ditch, flume, or other irrigation works, used by others for domestic purposes, shall be guilty of a misdemeanor, and upon conviction shall be fined any sum not to exceed $100.00.

18-5808 — Permitting mischievous animal at large

18-5808. Permitting mischievous animal at large. If the owner of a mischievous animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

18-5810 — Blind persons only may use white or red and white canes

18-5810. Blind persons only may use white or red and white canes. No person, except those wholly or partially blind, shall carry or use on any street, highway, or in any other public place a cane or walking stick which is white in color, or white tipped with red.

18-5811 — Action required to avoid accident or injury to individuals with disabilities — Prohibited intentional actions — Penalties

18-5811. Action required to avoid accident or injury to individuals with disabilities — Prohibited intentional actions — Penalties.

(1) Any person, whether a pedestrian, operating a vehicle or otherwise, who approaches an individual appearing to be an individual with a disability or lawfully using an assistance device or a service dog, and who:

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

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

(2) Any person who, without justification, intentionally interferes with the use of a service dog or an assistance device by obstructing, battering, or intimidating the user or the service dog is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand five hundred dollars ($1,500), or by both.

18-5811A — Unlawful use of assistance device, assistance animal, or service dog

18-5811A. Unlawful use of assistance device, assistance animal, or service dog. Any person, not being an individual with a disability or being trained to assist individuals with disabilities, who uses an assistance device, an assistance animal, or a service dog in an attempt to gain treatment or benefits as an individual with a disability is guilty of a misdemeanor.

18-5812 — Battery to assistance animals, service dogs, and dogs-in-training — Penalties

18-5812. Battery to assistance animals, service dogs, and dogs-in-training — Penalties.

(1) Any person who:

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

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

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

18-5812A — individuals with disabilities may be accompanied by service dogs — Penalty for intentional violation

18-5812A. individuals with disabilities may be accompanied by service dogs — Penalty for intentional violation.

(1) An individual with a disability shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, housing for sale or rent, or any other place of public accommodation within the state of Idaho by reason of his being accompanied by a service dog. An individual with a disability shall be entitled to have a service dog with him in such places and while using such facilities without being required to pay any additional charges for his service dog, but shall be liable for any damage caused by his service dog.

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

18-5812B — Person may be accompanied by a service dog-in-training — Liability

18-5812B. Person may be accompanied by a service dog-in-training — Liability.

(1) A person shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, or any other place of public accommodation within the state of Idaho by reason of being accompanied by a dog-in-training. Such dog-in-training shall be properly leashed so that the person may maintain control of the dog.

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

(3) The school or organization responsible for the dog-in-training shall be liable for any damages or injuries caused by the dog, and any third-party owner, lessor, or manager of the public property shall in no way suffer liability for damages or injuries caused by the dog-in-training.

(4) The dog-in-training shall be visually identified as a dog-in-training as provided in section 56-701A , Idaho Code.

18-5816 — Abandonment of airtight containers without removing door locks prohibited

18-5816. Abandonment of airtight containers without removing door locks prohibited. It shall be unlawful for any person or persons to abandon, or to permit to remain in an abandoned state on his premises or on premises over which he exercises control, within the state of Idaho, any ice box, refrigerator, deep freeze, or similar appliance having a door which fastens automatically and which cannot be opened from the inside, without having first removed the lock or the hinges by which said door is attached to the body of the appliance.

18-5817 — "Abandon" defined as leaving to attract children

18-5817. "Abandon" defined as leaving to attract children. "Abandon" means leaving unattended and uninclosed such appliance, in such manner and for such time that playing children may be attracted thereto, whether left upon the premises of the owner of the appliance or upon other premises.

18-5818 — Violations a misdemeanor

18-5818. Violations a misdemeanor. Any violation of this act shall constitute a misdemeanor.

CHAPTER 59

18-5901 — Public nuisance defined

18-5901. Public nuisance defined. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use,

in the customary manner, of any navigable lake, or river, stream, canal or basin, or any public park, square, street, or highway, is a public nuisance.

18-5902 — Public nuisance — Unequal damage

18-5902. Public nuisance — Unequal damage. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

18-5903 — Punishment for nuisance

18-5903. Punishment for nuisance. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

18-5904 — No smoking during public meetings

18-5904. No smoking during public meetings. For the purpose of this act, any meeting or hearing of any board, commission, council, department or agency of state, county, or local government, held within a building owned, rented, or being used by a governmental agency, to which the public is invited, or solicited, or legally entitled to attend is defined as a public meeting. Cigarette, cigar, and pipe smoking are prohibited during all periods when such public hearings or meetings are in progress.

18-5905 — Signs to be displayed

18-5905. Signs to be displayed. No smoking signs shall be displayed in the place of any such public meeting and upon request an area nearby, but outside the room in which the meeting is being held, shall be designated as an area where smoking is permitted.

18-5906 — Penalty for violation

18-5906. Penalty for violation. A violation of section 18-5904 , Idaho Code, is punishable by a fine of not less than five dollars ($5.00) nor more than ten dollars ($10.00).

CHAPTER 60

18-6001 — Permitting collision causing death

18-6001. Permitting collision causing death. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive or train, who wilfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one (1) nor more than ten (10) years.

18-6002 — Neglect to sound bell or whistle

18-6002. Neglect to sound bell or whistle. Every person in charge of a locomotive engine who, before crossing any traveled public way, omits to cause a bell to ring or steam, air, electric or other similar whistle to sound at the distance of at least eighty (80) rods from the crossing, and up to it, is guilty of a misdemeanor.

18-6006 — Injuring railroad property

18-6006. Injuring railroad property. Every person who maliciously removes, displaces, injures, or in any way interferes with, or changes, or destroys, any part of any railroad property, whether for cars propelled by steam or any other motive power, or any track of any railroad, or any branch or branchway, switch, block or other signal or signaling device, turnout, bridge, viaduct, culvert, embankment, station house or other structure or fixture, or any part thereof attached to or connected with any railroad, is punishable by imprisonment in the state prison not exceeding ten (10) years, or by fine not exceeding fifty thousand dollars ($50,000), or by both fine and imprisonment, in the discretion of the court.

18-6007 — Theft of car parts — Murder by wrecking

18-6007. Theft of car parts — Murder by wrecking. Any person or persons who shall remove, take, steal, change, add to, take from, or in any manner interfere with any journal bearings or brasses, or any parts or attachments of any locomotive, tender or car, or any fixture or attachment belonging thereto, connected with, or used in operating any locomotive, tender

or car, owned, leased or used by any railway or transportation company in this state, is guilty of a felony, and upon conviction thereof shall be subject to punishment by imprisonment in the penitentiary not less than one (1) nor more than fourteen (14) years, or by a fine of up to fifty thousand dollars ($50,000), or by both such fine and imprisonment, in the discretion of the court: provided, that if the removal of such journal bearings or brasses, fixtures or attachments, as aforesaid, shall be the cause of wrecking any train, locomotive or other car in this state, whereby the life or lives of any person or persons shall be lost as the result of the felonious or malicious stealing, interfering with or removal of the fixtures, as aforesaid, the person or persons found guilty thereof shall be liable for murder as in other cases.

18-6008 — Receiving stolen car parts

18-6008. Receiving stolen car parts. Every person who buys or receives any of the property described in section 18-6007 , Idaho Code, knowing the same to have been stolen, is guilty of a felony, and upon conviction thereof shall be subject to the punishment provided in section 18-6007 , Idaho Code.

18-6009 — Placing obstructions on tracks

18-6009. Placing obstructions on tracks. Every person who maliciously places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not less than six months.

18-6010 — Obstruction or interference with railroad

18-6010. Obstruction or interference with railroad. Any person or persons who shall wilfully or maliciously place any obstruction on any railroad track or roadbed, or street car track in this state, or who shall loosen, tear up, remove or misplace any rail, switch, frog, guard rail, cattle guard, or any part of such railroad track or roadbed or street car track, or who shall tamper with or molest any such road, roadbed or track, or who shall destroy or damage any locomotive, motor or car on said track, or who shall otherwise interfere with the maintenance or operation of such road so as to endanger the safety of any train, car, motor or engine, or so as to endanger or injure any passenger or person riding thereon, or being about the same, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for any term not exceeding twenty (20) years nor less than five (5) years.

18-6011 — Obstruction or interference with railroad — Act causing death

18-6011. Obstruction or interference with railroad — Act causing death. Any person or persons who shall, within this state, wilfully or maliciously place any obstruction upon any railroad track or roadbed or street car track, or shall misplace, remove, obstruct, detach, damage or destroy any rail, switch, frog, guard rail, cattle guard, or any other part of such railroad track or roadbed or street car track, or who shall otherwise interfere with the maintenance and operation of such road, thereby causing the death of any person, whether passenger or employee of such railroad, or street railway, or otherwise, shall, upon conviction thereof, be deemed guilty of a felony and be punished by imprisonment in the penitentiary for a term not less than five (5) years and which may extend to the natural life of such person so found guilty, or may be tried and punished for murder. But this section shall not in any way lessen the liability of the railroad company where a wreck may hereafter occur in the state of Idaho.

18-6012 — Offenses against railroads

18-6012. Offenses against railroads. Any person disturbing the peace of any traveler on any railway train, or breaking the seal or forcibly entering any car, or disturbing the contents of any car, or breaking any package therein, or breaking any package left at any depot for transportation or delivery, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

18-6015 — Prohibition on disposal of human body waste from passenger trains

18-6015. Prohibition on disposal of human body waste from passenger trains.

(1) As used in this section:

(a) "Human body waste" means excrement, feces or other waste material discharged from the human body.

(b) "Passenger train" means any train operated by a railroad company or corporation or operated by an entity created by federal law, for the primary purpose of transporting passengers.

(c) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, state, state or federal agency or entity, city, commission, or political subdivision of a state.

(2) No person operating or controlling any passenger train through or within this state may knowingly and openly place, throw, release, discharge, or deposit human body waste from a passenger train upon the right-of-way over which it operates.

(3) Any person who violates any provision of this section is guilty of a misdemeanor.

(4) The department of environmental quality and the public health districts shall enforce the provisions of this section.

CHAPTER 61

18-6101 — Rape defined

18-6101. Rape defined. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

(1) Where the victim is under the age of sixteen (16) years, the perpetrator is eighteen (18) years of age or older, and the victim is not lawfully married to the perpetrator.

(2) Where the victim is sixteen (16) or seventeen (17) years of age, the perpetrator is three (3) years or more older than the victim, and the victim is not lawfully married to the perpetrator.

(3) Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.

(4) Where the victim resists but the resistance is overcome by force or violence.

(5) Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

(6) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.

(7) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(8) Where the victim submits under the belief that the person committing the act is the victim’s spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(9) Where the victim submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(10) Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule. The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim. Males and females are both capable of committing the crime of rape as defined in this section.

18-6102 — Proof of physical ability

18-6102. Proof of physical ability. No conviction for rape can be had against one who was under the age of fourteen (14) years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

18-6103 — Penetration

18-6103. Penetration. Any sexual penetration, however slight, is sufficient to complete the crime of rape.

18-6104 — Punishment for rape

18-6104. Punishment for rape. Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence.

18-6105 — Evidence of previous sexual conduct of prosecuting witness

18-6105. Evidence of previous sexual conduct of prosecuting witness. In prosecutions for the crime of rape, evidence of the prosecuting witness' previous sexual conduct shall not be admitted nor reference made thereto in the presence of the jury, except as provided hereinafter. The defendant may make application to the court before or during the trial for the admission of evidence concerning the previous sexual conduct of the prosecuting witness. Upon such application the court shall conduct a hearing out of the presence of the jury as to the relevancy of such evidence of previous sexual conduct and shall limit the questioning and control the admission and exclusion of evidence upon trial. Nothing in this section shall limit the right of either the state or the accused to impeach credibility by the showing of prior felony convictions.

18-6106 — Restitution to victim

18-6106. Restitution to victim. Persons convicted of offenses covered under this chapter may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.

18-6110 — Sexual contact with a prisoner

18-6110. Sexual contact with a prisoner.

(1) It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A , Idaho Code, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in section 18-101A , Idaho Code.

(2) It is a felony for any supervising officer, as that term is defined in section 18-101A , Idaho Code, to knowingly have sexual contact with any parolee or probationer, as those terms are defined in section 18-101A , Idaho Code, who is not the person's spouse.

(3) For the purposes of this section "sexual contact" means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, contact between the mouth and any body part, or any willful physical contact, over or under the clothing, when the physical contact is done with the intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires of the actor or any other person, between persons of the same or opposite sex.

(4) Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.

CHAPTER 63

18-6301 — Taxation — Refusal to give assessor list of property

18-6301. Taxation — Refusal to give assessor list of property. Every person who unlawfully refuses upon demand to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name, or fraudulently refuses to give his true name, to any assessor when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

18-6302 — Use of illegal receipts

18-6302. Use of illegal receipts. Every person who uses or gives any receipt except that prescribed by law, as evidence of the payment of any poll tax, road tax or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one (1) person therein, is guilty of a misdemeanor.

18-6303 — Unlawful possession of blank licenses or poll tax receipts

18-6303. Unlawful possession of blank licenses or poll tax receipts. Every person who has in his possession with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the proper officer, is guilty of felony.

18-6304 — Refusal to give tax collector names of employees

18-6304. Refusal to give tax collector names of employees. Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

18-6305 — Doing business without license

18-6305. Doing business without license. Every person who commences or carries on any business, trade, profession or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

18-6306 — Tax collector — Neglect of duty

18-6306. Tax collector — Neglect of duty. If any tax collector or his deputy wilfully neglects or refuses to perform any of the duties enjoined on him by the provisions of title 63 of Idaho Code he is guilty of a misdemeanor in office, and shall be punished by imprisonment in the county jail not more than one (1) year, or by a fine of not less than $200 nor more than $1,000, or by both such fine and imprisonment, and shall be forthwith removed from office.

18-6307 — Auditor — Neglect of duty

18-6307. Auditor — Neglect of duty. If any county auditor neglects or refuses to perform the duties enjoined on him by the provisions of title 63 of the Idaho Code he is guilty of a felony, and shall be punished by imprisonment in the state prison for not more than one (1) year, or by a fine of not less than $200 nor more than $1,000, or by both such fine and imprisonment, and shall be forthwith removed from office.

18-6308 — Violation of revenue laws

18-6308. Violation of revenue laws. Any officer who, at the same time, performs the duties of any two officers, in any manner connected with the public revenue, except in the manner expressly provided by law, or any collecting or disbursing officer who refuses or neglects the performance of the duties required of him by the title, Revenue, of the Idaho Code, is guilty of a felony, and on conviction thereof must be punished by imprisonment in the state prison for not more than one year, or by a fine of not less than $200 nor more than $1,000, or by both such fine and imprisonment, and must forthwith be removed from office.

18-6309 — Impersonation of revenue officer

18-6309. Impersonation of revenue officer. Any person who shall in this state unlawfully exercise or attempt to exercise the functions of, or hold himself out as, an officer, agent, deputy or employee of the state tax commission or of any county assessor shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for a period of not more than five (5) years or by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment.

CHAPTER 64

18-6401 — Riot defined

18-6401. Riot defined. Any action, use of force or violence, or threat thereof, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two (2) or more persons acting together, and without authority of law, which results in:

(a) physical injury to any person; or

(b) damage or destruction to public or private property; or

(c) a disturbance of the public peace; is a riot.

18-6402 — Riot — Felony — Misdemeanor — Punishment

18-6402. Riot — Felony — Misdemeanor — Punishment.

(1) A riot is a felony if:

(a) It occurs on or about the state penitentiary, a county or city jail, or any other penal facility in this state, or it involves the taking of one or more hostages. Violation of the provisions of this subsection is punishable by imprisonment in the state penitentiary for not less than five (5) years, no more than twenty (20) years or a fine not to exceed twenty-five thousand dollars ($25,000), or both such fine and imprisonment.

(b) The destruction or damage to public or private property exceeds five hundred dollars ($500). Violation of the provisions of this subsection is punishable by imprisonment in the state penitentiary for not more than five (5) years or a fine not to exceed ten thousand dollars ($10,000), or both such fine and imprisonment.

(2) A riot is a misdemeanor in all other circumstances punishable by imprisonment in the city or county jail for not more than one (1) year and a fine not to exceed five thousand dollars ($5,000).

18-6404 — Unlawful assembly defined

18-6404. Unlawful assembly defined. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.

18-6405 — Punishment for unlawful assembly

18-6405. Punishment for unlawful assembly. Every person who participates in any unlawful assembly is guilty of a misdemeanor.

18-6409 — Disturbing the peace

18-6409. Disturbing the peace.

(1) Every person who maliciously and willfully disturbs the peace or quiet of any religious gathering, house of worship, neighborhood, family, or person, by loud or unusual noise, by tumultuous or offensive conduct, by threatening, traducing, quarreling, challenging to fight or fighting, or by firing any gun or pistol, is guilty of a misdemeanor.

(2) Every person who maliciously and willfully disturbs the dignity or reverential nature of any funeral, memorial service, funeral procession, burial ceremony or viewing of a deceased person is guilty of a misdemeanor.

18-6410 — Assembly to disturb peace — Refusal to disperse

18-6410. Assembly to disturb peace — Refusal to disperse. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

CHAPTER 65

18-6501 — Robbery defined

18-6501. Robbery defined. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

18-6502 — Fear which constitutes robbery

18-6502. Fear which constitutes robbery. The fear which constitutes robbery may be either: 1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or, 2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

18-6503 — Punishment for robbery

18-6503. Punishment for robbery. Robbery is punishable by imprisonment in the state prison not less than five (5) years, and the imprisonment may be extended to life.

CHAPTER 66

18-6601 — Incest

18-6601. Incest.

(1) Any person who willfully marries or engages in sexual intercourse with another person known to be within the degrees of consanguinity within which marriages are declared by law to be incestuous and void under section 32-205 , Idaho Code, is guilty of a felony.

(2) For the purposes of this section, "sexual intercourse" means genital-genital, oral-genital, anal-genital, oral-anal, manual-anal, or manual-genital penetration between persons of the same or opposite sex.

(3) Any violations of this section are punishable by imprisonment in the state prison for a term not to exceed fifteen (15) years; however, if a victim is under the age of eighteen (18) years at the time of violation of this section, such violation is punishable by imprisonment in the state prison for a term not to exceed life.

18-6602 — sexual abuse of an animal

18-6602. sexual abuse of an animal.

(1) A person is guilty of a felony if that person:

(a) Engages in sexual contact with an animal;

(b) Advertises, solicits, offers, or accepts the offer of an animal or possesses, purchases, or otherwise obtains an animal with the intent that the animal be subject to sexual contact; or

(c) Causes, aids, or abets another person to engage in sexual contact with an animal.

(2) As used in this section:

(a) "Animal" means any living creature of the animal kingdom, other than a human being, whether dead or alive at the time of the violation of this section; and

(b) "Sexual contact" means any act committed between a person and an animal for the purpose of sexual arousal, sexual gratification, abuse, or financial gain without a bona fide veterinary or animal husbandry purpose and involving:

(i) Contact between the sex organs or anus of an animal and the mouth of the person or contact between the sex organs or anus of the person and the mouth of the animal; (ii) The insertion of any part of the animal's body into the vaginal or anal opening of the person; or (iii) The insertion of any part of the body of a person or any object into the vaginal or anal opening of an animal.

(3) Any person who violates this section may be punished by imprisonment in the state prison for a term not to exceed five (5) years. Additionally, the court may order a person who violates this section to:

(a) Relinquish custody of some or all animals under the person's control at the time of the offense. If the person convicted of violating this section is not the owner of the animal that was the subject of the violation, then the animal shall be returned to the owner of the animal. An animal returned to an owner under this section shall not be spayed or neutered prior to being returned; and

(b) Reimburse the agency or shelter caring for the animal for reasonable costs incurred for the care and treatment of the animal from the date of impoundment until the disposition of the criminal proceeding.

(4) Nothing in this section shall be construed to criminalize:

(a) Generally accepted veterinary practices in compliance with chapter 21, title 54 , Idaho Code;

(b) Generally accepted agricultural, farming, ranching, and animal husbandry practices, including grooming, raising, breeding or artificially inseminating an animal for reproductive purposes, assisting with the birthing process of animals, or any other procedure that provides care for an animal;

(c) Generally accepted commercial, traditional, cultural, historical, or tribal practices, including judging of breed conformation, rodeos, horse racing, fairs, and stock sales and auctions; or

(d) Generally accepted hunting, fishing, and trapping practices in compliance with title 36 , Idaho Code.

18-6603 — sexual abuse of human remains

18-6603. sexual abuse of human remains.

(1) A person is guilty of a felony if that person engages in sexual contact with human remains.

(2) As used in this section:

(a) "Human remains" means a deceased human body or any portion of a deceased human body in any condition or state of decomposition; and

(b) "Sexual contact" means any act committed between a person and human remains for the purpose of sexual arousal, sexual gratification, abuse, or financial gain involving genital-genital, oral-genital, anal-genital, oral-anal, manual-genital, or manual-anal contact between a person and human remains or penetration of the genitals or anus with an object, instrument, or device.

(3) Any person who violates this section may be punished by imprisonment in the state prison for a term not to exceed five (5) years.

(4) Nothing in this section shall be construed to criminalize:

(a) Generally accepted dental, nursing, or medical practices in compliance with chapter 9, chapter 18, or chapter 14, title 54 , Idaho Code;

(b) Generally accepted organ donation or anatomical gift practices in compliance with chapter 34, title 39 , Idaho Code;

(c) Generally accepted mortuary or funerary practices, including but not limited to embalming in compliance with chapter 11, title 54 , Idaho Code; or

(d) Generally accepted investigative practices by coroners, medical examiners, pathologists, or the like.

18-6604 — Forcible penetration by use of foreign object

18-6604. Forcible penetration by use of foreign object.

(1) A person violates this section when that person willfully causes the penetration, however slight, of the genital or anal opening of any person, by any object, instrument, or device:

(a) Against the victim's will by:

(i) Use of force or violence; or (ii) Duress; or (iii) Threats of immediate and great bodily harm, accompanied by apparent power of execution; or

(b) Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent; or

(c) Where the victim is prevented from resistance by any intoxicating, narcotic, or anesthetic substance; or

(d) Where the victim is at the time unconscious of the nature of the act because the victim:

(i) Was unconscious or asleep; or (ii) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(2) A person who violates the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state prison for not more than life.

(3) The provisions of this section shall not apply to bona fide medical, health care, or hygiene procedures.

18-6605 — video voyeurism

18-6605. video voyeurism.

(1) As used in this section:

(a) "Broadcast" means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons.

(b) "Disseminate" means to make available by any means to any person.

(c) "Imaging device" means any instrument capable of recording, storing, viewing or transmitting visual images.

(d) "Intimate areas" means the nude genitals, nude pubic area, nude buttocks or nude female nipple.

(e) "Person" means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof.

(f) "Place where a person has a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without concern that he is being viewed, photographed, filmed or otherwise recorded by an imaging device; or (ii) A place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or (iii) Any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas.

(g) "Publish" means to:

(i) Disseminate with the intent that such image or images be made available by any means to any person; or (ii) Disseminate with the intent that such images be sold by another person; or (iii) Post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or (iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public.

(h) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.

(i) "Sexual act" includes, but is not limited to, masturbation; genital, anal or oral sex; sexual penetration with an object; or the transfer or transmission of semen upon any part of the depicted person's body.

(2) A person is guilty of video voyeurism when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person, he uses, installs or permits the use or installation of an imaging device at a place where a person would have a reasonable expectation of privacy, without the knowledge or consent of the person using such place.

(3) A person is guilty of video voyeurism when:

(a) With the intent to annoy, terrify, threaten, intimidate, harass, offend, humiliate or degrade, he intentionally disseminates, publishes or sells, or threatens or conspires to disseminate, publish or sell, any image of another person who is identifiable from the image itself or information displayed in connection with the image and whose intimate areas are exposed, in whole or in part, or who is engaged in a sexual act;

(b) He knew or reasonably should have known that the person depicted in the image understood that the image should remain private; and

(c) He knew or reasonably should have known that the person depicted in the image did not consent to the dissemination, publication or sale of the image.

(4) A violation of this section is a felony.

(5) This section does not apply to:

(a) An interactive computer service, as defined in 47 U.S.C. 230(f)(2), an information service, as defined in 47 U.S.C. 153 or a telecommunication service, as defined in section 61-121

(2) or 62-603 (13), Idaho Code, for content provided by another person, unless the provider intentionally aids or abets video voyeurism;

(b) Images involving voluntary exposure in public or commercial settings; or

(c) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings or medical treatment.

18-6606 — DISCLOSING EXPLICIT SYNTHETIC MEDIA

18-6606. DISCLOSING EXPLICIT SYNTHETIC MEDIA.

(1) A person is guilty of disclosing explicit synthetic media when the person knowingly:

(a) Discloses explicit synthetic media and knows or reasonably should know that:

(i) An identifiable person portrayed in whole or in part in the explicit synthetic media did not consent to such disclosure; and (ii) Disclosure of the explicit synthetic media would cause the identifiable person substantial emotional distress;

(b) Discloses explicit synthetic media with the intent to annoy, terrify, threaten, intimidate, harass, offend, humiliate, or degrade an identifiable person portrayed in whole or in part in the explicit synthetic media; or

(c) Possesses and threatens to disclose explicit synthetic media with the intent to obtain money or other valuable consideration from an identifiable person portrayed in whole or in part in the explicit synthetic media.

(2) A person who violates subsection (1) of this section is guilty of a misdemeanor unless such person is guilty of a felony as provided in subsection (3) of this section.

(3) A person who violates subsection (1) of this section when the identifiable person is under eighteen (18) years of age or when the person was previously found guilty of a violation of this section or a similar statute in another state or any local jurisdiction within the past five (5) years, notwithstanding the form of the judgment or withheld judgment, is guilty of a felony punishable by imprisonment for a period no more than ten (10) years, or by a fine of no more than twenty-five

thousand dollars ($25,000), or by both such fine and imprisonment.

(4) As used in this section:

(a) "Disclose" means to make available by any means to any person.

(b) "Explicit synthetic media" means synthetic media that depicts or appears to depict:

(i) An identifiable individual engaged in sexual conduct; (ii) The intimate parts of another individual or artificially generated intimate parts presented as the intimate parts of an identifiable individual; or (iii) The display or transfer of sexual bodily fluids onto any part of the body of an identifiable individual or from the body of an identifiable individual.

(c) "Identifiable individual" means a person who is portrayed in whole or in part in synthetic media and who is recognizable by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(d) "Intimate parts" means the nude genitals, pubic area, anus, or postpubescent female nipple.

(e) "Realistically" means that the synthetic media is sufficiently convincing such that an ordinary person viewing the synthetic media would conclude that it is an actual image or video of the identifiable person but does not include drawings, cartoons, or paintings.

(f) "Sexual conduct" means actual or simulated sexual intercourse, oral-genital contact, manual genital contact, genital-anal contact, oral-anal contact, or other physical-genital contact.

(g) "Synthetic media" means any image or video created or altered using technical means, such as artificial intelligence, to realistically misrepresent an identifiable individual as engaging in conduct in which the identifiable individual did not engage.

(h) "Valuable consideration" includes but is not limited to sexually explicit images or video from the identifiable individual portrayed in the synthetic media.

(5) Subsection (1)(a) of this section shall not apply when:

(a) The disclosure is made for the purpose of a criminal investigation or prosecution that is otherwise lawful;

(b) The disclosure is for the purpose of, or in connection with, the reporting of unlawful conduct;

(c) The explicit synthetic media relates to a matter of public interest and disclosure serves a lawful public purpose, provided that explicit synthetic media does not relate to a matter of public interest merely because a public figure is portrayed in the explicit synthetic media;

(d) The disclosure is for legitimate scientific research or educational purposes; or

(e) The disclosure is made in the normal course of civil legal proceedings and consistent with common practice or is protected by court order that prohibits further dissemination.

(6) The provisions of this section shall not apply to an interactive computer service, as defined in 47 U.S.C. 230(f)(2); an information service, as defined in 47 U.S.C. 153; or a telecommunication service, as defined in section 61-121

(2) or 62-603 (13), Idaho Code, for content provided by another person, unless the provider intentionally aids or abets disclosing explicit synthetic media.

(7) 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 this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

CHAPTER 67

18-6701 — Definitions

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

(1) "Wire communication" means any 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 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 such expectation 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) Furnished to the subscriber or user by a 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) Being used by a 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) "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.

18-6702 — Interception and disclosure of wire, electronic or oral communications prohibited

18-6702. Interception and disclosure of wire, electronic or oral communications prohibited.

(1) Except as otherwise specifically provided in this chapter, any person 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 if that person:

(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.

(2) (a) It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of 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 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, 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 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.

18-6703 — Manufacture, distribution, possession, and advertising of wire, electronic or oral communication intercepting devices prohibited

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 service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of 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.

18-6704 — Confiscation of wire, electronic or oral communication intercepting devices

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.

18-6705 — Prohibition of use as evidence of intercepted wire, electronic or oral communications

18-6705. Prohibition of use as evidence of intercepted wire, electronic or oral communications. Whenever any wire, electronic or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence 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.

18-6706 — Authorization for interception of wire, electronic or oral communications

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 2518 of chapter 119, title 18 U.S.C.A., and in conformity with the provisions of this chapter, 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.

18-6707 — Authorization for disclosure and use of intercepted wire, electronic or oral communications

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.

18-6708 — Procedure for interception of wire, electronic or oral communications

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 , 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 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, there 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 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 service provider, landlord, custodian or person is providing the person whose communications are to be intercepted. Any 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 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 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 punished 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 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 violations 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.

18-6709 — Recovery of civil damages authorized

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.

18-6710 — Use of telecommunication to annoy, terrify, threaten, intimidate, harass, or offend by lewd or profane language, requests, suggestions, or proposals — Threats of physical harm — Disturbing the peace by repeated telecommunication — Penalties

18-6710. Use of telecommunication to annoy, terrify, threaten, intimidate, harass, or offend by lewd or profane language, requests, suggestions, or proposals — Threats of physical harm — Disturbing the peace by repeated telecommunication — Penalties.

(1) Any person who, with intent to annoy, terrify, threaten, intimidate, harass, or offend, contacts another via telecommunication, email, text message, or any other form of electronic communication and (a) addresses to or about such person any obscene, lewd, or profane language, or makes any request, suggestion, or proposal that is obscene, lewd, lascivious, or indecent; or (b) addresses to such other person any threat to inflict injury or physical harm to the person or property of the person addressed or any member of his family, or any other person; or (c) by repeated anonymous or identified telecommunications, emails, text messages, or any other form of electronic communication whether or not conversation ensues, disturbs the peace or attempts to disturb the peace, quiet, or right of privacy of any person at the place where the telecommunication, email, text message, or any other form of electronic communication is received is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to a term of not to exceed one (1) year in the county jail. Upon a second or subsequent conviction, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

(2) The use of obscene, lewd, or profane language or the making of a threat or obscene proposal, or the sending of repeated anonymous telecommunications, emails, text messages, or any other form of electronic communication as set forth in this section may be prima facie evidence of intent to annoy, terrify, threaten, intimidate, harass, or offend.

(3) For the purposes of this section, the term "telecommunication" shall mean the transmission of messages, signals, facsimiles, video images, or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection.

18-6711 — Use of telephone to terrify, intimidate, harass or annoy by false statements — Penalties

18-6711. Use of telephone to terrify, intimidate, harass or annoy by false statements — Penalties.

(1) Every person who telephones another and knowingly makes any false statements concerning injury, death, disfigurement, indecent conduct or criminal conduct of the person telephoned or any member of his family, with intent to terrify, intimidate, harass or annoy the called person, is guilty of a misdemeanor. Upon a second or subsequent conviction of the violation of the provisions of this section, the defendant shall be guilty of a felony.

(2) The making of a false statement as herein set out may be prima facie evidence of intent to terrify, intimidate, harass or annoy.

(3) For the purposes of this section, the term "telephone" shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

18-6711A — False alarms — Complaints — Reports — Penalties — Civil damages

18-6711A. False alarms — Complaints — Reports — Penalties — Civil damages.

(a) Any person calling the number "911" for the purpose of making a false alarm or complaint and reporting false information which could or does result in the emergency response of any firefighting, police, medical or other emergency services shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not to exceed one thousand dollars ($1,000) or to a term of not to exceed one (1) year in the county jail, or to both such fine and imprisonment.

(b) In addition to the criminal penalties for violation of the provisions of this section, civil damages may be recovered from the person so convicted in an amount of three (3) times the amount necessary to compensate or reimburse the complainant for costs incurred, losses sustained or other damages suffered in receiving, acting upon or responding to the false alarm, complaint or report. If the person so convicted is under the age of eighteen (18) years of age, the parent having legal custody of the minor may be jointly and severally liable with the minor for such civil damages as are imposed. Recovery from the parents shall not be limited by any other provision of law which limits the liability of a parent for the tortious or criminal conduct of a minor. A parent not having legal custody of the minor shall not be liable for civil damages imposed hereunder.

18-6712 — Place of offense

18-6712. Place of offense. Any offense committed by use of a telephone as provided by this chapter may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

18-6713 — Theft of telecommunication services

18-6713. Theft of telecommunication services.

(1) As used in this section:

(a) "Clone cellular telephone" or "counterfeit cellular telephone" is a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(b) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. These materials include: scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned phone with a false electronic serial number and mobile identification number combination, a computer containing such software and lists of electronic serial number and mobile identification number combinations.

(c) "Electronic serial number" means the unique number that was programmed into a cellular telephone by its manufacturer which is transmitted by the cellular phone and used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(d) "EPROM" or "erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(e) "Illegal telecommunications equipment" means any instrument, apparatus, equipment, or device which is designed or adapted, and otherwise used or intended to be used for the theft of any telecommunication service or for concealing from any supplier of telecommunication service or lawful authority the existence, place of origin, use or destination of any telecommunication.

(f) "Intercept" means to electronically capture, record, reveal or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver of the signals, by means of any instrument, device or equipment.

(g) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(h) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

(i) "Telecommunication service" means a service which, in exchange for a pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire, or the projection of energy without

physical connection.

(2) It is unlawful intentionally to:

(a) Make illegal telecommunications equipment; or

(b) Sell, give, or furnish to another or advertise or offer for sale illegal telecommunications equipment; or

(c) Sell, give, or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment; or

(d) Use or possess illegal telecommunications equipment.

(3) It is unlawful intentionally to:

(a) Make clone cellular telephones; or

(b) Sell, give or furnish to another or advertise or offer for sale clone cellular telephones; or

(c) Sell, give or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using clone cellular telephones; or

(d) Use or possess illegal cloning paraphernalia; or

(e) Use a clone cellular telephone or counterfeit telephone to facilitate the commission of a felony.

(4) It is theft of telecommunications services to use, receive, or control telecommunications services without paying the pecuniary consideration regularly charged by the supplier of the telecommunication services used, received or controlled.

(a) Actual knowledge by the supplier of the telecommunication services that a person is or has been using, receiving or controlling the services shall not be a defense to the crime of theft of telecommunication services.

(5) A person who violates the provisions of subsection (2)(d) of this section commits a crime and shall be punished as follows:

(a) The first conviction shall be a misdemeanor, which shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

(b) Conviction of a second or subsequent violation shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(6) A person who violates the provisions of either subsection (2)(a), (b) or (c) of this section commits a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(7) A person who violates the provisions of subsection (3) of this section commits a felony.

(8) In a prosecution for violation of the provisions of subsection (2), (3) or (4) of this section, the element of intent may be established by proof that the defendant obtained such services by any of the following means:

(a) By use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(b) Without the consent of the supplier of the telecommunication services, the installation, connection, or alteration of any equipment, cable, wire, antenna or facilities capable of either physically, inductively, acoustically, or electronically enabling a person to use, receive or control telecommunication services without paying the regular pecuniary charge;

(c) By any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(d) By making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise used or intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the use, existence, place of origin, or destination of any telecommunications.

(9) The supplier of telecommunication services which is directly affected by the commission of any of the acts prohibited under subsections (2), (3) and (4) of this section shall, regardless of whether there was a criminal conviction, have a civil cause of action against the person who commits any of the prohibited acts. The prevailing party shall be awarded all reasonable costs of litigation including, but not limited to, attorney's fees and court costs. If the supplier prevails, he shall

recover additionally:

(a) Actual damages; or

(b) Liquidated damages of ten dollars ($10.00) per day for each day of the violation or five hundred dollars ($500), whichever is greater; or

(c) If actual damages are greater than five hundred dollars ($500), and, if proven, punitive damages.

(10) Nothing in this section shall be construed to make unlawful the interception or receipt by any person or the assisting, including the manufacture or sale, of such interception or receipt, of any satellite cable programs for private viewing as defined and specifically permitted under the "Cable Communications Policy Act of 1984."

18-6714 — Aiding the avoidance of telecommunications charges

18-6714. Aiding the avoidance of telecommunications charges.

(1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) Publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges; or

(b) Publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in section 18-6713 , Idaho Code, with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be punished according to the provisions of section 18-6713 , Idaho Code.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons either orally; in person; by telephone, radio, or television; or in a writing of any kind.

18-6715 — Forgery of telegraphic messages

18-6715. Forgery of telegraphic messages. Every person who knowingly and willfully sends by telegraph to any person a false or forged message purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or to be delivered, any such message, knowing the same to be false or forged with the intent to deceive, injure, or defraud another, 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 such fine and imprisonment.

18-6716 — Opening telegrams

18-6716. Opening telegrams. Every person not connected with any telegraphic office who without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope enclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person, and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy or detain the same from the person or persons entitled to receive such message, is punishable as provided in section 18-6715 , Idaho Code.

18-6717 — Refusal to send or deliver telegraph message

18-6717. Refusal to send or deliver telegraph message. Every agent, operator or employee of any telegraph office who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered unless the charges thereon have been paid or tendered.

18-6718 — Opening sealed mail or packages

18-6718. Opening sealed mail or packages.

(1) Every person who willfully opens or breaks the seal, or reads, or causes to be read, any sealed mail not addressed to such person without being authorized to do so either by the writer or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such mail knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

(2) For the purposes of this section, "mail" means any written communication or package that is designed to be carried by the United States postal service or any other federally regulated carrier of packages, parcels or letters.

18-6719 — Definitions for pen registers and trap and trace devices

18-6719. Definitions for pen registers and trap and trace devices.

(1) "Attorney general" means the attorney general of the state of Idaho;

(2) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(3) "Prosecuting attorney" means the prosecuting attorney of each county of the state of Idaho;

(4) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

18-6720 — General prohibition on pen register and trap and trace device use — Exception

18-6720. General prohibition on pen register and trap and trace device use — Exception.

(1) Except as provided in section 18-6720 , Idaho Code, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 18-6722 , Idaho Code.

(2) The prohibition of subsection (1) of this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(a) Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(b) 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 communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(c) Where the consent of the user of that service has been obtained.

(3) Whoever knowingly violates the provisions of subsection (1) of this section shall be guilty of a misdemeanor.

18-6721 — Application for an order for a pen register or a trap and trace device

18-6721. Application for an order for a pen register or a trap and trace device.

(1) The prosecuting attorney or attorney general may make application for an order or an extension of an order under section 18-6722 , Idaho Code, authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation to the district court.

(2) An application under subsection (1) of this section shall include:

(a) The identity of the prosecuting attorney or attorney general making the application and the identity of the law enforcement agency conducting the investigation; and

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

18-6722 — Issuance of an order for a pen register or a trap and trace device

18-6722. Issuance of an order for a pen register or a trap and trace device.

(1) Upon an application made under section 18-6721 , Idaho Code, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the prosecuting attorney, the attorney general, or the state law enforcement or investigative officer has certified to the court

that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section:

(a) Shall specify– 1. The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached; 2. The identity, if known, of the person who is the subject of the criminal investigation; 3. The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and 4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(b) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 18-6723 , Idaho Code.

(3) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty (60) days. Extensions of such an order may be granted, but only upon an application for an order under section 18-6721 , Idaho Code, and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty (60) days.

(4) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(a) The order be sealed until otherwise ordered by the court; and

(b) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

18-6723 — Assistance in installation and use of a pen register or a trap and trace device

18-6723. Assistance in installation and use of a pen register or a trap and trace device.

(1) Upon the request of the prosecuting attorney or attorney general, or an officer of a law enforcement agency authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant, investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 18-6722 , Idaho Code.

(2) Upon the request of a prosecuting attorney or attorney general, or an officer of a law enforcement agency authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 18-6722 (2)(b), Idaho Code. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

18-6725 — Rule for prior interceptions

18-6725. Rule for prior interceptions. Any pen register or trap and trace device installed prior to the effective date of this act which would be valid and lawful without regard to the amendments made by sections 18-6719 and 18-6724 , Idaho

Code, shall be valid and lawful.

18-6726 — TikTok use by state employees on a state-issued device prohibited

18-6726. TikTok use by state employees on a state-issued device prohibited.

(1) As used in this section, "TikTok" means the social networking service owned by the Chinese company ByteDance Limited or any successor application.

(2) No person or entity that contracts with the state government and no member or employee of:

(a) The executive branch, the state legislature, or the judiciary;

(b) Any state-funded agency, department, organization, commission, office, division, board, bureau, council, college, university, administration, or corrections industry or any other division or subdivision that is funded in whole or in part through funds appropriated in the state budget; or

(c) The Idaho air national guard, Idaho army national guard, or Idaho state police, not including use for gathering military intelligence or criminal investigations by law enforcement, shall download or use the TikTok application or visit the TikTok website on any network owned by, operated by, or otherwise under the control of state government or on any state government-issued device, including but not limited to a cellular phone, a computer, or any other device capable of internet connectivity.

(3) The executive branch, the legislative branch, and the judicial branch shall implement controls to prevent the use of TikTok on state government-issued equipment or while connected to any network owned, operated, or otherwise under the control of state government.

(4) Any person who knowingly violates the provisions of subsection (2) of this section shall be guilty of a misdemeanor.

CHAPTER 68

18-6801 — Removal or obstruction of telephone or telegraph lines or equipment

18-6801. Removal or obstruction of telephone or telegraph lines or equipment. Every person who maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who willfully displaces, removes, injures or destroys any telegraph or telephone line, wire, cable, pole or conduit belonging to another or the material or property appurtenant thereto is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

18-6802 — Electric lines — Punishment for injuring

18-6802. Electric lines — Punishment for injuring. Any person who shall wilfully cut down or burn, or otherwise materially injure, any electric light pole, or shall shoot so as to materially injure any insulator, or knock said insulator loose from the pole to which it is attached, or otherwise materially injure such insulator, or who shall shoot any electric light wire, thereby breaking said wire, or who shall otherwise wilfully cut, break, or injure such wire, shall, upon conviction be guilty of a misdemeanor.

18-6803 — Removal or destruction of electric transmission lines

18-6803. Removal or destruction of electric transmission lines. It shall be unlawful for anyone within the state of Idaho to take down, remove, injure, obstruct, displace or destroy, wilfully or maliciously and without the consent of the owner, any line erected or constructed for the transmission of electrical current, or any poles, wires, conduits, cables, insulators, or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or to sever any wire or cable thereof, or in any manner to interrupt the transmission of electrical current over and along any such line, or to take down, remove, injure or destroy any house, shop, building or other structure, or appurtenances thereto, or any machinery connected therewith or necessary to the use of any line erected or constructed for the transmission of electrical current: Provided, nothing in this section shall be construed to prevent any person, after having given ten days' written notice, from removing or causing to be removed from his premises, or premises occupied by him, any of the above described line or lines, wires, conduits, cables, insulators or apparatus connected therewith; provided further, any such removals must be made by or under the direction of a skillful and

competent electrician.

18-6804 — Burning electric lines or plants

18-6804. Burning electric lines or plants. It shall be unlawful for any person within the state of Idaho to set fire, wilfully or maliciously, that shall result in the destruction or injury of any line erected or constructed for the transmission of electrical current, or any poles, conduits, cables, wires, insulators or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or any house, shop, building or other structure, or appurtenances thereto, or machinery connected therewith, or necessary to the use of, any line erected or constructed for the transmission of electrical current, or to set fire that shall in any manner interrupt the transmission of electrical current along such line.

18-6805 — Punishment for removal, destruction or burning of electric lines or plants

18-6805. Punishment for removal, destruction or burning of electric lines or plants. Any person or persons violating any provision or provisions of the two preceding sections or any part of said sections, shall, upon conviction thereof, be punished by a fine not exceeding $500.00, or by imprisonment in the penitentiary not to exceed ten years, or by both such fine and imprisonment, in the discretion of the court.

18-6806 — Relinquishment of telephone line for emergency messages

18-6806. Relinquishment of telephone line for emergency messages. Any person using a telephone line by which use restricts or denies use of such line by other persons shall relinquish the use of such line to any other person requesting the use of such line for emergency messages.

18-6807 — Information required of person making request

18-6807. Information required of person making request. Any person requesting that another person using a telephone line relinquish the use of such line for the purpose of an emergency message shall inform such person of the nature of the emergency, and their name and telephone number upon request.

18-6808 — Emergency calls enumerated

18-6808. Emergency calls enumerated. Emergency telephone calls for the purpose of this act are calls for police, medical and fire aid.

18-6809 — Misdemeanor to fail to relinquish or fraudulently procure use of line

18-6809. Misdemeanor to fail to relinquish or fraudulently procure use of line. Any person using such line, failing or refusing to relinquish such line upon proper request, shall be guilty of a misdemeanor. Any person fraudulently procuring use of such line for nonexisting emergency shall be guilty of a misdemeanor.

18-6810 — Intentional destruction of a telecommunication line or telecommunication instrument

18-6810. Intentional destruction of a telecommunication line or telecommunication instrument.

(1) 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 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."

CHAPTER 69

18-6901 — Short title

18-6901. Short title. This chapter shall be known and may be cited as the "Idaho Anti-Camcorder Piracy Act."

18-6902 — Definitions

18-6902. Definitions. As used in this chapter:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

18-6903 — Prohibition against piracy

18-6903. Prohibition against piracy. Any person who, without the written consent of the motion picture theater owner, knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited for the purpose of recording the motion picture being exhibited shall be guilty of a misdemeanor and upon conviction shall be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or shall be punished by both such fine and imprisonment.

18-6904 — Authorized actions — Immunity

18-6904. Authorized actions — Immunity.

(1) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee may request a person on his premises to place or keep in full view any audiovisual recording device or related item such person may have operated, or which the owner or lessee or authorized agent or employee of such owner or lessee has reason to believe he may have operated, in violation of the provisions of this chapter. No merchant shall be criminally or civilly liable on account of having made such a request.

(2) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, who has reason to believe that any audiovisual recording device or related item has been operated by a person in violation of this chapter and that he can recover such audiovisual recording device or related item by taking such a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

18-6905 — Applicability

18-6905. Applicability.

(1) This chapter does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence-gathering employee or agent of the federal government, the state or a political subdivision of the state, from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, law enforcement, protective, or intelligence-gathering activities.

(2) Nothing in this chapter shall prevent prosecution instead under other applicable law providing a greater penalty.

CHAPTER 70

18-7001 — Malicious injury to property

18-7001. Malicious injury to property.

(1) Except as otherwise provided in subsection (2) of this section, every person who maliciously injures or destroys any real or personal property not his own, or any jointly owned property without permission of the joint owner, or any property belonging to the community of the person’s marriage, in cases otherwise than such as are specified in this code, is guilty

of a misdemeanor and shall be punishable by imprisonment in the county jail for up to one (1) year or a fine of not more than one thousand dollars ($1,000), or both.

(2) A person is guilty of a felony, and shall be punishable by imprisonment in the state prison for not less than one (1) year nor more than five (5) years, and may be fined not more than one thousand dollars ($1,000), or by both such fine and imprisonment, if:

(a) The damages caused by a violation of this section exceed one thousand dollars ($1,000) in value; or

(b) Any series of individual violations of this section are part of a common scheme or plan and are aggregated in one (1) count, and the damages from such violations when considered together exceed one thousand dollars ($1,000) in value.

18-7002 — Construction of sections enumerating acts of malicious mischief

18-7002. Construction of sections enumerating acts of malicious mischief. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

18-7004 — Firing timber or prairie lands

18-7004. Firing timber or prairie lands. Any person who shall wilfully or carelessly set on fire, or cause to be set on fire, any timber or prairie lands in this state, thereby destroying the timber, grass or grain on any such lands, or any person who shall build a camp fire in any woods, or on any prairie, and leave the same without totally extinguishing such fire, or any railway company which shall permit any fire to spread from its right-of-way to the adjoining lands, is guilty of a misdemeanor.

18-7005 — Damage to forage on public lands from throwing away or leaving lighted substances

18-7005. Damage to forage on public lands from throwing away or leaving lighted substances. Any person who shall throw any lighted cigarette, cigar, match, ashes, or other flaming or glowing substance or any substance or thing which may cause a fire, from any vehicle, or who shall throw, deposit, or leave any lighted cigarette, cigar, match, ashes or other flaming or glowing substance or any substance or thing which may cause a fire in any place where the same may directly or indirectly cause a fire resulting in damage to forage on the lands of the United States or the state of Idaho or to the property of any person, is guilty of a misdemeanor and shall be punished accordingly.

18-7006 — Trespass of privacy

18-7006. Trespass of privacy. It shall be unlawful for any person, upon the private property of another, to intentionally look, peer or peek in the door, window, or other transparent opening of any inhabited building or other structure located thereon, without visible or lawful purpose. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

18-7008 — CRIMINAL Trespass — definitions and Acts constituting

18-7008. CRIMINAL Trespass — definitions and Acts constituting.

(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 person, or opening any gate, bar or fence of another person and leaving it open, or using the corral or corrals of another person;

(v) Dumping trash or covering up in any manner the property of another person; (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 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) Acts constituting criminal trespass.

(a) A person commits criminal trespass and is guilty of a misdemeanor, except as provided in subsection (3)(a)(i) of this section, 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. A person has reason to know his presence is not permitted when, except under a landlord-tenant relationship, he fails to depart immediately from the real property of another after being notified by the owner or his agent to do so, or he returns without permission or invitation within one (1) year, unless a longer period of time is designated by the owner or his agent. In addition, 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.

(b) A person commits criminal trespass and is guilty of a misdemeanor when he enters or remains on the premises of a church or house of worship without permission, knowing or with reason to know that his presence is not permitted and with the intent to intimidate or harass or to disrupt a church service or assemblage of people meeting for religious worship.

(c) Every person who commits a criminal trespass as provided by this section and who causes damage to real or personal property in excess of one thousand dollars ($1,000) while trespassing is guilty of criminal trespass with damage and is guilty of a misdemeanor, except as provided in subsection (3)(b)(iii) of this section.

(3) Penalties.

(a) Penalties for criminal trespass.

(i) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(a) of this section for the first time: 1. If no damage of any kind was committed during the trespass and the person accused does not remain if ordered to depart by the owner of the real property or his agent, then the person shall be guilty of an infraction and fined in the amount of three hundred dollars ($300); or 2. Except as provided in subparagraph (i)1. of this paragraph, the person may be sentenced to jail for a period of no more than six (6) months and shall be fined in an amount no less than five hundred dollars ($500) and no more than one thousand dollars ($1,000). (ii) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(b) of this section for the first time shall be guilty of a misdemeanor and may be sentenced to jail for a period of no more than six (6) months and shall be fined in an amount no less than five hundred dollars ($500) and no more than one thousand dollars ($1,000). (iii) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(a) or (b) of this section for a second time within five (5) years: 1. May be sentenced to jail for a period of no more than six (6) months; 2. Shall be fined in an amount no less than one thousand five hundred dollars ($1,500) and no more than three thousand dollars ($3,000); and 3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603 (a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36 , Idaho Code, suspended for a period of one (1) year. (iv) Any person who pleads guilty to or is found guilty of a violation of

subsection (2)(a) or (b) of this section, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of subsection (2) of this section within ten (10) years, notwithstanding the form of the judgments or withheld judgments: 1. May be sentenced to jail for a period no more than one (1) year; 2. Shall be fined an amount no less than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000); and 3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603 (a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36 , Idaho Code, suspended for a period of no more than five (5) years.

(b) Penalties for criminal trespass with damage.

(i) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(c) of this section for the first time: 1. May be sentenced to jail for a period of no more than six (6) months; and 2. Shall be fined in an amount no less than one thousand five hundred dollars ($1,500) and no more than five thousand dollars ($5,000). (ii) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(c) of this section for a second time within five (5) years: 1. May be sentenced to jail for a period of no more than six (6) months; 2. Shall be fined in an amount no less than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000); and 3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603 (a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36 , Idaho Code, suspended for a period of one (1) year. (iii) Any person who pleads guilty to or is found guilty of a violation of subsection (2)(c) of this section, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of subsection (2) of this section within ten (10) years, notwithstanding the form of the judgments or withheld judgments, is guilty of a felony and: 1. Shall be sentenced to the custody of the state board of correction for a period of no less than one (1) year and no more than five (5) years; 2. Shall be fined in an amount no less than fifteen thousand dollars ($15,000) and no more than fifty thousand dollars ($50,000); and 3. If the trespass can be reasonably construed to have been committed in a manner described in section 36-1603 (a), Idaho Code, shall have any license issued pursuant to chapter 3, title 36 , Idaho Code, suspended for a period of no less than five (5) years.

(c) In addition to any other penalty prescribed by law, a court shall, for any violation of subsection (2) of this section, order restitution in accordance with section 19-5304 , Idaho Code.

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

(5) Subject to any rights or authorities described in subsection (6) 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.

(6) A person shall not be guilty of 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.

(7) Examples of the exclusions in subsection (6) 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 during 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 pursuant to 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.

(8) 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.

18-7009 — Destruction of timber on state lands

18-7009. Destruction of timber on state lands. Every person who wilfully and without authority enters upon the public lands of the state and cuts down, destroys or injures any kind of wood or timber, standing or growing upon such lands, or who wilfully and without authority carries away any kind of wood or timber lying on such lands, is guilty of a misdemeanor.

18-7010 — Cutting state timber for shipment

18-7010. Cutting state timber for shipment. Every person who wilfully and without authority enters upon the public lands of the state and cuts down, destroys or injures any kind of wood or timber growing upon such lands, for the purpose of shipping, freighting, floating or otherwise transporting such wood or timber out of the state, or who shall ship, freight or float, or otherwise transport out of the state, any wood or timber cut upon the public lands of the state, shall be guilty of a felony.

18-7012 — Opening gates and destroying fences

18-7012. Opening gates and destroying fences. It shall be a misdemeanor for any person to open and leave open any gate not belonging to such person or rightfully under his control, or to cut, break, tear down, or otherwise injure, any fence or wall or any obstruction used for a fence not belonging to such person or rightfully under his control.

18-7013 — Reservoirs and tanks — Pollution when fenced or posted a misdemeanor

18-7013. Reservoirs and tanks — Pollution when fenced or posted a misdemeanor. Whenever any individual, individuals or corporation, municipal, public or private, owning, operating or maintaining any reservoir, pond, tank or any structure or place wherein or whereon water is stored, either in whole or in part for domestic use, has the area or ground on or wherein such reservoir, pond, tank, structure or place is located, wholly inclosed by any fence or artificial barrier, and has posted or caused to be posted, warning signs in conspicuous places on such fence or artificial barrier forbidding entry, it shall be unlawful for any person to enter, or to throw or place, or to cause to be thrown or placed, any substance or thing whatsoever, within the area so inclosed by such fence or artificial barrier, without the consent of such individual, individuals or corporation, and any violation hereof shall constitute a misdemeanor and shall be punishable accordingly.

18-7014 — Injuries to crops

18-7014. Injuries to crops. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, is guilty of a misdemeanor.

18-7015 — Trespass on inclosure for fur-bearing animals

18-7015. Trespass on inclosure for fur-bearing animals. When the owner of any inclosure wherein foxes or other fur-bearing animals are held in captivity, shall erect a fence or other barrier around the same and within the boundaries of the premises under the exclusive dominion and control of such owner, and shall post warning signs in conspicuous places along such fence or barrier prohibiting trespass on the clear space between such fence or barrier and the inclosure aforesaid, it shall be unlawful for any person, without the permission of such owner, to cross such fence or barrier or trespass upon such clear space. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor.

18-7016 — Obliterating and defacing boundary monuments

18-7016. Obliterating and defacing boundary monuments. Every person who either: 1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land; or 2. Maliciously defaces or alters the marks upon any such monument; or 3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks; Is guilty of a misdemeanor.

18-7017 — Defacing natural scenic objects

18-7017. Defacing natural scenic objects. It shall be unlawful for any person to paint, sketch, or place in any manner or form or by any means, upon any rock or rocks or similar natural object or objects, any place within the state of Idaho, any sign, advertisement or picture or commercial or business name, for business or commercial purposes. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor.

18-7018 — Injuring jails

18-7018. Injuring jails. Every person who wilfully and intentionally breaks down, pulls down or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding $10,000, and by imprisonment in the state prison not exceeding five years.

18-7019 — Injuring dams, canals, and other structures — Penalty

18-7019. Injuring dams, canals, and other structures — Penalty. Every person who wilfully and maliciously cuts, breaks, injures or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed or marsh land, or to conduct water for mining, manufacturing, reclamation or agricultural purposes, or any embankment necessary to the same, or either of them; or wilfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee or structure, with intent to injure or destroy the same, is punishable by a fine not exceeding $1,000, or by imprisonment in the state prison not exceeding two years, or by both.

18-7020 — Destroying lumber, poles, rafts, and vessels

18-7020. Destroying lumber, poles, rafts, and vessels. Every person who willfully and maliciously burns, injures, marks, brands or defaces or destroys any pile, piling, telegraph pole, telephone pole or electric transmission line pole, fence post, pile or raft of wood, plank, boards or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks or sets adrift any vessel the property of another, is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

18-7021 — Injuring monuments, ornaments, and public improvements

18-7021. Injuring monuments, ornaments, and public improvements. Every person, not the owner thereof, who wilfully mars, disfigures, breaks or otherwise injures, or molests, removes or destroys, any work of art, monument, landmark, historic structure, shade tree, shrub, ornamental plant, or useful or ornamental improvement, is guilty of a misdemeanor.

18-7022 — Injuring gas or water pipes

18-7022. Injuring gas or water pipes. Every person who wilfully breaks, digs up, obstructs or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

18-7023 — Destroying mining and water right notices

18-7023. Destroying mining and water right notices. Every person who intentionally defaces, obliterates, tears down or destroys any notice posted on any lode or placer mining claim, or ditch, or water right, or location, or who removes, takes down or destroys any post or monument erected or placed to mark or indicate any such claim, right or location, or any part or boundary thereof, or part thereon, is guilty of a misdemeanor.

18-7024 — Underground workings of mines — Setting fire to

18-7024. Underground workings of mines — Setting fire to. It shall be unlawful for any person or persons to set fire, wilfully or maliciously, in or within any of the underground tunnels, shafts, or any of the underground workings of any mine in the state of Idaho that shall result in the burning of, destruction of, or injury to any of the timbering or workings of any such mine or any part thereof.

18-7025 — Punishment for violation of preceding section

18-7025. Punishment for violation of preceding section. Any person or persons violating any of the provisions of this act shall be guilty of a felony and upon conviction thereof shall be punished by not less than five (5) nor more than twenty (20) years imprisonment in the state penitentiary.

18-7026 — Sabotage

18-7026. Sabotage. Any person who wilfully, maliciously or mischievously drives or causes to be driven or imbedded any nail, spike or piece of iron, steel or other metallic substance, or any rock or stone, into any log or timber intended to be manufactured into boards, lath, shingles or other lumber, or to be marketed for such purpose, is punishable by imprisonment in the state prison not more than five (5) years or by imprisonment in the county jail not less than six (6)

months, or by fine not to exceed $5000, in the discretion of the court.

18-7027 — Desecration of grave, cemetery, headstone or place of burial prohibited

18-7027. Desecration of grave, cemetery, headstone or place of burial prohibited. It shall be unlawful for any person, not acting in full compliance with all the terms of the law to desecrate or molest in any way any portion of any grave, cemetery, headstone, grave marker, mausoleum, crypt, or other place of burial, whether of whole bodies or ashes, or other evidence of remains of a deceased human body. Any person convicted or found guilty of violating the provisions of this section is guilty of a misdemeanor.

18-7028 — Unlawful removal of human remains — Malice — Intent to sell

18-7028. Unlawful removal of human remains — Malice — Intent to sell. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it or to dissect it, without authority of law, or from malice or wantonness is guilty of a felony punishable by imprisonment in the state penitentiary for not more than five (5) years, by a fine not greater than ten thousand dollars ($10,000) or by both such fine and imprisonment.

18-7029 — Placing posters or promotional material on public or private property without permission

18-7029. Placing posters or promotional material on public or private property without permission. It shall be unlawful for any person to erect, install, attach or paint, or cause to be erected, installed, attached or painted, election posters or signs upon public or private property, real or personal, in the state of Idaho, without permission from the owner or occupant of such property, and it shall be unlawful for any person to place or leave any literature or other political, promotional or sales materials upon public or private property, real or personal, in the state of Idaho when the owner or occupant of such property, by a sign conspicuously posted on the property, or by other written or audio communication to such person, has forbidden the placing or leaving of literature or other political, promotional or sales material upon that property. Provided, however, that the granting of such permission by any public utility company on behalf of any candidate for public office shall constitute the granting of like permission by such public utility company to all other candidates for the same public office. Any violation of this section shall be a misdemeanor.

18-7031 — Placing debris on public or private property

18-7031. Placing debris on public or private property. It shall constitute an infraction for any person, natural or artificial, to deposit upon any public or private property within this state any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, hoops, cans, barbed wire, boards, trash, garbage, lighted material or other waste substances on any place not authorized by any county, city, village or the owner of such property, and is punishable by a fine of one hundred fifty dollars ($150). A second conviction under this section within two (2) years of the commission of the prior offense for which the person was convicted shall constitute an infraction and be punishable by a fine not exceeding three hundred dollars ($300). A third conviction under this section within three (3) years of the first offense for which the person was convicted shall constitute a misdemeanor and be punishable by a fine not exceeding one thousand dollars ($1,000) and by imprisonment in the county jail not exceeding thirty (30) days. Additionally, a peace officer or state fish and game personnel supervised public service of not less than eight (8) hours and not more than forty (40) hours may be imposed to clean up and to properly dispose of debris from public property, or from private property with the written consent of the private property owner, as ordered by the court.

18-7032 — Tampering with parking meters, coin telephones or vending machines — Possession of keys

18-7032. Tampering with parking meters, coin telephones or vending machines — Possession of keys. Any person who without lawful authority, wilfully and wrongfully, opens, removes or damages any parking meter, coin telephone or other vending machine dispensing goods or services, or a part thereof; or possesses a key or device specifically designed to open or break any parking meter, coin telephone or other vending machine dispensing goods or services; or possesses a drawing, print or mold of a key or device specifically designed to open or break any parking meter, coin telephone or other vending machine dispensing goods or services, shall be guilty of a misdemeanor.

18-7033 — Use of unauthorized vehicles on airports

18-7033. Use of unauthorized vehicles on airports. It shall be a misdemeanor offense for any unauthorized vehicle to drive upon, cross or traverse any public or public use airport without the consent of the owner or his designated representative. The owner, operator or lessee or any of them guilty of operating a vehicle upon airport landing surfaces

shall be liable for damage caused to the airport surfaces and for any injuries or damages to persons or property resulting from such damage. The operator, owner or lessee of an unauthorized vehicle involved in a collision with an aircraft while operating upon a public or public use airport shall be held liable for damages to persons or property, both the owner and lessee shall be thus liable, and may be sued jointly, or either or both of them may be sued separately.

18-7034 — Unlawful entry

18-7034. Unlawful entry.

(1) Every person, except under landlord-tenant relationship, who enters any dwelling house, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, closed vehicle, closed trailer, airplane, railroad car or outbuilding, without the consent of the owner of such property or his agent or any person in lawful possession thereof, is guilty of a misdemeanor.

(2) Any person who enters any permanent or temporary dwelling without the consent of the owner of such property or his agent or any person in lawful possession thereof while being pursued by a peace officer is guilty of a felony. For purposes of this subsection "pursued" means "fresh pursuit" as defined in section 19-705 , Idaho Code.

18-7035 — Damaging caves or caverns unlawful — Penalty

18-7035. Damaging caves or caverns unlawful — Penalty. It shall be unlawful for any person, without prior permission of the federal, state or private landowner, to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, multilate, injure, deface, remove, displace, mar or harm any natural material found in any cave or cavern, such as stalactites, stalagmites, helictites, anthodites, gypsum flowers or needles, flowstone, draperies, columns, tufa dams, clay or mud formations or concretions, or other similar crystalline mineral formations or otherwise; to kill, harm or in any manner or degree disturb any plant or animal life found therein; to otherwise disturb or alter the natural conditions of such cave or cavern through the disposal therein of any solid or liquid materials such as refuse, food, containers or fuel of any nature, whether or not malice is intended; to disturb, excavate, remove, displace, mar or harm any archaeological artifacts found within a cave or cavern including petroglyphs, projectile points, human remains, rock or wood carvings or otherwise, pottery, basketry or any handwoven articles of any nature, or any pieces, fragments or parts of any such articles; or to break, force, tamper with, remove of otherwise disturb a lock, gate, door, or other structure or obstruction designed to prevent entrance to a cave or cavern, without the permission of the owner thereof, whether or not entrance is gained. For purposes of this section, "cave" means any natural geologically formed void or cavity beneath the surface of the earth, not including any mine, tunnel, aqueduct or other manmade excavation, which is large enough to permit a person to enter. Any person violating the provisions of this section shall be guilty of a misdemeanor.

18-7036 — Injury by graffiti

18-7036. Injury by graffiti. No person shall purposely or knowingly vandalize, deface or otherwise damage the property of another by painting, writing, drawing, or otherwise inscribing thereon in any fashion that which is commonly known as graffiti. Graffiti includes any form of painting, writing, or inscription regardless of the content or the nature of the materials used which is applied to any public or private surface without the consent of the owner of the property. Every person who is convicted of a violation of the provisions of this section is guilty of a misdemeanor.

18-7037 — Unauthorized release of certain animals, birds or aquatic species — Penalties

18-7037. Unauthorized release of certain animals, birds or aquatic species — Penalties.

(1) Any person who without expressed permission from the owner or agent releases an animal, a bird, or an aquatic species which has been lawfully confined for agriculture, science, research, commerce, public propagation, protective custody, or education is liable: (a) to the owner or agent exercising possession of the animal, bird or aquatic species for damages and replacement costs, including the costs of restoring the animal, bird, or aquatic species to confinement and to its health condition prior to release; and (b) for damage to personal and real property caused by the release of the animal, bird or aquatic species. If the release causes the failure of an experiment, the person is liable for all costs of repeating the experiment, including replacement of the animal, bird or aquatic species.

(2) Any person who intentionally and without permission releases an animal, a bird, or an aquatic species which has been lawfully confined for agriculture, science, research, commerce, public propagation, protective custody, or education is guilty of a misdemeanor.

18-7038 — Destroying livestock

18-7038. Destroying livestock.

(1) Any person who shall, without the permission of the owner:

(a) Wilfully and intentionally destroy; or

(b) Destroy and remove the body or any body parts of any livestock with a value as set forth in subsection (1)(b) of section 18-2407 , Idaho Code, shall be guilty of a felony.

(2) If the value of the livestock is less than that set forth in subsection (1)(b) of section 18-2407 , Idaho Code, a violation of the provisions of this section shall be a misdemeanor.

(3) The provisions of this section shall not apply to any peace officer, veterinarian or officially designated animal control officer who, in the discharge of his official duties is called upon the scene of injured livestock and cannot contact the owner or caretaker of the injured animal within thirty (30) minutes, and he reasonably determines that the injured animal is suffering to such a degree that humane destruction is warranted, and he humanely destroys or causes the animal to be humanely destroyed.

18-7039 — Killing and otherwise mistreating police dogs, police horses, search and rescue dogs and accelerant detection dogs

18-7039. Killing and otherwise mistreating police dogs, police horses, search and rescue dogs and accelerant detection dogs.

(1) Definitions:

(a) "Police dog" shall include:

(i) "Bomb detection dog" means a dog trained to locate bombs or explosives by scent; (ii) "Electronic storage detection dog" means a dog trained to locate electronic storage devices by scent; (iii) "Narcotic detection dog" means a dog trained to locate narcotics by scent; (iv) "Patrol dog" means a dog trained to protect a peace officer and to apprehend a person;

(v) "Tracking dog" means a dog trained to track and find a missing person, escaped inmate or fleeing felon.

(b) "Police horse" means any horse that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in detection of criminal activity, enforcement of laws and apprehension of offenders.

(c) "Search and rescue dog" means a dog that is trained to locate lost or missing persons, victims of natural or man-made disasters, and human bodies.

(d) "Accelerant detection dog" means a dog that is used exclusively for accelerant detection, commonly referred to as arson canines.

(2) The provisions of this section shall apply to police dogs and police horses used by peace officers, including any used by a corrections officer in the performance of the officer's duties, and to search and rescue dogs and accelerant detection dogs used by peace officers or certified handlers under the supervision of a peace officer. The provisions of this section shall apply when the animals are on duty and when not on duty.

(3) Any person who willfully and maliciously and with no legal justification, and with intent to inflict such injury or death, personally causes the death, destruction, or serious physical injury, including bone fracture, loss or impairment of function of any bodily organ, wounds requiring extensive suturing, or serious crippling, of any police dog, police horse, search and rescue dog or accelerant detection dog, shall be guilty of a felony under this section and shall be punished by imprisonment in the state penitentiary for a period not to exceed five (5) years, or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(4) Any person who willfully, maliciously and with no legal justification throws, hurls or projects at a police dog, police horse or search and rescue dog, any rock, object or other substance that is used in such a manner as to be capable of producing injury and likely to produce injury or kicks, strikes, beats, or torments any police dog, police horse or search and rescue dog is guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

(5) Any person who willfully and maliciously and with no legal justification interferes with or obstructs any police dog, police horse or search and rescue dog being used by any peace officer in the discharge of the officer's duties by teasing, agitating, or harassing such animals, or who causes another person or persons, animal or animals, to do likewise, is guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year or by a fine not exceeding one

thousand dollars ($1,000), or by both such fine and imprisonment.

(6) In any case in which a defendant is convicted of a violation of the provisions of this section, the defendant shall be ordered to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency.

(7) The provisions of this subsection do not apply to peace officers or veterinarians who terminate the life of such a police dog, police horse or search and rescue dog for the purpose of relieving the police dog, police horse or search and rescue dog of undue pain or suffering.

18-7040 — Interference with agricultural research

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.

18-7041 — Damage to aquaculture operations

18-7041. Damage to aquaculture operations.

(1) It is unlawful for any person to knowingly transfer, damage, vandalize, poison, or knowingly attempt to transfer, damage, vandalize or poison the product or facilities of a posted commercial aquaculture operation in Idaho, or to knowingly release or knowingly allow another person to release any poisonous or dangerous substance that comes in contact with any species in production in an aquaculture operation and causes damage to either the species in production or the aquaculture facility itself.

(2) Any person or persons violating any provision of this section when the value of the damage to either the species in production or the aquaculture facility itself is one thousand dollars ($1,000) or less shall be guilty of a misdemeanor. Any person or persons violating any provisions of this section when the value of the damage to either the species in production or the aquaculture facility itself is in excess of one thousand dollars ($1,000) shall be guilty of a felony and upon conviction thereof shall be punished by a term of imprisonment of not more than twenty (20) years or by a fine not in excess of ten thousand dollars ($10,000), or by both such fine and imprisonment.

(3) Nothing in this section shall be construed to limit the court's power to order restitution equal to the extent of the damage suffered by the aquaculture operation.

(4) Nothing in this section shall be construed to limit an aquaculture operation from proceeding in a civil action to seek any lawful civil remedy.

18-7042 — interference with agricultural production

18-7042. interference with agricultural production.

(1) A person commits the crime of interference with agricultural production if the person knowingly:

(a) Is not employed by an agricultural production facility and enters an agricultural production facility by force, threat, misrepresentation or trespass;

(b) Obtains records of an agricultural production facility by force, threat, misrepresentation or trespass;

(c) Obtains employment with an agricultural production facility by force, threat, or misrepresentation with the intent to cause economic or other injury to the facility's operations, livestock, crops, owners, personnel, equipment, buildings, premises, business interests or customers;

(d) Enters an agricultural production facility that is not open to the public and, without the facility owner's express consent or pursuant to judicial process or statutory authorization, makes audio or video recordings of the conduct of an agricultural production facility's operations; or

(e) Intentionally causes physical damage or injury to the agricultural production facility's operations, livestock, crops, personnel, equipment, buildings or premises.

(2) For purposes of this section:

(a) "Agricultural production" means activities associated with the production of agricultural products for food, fiber, fuel and other lawful uses and includes without limitation:

(i) Construction, expansion, use, maintenance and repair of an agricultural production facility; (ii) Preparing land for agricultural production; (iii) Handling or applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; (iv) Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;

(v) Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, furbearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal byproducts, animal waste, animal compost, and bees, bee products and bee byproducts; (vi) Processing and packaging agricultural products, including the processing and packaging of agricultural products into food and other agricultural commodities; (vii) Manufacturing animal feed.

(b) "Agricultural production facility" means any structure or land, whether privately or publicly owned, leased or operated, that is being used for agricultural production.

(3) A person found guilty of committing the crime of interference with agricultural production shall be guilty of a misdemeanor and shall be punished by a term of imprisonment of not more than one (1) year or by a fine not in excess of five thousand dollars ($5,000), or by both such fine and imprisonment.

(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 however, that such award shall be in an amount equal to twice the value of the damage resulting from the violation of this section.

18-7043 — INTENTIONAL BREACH OF BIOSECURITY

18-7043. INTENTIONAL BREACH OF BIOSECURITY.

(1) It is unlawful for a person to knowingly commit any of the following acts in the state of Idaho with the intent to damage, poison or infect the crops, livestock, products or facilities of an agricultural facility or agricultural operation as defined in section 22-4502 , Idaho Code, without the knowledge and consent of the owner of the agricultural facility or agricultural operation:

(a) Release or spread any type of contagious, communicable or infectious disease or poison;

(b) Attempt to release or spread any type of contagious, communicable or infectious disease or poison;

(c) Aid, abet or conspire with another person to release or spread any type of contagious, communicable or infectious disease or poison.

(2) Any person or persons violating any provision of this section shall be:

(a) Guilty of a misdemeanor when the damage to the crops, livestock, products or consumers of such products, agricultural facility or agricultural operation itself is one thousand dollars ($1,000) or less;

(b) Guilty of a felony and upon conviction thereof shall be punished by a term of imprisonment of not more than twenty (20) years or by a fine not in excess of ten thousand dollars ($10,000), or by both such fine and imprisonment, when the value of the damage to the crops, livestock, products or consumers of such products, agricultural facility or agricultural operation itself is in excess of one thousand dollars ($1,000).

(3) Nothing in this section shall be construed to limit the court's power to order restitution equal to the extent of the damage suffered to the crops, livestock, products or consumers of such products, agricultural facility or agricultural operation.

(4) Nothing in this section shall be construed to limit an agricultural facility or agricultural operation from proceeding in a civil action to seek any lawful civil remedy.

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

18-7044 — immunity — aid to person in vehicle

18-7044. immunity — aid to person in vehicle.

(1) A person shall not be prosecuted under this title for entry, including forced entry and any resulting property damage, into a motor vehicle for the purpose of removing another person from the vehicle, provided that the person entering:

(a) Has a reasonable, good-faith belief that the other person is in imminent danger of suffering death or serious bodily harm;

(b) Contacts law enforcement before and immediately after entering, if feasible; and

(c) Uses no more force than reasonably necessary to gain entry.

(2) This section shall not be construed to prevent prosecution for physical harm caused to the person in the vehicle or for any other crime unrelated to the act of entering the vehicle as provided in subsection (1) of this section.

CHAPTER 71

18-7101 — Short title

18-7101. Short title. This chapter shall be known and may be cited as the "Property Rights Protection Act."

18-7102 — definitions

18-7102. definitions. As used in this chapter:

(1) "Exigent circumstances" means only those limited, judicially recognized exceptions to the warrant requirement under section 17, article I of the constitution of the state of Idaho and the fourth amendment to the United States constitution.

(2) "Government agent" means any employee or representative of the state of Idaho, any political subdivision thereof, or the federal government, acting in an official capacity.

(3) "Private land not open to the public" or "private land" means any privately owned real property, not including any place of habitation or the associated curtilage, where a person knows or has reason to know that the person's presence is not permitted pursuant to the provisions of section 18-7008 (2)(a), Idaho Code.

(4) "Search warrant" or "warrant" has the same meaning as that term is defined in section 19-4401 , Idaho Code, and shall include an arrest warrant as described in section 19-507 , Idaho Code.

18-7103 — private land protection — Protection From Warrantless Search

18-7103. private land protection — Protection From Warrantless Search. Government agents shall not, in the course and scope of their lawful duty, enter private land not open to the public without a valid search warrant, exigent circumstances, or lawful consent of the owner or lessee.

18-7104 — federal government agents and local coordination

18-7104. federal government agents and local coordination. Prior to executing a search warrant on private land pursuant to section 18-7103 , Idaho Code, federal government agents shall notify the county sheriff, unless exigent circumstances exist.

18-7105 — limited access for government agents

18-7105. limited access for government agents. Notwithstanding section 18-7103 , Idaho Code, a government agent may approach a residence's front entrance using a driveway, walkway, or similar pathway in a manner consistent with that of a private citizen. However, such government agent:

(1) Shall not conduct an investigatory search, inspection, or surveillance beyond what is visible from a lawful public vantage point, nor shall the agent enter other areas of the property not open to the public; and

(2) Shall promptly leave such private land upon the request of the owner or occupant, unless otherwise authorized by law to remain.

18-7106 — civil liability

18-7106. civil liability.

(1) Any government agent who knowingly violates the provisions of this chapter shall be subject to a civil penalty of one thousand dollars ($1,000) per occurrence, payable to the rangeland improvement account established in section 58-1504 , Idaho Code.

(2) A person aggrieved by a violation of this section may bring a civil action for actual damages and injunctive relief. The prevailing party shall be entitled to reasonable attorney's fees and costs.

(3) The civil penalty provided in this section may be enforced by the county prosecuting attorney or by an aggrieved person through a civil action in the magistrate division of the district court. The court shall enter judgment for one thousand dollars ($1,000) per violation, together with any costs and attorney's fees as provided in subsection (2) of this section.

(4) No political subdivision shall be required to indemnify a government agent for civil penalties imposed under this section.

(5) Nothing in this section shall affect the admissibility of evidence in any judicial or administrative proceeding.

(6) The penalties provided in this section shall not be applicable to any county sheriff or deputies, county coroner, municipal police officers, or Idaho state police.

18-7107 — criminal liability

18-7107. criminal liability. A government agent shall not be subject to prosecution under the provisions of section 18-7008 , Idaho Code, if the agent enters private land:

(1) In good faith reliance on a valid search warrant or on exigent circumstances;

(2) Pursuant to lawful consent; or

(3) In accordance with the provisions of section 18-7105 or 18-7108 , Idaho Code.

18-7108 — scope and applicability

18-7108. scope and applicability. Nothing in this chapter shall:

(1) Prevent government agents from conducting lawful investigations from public vantage points or entering private land in response to exigent circumstances;

(2) Prevent government agents from entering private land only to the extent necessary to serve civil process or conduct welfare checks;

(3) Interfere with the use or administration of water rights as provided for in Idaho law;

(4) Interfere with the ability of the department of water resources, or a designated watermaster, to make reasonable entry upon any lands to carry out duties imposed by law;

(5) Interfere with the right of the owner or operator of any right-of-way or easement for any ditch, canal, lateral, drain, or other conduit, as described by law;

(6) Limit lawful aerial observation conducted in compliance with section 21-213 , Idaho Code;

(7) Limit lawful entry to control noxious weeds as authorized in section 22-2406 , Idaho Code;

(8) Limit lawful entry by abatement district employees as authorized in section 39-2804 , Idaho Code;

(9) Limit lawful entry as authorized in sections 7-705 , 40-1310 , 40-2301 , and 54-1230 , Idaho Code; or

(10) Increase or diminish any rights, protections, or legal authorizations with respect to any place of habitation or the associated curtilage.

18-7109 — severability

18-7109. severability. If any provisions of this chapter or the application thereof to any person or circumstances, is held invalid as unconstitutional or ineffective for any reason, such invalidity shall not affect other provisions or applications of the chapter, and to this end the provisions of this chapter are severable.

CHAPTER 72

18-7206 — Use of fraudulent scales for ore

18-7206. Use of fraudulent scales for ore. Every person, association or corporation, or the agent of any person, association or corporation, engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores, who keeps or uses any false or fraudulent scales or weights for weighing ores, who keeps or uses any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, is guilty of a misdemeanor, and is punishable by a fine in any sum not exceeding $1000, or by imprisonment in the county jail for a term of not more than one year nor less than one month, or by both such fine and imprisonment.

18-7207 — Alteration of ore values

18-7207. Alteration of ore values. Every person, corporation or association, or the agent of any person, corporation or association, engaged in milling, sampling, concentrating, reducing, shipping or purchasing ores in this state, who in any manner knowingly alters or changes the true value of any ores delivered to him or them, so as to deprive the seller of the result of the correct value of the same, or who issues any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another, issues a bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another, issues a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value and total amount paid for any lot or lots of ore purchased by him, is guilty of a misdemeanor, and shall be punished as provided in the preceding section.

CHAPTER 73

18-7301 — Freedom from discrimination constitutes a civil right

18-7301. Freedom from discrimination constitutes a civil right. The right to be free from discrimination because of race, creed, color, sex, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination.

(2) The right to the full enjoyment of any of the accommodations, facilities or privileges of any place of public resort, accommodation, assemblage or amusement.

18-7301A — Freedom of choice in treatment

18-7301A. Freedom of choice in treatment. The right of any person to use amygdalin (laetrile) as an adjunct in the treatment of any physical condition of the human body shall not be denied, interfered with or obstructed by any other person.

18-7302 — Definitions

18-7302. Definitions. Terms used in this chapter shall have the following definitions:

(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "National origin" includes "ancestry."

(e) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children’s camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

18-7303 — Denial of right to work or accommodations a misdemeanor

18-7303. Denial of right to work or accommodations a misdemeanor. Every person shall be guilty of a misdemeanor who denies to any other person because of race, creed, color, sex, or national origin the right to work: (a) by refusing to hire, (b) by discharging, (c) by barring from employment, or (d) by discriminating against such person in compensation or in

other terms or conditions of employment; or who denies to any other person because of race, creed, color, sex, or national origin, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement, provided, however, that denial of the right to work on the basis of sex shall be permissible in situations where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business.

CHAPTER 74

18-7401 — Bail jumping — Default in required appearance

18-7401. Bail jumping — Default in required appearance. A person set at liberty by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place, commits a misdemeanor if, without lawful excuse, he fails to appear at that time and place. The offense constitutes a felony where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment. This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

CHAPTER 75

18-7501 — Aircraft hijacking defined — Penalty

18-7501. Aircraft hijacking defined — Penalty. The offense of aircraft hijacking is defined as the seizure or exercise of control, by force or violence or threat of force or violence, of any aircraft within the airspace jurisdiction of the state of Idaho. Any person convicted of the offense of aircraft hijacking shall suffer life imprisonment.

18-7502 — Assault with intent to commit aircraft hijacking defined — Penalty

18-7502. Assault with intent to commit aircraft hijacking defined — Penalty. The offense of assault with intent to commit aircraft hijacking is defined as an intimidation, threat, assault or battery toward any flight crew member, attendant or employee, as to lessen the ability of such member, attendant, or employee to perform his duties, with the intent to commit aircraft hijacking as defined in section 18-7501 of this act. Any person convicted of the offense of assault with intent to commit aircraft hijacking shall suffer life imprisonment.

18-7503 — Weapons aboard aircraft — Penalty

18-7503. Weapons aboard aircraft — Penalty.

(1) 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 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.

(3) This section does not apply to:

(a) Law enforcement officials 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.

(4) Any person convicted of violating the provisions of 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.

(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 law enforcement officials the person refusing 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.

(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 (5) and (6) of this section.

18-7504 — Threats made against airline passengers, other persons, commercial airline companies, or aircraft — Penalty

18-7504. Threats made against airline passengers, other persons, commercial airline companies, or aircraft — Penalty.

(1) Every person who knowingly and wilfully threatens the safety and well-being of any passenger, flight crew member or flight attendant, aboard any aircraft by making telephone, verbal, or written threats against any airline or aircraft within the airspace jurisdiction of the state of Idaho shall be guilty of a felony.

(2) Any person who seizes, confines, or kidnaps another person against his will or without authority of law, or who threatens the safety and well-being of any person, with the intent to hold such person hostage or use such person for the purpose of aircraft hijacking shall be guilty of a felony.

18-7505 — Indictment and trial jurisdiction

18-7505. Indictment and trial jurisdiction. Any offense occurring aboard an aircraft is declared to be a continuing offense from the point of beginning to the point of termination of the flight, and jurisdiction to prosecute a person accused of such an offense shall be in any county of Idaho over which or in which the aircraft is being operated.

CHAPTER 76

18-7601 — Short title

18-7601. Short title. This act shall be known as the "Idaho Tape Piracy Act of 1976."

18-7602 — Definitions

18-7602. Definitions. As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Person" means any individual, firm, partnership, corporation or association of individuals.

(2) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which transferred recorded sounds are directly derived.

18-7603 — Unlawful transfer, sale, distribution, advertisement

18-7603. Unlawful transfer, sale, distribution, advertisement. It shall be unlawful and punishable:

(1) For any person to knowingly, and without the consent of the owner, transfer or cause to be transferred or recorded any sounds previously recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded with the intent to sell such articles, or cause them to be sold for profit or used to promote the sale of any product.

(2) For any person to knowingly, or with reasonable grounds to know, advertise, or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any article that has been produced in violation of the provisions of subsection (1) of this section.

(3) For any person to advertise, or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film or other article on which sounds are recorded, unless the outside cover, box, jacket or container clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

18-7604 — Penalties

18-7604. Penalties.

(1) Any person who violates subsection (1) of section 18-7603 , Idaho Code, is guilty of a felony and upon conviction may be fined not more than ten thousand dollars ($10,000), or imprisoned for not more than four (4) years, or both such fine and imprisonment. Each recording of the original fixation of sounds without consent of the owner thereof shall constitute a separate offense.

(2) Any person who violates subsection (2) or (3) of section 18-7603 , Idaho Code, is guilty of a misdemeanor and upon conviction may be fined not more than one thousand dollars ($1,000) or imprisoned for not more than six (6) months, or both such fine and imprisonment.

18-7605 — Confiscation of equipment

18-7605. Confiscation of equipment. Any article produced in violation of section 18-7603 , Idaho Code, and any equipment used for such purpose, shall be subject to confiscation and destruction by the appropriate law enforcement agency.

18-7606 — Exceptions

18-7606. Exceptions. The provisions of this act shall not apply to any broadcaster, who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

18-7607 — Act not an exclusive remedy

18-7607. Act not an exclusive remedy. This act shall not be deemed an exclusive remedy for persons affected or injured by acts herein proscribed.

18-7608 — Severability

18-7608. Severability. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid as unconstitutional or ineffective for any reason, such invalidity shall not affect other provisions or applications of the act, and to this end the provisions of this are severable.

CHAPTER 77

18-7701 — Short Title

18-7701. Short Title. This act shall be known and may be cited as the "Motion Picture Fair Bidding Act."

18-7702 — Definitions

18-7702. Definitions. As used in this act:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theatre in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor of this state.

(5) "Theatre" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(6) "Trade screening" means the showing of a motion picture by a distributor, and such showing shall be open to any exhibitor interested in exhibiting the motion picture.

18-7703 — Prohibition on Blind Bidding

18-7703. Prohibition on Blind Bidding. No distributor shall engage in blind bidding.

18-7704 — Prohibition on Minimum Fee Guarantee

18-7704. Prohibition on Minimum Fee Guarantee. It shall be unlawful for any license agreement which provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theatre within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement or understanding which provides for such a guarantee shall be void, and any purported waiver of the prohibition in subsection (1) of section 4 of this act shall be void and unenforceable.

18-7705 — Availability of Information on Trade Screening

18-7705. Availability of Information on Trade Screening. If bids are solicited from exhibitors for the purpose of entering into a license agreement, the bid shall include in the invitation to bid the date, time and location of the trade screening of the motion picture that is the subject of the invitation to bid.

18-7706 — Prohibition on Requirement of Advance Payment as Security

18-7706. Prohibition on Requirement of Advance Payment as Security.

(1) It shall be unlawful for any license agreement for the exhibition of a motion picture at a theatre within the state to contain or be conditioned upon a provision, agreement or understanding that the exhibitor shall advance any funds prior to the exhibition of the picture as security for the performance of the license agreement or to be applied to payments under such agreement.

(2) Any provision, agreement or understanding which provides for such an advance shall be void, and any purported waiver of the prohibition in subsection (1) of section 6 of this act shall be void and unenforceable.

18-7707 — Unenforceability of Waiver Provision

18-7707. Unenforceability of Waiver Provision. Any provision of an invitation to bid or a license agreement that waives any of the prohibitions of or fails to comply with this act is void and unenforceable.

18-7708 — Penalty

18-7708. Penalty. It shall be unlawful for any person to willfully violate any provision of this act. Any such violation shall constitute a misdemeanor.

CHAPTER 78

18-7801 — Short title

18-7801. Short title. This act shall be known and may be cited as the "Racketeering Act."

18-7802 — Purpose

18-7802. Purpose. The purpose of this act is to eliminate the infiltration and illegal acquisition of legitimate economic enterprise by racketeering practices and to eliminate the use of legal and illegal enterprises to further criminal activities.

18-7803 — Definitions

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 , 18-4630 , 18-6501 and 49-518 , Idaho Code);

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

(4) Commercial sexual activity (sections 18-5601 , 18-5602 , 18-5603 , 18-5604 , 18-5605 , 18-5606 , 18-5607 , 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 30-14-401 , 30-14-402 , 30-14-403 , 30-14-404 , 30-14-501 , 30-14-502 , 30-14-505 and 30-14-506 , Idaho Code);

(14) Horseracing (section 54-2512 , Idaho Code);

(15) Interest and usurious practices (sections 28-45-401 and 28-45-402 , Idaho Code);

(16) Corporations (sections 18-1901 , 18-1902 , 18-1903 , 18-1904 , 18-1905 , 18-1906 and 30-1510 , Idaho Code);

(17) Perjury (sections 18-5401 and 18-5410 , Idaho Code);

(18) Bribery and corrupt influence (sections 18-1352 and 18-1353 , Idaho Code);

(19) Controlled substances (sections 37-2732 (a), (b), (c), (e) and (f), 37-2732B , 37-2734 and 37-2734B , Idaho Code);

(20) Motor vehicles (sections 49-228 , 49-231 , 49-232 and 49-518 , Idaho Code);

(21) Terrorism (section 18-8103 , Idaho Code).

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

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

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

18-7804 — Prohibited activities — Penalties

18-7804. Prohibited activities — Penalties.

(a) It is unlawful for any person who has received any proceeds derived directly or indirectly from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any interest in, or the establishment or operation

of, any enterprise or real property. Whoever violates this subsection is guilty of a felony.

(b) It is unlawful for any person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property. Whoever violates this subsection is guilty of a felony.

(c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of the affairs of such enterprise by engaging in a pattern of racketeering activity. Whoever violates the provisions of this subsection is guilty of a felony.

(d) It is unlawful for any person to conspire to violate any of the provisions of subsections (a) through (c) of this section. Whoever violates the provisions of this subsection is guilty of a felony.

(e) Whoever violates the provisions of this act is punishable by a fine not to exceed twenty-five thousand dollars ($25,000) and/or imprisonment not to exceed a term of fourteen (14) years in the Idaho state penitentiary.

(f) Upon a conviction of a violation under the provisions of this chapter, the court may order restitution for all costs and expenses of prosecution and investigation, pursuant to the terms and conditions set forth in section 37-2732 (k), Idaho Code.

(g) In addition to any other penalties prescribed by law, whoever violates any provisions of this act shall forfeit to the state of Idaho:

(1) Any interest acquired or maintained in violation of the racketeering act; and

(2) Any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the provisions of the racketeering act.

(h) In any action brought by the state under the racketeering act, the district court shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under the provisions of this section, as it shall deem proper.

(i) Upon conviction of a person under the provisions of this section, the court shall authorize the attorney general or the proper prosecuting attorney to seize all property or other interest declared forfeited under the provisions of this section upon such terms and conditions as the court shall deem proper, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the convicted person, it shall expire and shall not revert to the convicted person.

18-7805 — Racketeering — Civil remedies

18-7805. Racketeering — Civil remedies.

(a) A person who sustains injury to his person, business or property by a pattern of racketeering activity may file an action in the district court for the recovery of three (3) times the actual damages proved and the cost of the suit, including reasonable attorney's fees.

(b) The state, through the attorney general or the proper county prosecuting attorney, may file an action on behalf of those persons injured or to prevent, restrain or remedy racketeering as defined by the racketeering act.

(c) The district court has jurisdiction to prevent, restrain and remedy racketeering after making provisions for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders. Prior to a determination of liability, such orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this section as it deems proper.

(d) Following a determination of liability, such orders may include, but are not limited to:

(1) Ordering any person to divest himself of any interest, direct or indirect, in any enterprise;

(2) Imposing reasonable restrictions on the future activities or investments of any person;

(3) Ordering dissolution or reorganization of any enterprise;

(4) Ordering the payment of three (3) times the damages proved to those persons injured by racketeering;

(5) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state;

(6) Ordering the forfeiture of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within this state; and

(7) Ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering incurred by a municipal, county or state government agency to the agency incurring the costs or expenses.

CHAPTER 79

18-7901 — Purpose

18-7901. Purpose. The legislature finds and declares that it is the right of every person regardless of race, color, ancestry, religion or national origin, to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of groups and individuals. It is not the intent of this act to interfere with the exercise of rights protected by the constitution of the United States. The legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The legislature further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

18-7902 — Malicious harassment defined — Prohibited

18-7902. Malicious harassment defined — Prohibited. It shall be unlawful for any person, maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, or national origin, to:

(a) Cause physical injury to another person; or

(b) Damage, destroy, or deface any real or personal property of another person; or

(c) Threaten, by word or act, to do the acts prohibited if there is reasonable cause to believe that any of the acts described in subsections (a) and (b) of this section will occur. For purposes of this section, "deface" shall include, but not be limited to, cross-burnings or the placing of any word or symbol commonly associated with racial, religious or ethnic terrorism on the property of another person without his or her permission.

18-7903 — Penalties — Criminal and civil

18-7903. Penalties — Criminal and civil.

(a) Malicious harassment is punishable by imprisonment in the state prison for a period not to exceed five (5) years or by fine not exceeding five thousand dollars ($5,000) or by both.

(b) In addition to the criminal penalty provided in subsection (a) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious harassment for both special and general damages, including but not limited to damages for emotional distress, reasonable attorney fees and costs, and punitive damages.

(c) The penalties provided in this section for malicious harassment do not preclude victims from seeking any other remedies, criminal or civil, otherwise available under law.

18-7904 — Effect of invalidity of part of this act

18-7904. Effect of invalidity of part of this act. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional.

18-7905 — Stalking in the first degree

18-7905. Stalking in the first degree.

(1) A person commits the crime of stalking in the first degree if the person violates section 18-7906 , Idaho Code, and:

(a) The actions constituting the offense are in violation of a temporary restraining order, protection order, no contact order or injunction, or any combination thereof; or

(b) The actions constituting the offense are in violation of a condition of probation or parole; or

(c) The victim is under the age of sixteen (16) years; or

(d) At any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon or instrument; or

(e) The defendant has been previously convicted of a crime under this section or section 18-7906 , Idaho Code, or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment; or

(f) The defendant has been previously convicted of a crime, or an attempt, solicitation or conspiracy to commit a crime, involving the same victim as the present offense under any of the following provisions of Idaho Code or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment:

(i) Chapter 9, title 18 ; (ii) Chapter 15, title 18 ; (iii) Chapter 61, title 18 ; (iv) Section 18-4014 (administering poison with intent to kill);

(v) Section 18-4015 (assault with intent to murder); (vi) Section 18-4501 (kidnapping); (vii) Section 18-5501 (poisoning); (viii) Section 18-6604 (forcible sexual penetration by use of foreign object); (ix) Section 18-7902 (malicious harassment); or

(x) Section 18-8103 (act of terrorism).

(2) In this section, "course of conduct" and "victim" have the meanings given in section 18-7906 (2), Idaho Code.

(3) For the purpose of this section, a "substantially conforming foreign criminal violation" exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of this section or section 18-7906 , Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(4) Stalking in the first degree is a felony punishable by a fine not exceeding ten thousand dollars ($10,000) or imprisonment in the state prison for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment.

18-7906 — Stalking in the second degree

18-7906. Stalking in the second degree.

(1) A person commits the crime of stalking in the second degree if the person knowingly and maliciously:

(a) Engages in a course of conduct that seriously alarms, annoys or harasses the victim and is such as would cause a reasonable person substantial emotional distress; or

(b) Engages in a course of conduct such as would cause a reasonable person to be in fear of death or physical injury, or in fear of the death or physical injury of a family or household member.

(2) As used in this section:

(a) "Course of conduct" means repeated acts of nonconsensual contact involving the victim or a family or household member of the victim, provided however, that constitutionally protected activity is not included within the meaning of this definition.

(b) "Family or household member" means:

(i) A spouse or former spouse of the victim, a person who has a child in common with the victim regardless of whether they have been married, a person with whom the victim is cohabiting whether or not they have married or have held themselves out to be husband or wife, and persons related to the victim by blood, adoption or marriage; or (ii) A person with whom the victim is or has been in a dating relationship, as defined in section 39-6303 , Idaho Code; or (iii) A person living in the same residence as the victim.

(c) "Nonconsensual contact" means any contact with the victim that is initiated or continued without the victim’s consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim’s expressed desire that the contact be avoided or discontinued. "Nonconsensual contact" includes, but is not limited to:

(i) Following the victim or maintaining surveillance, including by electronic means, on the victim; (ii) Contacting the victim in a public place or on private property; (iii) Appearing at the workplace or residence of the victim; (iv) Entering onto

or remaining on property owned, leased or occupied by the victim;

(v) Contacting the victim by telephone or causing the victim's telephone to ring repeatedly or continuously regardless of whether a conversation ensues; (vi) Sending mail or electronic communications to the victim; or (vii) Placing an object on, or delivering an object to, property owned, leased or occupied by the victim.

(d) "Victim" means a person who is the target of a course of conduct.

(3) Stalking in the second degree is punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than one thousand dollars ($1,000), or by both such fine and imprisonment.

18-7907 — action for protection

18-7907. action for protection.

(1) There shall exist an action known as a "petition for a protection order" in cases where a person intentionally engages in the following conduct:

(a) Stalks, in any degree, as described in sections 18-7905 and 18-7906 , Idaho Code;

(b) Telephones another with the intent to terrify, threaten, or intimidate such other person and addresses to such other person any threat to inflict injury or physical harm to the person addressed or any member of his family and engages in such conduct with any device that provides transmission of messages, signals, facsimiles, video images, or other communication by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection between persons who are physically separated from each other; or

(c) Based upon another person's race, color, religion, ancestry, or national origin, intimidates or harasses another person or causes, or threatens to cause, physical injury to another person or damage to any real or personal property of another person.

(2) A person may seek relief from such conduct for himself, his children or his ward by filing a verified petition for a protection order with the magistrate division of the district court, alleging specific facts that a person for whom protection is sought was the victim of such conduct within the ninety (90) days immediately preceding the filing of the petition and that such conduct is likely to occur in the future. Evidence of such conduct occurring prior to such ninety (90) day period may be admissible to show that conduct committed within the ninety (90) day period is part of a course or pattern of conduct as described in subsection (1) of this section and may be admissible as otherwise permitted in accordance with court rule and decisional law.

(3) Upon the filing of a verified petition for a protection order, the court shall hold a hearing within fourteen (14) days to determine whether the relief sought shall be granted unless the court determines that the petition fails to state sufficient facts to warrant relief authorized by this section. If either party is represented by counsel at such hearing, the court shall grant a request for a continuance of the proceedings so that counsel may be obtained by the other party. Such order may require either the petitioner or respondent, or both, to pay for costs, including reasonable attorney's fees.

(4) Upon a showing by a preponderance of the evidence that a person for whom protection is sought in the petition was the victim of conduct committed by the respondent that constitutes conduct as described in subsection (1) of this section, within ninety (90) days immediately preceding the filing of the petition, and that such conduct is likely to occur in the future to such person, the court may issue a protection order. Such protection order may:

(a) Direct the respondent to refrain from conduct described in subsection (1) of this section;

(b) Order the respondent to refrain from contacting the petitioner or any other person for whom the petition sought protection; and

(c) Grant such other relief and impose such other restrictions as the court deems proper, that may include a requirement that the respondent not knowingly remain within a certain distance of the protected person, which distance restriction may not exceed one thousand five hundred (1,500) feet.

(5) The petition and the court's protection order shall be served on the respondent in the manner provided in section 39-6310 , Idaho Code. (6)(a) Notice of a protection order shall be forwarded by the clerk of the court, on or before the next judicial day, to the appropriate law enforcement agency.

(b) Upon receipt of such notice, the law enforcement agency shall forthwith enter the order into the Idaho public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the Idaho public safety and security information system constitutes notice to all law enforcement agencies of

the existence of the order. The order is fully enforceable in any county in the state.

(c) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident may be informed of the existence of such protection order.

(7) Any relief granted by a protection order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year; provided that a protection order obtained pursuant to this section may, upon motion and upon good cause shown, be renewed, modified, or terminated by further order of the court with notice to all parties and after a hearing or written stipulation filed with the court.

(8) Whenever a protection order, or an ex parte temporary protection order issued pursuant to this chapter, is granted and the respondent or person to be restrained was served a copy of the order in the manner provided in section 39-6310 , Idaho Code, a violation of the provisions of the order shall be a misdemeanor punishable by not to exceed one (1) year in jail and a fine not to exceed five thousand dollars ($5,000). A peace officer may arrest without a warrant and take into custody a person who the peace officer has probable cause to believe has violated such order.

(9) A petition shall be filed in the county of the respondent's residence, the petitioner's residence or where the petitioner is temporarily residing.

(10) A person may file a single verified petition seeking relief pursuant to this chapter and section 39-6304 , Idaho Code. Such petition shall separately set forth the matters pertaining to each such provision of law. All procedural and substantive requirements governing petitions for domestic violence protection orders under chapter 63, title 39 , Idaho Code, shall apply with respect to the issuance of such domestic violence protection orders.

(11) As used in this section, "contact" means any actual physical contact; contact or attempted contact, directly or indirectly, by telephone, pager, e-mail, facsimile or other oral, written or electronic means of communication.

18-7908 — Ex parte temporary protection order

18-7908. Ex parte temporary protection order.

(1) Where a verified petition for a protection order under this chapter seeks an ex parte temporary protection order, such an ex parte temporary protection order may be granted to the petitioner if the court finds that present harm could result if an order is not immediately issued without prior notice to the respondent and that the respondent has intentionally engaged in the conduct described in section 18-7907 (1), Idaho Code.

(2) The court may grant an ex parte temporary protection order based upon the verified petition submitted and set the matter for a full hearing under section 18-7907 , Idaho Code. If the court does not grant an ex parte temporary protection order based upon the petition, the court may hold an ex parte hearing on the day a petition is filed or on the following judicial day to determine whether the court should grant an ex parte temporary protection order and set the matter for a full hearing under section 18-7907 , Idaho Code, dismiss the verified petition, or deny the ex parte temporary protection order and set the matter for a full hearing under section 18-7907 , Idaho Code. An ex parte temporary protection order may grant the same relief as specified in section 18-7907 (4), Idaho Code.

(3) An ex parte hearing to consider the issuance of an ex parte temporary protection order may be conducted by telephone or other electronic means in accordance with any procedures authorized by the Idaho supreme court.

(4) An ex parte temporary protection order shall be effective for a fixed period not to exceed fourteen (14) days but may be reissued for good cause shown. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the ex parte temporary protection order. Motions seeking an order shortening the time period must be served upon the petitioner at least two (2) days prior to the hearing on the motion.

(5) Except as otherwise provided in this section, the provisions of section 18-7907 , Idaho Code, are applicable to a petition for protective order seeking an ex parte temporary protection order and to any ex parte temporary restraining order issued pursuant to this section.

18-7909 — Fees waived

18-7909. Fees waived. No filing fee, service fee, hearing fee or bond shall be charged for proceedings seeking only the relief provided under sections 18-7907 and 18-7908 , Idaho Code.

CHAPTER 80

18-8001 — Driving without privileges

18-8001. Driving without privileges. (1)(a) Except as provided in paragraph (b) of this subsection, any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320 , Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(b) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320 , Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction and whose license was suspended for any reason outlined in sections 18-1502 , 49-326 (1)(g), 49-1204 and 49-1207 , Idaho Code, is guilty of an infraction punishable by a fine of one hundred fifty dollars ($150).

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by first class mail to his address pursuant to section 49-320 , Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320 , Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) A minor may be prosecuted for a violation of subsection (1) of this section under chapter 5, title 20 , Idaho Code.

(4) If a person is convicted for a violation of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005 , 18-8004A , 18-8004C or 18-8006 , Idaho Code, and not in lieu thereof.

(5) In no event shall a person be granted restricted driving privileges unless the person shows proof of liability insurance or other proof of financial responsibility, as provided in chapter 12, title 49 , Idaho Code.

(6) In no event shall a person who is disqualified or whose driving privileges are suspended, revoked or canceled under the provisions of this chapter be granted restricted driving privileges to operate a commercial motor vehicle.

18-8002 — Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Penalty and suspension upon refusal of tests

18-8002. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Penalty and suspension upon refusal of tests.

(1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004 , Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or was in actual physical control of a motor vehicle in violation of the provisions of section 18-8004 or 18-8006 , Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars ($250) for refusing to take the test;

(b) He is subject to mandatory installation of a state-approved ignition interlock system, at his expense, on all of the motor vehicles operated by him for a period to end one (1) year following the end of the suspension period;

(c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to or complete evidentiary testing;

(d) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and shall order the required installation of a state-approved ignition interlock system on all motor vehicles operated by him and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years;

(e) Provided however, if he is admitted to a problem solving court program and has served at least forty-five (45) days of an absolute suspension of driving privileges, then he may be eligible for a restricted permit for the purpose of getting to and from work, school or an alcohol treatment program, but only if a state-approved ignition interlock system has been installed, at his expense, on all motor vehicles operated by him; and

(f) After submitting to evidentiary testing, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) of this section:

(a) He shall be fined a civil penalty of two hundred fifty dollars ($250);

(b) The court shall direct the installation, at his expense, of a state-approved ignition interlock system meeting the requirements set forth in section 18-8008 , Idaho Code, on all motor vehicles operated by him for a period of one (1) year following the end of the suspension period;

(c) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the date of service unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to or complete evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar ($250) civil penalty immediately, suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years and direct the installation, at his expense, of a state-approved ignition interlock system meeting the requirements set forth in section 18-8008 , Idaho Code, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period, unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(d) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred fifty dollar ($250) civil penalty, suspend the defendant's driving privileges for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years, during which time he shall have absolutely no driving privileges of any kind, and direct the installation of a state-approved ignition interlock system, at his expense, meeting the requirements set forth in section 18-8008 , Idaho Code, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period;

(e) Notwithstanding the provisions of paragraphs (c) and (d) of this subsection, if the defendant is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19 , Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, then the defendant shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the defendant has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system meeting the requirements set forth in section 18-8008 , Idaho Code, is installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period and that the defendant has shown proof of financial responsibility as defined and in the amounts specified in section 49-117 , Idaho Code, provided that the restricted noncommercial driving privileges and the requirement of a state-approved ignition interlock system may be continued if the defendant successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program; and

(f) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained sanction under this section or section 18-8002A , Idaho Code, shall be a sanction separate and apart from any other sanction imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A , Idaho Code; provided that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003 , Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003 , Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006 , Idaho Code; (ii) Vehicular manslaughter as provided in subsection (3)(a), (b) and (c) of section 18-4006 , Idaho Code; (iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035 , Idaho Code; or (iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003 (2), Idaho Code.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel, withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or (ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A , Idaho Code, shall be defined as being in the driver’s position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A , Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004 , Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney

representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

(12) Upon petition of the person required to install an ignition interlock device pursuant to subsection (4)(b) of this section, section 18-8002A (4), 18-8005 (1)(e), or 18-8008 , Idaho Code, a court in its discretion may relieve the person from the installation of the device where the court finds it clear and convincing that the person will not present a danger to the public or that there are exceptional or mitigating circumstances demonstrating that installation of the device is unnecessary or unwarranted. Financial hardship, standing alone, is not an exceptional or mitigating circumstance. If no civil or criminal case is pending related to the order to install the ignition interlock device, a person may file a petition for relief in magistrate court under this section in his county of residence, or, if such person has no county of residence in Idaho, in Ada county, if such petition is filed within thirty (30) days of the order requiring the installation of the interlock device. While any petition for judicial review in district court or motion or petition before a magistrate court is pending, the ignition interlock device requirement shall be stayed. The Idaho transportation department shall not be a party to any petition for interlock relief filed before a court. An order for relief from the installation of the ignition interlock device from any court shall apply to all statutory ignition interlock requirements.

(13) A court may determine that an offender is eligible to utilize available funds from the court interlock device and electronic monitoring device fund, as outlined in section 18-8010 , Idaho Code, for the installation and operation of an ignition interlock device, based on evidence of financial hardship.

(14) As used in this section, "at his expense" includes the cost of obtaining, installing, using and maintaining an ignition interlock system.

18-8002A — Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Suspension upon failure of tests

18-8002A. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Suspension upon failure of tests.

(1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim): If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will issue a notice of suspension and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. The suspension will be for one (1) year if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) However, if you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the purpose of getting to and from work, school or an alcohol treatment program, but only if you install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate;

(f) However, if you are admitted to a diversion program under section 19-3509 , Idaho Code, you may be eligible for a restricted permit for the purpose of getting to and from work, school, medical appointments, or a treatment program, but only if you install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate; and

(g) After submitting to evidentiary testing, you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67 , Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004 , Idaho Code, and subsection (1)(e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in accordance with section 18-8004 , Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004 , Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension and ignition interlock system.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating

substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section. (ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subparagraph. The department shall also direct the installation, at the offender's expense, of a state-approved ignition interlock system meeting the requirements of section 18-8008 , Idaho Code, on all motor vehicles operated by the offender for a period to end one (1) year following the end of the suspension period. The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension and notice of the requirement to install, at his expense, a state-approved ignition interlock system for a period to end one (1) year following the end of the suspension period. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension and the requirement to install the ignition interlock system; (ii) The effective date of the suspension and the requirement to install the ignition interlock system; (iii) The suspension periods to which the person may be subject as provided in paragraph (a) of this subsection; (iv) The procedures for obtaining restricted noncommercial vehicle driving privileges;

(v) The rights of the person to request an administrative hearing on the suspension and that, if an administrative hearing is not requested within seven (7) days of service of the notice of suspension and notice of the requirement to install the ignition interlock system, the right to contest the suspension shall be waived; (vi) The procedures for obtaining an administrative hearing on the suspension; (vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(c) Notwithstanding the provisions of paragraph (a)(i) and (ii) of this subsection, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19 , Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system is installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117 , Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(5) Service of suspension and ignition interlock system by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code:

(a) The peace officer shall, acting on behalf of the department, serve the person with a notice of suspension and notice of the requirement to install, at his expense, a state-approved ignition interlock system for a period to end one (1) year following the end of the suspension period in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension and the requirement to install the ignition interlock system if the peace officer failed to do so or failed to include the date of service as provided in subsection (4)(b) of this section.

(b) Within five (5) business days following service of a notice of suspension and notice of the requirement to install the ignition interlock system, the peace officer shall forward to the department a copy of the completed notice of suspension and notice of the requirement to install the ignition interlock system form upon which the date of service upon the driver shall be clearly indicated, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person; (ii) Stating the officer's legal cause to stop the person; (iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code; (iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;

(v) That the person was lawfully arrested; (vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code. If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension and notice of the requirement to install the ignition interlock system after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The hearing may be held only on the suspension and not on the requirement to install an ignition interlock system. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension and notice of the requirement to install the ignition interlock system and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request. If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for a ten (10) day period. Such extension shall not operate as a stay of the suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. The hearing shall be recorded. The sworn statement of the arresting officer and the copy of the notice of suspension and the notice of the requirement to install the ignition interlock system issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004 (4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer. The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

(a) The peace officer did not have legal cause to stop the person; or

(b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code; or

(c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004 , 18-8004C or 18-8006 , Idaho Code; or

(d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004 (4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or

(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section. If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law and shall enter an order vacating or sustaining the suspension. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67 , Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted. The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension and the requirement to install the ignition interlock system required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006 , Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67 , Idaho Code. Any petition for relief from the installation of an ignition interlock device shall be filed in accordance with the provisions of section 18-8002 (12), Idaho Code. An order for relief from the installation of an ignition interlock device from any court shall apply to all statutory ignition interlock requirements.

(9) Restricted noncommercial vehicle driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted noncommercial vehicle driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted noncommercial vehicle driving privileges will be issued for the person to travel to and from work and for work purposes not involving operation of a commercial vehicle, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted noncommercial vehicle driving privileges. Any person whose driving privileges are suspended under the provisions of this chapter may be granted privileges to drive a noncommercial vehicle but shall not be granted privileges to operate a commercial motor vehicle.

(10) As used in this section, "at his expense," "at your expense" and "at the offender's expense" include the cost of obtaining, installing, using and maintaining an ignition interlock system.

(11) Rules. The department may adopt rules under the provisions of chapter 52, title 67 , Idaho Code, deemed necessary to implement the provisions of this section.

18-8003 — Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances and restitution orders

18-8003. Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances and restitution orders.

(1) Only a licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or educational institution to withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose of determining the content of alcohol, drugs or other intoxicating substances therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of this section: (a) the term "qualified medical technologist" shall be deemed to mean a person who meets the standards of a "clinical laboratory technologist" as set forth by the then current rules and regulations of the social security administration of the United States department of health and human services pursuant to subpart M of part 405, chapter III, title 20 , of the code of federal regulation; and (b) the terms "phlebotomist" and "other medical personnel" shall be deemed to mean persons who meet the standards for the withdrawing of blood as designated and qualified by

the employing medical facility or other employing entity of those persons.

(2) Upon conviction for a felony or misdemeanor violation under this chapter, except pursuant to sections 18-8001 and 18-8007 , Idaho Code, or upon conviction for vehicular manslaughter pursuant to section 18-4006 (3)(b), Idaho Code, the court may order restitution for the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816 , Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A "conviction" for purposes of this subsection means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(3) The person tested may, at his own expense, have a person of his own choosing, who is authorized to make a test, administer an evidentiary test for alcohol concentration in addition to the one administered at the request of a peace officer.

18-8004 — Persons under the influence of alcohol, drugs or any other intoxicating substances

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) "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.

(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.

18-8004A — Penalties — Persons under 21 with less than 0

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 section 18-8005

(11) and (15), 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 (10), 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;

(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; and

(f) Shall undergo an alcohol evaluation and comply with the other requirements of section 18-8005

(11) and (15), 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;

(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 section 18-8005

(11) and (15), 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 20 , Idaho Code.

(6) Any person whose driving privileges are suspended, revoked, canceled or disqualified under the provisions of this chapter shall not be granted privileges to operate a commercial motor vehicle during the period of suspension, revocation, cancellation or disqualification.

18-8004C — Excessive alcohol concentration — Penalties

18-8004C. Excessive alcohol concentration — Penalties. Notwithstanding any provision of section 18-8005 , Idaho Code, to the contrary:

(1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(a), Idaho Code, for the first time, but who has an alcohol concentration of 0.20, as defined in section 18-8004 (4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days, the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year;

(b) May be fined an amount not to exceed two thousand dollars ($2,000);

(c) 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 and violations of the provisions 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 surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 , Idaho Code, and who has an alcohol concentration of 0.20, as defined in section 18-8004 (4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, and who previously has been found guilty of or has pled guilty to one (1) or more violations of the provisions of section 18-8004 , Idaho Code, in which the person had

an alcohol concentration of 0.20 or more, or any substantially conforming foreign criminal violation wherein the defendant had an alcohol concentration of 0.20 or more, or any combination thereof, within five (5) years, notwithstanding the form of judgment or withheld judgment shall be guilty of a felony; and:

(a) Shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years; provided that notwithstanding the provisions of section 19-2601 , Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of section 18-111 , Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(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 after release from imprisonment, and may have his driving privileges suspended by the court for a period not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; 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 license suspension period.

(3) Notwithstanding the provisions of subsections (1)(e) and (2)(d) of this section, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19 , Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year, on each of the motor vehicles owned or operated, or both, by the offender, and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117 , Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(4) All the provisions of section 18-8005 , Idaho Code, not in conflict with or otherwise provided for in this section, shall apply to this section.

(5) 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 or withheld judgment.

18-8005 — Penalties

18-8005. Penalties.

(1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(a), Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C , Idaho Code:

(a) May be sentenced to jail for a term not to exceed six (6) months;

(b) May be fined an amount not to exceed one thousand dollars ($1,000);

(c) 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 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 have his driving privileges suspended by the court for a period of thirty (30) days, which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days, during which the defendant may request restricted driving privileges that the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs; and

(e) Unless an exception is granted pursuant to section 18-8002 (12), Idaho Code, shall within ten (10) days following the end of the period of absolute suspension have a state-approved ignition interlock system meeting the requirements of section 18-8008 , Idaho Code, installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period. A court may determine that an offender is eligible to utilize available funds from the court interlock device and electronic monitoring device fund, as outlined in section 18-8010 , Idaho Code, for the installation and operation of an ignition interlock device, based on evidence of financial hardship.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of subsection (1)(a), (b), (c) and (e) of this section; and

(b) The provisions of section 49-335 , Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(c), Idaho Code, for the first time is guilty of a misdemeanor and is subject to:

(a) The provisions of subsection (1)(a), (b), (c) and (e) of this section; and

(b) The provisions of section 49-335 , Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(a), (b) or (c), 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) or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C , Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C , Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of no less than ten (10) days, the first forty-eight (48) hours of which must be consecutive, and five (5) days of which must be served in jail, as required by 23 U.S.C. 164, and may be sentenced to no more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed two thousand dollars ($2,000);

(c) 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 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 surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) 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 one (1) year mandatory license suspension period.

(5) If the person has pled guilty or was found guilty for the second time within ten (10) years of a violation of the provisions of section 18-8004 (1)(b) or (c), Idaho Code, then the provisions of section 49-335 , Idaho Code, shall apply.

(6) Except as provided in section 18-8004C , Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(a), (b) or (c), 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) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, or who has completed a diversion program for driving under the influence, whether or not the person has pled guilty or been found guilty, or any substantially conforming foreign program, and has pled guilty or been found guilty of one (1) or more violations of the provisions of section 18-8004 (1)(a), (b), or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony and:

(a) Shall be sentenced to the custody of the state board of correction for not to exceed ten (10) years; provided that notwithstanding the provisions of section 19-2601 , Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of no less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which

must be served in jail, as required by 23 U.S.C. 164; and further provided that notwithstanding the provisions of section 18-111 , Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(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 after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind, and may have his driving privileges suspended by the court for an additional period not to exceed four (4) years, during which the defendant may request restricted driving privileges that the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs; 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.

(7) Notwithstanding the provisions of subsections (4)(e) and (6)(d) of this section, any person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19 , Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system is installed, at his expense, on any motor vehicles operated by the offender for a period to end one (1) year following the end of the suspension period and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117 , Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(8) For the purpose of computation of the enhancement period in subsections (4), (6) and (9) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(9) Notwithstanding the provisions of subsections (4) and (6) of this section, any person who has pled guilty to or has been found guilty of a felony violation of the provisions of section 18-8004 , Idaho Code, a felony violation of the provisions of section 18-8004C , Idaho Code, a violation of the provisions of section 18-8006 , Idaho Code, a violation of the provisions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judgment(s) or withheld judgment(s) or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment(s) or withheld judgment(s), and within fifteen (15) years pleads guilty to or is found guilty of a further violation of the provisions of section 18-8004 , Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (6) of this section.

(10) For the purpose of subsections (4), (6) and (9) of this section and the provisions of section 18-8004C , Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004 , Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(11) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31 , Idaho Code) and prior to the sentencing date, an alcohol evaluation by a substance use disorders service provider approved by the Idaho department of health and welfare; provided however, if the defendant has no prior or pending charges with respect to the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, and the court has the records and information required under subsection (12)(a), (b) and (c) of this section or possesses information from other reliable sources relating to the defendant's use or nonuse of alcohol or drugs that does not give the

court any reason to believe that the defendant regularly abuses alcohol or drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of section 18-8004 or 18-8004C (1), Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of an alcohol evaluation with respect to a defendant's first violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance use disorder assessment, criminogenic risk assessment, or other assessment that evaluates the defendant's degree of alcohol abuse and need for alcohol treatment conducted within twelve (12) months preceding the date of the defendant's sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39 , Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(12) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;

(b) A computer or teletype or other acceptable copy of the person's driving record;

(c) Information as to whether the defendant has pled guilty to or been found guilty of a violation of the provisions of section 18-8004 , 18-8004C or 18-8006 , Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (11) of this section, if any.

(13) At the time of sentencing, the court shall inform the defendant that a second or subsequent offense of driving while under the influence of alcohol, drugs, or any other intoxicating substances that results in death may be considered vehicular manslaughter and may result in stricter punishment, including a mandatory fixed term of imprisonment of at least five (5) years for a second offense and a mandatory fixed term of imprisonment of at least ten (10) years for a third or subsequent offense, as provided in section 18-4007 (3)(b)(ii) and (iii), Idaho Code. Failure by the court to inform the defendant of such information shall not prohibit the imposition of a mandatory fixed term of imprisonment, and proof of knowledge of the mandatory fixed term of imprisonment shall not be required for such term to be imposed.

(14) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C , Idaho Code, under chapter 5, title 20 , Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 (1)(a), (b) or (c) or 18-8004C , Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(15) In the event that the alcohol evaluation required in subsection (11) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence that may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19 , Idaho Code.

Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(16) Any person who is disqualified, or whose driving privileges have been suspended, revoked or canceled under the provisions of this chapter, shall not be granted restricted driving privileges to operate a commercial motor vehicle.

(17) As used in this section, "at his expense" includes the cost of obtaining, installing, using and maintaining an ignition interlock system.

18-8006 — Aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances

18-8006. Aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances.

(1) Any person causing great bodily harm, permanent disability or permanent disfigurement to any person other than himself in committing a violation of the provisions of section 18-8004 (1)(a) or (1)(c), Idaho Code, is guilty of a felony, and upon conviction:

(a) Shall be sentenced to the state board of correction for not to exceed fifteen (15) years, provided that notwithstanding the provisions of section 19-2601 , Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive; and further provided that notwithstanding the provisions of section 18-111 , Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall be ordered by the court to pay restitution in accordance with chapter 53, title 19 , Idaho Code.

(2) At the time of sentencing, the court shall inform the defendant that a second or subsequent offense of driving while under the influence of alcohol, drugs, or any other intoxicating substances that results in death may be considered vehicular manslaughter and may result in stricter punishment, including a mandatory fixed term of imprisonment of at least five (5) years for a second offense and a mandatory fixed term of imprisonment of at least ten (10) years for a third or subsequent offense, as provided in section 18-4007 (3)(b)(ii) and (iii), Idaho Code. Failure by the court to inform the defendant of such information shall not prohibit the imposition of a mandatory fixed term of imprisonment, and proof of knowledge of the mandatory fixed term of imprisonment shall not be required for such term to be imposed.

(3) 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).

18-8006A — aggravated driving while reckless

18-8006A. aggravated driving while reckless.

(1) A person shall be guilty of aggravated driving while reckless if he causes great bodily harm, permanent disability, or permanent disfigurement to any person other than himself in committing a violation of the provisions of section 49-1401 (1), Idaho Code.

(2) Any person who commits aggravated driving while reckless upon conviction:

(a) Shall be sentenced to the state board of correction for a term not to exceed fifteen (15) years. Notwithstanding the provisions of section 19-2601 , Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of at least thirty (30) days, the first forty-eight (48) hours of which must be consecutive. Notwithstanding the provisions of section 18-111 , Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(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 after release from imprisonment and may have his driving privileges suspended by the court for a period not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall be ordered by the court to pay restitution in accordance with chapter 53, title 19 , Idaho Code.

(3) 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 or withheld judgment.

18-8007 — Leaving scene of accident resulting in injury or death

18-8007. Leaving scene of accident resulting in injury or death.

(1) The driver of any vehicle that has been involved in an accident, either upon public or private property open to the public, who knows or has reason to know that said accident has resulted in injury to or death of any person shall:

(a) Immediately stop the vehicle at the scene of the accident or as close thereto as possible. Every stop required under this section shall be made without obstructing traffic more than is necessary.

(b) Remain at the scene of the accident until the driver has fulfilled all the requirements under this section.

(c) Give his name, address, the name of his insurance agent or company if he has automobile liability insurance, and the motor vehicle registration number of the vehicle he is driving to the person struck, or to the driver or occupant of or person attending any vehicle collided with.

(d) If available, exhibit his driver's license to the person struck, or to the driver or occupant of or person attending any vehicle collided with.

(e) Render to any person injured in the accident reasonable assistance, including the conveying or the making of arrangements for the conveying of such person to a physician, surgeon, hospital or other medical facility, for medical or surgical treatment, if it is apparent that such treatment is necessary or if such conveying is requested by the injured person.

(2) A violation of any provision of this section shall constitute a felony and be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment in the state penitentiary for a period of not more than five (5) years, or by both such fine and imprisonment.

(3) The director of the transportation department shall revoke for a period of one (1) year the driver's license or permit to drive, or the nonresident operating privilege, of any person convicted or found guilty of violating any provision of this section. Such revocation shall preclude any type of work permit or other form of limited driving privileges as provided in section 49-326 , Idaho Code.

18-8008 — Ignition interlock systems

18-8008. Ignition interlock systems. (1)(a) If a person is convicted, is found guilty, pleads guilty or receives a withheld judgment for violating any of the provisions of this chapter relating to driving under the influence and has had any or all of a sentence or fine suspended for the violation, the court shall, unless an exception is granted pursuant to section 18-8002 (12), Idaho Code, impose the sanction provided for in this section in addition to any other penalty or fine imposed pursuant to this chapter.

(b) The court shall order the person to have a state-approved ignition interlock system installed, at his expense, on all motor vehicles operated by him. A court may determine that an offender is eligible to utilize available funds from the court interlock device and electronic monitoring device fund, as outlined in section 18-8010 , Idaho Code, for the installation and operation of an ignition interlock device, based on evidence of financial hardship.

(2) The calibration setting at which the ignition interlock system will prevent the motor vehicle from being started shall be.025. The ignition interlock vendor shall notify the prosecuting authority any time a person is prevented from starting a motor vehicle, as provided in this subsection.

(3) As used in this chapter, the term "ignition interlock system" means breath alcohol ignition interlock device, including a camera, certified by the transportation department, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage.

(4) The transportation department shall by rule provide standards for the certification, installation, repair and removal of the devices. The ignition interlock vendor shall provide proof of installation of the ignition interlock system to the

transportation department.

(5) The court shall notify the transportation department of its order imposing a sanction pursuant to this section. The department shall attach or imprint a notation on the driver's license or other document granting the person restricted driving privileges of any person restricted under this section that the person may operate only a motor vehicle equipped with an ignition interlock system. The ignition interlock restriction period shall end one (1) year from the date the ignition interlock vendor provides proof of installation of the ignition interlock system.

(6) When a court orders a person to install and use an ignition interlock system pursuant to this section, the court shall order the person to pay the cost for obtaining, installing, utilizing and maintaining the ignition interlock system. All fees collected pursuant to this section shall be in addition to any other fines or penalty provided by law and shall be deposited in the court interlock device and electronic monitoring device fund created in section 18-8010 , Idaho Code.

18-8008A — Electronic monitoring devices

18-8008A. Electronic monitoring devices.

(1) If a person is convicted, is found guilty, pleads guilty or receives a withheld judgment for violating any of the provisions of this chapter and has had any or all of a sentence or fine suspended for the violation, the court, in its discretion, may impose the sanction provided for in this section in addition to any other penalty or fine imposed pursuant to this chapter.

(2) The court may order the person to use electronic monitoring devices to record the person's movements if, as a condition of probation, the person has been given restricted driving privileges between certain times, has been placed under a curfew or has been ordered confined to his residence during times certain. Nothing in this subsection shall restrict the court's usage of electronic monitoring devices to supervise a defendant on probation for other offenses.

(3) If a court orders a defendant to use an electronic monitoring device pursuant to this section, and the court, or its probation department, furnishes the defendant with the device, the court may order the defendant to pay a reasonable fee for utilizing the equipment. All fees collected pursuant to this section shall be in addition to any other fines or penalty provided by law and shall be deposited in the court interlock device and electronic monitoring device fund created in section 18-8010 , Idaho Code.

18-8009 — Ignition interlocks — Assisting another in starting or operating — Penalty

18-8009. Ignition interlocks — Assisting another in starting or operating — Penalty. A person who knowingly assists another person who is restricted to the use of an ignition interlock device to start and operate that vehicle in violation of a court order shall be guilty of a misdemeanor. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and person subject to the court order does not operate the vehicle.

18-8010 — Surcharge added to all fines

18-8010. Surcharge added to all fines. Every person who is convicted, found guilty, pleads guilty or receives a withheld judgment for violating the provisions of this chapter shall be required to pay an additional fifteen dollars ($15.00) in addition to any other fine, penalty or costs the court may assess. Moneys received pursuant to this section shall be remitted to the county treasurer in the county where the person was adjudicated for deposit in the "court interlock device and electronic monitoring device fund," which is hereby created in each county. Moneys in this fund may be utilized for the purchase of ignition interlock devices and electronic monitoring devices required pursuant to sections 18-8002 , 18-8002A , 18-8005 , 18-8008 and 18-8008A , Idaho Code. Additionally, any moneys a court charges a defendant for using an ignition interlock device or electronic monitoring devices shall be placed in this fund. The court or a prosecuting attorney who establishes a diversion program pursuant to section 19-3509 , Idaho Code, may also utilize moneys in this fund to assist an indigent defendant or indigent diversion participant to procure an ignition interlock device or electronic monitoring devices. The court may also utilize moneys in this fund for alcohol or drug abuse-related probation, treatment or prevention programs for adults or juveniles.

18-8011 — Stay of suspension of drivers' licenses or driving privileges upon reincarceration

18-8011. Stay of suspension of drivers' licenses or driving privileges upon reincarceration. A court-ordered suspension of an individual's driver's license or driving privileges issued pursuant to this chapter that is to commence after that individual's release from confinement or imprisonment, shall cease to run if the individual is reincarcerated. The court-ordered suspension will be stayed for the entire period the individual is reincarcerated and will recommence as of

the date the individual is rereleased from confinement or imprisonment. Upon the individual's release from confinement or imprisonment, the suspension period will run for the number of days remaining on the suspension as of the date of the individual's reincarceration.

CHAPTER 81

18-8101 — Purpose

18-8101. Purpose. The legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject, to associate with others who share similar beliefs, and to keep and bear arms. It is not the intent, by the provisions of this chapter, to interfere with the exercise of rights protected by the constitutions of the state of Idaho or the United States. The legislature further recognizes and finds that conspiracies and training activities in furtherance of unlawful acts of violence against persons and property is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

18-8102 — Definitions

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.

18-8103 — Prohibited activities — Penalties

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. 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.

18-8104 — Exclusions

18-8104. Exclusions. Nothing contained in this chapter makes unlawful any act protected pursuant to article I, section 11, of the Idaho constitution, or any act of any peace officer which is performed in the lawful performance of the law enforcement officer's official duties. Nothing contained in this chapter makes unlawful any activity of the department of fish and game, any governmental military force, the department of correction, any law enforcement agency, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to, hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to, any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined under the laws of this state or the knowledge of or the intent to cause or further a civil disorder.

18-8105 — Severability

18-8105. Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

18-8106 — Providing material support to terrorists

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.

CHAPTER 82

18-8201 — Money laundering and illegal investment — Penalty — Restitution

18-8201. Money laundering and illegal investment — Penalty — Restitution.

(1) It is unlawful for any person to knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport, or make available anything of value that the person knows is intended to be used to commit or further a pattern of racketeering activity as defined in section 18-7803 (d), Idaho Code, or a violation of the provisions of chapter 27, title 37 , Idaho Code.

(2) It is unlawful for any person to knowingly or intentionally direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known by that person to be derived from a pattern of racketeering activity as defined in section 18-7803 (d), Idaho Code, or a violation of the provisions of chapter 27, title 37 , Idaho Code.

(3) It is unlawful for any person to knowingly or intentionally conduct a financial transaction involving proceeds known by that person to be derived from a pattern of racketeering activity as defined in section 18-7803 (d), Idaho Code, or a violation of the provisions of chapter 27, title 37 , Idaho Code, if the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a transaction reporting requirement under state or federal law.

(4) A person who violates the provisions of this section is guilty of a felony and upon conviction may be fined not more than two hundred fifty thousand dollars ($250,000) or twice the value of the property involved in the transaction,

whichever is greater, or be imprisoned for not more than ten (10) years, or be both so fined and imprisoned.

(5) Upon a conviction of a violation under the provisions of this chapter, the court may order restitution for all costs and expenses of prosecution and investigation, pursuant to the terms and conditions set forth in section 37-2732 (k), Idaho Code.

CHAPTER 83

18-8301 — Short title

18-8301. Short title. This chapter shall be known and may be cited as the "Sexual Offender Registration Notification and Community Right-to-Know Act."

18-8302 — Findings

18-8302. Findings. The legislature finds that sexual offenders present a danger and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sexual offenses are impaired by the lack of current information available about individuals who have been convicted of sexual offenses who live within their jurisdiction. The legislature further finds that providing public access to certain information about convicted sexual offenders assists parents in the protection of their children. Such access further provides a means for organizations that work with youth or other vulnerable populations to prevent sexual offenders from threatening those served by the organizations. Finally, public access assists the community in being observant of convicted sexual offenders in order to prevent them from recommitting sexual crimes. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect communities by requiring sexual offenders to register with local law enforcement agencies and to make certain information about sexual offenders available to the public as provided in this chapter.

18-8303 — Definitions

18-8303. Definitions. As used in this chapter:

(1) "Aggravated offense" means any of the following crimes: 18-1506A (ritualized abuse of a child); 18-1508 (lewd conduct); 18-4003

(d) (murder committed in the perpetration of rape); 18-4502 (first-degree kidnapping committed for the purpose of rape, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-4503 (second-degree kidnapping where the victim is an unrelated minor child and the kidnapping is committed for the purpose of rape, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-6101 (rape, but excluding section 18-6101

(1) where the victim is at least twelve (12) years of age or the defendant is eighteen (18) years of age and section 18-6101

(2) where the victim is sixteen (16) or seventeen (17) years of age and the defendant is no more than five (5) years older than the victim); 18-6604 (forcible penetration by use of a foreign object); chapter 86, title 18 , (human trafficking); and any other offense set forth in section 18-8304 , Idaho Code, if at the time of the commission of the offense the victim was below the age of thirteen (13) years or an offense that is substantially similar to any of the foregoing offenses under the laws of another jurisdiction or military court or the court of another country.

(2) "Board" means the sexual offender management board described in section 18-8312 , Idaho Code.

(3) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho state police pursuant to this chapter.

(4) "Certified evaluator" means either a psychiatrist licensed by this state pursuant to chapter 18, title 54 , Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to chapter 23, chapter 32, or chapter 34, title 54 , Idaho Code. Such person shall have, by education, experience and training, expertise in the assessment and treatment of sexual offenders, and such person shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in section 18-8314 , Idaho Code.

(5) "Department" means the Idaho state police.

(6) "Employed" means full-time or part-time employment exceeding ten (10) consecutive working days or for an aggregate period exceeding thirty (30) days in any calendar year, or any employment that involves counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(7) "Foreign conviction" means a conviction under the laws of Canada, Great Britain, Australia or New Zealand, or a conviction under the laws of any foreign country deemed by the U.S. department of state, in its country reports on human rights practices, to have been obtained with sufficient safeguards for fundamental fairness and due process.

(8) "Habitually lives" means any place where a person lives, sleeps, or visits with any regularity, including where a homeless person is stationed during the day or sleeps at night, and any place where a person visits for longer than five (5) hours per visit more than five (5) times within a thirty (30) day period.

(9) "Homeless" means having no fixed residence.

(10) "Incarceration" means committed to the custody of the Idaho department of correction or department of juvenile corrections, but excluding cases where the court has retained jurisdiction.

(11) "Jurisdiction" means any of the following: a state, the District of Columbia, the commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, the federal government or a federally recognized Indian tribe.

(12) "Minor" means an individual who has not attained the age of eighteen (18) years.

(13) "Offender" means an individual convicted of an offense listed and described in section 18-8304 , Idaho Code, or a substantially similar offense under the laws of another jurisdiction or military court or the court of another country deemed by the U.S. department of state, in its country reports on human rights practices, to have sufficient safeguards for fundamental fairness and due process.

(14) "Offense" means a sexual offense listed in section 18-8304 , Idaho Code.

(15) "Psychosexual evaluation" means an evaluation that specifically addresses sexual development, sexual deviancy, sexual history and risk of reoffense as part of a comprehensive evaluation of an offender.

(16) "Recidivist" means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(17) "Residence" means the location where an offender habitually lives.

(18) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.

(19) "Violent sexual predator" means a person who was designated as a violent sexual predator by the sexual offender management board where such designation has not been removed by judicial action or otherwise.

18-8304 — Application of chapter — rulemaking authority

18-8304. Application of chapter — rulemaking authority.

(1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with intent to commit rape or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with intent to commit rape or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual exploitation by a medical care provider), 18-925 (aggravated sexual battery), 18-1505B (sexual abuse and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), felony violations of 18-1507 (sexual exploitation of a child), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1508B (aggravated lewd conduct with a minor child under sixteen), 18-1508C (aggravated lewd conduct with a minor child twelve or under), 18-1509A (enticing a child over the internet), 18-4003

(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-5605 (detention for commercial sexual activity), 18-5609 (inducing a child

into commercial sexual activity), 18-5610 (utilizing a child for commercial sexual activity), 18-5611 (inducing a child to engage in commercial sexual activity), 18-6101 (rape, but excluding 18-6101

(1) where the defendant is eighteen years of age), 18-6110 (sexual contact with a prisoner), 18-6601 (incest), 18-6602 (sexual abuse of an animal), 18-6603 (sexual abuse of human remains), 18-6604 (forcible penetration by use of a foreign object), 18-6605 (video voyeurism where the victim is a minor or upon a second or subsequent conviction), 18-7804 (if the racketeering act involves kidnapping of a minor) or chapter 86, title 18 (human trafficking), Idaho Code.

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction, including military courts, or who has a foreign conviction that is substantially equivalent to the offenses listed in paragraphs (a) or (f) of this subsection and enters this state to establish residence or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction, including military courts, or who has a foreign conviction that is substantially equivalent to the offenses listed in paragraphs (a) or (f) of this subsection and was required to register as a sex offender in any other state or jurisdiction when he established residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(f) On or after July 1, 1993, is convicted of the crime or an attempt, solicitation, or conspiracy to commit the infamous crime against nature, a felony offense formerly codified in chapter 66, title 18 , Idaho Code, and whose conviction is entered before July 1, 2022.

(2) An offender shall not be required to comply with the registration provisions of this chapter while incarcerated in a correctional institution of the department of correction, a county jail facility, committed to the department of juvenile corrections or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(4) The department shall have authority to promulgate rules to implement the provisions of this chapter.

18-8305 — Central registry — Notice to agencies

18-8305. Central registry — Notice to agencies.

(1) The department shall establish and maintain a central sexual offender registry separate from other records maintained by the department. The information contained in the registry shall be in digital form or include links or identification numbers that provide access to the information in other databases in which it is included in digital form. The registry shall include, but is not limited to, the following information:

(a) Name and all aliases that the offender has used or under which the offender has been known including the offender's primary or given name, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers used for self-identification in internet communications or postings and traditional names given by family or clan pursuant to ethnic or tribal tradition;

(b) A complete physical description of the person including any identifying marks, such as scars or tattoos, the offender's date of birth including any date the offender uses as his or her purported date of birth and the offender's social security number including any number the offender uses as his or her purported social security number;

(c) The criminal history of the offender including the jurisdiction of all arrests and convictions, the name under which the offender was convicted of each offense, the status of parole, probation or supervised release; registration status; and the existence of any outstanding arrest warrants for the offender;

(d) The text of the provision of law defining the criminal offense for which the sexual offender is registered as formulated at the time the offender was convicted;

(e) The name and location of each hospital, jail or penal institution to which the offender was committed for each offense covered under this chapter;

(f) The address or physical description of each residence at which the offender resides;

(g) The name and address of any place where the offender is a student or will be a student unless the offender is only participating in courses remotely through the mail or the internet;

(h) The license plate number and a description of any vehicle owned or regularly operated by the sexual offender including any vehicle the offender drives, either for personal use or in the course of employment, regardless of to whom the vehicle is registered. The term "vehicle" includes watercraft and aircraft. To the extent the vehicle does not have a license plate, a registration number or other identifying information shall be provided;

(i) Any e-mail or instant messaging address used by the offender;

(j) The offender's telephone numbers including, but not limited to, fixed location telephone numbers, voice over internet protocol numbers and cell phone numbers;

(k) The name and address of any place where the offender is employed or will be employed and the name and address of any place where the offender works as a volunteer or otherwise works without remuneration or if the offender does not have a fixed place of employment, a description of normal travel routes or the general areas in which the offender works;

(l) Information regarding any professional license maintained by the offender that authorizes the offender to engage in an occupation or carry out a trade or business;

(m) Information about the offender's passport, if any, and if the offender is an alien, information about documents establishing the offender's immigration status including document type and number information for such documents and a digitized copy of the documents;

(n) A set of fingerprints and palm prints of the offender;

(o) A current photograph of the offender; and

(p) A photocopy of a valid driver's license or identification card issued to the offender, if any.

(2) The department shall adopt rules relating to providing notice of address changes to law enforcement agencies, developing forms, operating the central registry, reviewing and correcting records, and expunging records of persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from registration has been entered pursuant to section 18-8310 , Idaho Code.

(3) The department shall develop and distribute to appropriate agencies the standardized forms necessary for the administration of the registry and shall provide appropriate agencies with instructions for completing and submitting the forms. The attorney general shall approve the forms and instructions prior to distribution.

(4) The department shall notify the attorney general of the United States and appropriate law enforcement agencies of any failure by an offender to comply with the requirements of this chapter and shall revise the registry to reflect the nature of that failure.

18-8306 — Notice of duty to register and initial registration

18-8306. Notice of duty to register and initial registration.

(1) When a person is sentenced for an offense identified in section 18-8304 , Idaho Code, the prosecuting attorney shall seek and the court shall order a designated law enforcement agency to immediately photograph that person and obtain fingerprints and palm prints unless the person has been photographed and has provided fingerprints and palm prints previously for the same offense. Fingerprints, palm prints and photographs may be taken at the jail or correctional facility to which the person is remanded or sentenced. The fingerprints, palm prints and photographs taken pursuant to this subsection shall be submitted to the department as provided in section 67-3005 , Idaho Code.

(2) A person convicted of an offense identified in section 18-8304 , Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the defendant. The court shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304 , Idaho Code, and sentenced to a period of immediate incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register and the offender shall register prior to his or her release. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the offender. The department of correction or jail shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(4) The sheriff of each county shall provide written notification, on a form provided by the Idaho transportation department and approved by the attorney general, of the registration requirements of this chapter to any person who enters this state from another jurisdiction and makes an application for an identification card or a license to operate a motor vehicle in this state. The written notice shall be signed by the person and one (1) copy shall be retained by the sheriff's office and one (1) copy shall be provided to the person.

(5) The notification form provided by the department and approved by the attorney general shall:

(a) Explain the duty to register, the procedure for registration and penalty for failure to comply with registration requirements;

(b) Inform the offender of the requirement to provide notice of any change of address within Idaho or to another jurisdiction within two (2) working days of such change and of the immediate notification requirements set forth in subsections (2) and (3) of section 18-8309 , Idaho Code;

(c) Inform the offender of the requirement to register in a new jurisdiction within two (2) working days of changing residence to that jurisdiction, becoming employed in that jurisdiction or becoming a student in that jurisdiction; and

(d) Obtain from the offender and agency or court, the information required for initial registration in the central registry as set forth in section 18-8305 , Idaho Code, and any other information required by rules promulgated by the department.

(6) The official conducting the notice and initial registration shall ensure that the notification form is complete, that the offender has read and signed the form, and that a copy is forwarded to the central repository within three (3) working days of the registration.

(7) No person subject to registration shall willfully furnish false or misleading information when complying with registration and notification requirements of this chapter.

(8) An offender required to register under this chapter shall initially register in the jurisdiction in which he or she was convicted as well as any other jurisdiction requiring registration under this chapter. If the jurisdiction in which the offender is initially required to register is Idaho, the offender shall register in the county in which he or she primarily intends to reside. The county of initial registration shall then notify the department, which shall notify any other county or jurisdiction in which the offender is required to register.

18-8307 — Registration

18-8307. Registration.

(1) Registration shall consist of a form provided by the department and approved by the attorney general, which shall be signed by the offender and shall require the information set forth in subsection (1) of section 18-8305 , Idaho Code.

(2) At the time of registration, the sheriff shall obtain a photograph and fingerprints, in a manner approved by the department, and require the offender to provide full palm print impressions of each hand. A violent sexual predator shall pay a fee of fifty dollars ($50.00) to the sheriff at the time of the first calendar quarter registration and ten dollars ($10.00) per registration every subsequent quarter in the same calendar year. All other offenders shall pay an annual fee of eighty dollars ($80.00) to the sheriff for registration. The sheriff may waive the registration fee if the violent sexual predator or other offender demonstrates indigency. The fees collected under this section shall be used by the sheriff to defray the costs of violent sexual predator and other sexual offender registration and verification and for electronic notification, law enforcement information sharing and tracking. Irrespective of the classification or designation of the offender or predator, each county shall cause forty dollars ($40.00) per offender per year of the fees collected under this section to be used for development, continuous use and maintenance of a statewide electronic notification, information sharing and tracking system as implemented by the Idaho sheriffs' association.

(3) The sheriff shall forward the completed and signed form, photograph, fingerprints and palm prints to the department within three (3) working days of the registration.

(a) The official conducting the registration shall ensure that the notification form is complete and that the offender has read and signed the form.

(b) No person subject to registration shall furnish false or misleading information when complying with registration and notification requirements of this chapter. (4)(a) Within two (2) working days of coming into any county to establish residence, an offender shall register with the sheriff of the county. The offender thereafter shall register annually, unless the offender is designated as a violent sexual predator, in which case the offender shall register with the sheriff every three (3) months as provided in this section. If the offender intends to reside in another jurisdiction, the offender shall register in the other jurisdiction within two (2) days of moving to that jurisdiction and will not be removed from the sexual offender registry in Idaho until registration in another jurisdiction is complete.

(b) A nonresident required to register pursuant to section 18-8304 (1)(b), Idaho Code, shall register with the sheriff of the county where employed or enrolled as a student within two (2) working days of the commencement of employment or enrollment as a student in an educational institution, provided that nonresidents employed in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, must register prior to the commencement of such employment.

(5) Registration shall be conducted as follows:

(a) For violent sexual predators the department shall mail a nonforwardable notice of quarterly registration to the offender's last reported address within three (3) months following the last registration;

(b) For all other sex offenders the department shall mail an annual, nonforwardable notice of registration to the offender's last reported address;

(c) Within seven (7) days of the mailing date of the notice, the offender shall appear in person at the office of the sheriff in the county in which the offender is required to register for the purpose of completing the registration process;

(d) If the notice is returned to the department as not delivered, the department shall inform the sheriff with whom the offender last registered of the returned notice.

(6) All written notifications of duty to register as provided herein shall include a warning that it is a felony as provided in section 18-8327 , Idaho Code, for an offender to accept employment in any day care center, group day care facility or family day care home, as those terms are defined in chapter 11, title 39 , Idaho Code, or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the offender's child or children.

(7) An offender shall keep the registration current for the full registration period. The full registration period is for life; however, offenders may petition for release from the full registration period as set forth in section 18-8310 , Idaho Code.

18-8308 — Verification of address and electronic monitoring of violent sexual predators

18-8308. Verification of address and electronic monitoring of violent sexual predators. (1)(a) The address or physical residence of an offender designated as a violent sexual predator shall be verified by the department between registrations.

(b) The procedure for verification shall be as follows:

(i) The department shall mail a nonforwardable notice of address verification every thirty (30) days between registrations to each offender designated as a violent sexual predator. (ii) Each offender designated as a violent sexual predator shall complete, sign and return the notice of address verification form to the department within fourteen (14) days of the mailing date of the notice. If the notice of address verification is returned to the department as not delivered, or if the signed notice is not returned on time, the department shall, within five (5) days, notify the sheriff with whom the offender designated as a violent sexual predator last registered. (iii) The sheriff shall verify the address of the offender by visiting the offender's residence once every six (6) months or, if the offender fails to comply with the provisions of subparagraph (ii) of this paragraph, at any reasonable time to verify the address provided at registration.

(2) The address or physical residence of any sex offender not designated as a violent sexual predator shall be verified by the department between registrations. The procedure for verification shall be as follows:

(a) The department shall mail a nonforwardable notice of address verification every four (4) months between annual registrations.

(b) Each offender shall complete, sign and return the notice of address verification form to the department within fourteen (14) days of the mailing date of the notice. If the notice of address verification is returned as not delivered or if the signed notice is not returned on time, the department shall notify the sheriff within five (5) days and the sheriff shall visit the residence of the registered offender at any reasonable time to verify the address provided at registration.

(3) Any individual designated as a violent sexual predator shall be monitored with electronic monitoring technology for the duration of the individual's probation or parole period as set forth in section 20-219 (2), Idaho Code. Any person who, without authority, intentionally alters, tampers with, damages or destroys any electronic monitoring equipment required to be worn or used by a violent sexual predator shall be guilty of a felony.

(4) A sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every fourteen (14) days to the sheriff of the county in which he resides. Each time the offender reports to the sheriff, he shall complete a form provided by the department that includes the offender's name, date of birth, social security number and a detailed description of the location where he is residing. The sheriff shall visit the described location at least once each month to verify the location of the offender.

18-8309 — duty to update registration information

18-8309. duty to update registration information.

(1) If an offender subject to registration changes his or her name, street address or actual address, employment or student status, the offender shall appear in person within two (2) working days after the change at the office of the sheriff of the county where the offender is required to register and notify the sheriff of all changes in the information required for that offender in the sex offender registry. Provided however, nonresidents employed in this jurisdiction in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, shall register before the commencement of such employment. Within three (3) working days after receipt of the notice, the sheriff shall notify the department of the changed information and the department shall notify all other counties and jurisdictions in which the offender is required to register. An offender satisfies the notification requirements set forth in this subsection if he or she appears in another jurisdiction in which registration is required and notifies that jurisdiction of the changed information.

(2) An offender required to register shall immediately notify the department of any lodging lasting seven (7) days or more, regardless of whether the lodging would be considered a residence as defined in section 18-8303 , Idaho Code. The department shall immediately notify the jurisdiction in which the lodging will occur if different than the jurisdiction in which the offender is required to register.

(3) An offender required to register shall immediately notify the department of any changes in his or her vehicle information and of any changes in designations used for self-identification or routing in internet communications or postings or telephonic communications.

(4) If this jurisdiction is notified that an offender who is required to register is expected to commence residence, employment or school attendance in this jurisdiction, but the offender fails to appear for registration as required, this jurisdiction shall inform the jurisdiction that provided the notification that the offender failed to appear and shall follow the procedures for cases involving possible violations of registration requirements set forth in the rules of procedures promulgated by the department.

(5) An offender required to register in Idaho shall notify the county in which he or she is registered of his or her intent to commence residence, employment or school attendance outside of the United States. Once notified, the county shall notify the central registry, which shall notify all other counties and jurisdictions in which the offender is required to register and notify the United States marshals service and update the registry accordingly.

(6) Upon receipt of information pursuant to this section, the department shall notify the law enforcement agencies in the counties where the offender resides or will reside, enter information in the central registry and transmit the appropriate information as required pursuant to section 18-8324 , Idaho Code. Upon receipt of a notice of an offender changing residence to another jurisdiction or entering another jurisdiction for employment purposes or to attend school, the department shall notify those agencies entitled to notification pursuant to section 18-8324 , Idaho Code.

(7) The department shall notify the attorney general of the United States and appropriate law enforcement agencies of any failure by an offender to comply with the requirements of this chapter and revise the registry to reflect the nature of that failure.

18-8310 — Release from registration requirements — Expungement

18-8310. Release from registration requirements — Expungement.

(1) Registration under this act is for life; however, any offender, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the offender was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the offender shall be exempted from the duty to register as a sexual offender. If the offender was convicted in Idaho, the offender shall file his or her petition in the county in which he or she was convicted. If the offender was convicted in a jurisdiction other than Idaho, then the offender shall file his or her petition in the county in which he or she resides. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner has completed all periods of supervised release, probation, or parole for the conviction requiring registration without revocation;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304 , Idaho Code;

(c) Provide proof of service of such petition and supporting documents upon the county prosecuting attorney for the county in which the application is made and upon the central registry;

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender;

(e) Provide clear and convincing evidence that the petitioner has successfully completed a sexual offender treatment program;

(f) Provide an affidavit demonstrating that the petitioner has no felony convictions during the period for which the petitioner has been registered; and

(g) Provide an affidavit demonstrating that the petitioner has committed no sex offenses during the period for which the petitioner has been registered.

(2) The county prosecuting attorney and the central registry may submit evidence, including by affidavit, rebutting the assertions contained within the offender's petition, affidavits or other documents filed in support of the petition.

(3) The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days' prior notice of the hearing to the petitioner, the county prosecuting attorney and the central registry. The central registry may appear or participate as a party.

(4) The court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence and upon written findings of fact and conclusions of law by the court that:

(a) The petitioner has complied with the requirements set forth in subsection (1) of this section;

(b) The court has reviewed the petitioner's criminal history and has determined that the petitioner is not a recidivist, has not been convicted of an aggravated offense or has not been designated as a violent sexual predator; and

(c) It is highly probable or reasonably certain the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304 , Idaho Code.

(5) Concurrent with the entry of any order exempting the petitioner from the registration requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

18-8310A — district court to release from registration requirements — expungement

18-8310A. district court to release from registration requirements — expungement. Any person who was convicted under section 18-6101 1., Idaho Code, as it existed before July 1, 2010, where such person would not have been convicted under section 18-6101

(1) or (2), Idaho Code, may petition the district court for a determination to be exempted from the duty to register as a sexual offender. If the district court finds that such person would not have been convicted under section 18-6101

(1) or (2), Idaho Code, then the district court may exempt the petitioner from the duty to register as a sexual offender and may order that any information regarding the petitioner be expunged from the central registry. In the petition, the petitioner shall:

(1) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender; and

(2) Provide an affidavit that states the following:

(a) The specific underlying facts of petitioner's conviction and that such facts do not come within the provisions of section 18-6101

(1) or (2), Idaho Code;

(b) The petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any crime identified in section 18-8304 , Idaho Code; and

(c) The petitioner is not required to register as a sexual offender for any other reason set forth in this chapter.

18-8311 — Penalties

18-8311. Penalties.

(1) An offender subject to registration who knowingly fails to register, verify his address, or provide any information or notice as required by this chapter shall be guilty of a felony and shall be punished by imprisonment in the state prison system for a period not to exceed ten (10) years and by a fine not to exceed five thousand dollars ($5,000). If the offender is on probation or other supervised release or suspension from incarceration at the time of the violation, the probation or supervised release or suspension shall be revoked and the penalty for violating this chapter shall be served consecutively to the offender's original sentence.

(2) An offender subject to registration under this chapter, who willfully provides false or misleading information in the registration required, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed ten (10) years and a fine not to exceed five thousand dollars ($5,000).

18-8312 — Sexual offender management board — Appointment — Terms — Vacancies — Chairman — Quorum — Qualifications of members — Compensation of members

18-8312. Sexual offender management board — Appointment — Terms — Vacancies — Chairman — Quorum — Qualifications of members — Compensation of members.

(1) A sexual offender management board is hereby created within the Idaho department of correction. The board shall consist of ten (10) voting members appointed by the governor by and with the advice and consent of the senate. Present members shall continue to serve for the balance of their initial terms of appointment. Thereafter, any member appointed or reappointed shall serve for a term of three (3) years. Members shall be eligible for reappointment to the board without limitation. The board shall be charged with the advancement and oversight of sexual offender management policies and practices statewide.

(2) Vacancies in the membership of the board shall be filled in the same manner in which the original appointments are made. Members appointed to a vacant position shall serve the remainder of the unexpired term.

(3) Qualifications of members.

(a) One (1) member of the board shall have, by education, experience and training, expertise in the assessment and treatment of adult sexual offenders.

(b) One (1) member of the board shall have, by education, experience and training, expertise in the assessment and treatment of juveniles who have been adjudicated for sexual offenses.

(c) One (1) member of the board shall have, by education, experience and training, expertise in cultural diversity and behavior of sexual offenders as they relate to assessment and treatment.

(d) One (1) member of the board shall be from the Idaho department of correction.

(e) One (1) member of the board shall be from the Idaho department of juvenile corrections.

(f) One (1) member of the board shall be an attorney who has experience in the prosecution of sexual offenders through the criminal justice process.

(g) One (1) member of the board shall be an attorney who has experience in the defense of sexual offenders through the criminal justice process.

(h) One (1) member of the board shall be from the Idaho sheriffs' association.

(i) One (1) member of the board shall be a representative of the public.

(j) One (1) member of the board shall have, by education, experience and training, expertise in postconviction sexual offender polygraph examination.

(4) In addition, there shall be advisory to the board, one (1) nonvoting member representing the judiciary who shall be appointed by the chief justice of the Idaho supreme court. The term of appointment for the judicial member shall be four (4) years.

(5) The board may create subcommittees to address specific issues. Such subcommittees may include board members as well as invited experts and other stakeholders or participants.

(6) The board shall elect a chairman from its members.

(7) A quorum shall exist when a majority of the board is present.

(8) Members shall be compensated as provided by section 59-509 (o), Idaho Code.

18-8313 — Removal of board members

18-8313. Removal of board members. The governor may remove members of the board for reasons of inefficiency, neglect of duty, malfeasance in office, commission of a felony or inability to perform the duties of office.

18-8314 — Powers and duties of the sexual offender management board

18-8314. Powers and duties of the sexual offender management board.

(1) The board shall develop, advance and oversee sound sexual offender management policies and practices statewide as demonstrated by evidence-based best practices.

(2) The board shall carry out the following duties:

(a) Establish standards for psychosexual evaluations performed pursuant to section 18-8316 , Idaho Code, and sexual offender treatment programs based on current and evolving best practices.

(b) Establish qualifications, set forth procedures for approval and certification, and administer the certification process for:

(i) Professionals conducting psychosexual evaluations pursuant to section 18-8316 , Idaho Code, or adjudication proceedings on juvenile sexual offenders; (ii) Professionals providing treatment to adult or juvenile sexual offenders as ordered or required by the court, the Idaho department of correction, the Idaho commission of pardons and parole, or the Idaho department of juvenile corrections; and (iii) Professionals conducting post-conviction sexual offender polygraphs as ordered or required by the court, the Idaho department of correction, or the Idaho commission of pardons and parole.

(c) Establish a nonrefundable processing fee not to exceed one hundred fifty dollars ($150) for each initial certification and a nonrefundable processing fee not to exceed one hundred fifty dollars ($150) for each annual recertification.

(d) Set forth and administer procedures for quality assurance of the standards and qualifications established in this section.

(e) The board shall have authority to deny, revoke, restrict or suspend a certification if standards or qualifications are not met or to otherwise monitor a provider.

(f) Establish and implement standard protocols for sexual offender management, assessment and classification based on current and evolving best practices.

(g) Manage and maintain the records of the former sexual offender classification board.

(3) The board shall have authority to promulgate rules to carry out the provisions of this chapter.

18-8315 — Compliance with open meetings law

18-8315. Compliance with open meetings law. All meetings of the board shall be held in accordance with the open meetings law as provided in chapter 2, title 74 , Idaho Code.

18-8316 — Requirement for psychosexual evaluations upon conviction

18-8316. Requirement for psychosexual evaluations upon conviction. If ordered by the court, an offender convicted of any offense listed in section 18-8304 , Idaho Code, may submit to an evaluation to be completed and submitted to the court in the form of a written report from a certified evaluator as defined in section 18-8303 , Idaho Code, for the court's consideration prior to sentencing and incarceration or release on probation. The court shall select the certified evaluator from a central roster of evaluators compiled by the sexual offender management board. A certified evaluator performing such an evaluation shall be disqualified from providing any treatment ordered as a condition of any sentence, unless

waived by the court. An evaluation conducted pursuant to this section shall be done in accordance with the standards established by the board pursuant to section 18-8314 , Idaho Code.

18-8318 — Offender required to pay for psychosexual evaluation

18-8318. Offender required to pay for psychosexual evaluation. The offender shall be required to pay for the cost of the psychosexual evaluations performed under this chapter, unless the offender demonstrates indigency. In such case, the psychosexual evaluation performed pursuant to section 18-8316 , Idaho Code, shall be paid for by the county. As a condition of sentence, indigent offenders for whom the county has paid the cost of evaluation performed pursuant to section 18-8316 , Idaho Code, shall be required to repay the county for the cost.

18-8323 — Public access to sexual offender registry information

18-8323. Public access to sexual offender registry information. Information within the sexual offender registry collected pursuant to this chapter is subject to release only as provided by this section.

(1) The department or sheriff shall provide public access to information contained in the central sexual offender registry by means of the internet.

(2) Information that shall be made available to the public is limited to:

(a) The offender's name including any aliases or prior names;

(b) The offender's date of birth;

(c) The address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has his or her home or habitually lives;

(d) The address of any place where the offender is a student or will be a student;

(e) A physical description of the offender;

(f) The offense for which the offender is registered and any other sex offense for which the offender has been convicted and the place of the convictions;

(g) A current photograph of the offender; and

(h) Temporary lodging information including the place and the period of time the offender is staying at such lodging. "Temporary lodging" means any place in which the offender is staying when away from his or her residence for seven (7) or more days. If current information regarding the offender's residence is not available because the offender is in violation of the requirement to register or cannot be located, then the website shall so note.

(3) The following information shall not be disclosed to the public:

(a) The identity of the victim;

(b) The offender's social security number;

(c) Any reference to arrests of the offender that did not result in conviction;

(d) Any internet identifier associated with and/or provided by the offender;

(e) Any information pertaining to the offender's passports and immigration documents; and

(f) Any information identifying any person related to, living with, working for, employing or otherwise associated with a registered sexual offender.

(4) Where a crime category such as "incest" may serve to identify a victim, that crime will be reported as a violation of section 18-1506 , Idaho Code.

(5) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326 , Idaho Code, for misuse of registry information.

(6) Information released pursuant to this section may be used only for the protection of the public.

(7) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (5) of this section.

18-8324 — Dissemination of registry information

18-8324. Dissemination of registry information.

(1) The department shall, within three (3) business days, disseminate any registration information collected under this chapter, including any changes in registry information, to:

(a) The attorney general of the United States for inclusion in the national sex offender registry or other appropriate databases;

(b) Each school and public housing agency in each area in which the offender resides, is an employee or is a student;

(c) Each jurisdiction where the sexual offender resides, is an employee or is a student and each jurisdiction from or to which a change of residence, employment or student status occurs;

(d) Criminal justice agencies through the public safety and security information system established in section 19-5202 , Idaho Code;

(e) Any agency responsible for conducting employment-related background checks under section 3 of the national child protection act of 1993, 42 U.S.C. section 5119a;

(f) Social service entities responsible for protecting minors in the child welfare system;

(g) Volunteer organizations in which contact with minors or other vulnerable adults might occur; and

(h) Any organization, company or individual who requests notification of changes in registry information.

(2) Registry information provided under this section shall be used only for the administration of criminal justice or for the protection of the public as permitted by this chapter.

(3) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326 , Idaho Code, for misuse of registry information.

(4) Information released pursuant to this section may be used only for the protection of the public.

(5) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (3) of this section.

18-8325 — Exemption from civil liability

18-8325. Exemption from civil liability.

(1) No person or governmental entity, other than those specifically charged in this chapter with a duty to collect information under this chapter regarding registered sexual offenders, has a duty to inquire, investigate or disclose any information regarding registered sexual offenders.

(2) No person or governmental entity, other than those specifically charged in this chapter with an affirmative duty to provide public access to information regarding registered sexual offenders, shall be held liable for any failure to disclose any information regarding registered sexual offenders to any other person or entity.

(3) Every person or governmental entity who, acting without malice or criminal intent, obtains or disseminates information under this chapter shall be immune from civil liability for any damages claimed as a result of such disclosures made or received.

18-8326 — Penalties for vigilantism or other misuse of information obtained under this chapter

18-8326. Penalties for vigilantism or other misuse of information obtained under this chapter. Any person who uses information obtained pursuant to this chapter to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor and, in addition to any other punishment, be subject to imprisonment in the county jail for a period not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000) or both.

18-8327 — Adult criminal sex offender — Prohibited employment

18-8327. Adult criminal sex offender — Prohibited employment.

(1) Except as provided in section 18-8328 , Idaho Code, it is a felony for any person to: apply for or to accept employment at a day care center, group day care facility or family day care home; or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the person's child or children if the person is currently registered or is required to register under the sex offender registration act as provided in chapter 83, title 18 , Idaho Code.

(2) The owner or operator of any day care center, group day care facility or family day care home who knowingly employs a person or who knowingly accepts volunteer services from a person, which person is currently registered or is required to register under the sex offender registration act as provided in chapter 83, title 18 , Idaho Code, to work in the day care center, group day care facility or family day care home is guilty of a misdemeanor unless judicial relief has been granted pursuant to section 18-8328 , Idaho Code.

18-8328 — Action for relief by offender or juvenile offender

18-8328. Action for relief by offender or juvenile offender. Any person who is required to register pursuant to chapter 83, title 18 , Idaho Code, or chapter 84, title 18 , Idaho Code, may file a petition in a district court in the judicial district where the person resides, to have relief from the provisions of section 18-8327 or 18-8414 , Idaho Code, pertaining to employment in or being upon or remaining on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the sex offender's or juvenile sex offender's child or children. To be granted relief pursuant to this section, the person shall show by clear and convincing evidence that the person required to register pursuant to chapter 83, title 18 , Idaho Code, or chapter 84, title 18 , Idaho Code, does not pose a threat to children in a day care center, group day care facility or family day care home, it has been at least ten (10) years since the person's last conviction, finding of guilt or adjudication that required the person to register pursuant to chapter 83, title 18 , Idaho Code, or chapter 84, title 18 , Idaho Code, and the petitioner presents testimony from a licensed physician or psychologist about the petitioner's chance of success of not committing an act against children.

18-8329 — Adult criminal sex offenders — Prohibited access to school children — Exceptions

18-8329. Adult criminal sex offenders — Prohibited access to school children — Exceptions.

(1) If a person is currently registered or is required to register pursuant to the sex offender registration act as provided in chapter 83, title 18 , Idaho Code, it is a misdemeanor for such person to:

(a) Be on or to remain on the premises of any school building or school grounds in this state, on the premises or grounds of any daycare, or on other properties posted with a notice that they are used by a school or daycare, when the person has reason to believe children under eighteen (18) years of age are present and are involved in a school or daycare activity, or when children are present within thirty (30) minutes before or after a scheduled school or daycare activity.

(b) Knowingly loiter on a public way within five hundred (500) feet from the property line of school or daycare grounds in this state, including properties posted with a notice that they are used by a school or daycare, when children under eighteen (18) years of age are present and are involved in a school or daycare activity, or when children are present within thirty (30) minutes before or after a scheduled school or daycare activity.

(c) Be in any conveyance owned or leased by a school or daycare to transport students to or from school or daycare or a school- or daycare-related activity when children under eighteen (18) years of age are present in the conveyance.

(d) Reside within five hundred (500) feet of the property on which a school or daycare is located, measured from the nearest point of the exterior wall of the offender's dwelling unit to the school's or daycare's property line, provided however, that this paragraph shall not apply if such person's residence was established prior to July 1, 2006, for a school, and prior to July 1, 2020, for a daycare in existence on that date. This paragraph shall not apply to such person whose residence is established prior to the establishment of a daycare within five hundred (500) feet of his dwelling unit. The provisions of this paragraph shall apply when the person resides at a residential or long-term care facility.

(e) For purposes of this chapter, "school" means any public or private school. "Daycare" means any daycare as defined in chapter 11, title 39 , Idaho Code, that is licensed or is zoned, permitted, or approved by a city or county for use as a daycare. The posted notices required in this subsection shall be at least one hundred (100) square inches, shall make reference to section 18-8329 , Idaho Code, shall include the term "registered sex offender," and shall be placed at all public entrances to the property.

(2) The provisions of subsection (1)(a) and (b) of this section shall not apply when the person:

(a) Is a student in attendance at the school;

(b) Is exercising his right to vote in public elections;

(c) Is taking delivery of his mail through an official post office located on school grounds; or

(d) Contacts the school district or daycare office annually and prior to his first visit of a school year and has obtained written permission from the district or daycare to be on the school or daycare grounds or on other property posted with a

notice that the property is used by a school or daycare. For the purposes of this section, "contacts the school district or daycare office" shall include mail, facsimile machine, or by computer using the internet. The provisions of this subsection are required for an individual who:

(i) Is dropping off or picking up a child or children and the person is the child's or children's parent or legal guardian; (ii) Is attending an academic conference or other scheduled extracurricular school event with school officials present when the offender is a parent or legal guardian of a child who is participating in the conference or extracurricular event. "Extracurricular" means any school-sponsored activity that is outside the regular curriculum, occurring during or outside regular school hours, including but not limited to academic, artistic, athletic, or recreational activities; or (iii) Is temporarily on school or daycare grounds during school hours for the purpose of making a mail, food, or other delivery.

(3) The provisions of subsection (1)(d) of this section shall not apply when the person:

(a) Resides at a state-licensed or certified facility for incarceration or a hospital; or

(b) Stays at a homeless shelter or resides at a recovery facility, if such shelter or facility has been approved for sex offenders by the county sheriff.

(4) Nothing in this section shall prevent a school district or daycare from adopting more stringent safety and security requirements for employees and nonemployees while they are in district or daycare facilities and/or on district or daycare properties. If adopting more stringent safety and security requirements, the school district or daycare shall provide the requirements to any individual listed in subsection (2)(d)(i) through (iii) by mail, facsimile machine, or by computer using the internet.

18-8331 — Adult criminal sex offenders — Prohibited group dwelling — Exceptions

18-8331. Adult criminal sex offenders — Prohibited group dwelling — Exceptions.

(1) Except as otherwise provided in this section, when a person is required to register pursuant to this chapter, that person may not reside in any residential dwelling unit with more than one (1) other person who is also required to register pursuant to this chapter. If, on the effective date of this section, any person required to register pursuant to this chapter, is legally residing in a residential dwelling unit with more than one (1) other person required to so register, the person may continue to reside in that residential dwelling unit without violating the provisions of this section, provided that no additional persons so required to register shall move into that residential dwelling unit if the person moving in would be in violation of this section.

(2) For purposes of this section:

(a) "Reside" and "residing" mean occupying the residential dwelling unit as a fixed place of abode or habitation for any period and to which place the person has the intention of returning after a departure or absence therefrom regardless of the duration of absence.

(b) "Residential dwelling unit" includes, but is not limited to, single family dwellings and units in multifamily dwellings including units in duplexes, apartment dwellings, mobile homes, condominiums and townhouses in areas zoned as residential. For the purposes of this section a state or federally licensed health care or convalescent facility is not a residential dwelling unit.

(3) (a) A judge of the district court may, upon petition and after an appropriate hearing, authorize a person required to register pursuant to this chapter, to reside in a residential dwelling unit with more than one (1) other person who is also required to register pursuant to this chapter, if the judge determines that:

(i) Upon clear and convincing evidence that not doing so would deprive the petitioner of a constitutionally guaranteed right; and (ii) That such right is more compelling under the facts of the case than is the interest of the state and local government in protecting neighboring citizens, including minors, from risk of physical or psychological harm. Such risk of harm shall be presumed absent clear and convincing evidence to the contrary given the applicant's status as a person required to register pursuant to this chapter;

(b) Any exception allowed under this section shall be limited to alleviate only a deprivation of constitutional right which is more compelling than the interest of the state and local government in minimizing the risk of harm to the neighboring citizens;

(c) Any order of exception under this section shall be made a part of the registry maintained pursuant to this chapter.

(4) Any city or county may establish standards for the establishment and operation of residential houses for registered sex offenders which exceed the number of registered sex offenders allowed to reside in a residential dwelling unit under subsection (1) of this section. Applicable standards shall include establishing procedures to allow comment of neighboring residents within a specified distance, and may include, but are not limited to:

(a) Designating permissible zones in which such houses may be located;

(b) Designating permissible distances between such houses;

(c) Designating the maximum number of registered sex offenders allowed to reside in such houses;

(d) Designating qualifications and standards for supervision and care of such houses and the residents;

(e) Designating requirements and procedures to qualify as the operator of such houses, including any requirement that the residents be engaged in treatment or support programs for sex offenders and related addiction treatment or support programs; and

(f) Designating any health and safety requirements which are different than those applicable to other residential dwelling units in the zone.

(5) No person or entity shall operate a residence house for registered sex offenders in violation of the limitations of subsection (1) of this section except as otherwise provided under subsection (4) of this section. If, on the effective date of this section, any individual or entity is operating an existing residence house for persons required to register pursuant to this chapter, and when such individual or entity also requires such persons to be participants in a sex offender treatment or support program such individual or entity shall not be precluded from continuing to operate such residence house, provided that:

(a) The residence house shall not operate at a capacity exceeding eight (8) residents in the dwelling unit and two (2) residents per bedroom, or the existing number of residents, whichever is less;

(b) Once the governing city or county enacts an ordinance pursuant to subsection (4) of this section establishing standards for the operation of a residence house for sex offenders, the operator of the residence house shall, no later than one (1) year after enactment of the ordinance, comply with all standards of the ordinance, except any requirement that is less than the maximum capacity provided for under subsection (5)(a) of this section or which requires a relocation of the residence;

(c) The burden of proving that an existing residence house qualifies for continuing operation under this subsection shall be upon the operator of the residence house;

(d) Any change in the use of an existing residence house shall void the exception for the continuing operation of the house under the provisions of this section.

(6) If any person required to register pursuant to this chapter, is on parole or probation under the supervision of the Idaho department of correction, the department shall be notified by the person or the person's agent of any intent to reside with another person required to register under this chapter. The department must approve the living arrangement in advance as consistent with the terms of the parole or probation, and consistent with the objective of reducing the risk of recidivism. The department shall establish rules governing the application of this subsection.

(7) Any person who knowingly and with intent violates the provisions of this section is guilty of a misdemeanor.

(8) Any city or county is entitled to injunctive relief against any person or entity operating a residence house within its jurisdiction in violation of this section.

CHAPTER 84

18-8401 — Short title

18-8401. Short title. This chapter shall be known and may be cited as the "Juvenile Sex Offender Registration Notification and Community Right-to-Know Act."

18-8402 — Findings

18-8402. Findings. The legislature finds that juvenile sex offenders present a significant risk of reoffense and that efforts of law enforcement agencies to protect communities, conduct investigations and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available about individuals who have been convicted or

adjudicated delinquent of sex offenses who live within their jurisdiction. The legislature further finds that providing public access to certain information about sex offenders assists parents in the protection of their children. Further, such access provides a means for organizations that work with youth or other vulnerable populations to prevent juvenile sex offenders from threatening those served by the organizations. Finally, public access assists the public to be observant of convicted juvenile sex offenders in order to prevent the offenders from recommitting sex crimes. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect communities by requiring juvenile sex offenders to register with local law enforcement agencies and to make certain information about juvenile sex offenders available to the public as provided in this chapter.

18-8403 — Definitions

18-8403. Definitions. As used in this chapter, "juvenile sex offender" means a person who was between fourteen (14) years of age to eighteen (18) years of age at the time the qualifying sex offense was committed and who:

(1) On or after July 1, 1998, was adjudicated delinquent under the juvenile corrections act for an action that would be an offense enumerated in section 18-8304 , Idaho Code, if committed by an adult; or

(2) As of July 1, 1998, is serving formal probation, a period of detention, or commitment to the department of juvenile corrections as the result of sentencing imposed under section 20-520 , Idaho Code, for an action that would be an offense enumerated in section 18-8304 , Idaho Code, if committed by an adult; or

(3) Was adjudicated delinquent in another state for an action that is substantially equivalent to the offenses enumerated in section 18-8304 , Idaho Code, and is subject on or after July 1, 1998, to Idaho court jurisdiction under the interstate compact on juveniles; or

(4) Is required to register in another state for having committed a sex offense in that state regardless of the date of the offense or its adjudication.

18-8404 — Juvenile sex offender registry

18-8404. Juvenile sex offender registry. The Idaho state police shall establish and maintain within the central sex offender registry a separate registry of juvenile sex offenders. The registry shall include fingerprints, photographs, and information collected from submitted forms and other communications relating to notice of duty to register, sex offender registration, and notice of address change. Information in the registry of juvenile sex offenders is subject to release to criminal justice agencies pursuant to section 18-8305 , Idaho Code, and to the public pursuant to section 18-8323 , Idaho Code.

18-8405 — Notification of duty to register — Probation

18-8405. Notification of duty to register — Probation. With respect to a juvenile sex offender sentenced to probation without a period of detention, the court shall provide at the time of sentencing written notification of the duty to register. The written notification shall be a form provided by the Idaho state police and shall be signed by the juvenile and the parents or guardian of the juvenile. One (1) copy shall be retained by the court, one (1) copy shall be provided to the offender, and one (1) copy shall be submitted within three (3) working days to the central registry.

18-8406 — Notification of duty to register — Prior to release

18-8406. Notification of duty to register — Prior to release. With respect to a juvenile sex offender sentenced to a period of detention, the county shall provide, prior to release, written notification of the duty to register. With respect to a juvenile sex offender committed to the custody of the department of juvenile corrections, the department shall provide, prior to release, written notification of the duty to register. The written notification shall be a form provided by the Idaho state police and shall be signed by the juvenile and the parents or guardian of the juvenile. One (1) copy shall be retained by the department of juvenile corrections, one (1) copy shall be provided to the offender, and one (1) copy shall be submitted within three (3) working days to the central registry.

18-8407 — Annual registration

18-8407. Annual registration. A juvenile sex offender, other than one serving a period of detention or committed to the department of juvenile corrections, shall be subject to annual registration and change of name or address notification pursuant to sections 18-8307 and 18-8309 , Idaho Code. All written notifications of duty to register as provided herein shall include a warning that it is a felony punishable as provided in section 18-8414 , Idaho Code, for a juvenile sex offender to accept employment in any day care center, group day care facility or family day care home, as those terms are defined in chapter 11, title 39 , Idaho Code, or to be upon or to remain on the premises of a day care center, group day

care facility or family day care home while children are present, other than to drop off or pick up the juvenile sex offender's child or children.

18-8408 — Providing list to superintendent of public instruction

18-8408. Providing list to superintendent of public instruction. The Idaho state police shall provide to the superintendent of public instruction, quarterly and on request, a list of registered juvenile sex offenders in the state. The superintendent of public instruction subsequently shall notify a school district or private school regarding the enrollment of a registered juvenile sex offender. The superintendent shall also notify the district or school of the offender's probationary status or treatment status, if known.

18-8409 — Failure to register, penalties

18-8409. Failure to register, penalties.

(1) A juvenile sex offender who fails to register or provide notification of a change of name or address is guilty of a misdemeanor.

(2) A parent of a juvenile sex offender commits the misdemeanor offense of failure to supervise a child if the offender fails to register or provide notification of a change of name or address as required by this section. A person convicted of this offense is subject to a fine of not more than one thousand dollars ($1,000).

18-8410 — Transfer to adult registry

18-8410. Transfer to adult registry. When a registered juvenile sex offender reaches twenty-one (21) years of age, the prosecutor may petition the court to transfer the offender to the adult registry, subject to the registration and notification provisions of chapter 83, title 18 , Idaho Code. If the court determines at a hearing that the juvenile sex offender is likely to pose a threat to the safety of others, the court shall order that the delinquent act be deemed an adult criminal conviction for the purpose of registration, notification, and public information access pursuant to chapter 83, title 18 , Idaho Code. If no petition is filed, or if the court determines the juvenile is not likely to pose a threat to the safety of others, the juvenile shall be deleted from the registry.

18-8411 — Juveniles convicted as adults

18-8411. Juveniles convicted as adults. The provisions of this section do not apply to a juvenile who is subject to registration and notification requirements of chapter 83, title 18 , Idaho Code, because the offender was convicted of a sex offense as an adult.

18-8412 — Exemption from civil liability

18-8412. Exemption from civil liability.

(1) No person or governmental entity, other than those specifically charged in this chapter with a duty to collect information under this chapter regarding registered sex offenders, has a duty to inquire, investigate or disclose any information regarding registered sex offenders.

(2) No person or governmental entity, other than those specifically charged in this chapter with an affirmative duty to provide public access to information regarding registered sex offenders, shall be held liable for any failure to disclose any information regarding registered sex offenders to any other person or entity.

(3) Every person or governmental entity who, acting without malice or criminal intent, obtains or disseminates information under this chapter shall be immune from civil liability for any damages claimed as a result of such disclosures made or received.

18-8413 — Penalties for vigilantism or other misuse of information obtained under this chapter

18-8413. Penalties for vigilantism or other misuse of information obtained under this chapter. Any person who uses information obtained pursuant to this chapter to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor and, in addition to any other punishment, shall be subject to imprisonment in the county jail for a period not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000) or both.

18-8414 — Juvenile sex offender — Prohibited employment

18-8414. Juvenile sex offender — Prohibited employment.

(1) Except as provided in section 18-8328 , Idaho Code, it is a felony for any person to: apply for or to accept employment at a day care center, group day care facility or family day care home; or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the person's child or children if the person is currently registered or is required to register under the juvenile sex offender registration act as provided in chapter 84, title 18 , Idaho Code.

(2) The owner or operator of any day care center, group day care facility or family day care home who knowingly employs a person or who knowingly accepts volunteer services from a person, which person is currently registered or is required to register under the juvenile sex offender registration act as provided in chapter 84, title 18 , Idaho Code, to work in the day care center, group day care facility or family day care home is guilty of a misdemeanor unless judicial relief has been granted pursuant to section 18-8328 , Idaho Code.

CHAPTER 85

18-8501 — Short title

18-8501. Short title. This chapter shall be known and may be cited as the "Idaho Criminal Gang Enforcement Act."

18-8502 — Definitions

18-8502. Definitions. As used in this chapter:

(1) "Criminal gang" means an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, that has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, having as one (1) of its primary activities the commission of one (1) or more of the criminal acts enumerated in subsection (3) of this section.

(2) "Criminal gang member" means any person who engages in a pattern of criminal gang activity and who meets two (2) or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member;

(c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs, or its tattoos, and associates with known gang members;

(d) Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;

(e) Is identified as a gang member by physical evidence such as photographs or other documentation; or

(f) Has been stopped in the company of known gang members four (4) or more times.

(3) "Pattern of criminal gang activity" means the commission, attempted commission or solicitation of two (2) or more of the following offenses, provided that the offenses are committed on separate occasions or by two (2) or more gang members:

(a) Robbery, as provided in section 18-6501 , Idaho Code;

(b) Arson, as provided in sections 18-801 through 18-804 , Idaho Code;

(c) Burglary, as provided in sections 18-1401 , 18-1403 , 18-1405 and 18-1406 , Idaho Code;

(d) Murder or manslaughter, as provided, respectively, in sections 18-4001 and 18-4006 , Idaho Code;

(e) Any violation of the provisions of chapter 27, title 37 , Idaho Code;

(f) Any unlawful use or possession of a weapon, bomb or destructive device pursuant to chapter 33, title 18 , Idaho Code;

(g) Assault and battery, as provided in chapter 9, title 18 , Idaho Code;

(h) Criminal solicitation, as provided in section 18-2001 , Idaho Code;

(i) Computer crime, as provided in section 18-2202 , Idaho Code;

(j) Theft, as provided in sections 18-2401 and 18-2403 , Idaho Code;

(k) Evidence falsified or concealed and witnesses intimidated or bribed, as provided in sections 18-2601 through 18-2606 , Idaho Code;

(l) Forgery and counterfeiting, as provided in sections 18-3601 through 18-3603 and sections 18-3605 through 18-3616 , Idaho Code;

(m) Gambling, as provided in section 18-3802 , Idaho Code;

(n) Kidnapping, as provided in sections 18-4501 through 18-4503 , Idaho Code;

(o) Mayhem, as provided in section 18-5001 , Idaho Code;

(p) Commercial sexual activity, as provided in chapter 56, title 18 , Idaho Code;

(q) Rape, as provided in sections 18-6101 and 18-6110 , Idaho Code;

(r) Racketeering, as provided in section 18-7804 , Idaho Code;

(s) Malicious harassment, as provided in section 18-7902 , Idaho Code;

(t) Terrorism, as provided in section 18-8103 , Idaho Code;

(u) Money laundering and illegal investment, as provided in section 18-8201 , Idaho Code;

(v) Sexual abuse of a child under the age of sixteen years, as provided in section 18-1506 , Idaho Code;

(w) Sexual exploitation of a child, as provided in section 18-1507 , Idaho Code;

(x) Lewd conduct with minor child under sixteen, as provided in section 18-1508 , Idaho Code;

(y) Sexual battery of a minor child sixteen or seventeen years of age, as provided in section 18-1508A , Idaho Code;

(z) Escape or rescue of prisoners, as provided in sections 18-2501 through 18-2506 , Idaho Code; (aa) Riot, as provided in sections 18-6401 and 18-6402 , Idaho Code; (bb) Disturbing the peace, as provided in section 18-6409 , Idaho Code; (cc) Malicious injury to property, as provided in section 18-7001 , Idaho Code; (dd) Injuring jails, as provided in section 18-7018 , Idaho Code; (ee) Injury by graffiti, as provided in section 18-7036 , Idaho Code; or (ff) Human trafficking, as provided in chapter 86, title 18 , Idaho Code.

18-8503 — Punishment

18-8503. Punishment.

(1) An adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509 , Idaho Code, who is convicted of any felony or misdemeanor enumerated in section 18-8502 (3), Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member, in addition to the punishment provided for the commission of the underlying offense, shall be punished as follows:

(a) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509 , Idaho Code, who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.

(b) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509 , Idaho Code, who is convicted of a felony shall be punished by an extended term of not less than two (2) years and not more than five (5) years in prison.

(c) If the underlying offense described in section 18-8502 (3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than two (2) years and not more than five (5) years in prison.

(2) This section does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed facts.

(3) The court shall not impose an extended penalty pursuant to this section unless:

(a) The indictment, information, complaint or petition charging the defendant with the primary offense alleges that the primary offense was committed knowingly for the benefit or at the direction of, or in association with, a criminal gang or criminal gang member with the specific intent to promote, further or assist the activities of the criminal gang; and

(b) The trier of fact finds the allegation to be true beyond a reasonable doubt.

(4) Except in a case of a juvenile who has been waived to adult court pursuant to section 20-508 or 20-509 , Idaho Code, the imposition or execution of the sentences provided in this section may not be suspended.

(5) An extended sentence provided in this section shall run consecutively to the sentence provided for the underlying offense.

(6) Unless waived to adult court pursuant to section 20-508 or 20-509 , Idaho Code, a juvenile who is adjudicated of any felony or misdemeanor enumerated in section 18-8502 (3), Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member shall be sentenced according to the provisions of section 20-520 , Idaho Code.

18-8504 — Recruiting criminal gang members

18-8504. Recruiting criminal gang members.

(1) A person commits the offense of recruiting criminal gang members by:

(a) Knowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang; or

(b) Knowingly using force, threats, violence or intimidation directed at any person, or by the infliction of bodily injury upon any person, to actively participate in a criminal gang.

(2) A person convicted of a violation of this section shall be imprisoned for a term not to exceed ten (10) years.

(3) This section shall not be construed to limit prosecution under any other provision of law.

18-8505 — Supplying firearms to a criminal gang

18-8505. Supplying firearms to a criminal gang.

(1) A person commits the offense of supplying firearms to a criminal gang if the person knows an individual is a gang member and supplies, sells or gives possession or control of any firearm to that gang member.

(2) Subsection (1) of this section shall not apply to a person who is convicted as a principal to the offense committed by the recipient of the firearm.

(3) A person convicted of a violation of this section shall be imprisoned for a term not to exceed ten (10) years or be fined an amount not to exceed fifty thousand dollars ($50,000), or both.

18-8506 — Adoption of local regulations

18-8506. Adoption of local regulations. This chapter does not prevent any county, city or other political subdivision from adopting and enforcing ordinances or resolutions consistent with this chapter relating to criminal gangs and criminal gang violations.

CHAPTER 86

18-8601 — Legislative intent

18-8601. Legislative intent. It is the intent of the legislature to address the growing problem of human trafficking and to provide criminal sanctions for persons who engage in human trafficking in this state. In addition to the other provisions enumerated in this chapter, the legislature finds that it is appropriate for members of the law enforcement community to receive training from the respective training entities in order to increase awareness of human trafficking cases occurring in Idaho and to assist and direct victims of such trafficking to available community resources.

18-8602 — definitions

18-8602. definitions. As used in this chapter:

(1) "Coercion" means compulsion or a threat, including but not limited to:

(a) Abusing or threatening abuse of the law or legal process against a person or a third party;

(b) Causing a person, without the person’s consent, to become intoxicated to a degree that impairs the person’s ability to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services;

(c) Destroying, concealing, confiscating, or withholding, or threatening to destroy, conceal, confiscate, or withhold, a person’s or a third party’s actual or purported government record or identifying information or identifying document;

(d) Threatening physical harm, financial harm, unwanted physical restraint, or any conduct that would be criminal under Idaho Code; or

(e) Withholding alcohol or a controlled substance to a degree that impairs the ability of a person with a chemical dependency to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services.

(2) "Child" means a person under eighteen (18) years of age.

(3) "Commercial sexual activity" means the exchange, or the attempted exchange, of sexual contact for a fee.

(4) "Fee" means any money, service, item of real or personal property, contraband, or thing of value.

(5) "Force" means the use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or inflicting physical harm sufficient to compel submission by the victim.

(6) "Forced labor or services" means labor or services, other than labor or services that constitute sexual contact, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion.

(7) "Fraud" means the intentional use of any deceit, trick, misrepresentation, false statement, or some dishonest means to achieve a desired result.

(8) "Intimate body parts" includes human genitals, pubic area, buttocks, or breasts.

(9) "Sexual contact" means any touching of the intimate body parts of another person for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual-genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.

(10) "Sexually explicit performance" means an act, show, production, recording, or any form of pornography made for the purpose of arousing or gratifying the sexual desire of any person.

(11) "Traffic" means to transport, entice, recruit, harbor, detain, hold, provide, or otherwise obtain another person by any means.

18-8603 — penalties

18-8603. penalties.

(1) A person who commits human sex trafficking as described in section 18-8607 , Idaho Code, shall be guilty of a felony punishable by imprisonment for a period of no less than five (5) years and no more than twenty-five (25) years, or by a fine of no less than fifteen thousand dollars ($15,000) and no more than eighty thousand dollars ($80,000), or by both such fine and imprisonment.

(2) A person who commits human sex trafficking of a child as described in section 18-8608 , Idaho Code, shall be guilty of a felony punishable by imprisonment for a period of no less than ten (10) years and no more than thirty (30) years, or by a fine of no less than twenty thousand dollars ($20,000) and no more than one hundred thousand dollars ($100,000), or by both such fine and imprisonment.

(3) A person who commits human labor trafficking as described in section 18-8609 , Idaho Code, shall be guilty of a felony punishable by imprisonment for a period of no less than three (3) years and no more than twenty-five (25) years, or by a fine of no less than ten thousand dollars ($10,000) and no more than eighty thousand dollars ($80,000), or by both such fine and imprisonment.

(4) A person who commits human labor trafficking of a child as described in section 18-8610 , Idaho Code, shall be guilty of a felony punishable by imprisonment for a period of no less than five (5) years and no more than twenty-five (25) years, or by a fine of no less than fifteen thousand dollars ($15,000) and no more than eighty thousand dollars ($80,000), or by both such fine and imprisonment.

18-8604 — Restitution — Rehabilitation

18-8604. Restitution — Rehabilitation.

(1) In addition to any other amount of loss resulting from a violation of section 18-8607 , 18-8608 , 18-8609 , or 18-8610 , Idaho Code, the court shall order restitution, as applicable, including the greater of:

(a) The gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.

(2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

18-8605 — authority of the attorney general

18-8605. authority of the attorney general.

(1) The attorney general shall employ such attorneys, investigators, and other personnel as necessary to carry out the following responsibilities using funds allocated to the office of the attorney general for such purpose:

(a) To issue, by January 1 of each even-numbered year, a report outlining the status of the state's efforts to combat human trafficking and recommending next steps one (1) or more bodies of state government should take to eradicate human trafficking in Idaho;

(b) To compile and maintain curriculum for the training of prosecutors, law enforcement, victim advocates, and the public on identifying, investigating, and prosecuting human trafficking; and

(c) To assist, upon request, county prosecuting attorneys and other law enforcement agencies in the investigation and prosecution of human trafficking.

(2) Any state or local law enforcement agency may submit the findings of a human trafficking investigation to the attorney general, who shall have authority, in his sole discretion, to investigate and prosecute human trafficking under this act.

18-8606 — safe harbor provisions

18-8606. safe harbor provisions.

(1) Diversion of minor victim.

(a) When a minor is alleged to have committed any offense not listed in section 18-310 (2), Idaho Code, a prosecutor shall divert the offense if the minor committed the offense as a direct and immediate result of being a victim of conduct prohibited by section 18-8607 , 18-8608 , 18-8609 , or 18-8610 , Idaho Code.

(b) If a minor has an offense diverted pursuant to paragraph (a) of this subsection, the minor shall be placed in a state-licensed residential facility, as defined in section 39-1202 , Idaho Code, that provides a comprehensive rehabilitation program with access to:

(i) Comprehensive case management; (ii) Integrated mental health and chemical dependency services, including specialized trauma recovery services; (iii) Education and employment training services; and (iv) Off-site specialized services, as appropriate.

(c) A diversion agreement under this subsection may extend for up to twelve (12) months.

(d) Diversion shall only be available pursuant to this section if the minor expresses a willingness to cooperate and receive specialized services. If the minor is unwilling to cooperate with specialized services, continuation of the diversion shall be at the discretion of the court.

(2) A person charged with any offense not identified in section 18-310 (2), Idaho Code, committed as a direct and immediate result of being a victim of conduct prohibited by section 18-8607 , 18-8608 , 18-8609 , or 18-8610 , Idaho Code, may assert an affirmative defense that the person is a victim of such conduct.

18-8607 — Human sex trafficking

18-8607. Human sex trafficking. A person commits the felony of human sex trafficking if the person knowingly:

(1) Traffics another person and causes or attempts to cause, through force, fraud, or coercion, the trafficked person to engage in or become the victim of:

(a) Commercial sexual activity;

(b) A sexually explicit performance; or

(c) Conduct prohibited by:

(i) Section 18-5602 (procurement); (ii) Section 18-5603 (receiving pay for procurement); (iii) Section 18-5604 (paying for procurement); (iv) Section 18-5605 (detention for commercial sexual activity);

(v) Section 18-5606 (receiving proceeds of illegal sexual activity); (vi) Section 18-5608 (place of commercial sexual activity); (vii) Section 18-5609 (inducing a child into commercial sexual activity); (viii) Section 18-5610 (utilizing a child for commercial sexual activity); (ix) Section 18-5611 (inducing a child to engage in commercial sexual activity);

(x) Section 18-5613 (providing commercial sexual activity); or (xi) Section 18-5614 (soliciting commercial sexual activity);

(2) Engages in sexual contact with a person being trafficked in the manner described in subsection (1) of this section; or

(3) Receives any benefit from participating in a venture that involves an activity described in subsection (1) of this section.

18-8608 — human sex trafficking of a child

18-8608. human sex trafficking of a child. A person who is eighteen (18) years of age or older commits the felony of human sex trafficking of a child if the person:

(1) Traffics a child and knowingly, by any means, causes or attempts to cause the trafficked person to engage in or become the victim of:

(a) Commercial sexual activity;

(b) A sexually explicit performance; or

(c) Conduct prohibited by:

(i) Section 18-924 (sexual battery); (ii) Section 18-925 (aggravated sexual battery); (iii) Section 18-6101 (rape); (iv) Section 18-1506 (sexual abuse of a child under sixteen years);

(v) Section 18-1507 (sexual exploitation of a child); (vi) Section 18-1507A (sexual exploitation of a child by electronic means); (vii) Section 18-1508 (lewd conduct with a minor child under sixteen); (viii) Section 18-1508A (sexual battery of a minor child sixteen or seventeen years of age); (ix) Section 18-5602 (procurement);

(x) Section 18-5603 (receiving pay for procurement); (xi) Section 18-5604 (paying for procurement); (xii) Section 18-5605 (detention for commercial sexual activity); (xiii) Section 18-5606 (receiving proceeds of illegal sexual activity); (xiv) Section 18-5608 (place of commercial sexual activity); (xv) Section 18-5609 (inducing a child into commercial sexual activity); (xvi) Section 18-5610 (utilizing a child for commercial sexual activity); (xvii) Section 18-5611 (inducing a child to engage in commercial sexual activity); (xviii) Section 18-5613 (providing commercial sexual activity); (xix) Section 18-5614 (soliciting commercial sexual activity); (xx) Section 18-6601 (incest); (xxi) Section 18-6602 (sexual abuse of an animal); (xxii) Section 18-6603 (sexual abuse of human remains); or (xxiii) Section 18-6604 (forcible penetration by use of a foreign object);

(2) Engages in sexual contact with a child being trafficked in the manner described in subsection (1) of this section; or

(3) Receives any benefit from participating in a venture knowing that the venture involves an activity described in subsection (1) of this section.

18-8609 — human labor trafficking

18-8609. human labor trafficking. A person commits the felony of human labor trafficking if the person knowingly:

(1) Traffics another person with the intent that the trafficked person engage in forced labor or services; or

(2) Receives any benefit from participating in a venture that involves an activity described in subsection (1) of this section, including by receiving labor or services the person knows are forced labor or services.

18-8610 — human labor trafficking of a child

18-8610. human labor trafficking of a child. A person commits the felony of human labor trafficking of a child if the person knowingly:

(1) Traffics a child with the intent that the trafficked child engage in forced labor or services; or

(2) Receives any benefit from participating in a venture that involves an activity described in subsection (1) of this section, including by receiving labor or services the person knows are forced labor or services.

18-8611 — property subject to forfeiture

18-8611. property subject to forfeiture.

(1) Any person who is found guilty of, who enters a plea of guilty for, or who is convicted of a violation of section 18-8607 , 18-8608 , 18-8609 , or 18-8610 , Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and

(b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

(2) The court, in imposing a sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general, or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304 , Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

(3) With respect to property ordered forfeited under the provisions of this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

(a) Restore forfeited property to victims of a violation of relevant provisions of this chapter or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this chapter;

(b) Compromise claims arising under this chapter;

(c) Award compensation to persons providing information resulting in a forfeiture under this chapter; and

(d) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

(4) Property subject to criminal forfeiture under this chapter includes:

(a) Real property, including things growing on, affixed to, or found on the land; and

(b) Tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

18-8612 — inventory

18-8612. inventory. Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and shall maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the Idaho state police. Upon completion of the forfeiture action, pursuant to this chapter, a final inventory shall be made that indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the Idaho state police.

18-8613 — FORFEITURE REQUEST — REBUTTABLE PRESUMPTION

18-8613. FORFEITURE REQUEST — REBUTTABLE PRESUMPTION.

(1) Property subject to criminal forfeiture under the provisions of this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 18-8611 , Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

(2) There shall be a rebuttable presumption that any property of a person subject to the provisions of section 18-8611 , Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

(a) The property was acquired by a person during the period of the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611 , Idaho Code, or within a reasonable time after such violation; and

(b) There was no likely source for such property other than the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611 , Idaho Code.

18-8614 — PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS

18-8614. PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS.

(1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in section 18-8611 , Idaho Code, for forfeiture under the provisions of this chapter upon the filing of an indictment or information charging a violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611 , Idaho Code, and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses related to the property that are required by law, or that are necessary to protect the interests of the state of Idaho or third parties.

18-8615 — INSTITUTION OF PROCEEDINGS — THIRD PARTIES

18-8615. INSTITUTION OF PROCEEDINGS — THIRD PARTIES. Upon the filing of a part II forfeiture request pursuant to section 18-8613 , Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section 18-8611 , Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to section 18-8616 or 18-8617 , Idaho Code, or both, within five (5) days of such event.

18-8616 — PERSONAL PROPERTY — RIGHTS OF THIRD PARTIES

18-8616. PERSONAL PROPERTY — RIGHTS OF THIRD PARTIES.

(1) Within five (5) days of any of the events specified in section 18-8615 , Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title, or interest in any such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft, or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as documented in the records of the appropriate department of state or federal government where records relating to such conveyances are maintained;

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement; or

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice, and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft, or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft, or other conveyance was being used, had been used, or was intended to be used for the purposes described in section 18-8611 , Idaho Code.

(b) A co-owner or claimant of any right, title, or interest in the property may prove that his right, title, or interest, whether under a lien, mortgage, security agreement, conditional sales contract, or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used, or was intended to be used for the purpose alleged.

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party, or conditional sales vendor. (ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney

general or appropriate prosecuting attorney shall publish a notice of the sale in at least one (1) publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated: 1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee, or secured party of the property, if any, up to the value of his interest in the property; and 2. The balance, if any, in the following order: (A) To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings, including but not limited to expenditures for witness fees, reporter fees, transcripts, printing, travel, and investigation; (B) To the law enforcement agency of this state that seized the property for all expenditures for travel, investigation, storage, and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under the provisions of this chapter; and (C) The remainder, if any, to the crime victims compensation account as established in section 72-1009 , Idaho Code.

(4) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(5) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party, or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

18-8617 — real PROPERTY — RIGHTS OF THIRD PARTIES

18-8617. real PROPERTY — RIGHTS OF THIRD PARTIES.

(1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided, however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of the notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously on the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 18-8613 , Idaho Code. The request shall be served in the same manner as complaints subject to Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice, and the proceeding shall have priority over other civil cases.

(a) A co-owner or claimant of any right, title, or interest in the real property sought to be forfeited may prove that his right, title, or interest, whether under a lien, mortgage, deed of trust, or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged.

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used or had been used in any manner in violation of the provisions of section 18-8611 , Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee, or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee, or beneficiary of the real property, if any, up to the value of his interest in the real property; and (ii) The balance, if any, in the following order: 1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings, including but not limited to expenditures for witness fees, reporter fees, transcripts, printing, travel, investigation, title company fees, and insurance premiums; and 2. The remainder, if any, to the crime victims compensation account as established in section 72-1009 , Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee, or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

18-8618 — proportionality

18-8618. proportionality. In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the relevant provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

18-8619 — bar on intervention

18-8619. bar on intervention. Except as provided in sections 18-8616 and 18-8617 , Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under the provisions of this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

18-8620 — jurisdiction — depositions

18-8620. jurisdiction — depositions.

(1) The district courts of the state of Idaho shall have jurisdiction over:

(a) Property for which forfeiture is sought that is within the state at the time the action is filed; and

(b) The interest of a co-owner or interest holder in the property, if the co-owner or interest holder is subject to personal jurisdiction in this state.

(2) In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 27 of the Idaho rules of civil procedure.

18-8621 — DISPOSITION OF PROPERTY

18-8621. DISPOSITION OF PROPERTY. On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented, or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on, or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(1) Payment of reasonable expenses incurred in connection with the sale;

(2) Satisfaction of exempt interests in the order of their priority; and

(3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under the provisions of this chapter. When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney may:

(a) Retain it for official use; or

(b) Sell it if it is not required to be destroyed by law and is not harmful to the public, pursuant to section 18-8616 or 18-8617 , Idaho Code.

18-8622 — FORFEITURE OF SUBSTITUTE PROPERTY

18-8622. FORFEITURE OF SUBSTITUTE PROPERTY. If any of the property described in section 18-8611 , Idaho Code, as a result of any act or omission of the defendant: (1) cannot be located upon the exercise of due diligence; (2) has been transferred or sold to, or deposited with, a third party; (3) has been placed beyond the jurisdiction of the court; (4) has been substantially diminished in value; or (5) has been commingled with other property that cannot be divided without difficulty, then the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 18-8611 , Idaho Code.

CHAPTER 87

18-8701 — short title

18-8701. short title. This chapter shall be known and may be cited as the "No Public Funds for Abortion Act."

18-8702 — definitions

18-8702. definitions. As used in this chapter:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, remove a dead unborn child caused by spontaneous abortion, or remove an ectopic pregnancy.

(2) "Affiliate" means an organization that owns or controls or is owned or controlled, in whole or in part, by the other; is related by shareholdings or other means of control; or is a subsidiary, parent, or sibling corporation.

(3) "Facility" or "health care facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein health care is provided to any person.

(4) "Health care provider" means any person or individual who may be or is asked to participate in any way in any health care service. This includes but is not limited to doctors, nurse practitioners, physician assistants, nurses, nurses’ aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in the provision of health care services to any person.

(5) "Public funds" means the funds of every political subdivision of the state wherein taxes are levied or fees are collected for any purpose and also refers to:

(a) The revenue or money of a government, state, or municipal corporation;

(b) The bonds, stocks, or other securities of a national or state government; and

(c) Government spending for acquisition of goods and services for current use to directly satisfy individual or collective needs of the members of the community.

18-8703 — Government Contracts with Abortion Providers or Their Affiliates Prohibited

18-8703. Government Contracts with Abortion Providers or Their Affiliates Prohibited.

(1) The state, a county, a city, a public health district, a public school district, or any local political subdivision thereof may not enter into any contract or commercial transaction with an abortion provider or an affiliate of an abortion provider.

(2) Subsection (1) of this section shall not apply to:

(a) A contract or commercial transaction that is subject to a federal law related to medicaid; or

(b) A hospital, as defined in section 39-1301 , Idaho Code.

18-8704 — Contracts for Abortion Procedures Prohibited

18-8704. Contracts for Abortion Procedures Prohibited.

(1) No health care facility owned or operated by the state, a county, a city, a public health district, a public school district, or any political subdivision or agency thereof shall enter into any contract or commercial transaction with any health care provider or health care facility under the terms of which such health care provider or health care facility agrees to provide, perform, or induce an abortion, except when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) Subsection (1) of this section shall not apply to:

(a) A contract or commercial transaction that is subject to a federal law related to medicaid; or

(b) A hospital, as defined in section 39-1301 , Idaho Code.

18-8705 — Use of Public Funds for Abortion Prohibited

18-8705. Use of Public Funds for Abortion Prohibited.

(1) No public funds made available by the state, a county, a city, a public health district, a public school district, or any local political subdivision or agency thereof and distributed by any institution, board, commission, department, agency, official, or employee of the state, a county, a city, a public health district, a public school district, or any local political subdivision or agency thereof shall be used in any way to provide, perform, or induce an abortion; assist in the provision or performance of an abortion; promote abortion; counsel in favor of abortion; refer for abortion; or provide facilities for an abortion or for training to provide or perform an abortion.

(2) No person, agency, organization, or any other party that receives funds authorized by the state, a county, a city, a public health district, a public school district, or any local political subdivision or agency thereof may use those funds to perform or promote abortion, provide counseling in favor of abortion, make referral for abortion, or provide facilities for abortion or for training to provide or perform abortion.

(3) No fund or committee authorized by Idaho Code for the special protection of women or children shall be authorized to use or distribute public funds for payment for abortion, abortion referrals, abortion counseling, or abortion-related medical or social services.

(4) The provisions of subsections (1), (2), and (3) of this section shall not apply to:

(a) An abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(b) A hospital, as defined in section 39-1301 , Idaho Code; or

(c) A contract or commercial transaction that is subject to a federal law related to medicaid.

18-8706 — Use of School Tuition and Fees for Abortion Prohibited

18-8706. Use of School Tuition and Fees for Abortion Prohibited. No part of any tuition or fees paid to a public institution of higher education shall be used in any way to pay for an abortion, provide or perform an abortion, provide counseling in favor of abortion, make a referral for abortion, or provide facilities for an abortion or for training to provide or perform

abortion.

18-8707 — Abortion-Related Activities Prohibited in School-Based Health Clinics and sex education curricula

18-8707. Abortion-Related Activities Prohibited in School-Based Health Clinics and sex education curricula.

(1) No facility operated at a public institution of higher education or operated by a public school district shall provide any of the following services to any person:

(a) Providing or performing an abortion;

(b) Counseling in favor of abortion;

(c) Referring for abortion; or

(d) Dispensing a drug classified as emergency contraception by the food and drug administration (FDA), except in the case of rape as defined in section 18-6101 , Idaho Code.

(2) No employee of a public institution of higher education or a public school, acting within the scope of such person's employment, shall provide any of the following services to any person:

(a) Providing or performing an abortion;

(b) Counseling in favor of abortion;

(c) Referring for abortion; or

(d) Dispensing a drug classified as emergency contraception by the FDA, except in the case of rape as defined in section 18-6101 , Idaho Code.

(3) The state department of education, state board of education, and other state agencies and local units of administration are prohibited from using state funds to provide or procure an abortion or distribute drugs classified as emergency contraception by the FDA, except in the case of rape as defined in section 18-6101 , Idaho Code.

(4) No public school district shall allow any individual or organization that is a provider of abortion to furnish any materials or instruction relating to sex education curricula.

18-8708 — Use of Public Facilities and Assets for Abortion Prohibited

18-8708. Use of Public Facilities and Assets for Abortion Prohibited.

(1) No public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by this state, a county, a city, a public health district, a public school district, or any local political subdivision or agency thereof shall be used for the purpose of providing, performing, or participating in an abortion.

(2) No public institution or facility shall lease, sell, or permit the subleasing of its facilities or property to any physician or health care facility for use in the provision or performance of abortion.

(3) The provisions of subsections (1) and (2) of this section shall not apply to:

(a) An abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(b) A hospital, as defined in section 39-1301 , Idaho Code; or

(c) A contract or commercial transaction that is subject to a federal law related to medicaid.

18-8709 — Penalty for violation

18-8709. Penalty for violation. Any intentional violation of the provisions of this chapter by a public officer or public employee shall be considered a misuse of public moneys punishable under section 18-5702 , Idaho Code.

18-8710 — construction

18-8710. construction. Nothing in this chapter shall be construed as creating or recognizing a right to abortion. Nothing in this chapter shall be construed as creating or recognizing a right to federal or state funds for abortion.

18-8711 — severability

18-8711. severability. Any provision of this chapter held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding

shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

CHAPTER 88

18-8801 — definitions

18-8801. definitions. As used in this chapter:

(1) "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the preborn child. "Abortion" does not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus.

(2) "Fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(3) "Fetus" and "preborn child" each mean an individual organism of the species Homo sapiens from fertilization until live birth.

(4) "Gestational age" means the age of a preborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

(5) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

18-8802 — legislative findings and intent

18-8802. legislative findings and intent. The legislature finds and declares that:

(1) The life of each human being begins at fertilization, and preborn children have interests in life, health, and well-being that should be protected.

(2) The cardiopulmonary definition of death, which is the reigning common law standard for determining death, is defined as the "irreversible cessation of circulatory and respiratory functions." This cardiopulmonary definition of death was included in the uniform determination of death act, a model law that was adopted by numerous medical and ethics organizations, including the national conference of commissioners on uniform state laws, the American medical association, and almost all states in the United States.

(3) Legal standards and the medical community at large both affirm that a consistent human heartbeat, independent of life support, is a core determining factor in establishing the legal presence of human life in a full range of circumstances, for old and young alike.

(4) The heartbeat of a preborn child begins at a biologically identifiable moment in time that can be detected and imaged by medical equipment.

(5) A detectable fetal heartbeat and its characteristics is a key medical predictor in whether a preborn child will reach live birth.

(6) The fetal heartbeat, when detected, presents a clearly identifiable point at which the preborn child in the womb has a greater than ninety-five percent (95%) chance of survival when carried to term.

(7) The presence of a human heartbeat is a more reliable indicator of life than the medically uncertain concept of "viability" and whether that preborn child is "potentially able to live outside the mother's womb."

(8) Therefore, the state of Idaho has a compelling interest in protecting the life of a preborn child at all stages of its development, including after the preborn child has a detectable heartbeat, which signals rhythmically and without pause the presence of a precious and unique life, one that is independent and distinct from the mother's and one that is also worthy of our utmost protection.

18-8803 — determination of fetal heartbeat

18-8803. determination of fetal heartbeat. Any person who intends to perform or induce an abortion on a pregnant woman must determine if there is the presence of any fetal heartbeat, except in the case of a medical emergency. In testing for

any fetal heartbeat, the person conducting the physical examination on the pregnant woman must determine in his reasonable medical judgment and according to standard medical practice whether or not any fetal heartbeat is present. The person who determines the presence or absence of any fetal heartbeat must record in the pregnant woman's medical record the estimated gestational age of the preborn human individual or individuals, the method used to test for the fetal heartbeat, the date and time of the test, and the results of the test.

18-8804 — abortion following detection of a fetal heartbeat prohibited

18-8804. abortion following detection of a fetal heartbeat prohibited.

(1) A person may not perform an abortion on a pregnant woman when a fetal heartbeat has been detected, except in the case of a medical emergency, in the case of rape as defined in section 18-6101 , Idaho Code, or in the case of incest as described in section 18-6601 , Idaho Code. In the case of rape or incest:

(a) If the woman is not a minor or subject to guardianship, then, prior to the performance of the abortion, the woman has reported the act of rape or incest to a law enforcement agency and provided a copy of such report to the physician who is to perform the abortion; or

(b) If the woman is a minor or subject to guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported the act of rape or incest to a law enforcement agency or child protective services and a copy of such report have been provided to the physician who is to perform the abortion.

(2) Nothing in this section recognizes a right to abortion before a fetal heartbeat is detected.

18-8805 — penalties for violations — Effective upon a certain occurrence

18-8805. penalties for violations — Effective upon a certain occurrence.

(1) This section shall become effective thirty (30) days following the issuance of the judgment in any United States appellate court case in which the appellate court upholds a restriction or ban on abortion for a preborn child because a detectable heartbeat is present on the grounds that such restriction or ban does not violate the United States constitution.

(2) Every licensed health care professional who knowingly or recklessly performs or induces an abortion in violation of this chapter commits the crime of criminal abortion. Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than five (5) years in prison.

(3) The professional license of any health care professional who performs or induces an abortion or who assists in performing or inducing an abortion in violation of this chapter shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

(4) Nothing in this section shall be construed to conflict with the effectiveness of section 18-622 , Idaho Code, following the occurrence of the circumstances described in that section. In the event both this section and section 18-622 , Idaho Code, are enforceable, section 18-622 , Idaho Code, shall supersede this section.

18-8807 — civil causes of action

18-8807. civil causes of action.

(1) Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child may maintain an action for:

(a) All damages from the medical professionals who knowingly or recklessly attempted, performed, or induced the abortion in violation of this chapter;

(b) Notwithstanding any other provision of law, statutory damages in an amount not less than twenty thousand dollars ($20,000) from the medical professionals who knowingly or recklessly attempted, performed, or induced an abortion in violation of this chapter; and

(c) Costs and attorney's fees.

(2) Notwithstanding any other provision of law, a person may bring an action under this section not later than four (4) years following the date the cause of action accrues.

(3) No later than sixty (60) days after a defendant is served with a complaint or other pleading that asserts a cause of action under this section, or at a later time on a showing of good cause, the defendant may file a special motion for expedited dismissal regarding the cause of action. (4)(a) Except as otherwise provided in paragraphs (d) through (g) of this subsection, upon the filing of a motion pursuant to subsection (3) of this section, all other proceedings between the

plaintiff and the defendant, including discovery and a pending hearing or motion, shall be stayed.

(b) A stay issued pursuant to paragraph (a) of this subsection shall remain in effect until entry of an order ruling on the motion pursuant to subsection (3) of this section or expiration of the time for the moving party to appeal the order pursuant to subsection (9) of this section, per applicable court rule.

(c) Except as otherwise provided in paragraphs (e), (f), and (g) of this subsection, if a party appeals an order ruling on a motion pursuant to subsection (3) of this section, all proceedings between all parties in the action shall be stayed. The stay shall remain in effect until the conclusion of the appeal.

(d) During a stay issued pursuant to paragraph (a) of this subsection, the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden pursuant to subsection (7) of this section and the information is not reasonably available unless discovery is allowed.

(e) A motion pursuant to subsection (10) of this section for costs, attorney's fees, and expenses shall not be subject to a stay pursuant to this subsection.

(f) A stay issued pursuant to the provisions of this subsection shall not affect a party's ability to voluntarily dismiss a cause of action or part of a cause of action.

(g) During a stay issued pursuant to the provisions of this subsection, the court for good cause may hear and rule on a motion unrelated to the motion pursuant to subsection (3) of this section. (5)(a) The court shall hear a motion pursuant to subsection (3) of this section no later than sixty (60) days after filing of the motion, unless the court orders a later hearing:

(i) To allow discovery pursuant to subsection (4)(d) of this section; or (ii) For other good cause.

(b) If the court orders a later hearing pursuant to paragraph (a) of this subsection, the court shall hear the motion pursuant to subsection (4) of this section no later than sixty (60) days after the court order allowing the discovery, unless the court orders a later hearing pursuant to paragraph (a)(ii) of this subsection.

(6) In ruling on a motion pursuant to subsection (3) of this section, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment pursuant to applicable court rule. (7)(a) In ruling on a motion pursuant to subsection (3) of this section, the court shall dismiss with prejudice a cause of action or part of a cause of action if:

(i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or
(ii) The moving party establishes that the responding party failed to state a cause of action upon which relief can be granted.

(b) A voluntary dismissal with or without prejudice of a responding party's cause of action or part of a cause of action that is the subject of a motion pursuant to subsection (3) of this section shall not affect a moving party's right to obtain a ruling on the motion and to seek costs, attorney's fees, and expenses pursuant to subsection (10) of this section.

(8) The court shall rule on a motion pursuant to subsection (3) of this section no later than sixty (60) days after a hearing held pursuant to subsection (5) of this section.

(9) A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion pursuant to subsection (3) of this section. The appeal shall be filed within forty-two (42) days after entry of the order pursuant to applicable court rule.

(10) Upon a motion pursuant to subsection (3) of this section, the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses incurred in pursuing or responding to the motion to the prevailing party.

(11) Except as provided in subsection (10) of this section and notwithstanding any other provision of law, including chapter 1, title 12 , Idaho Code, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the defendant has complied with the applicable requirements of sections 18-8803 and 18-8804 , Idaho Code.

(12) The civil causes of action provided for in this section exist independently of any criminal action commenced pursuant to this chapter. A civil cause of action may be pursued under the provisions of this chapter even if a criminal prosecution is not pursued.

(13) Notwithstanding any other provision of law, including chapters 14, 17, and 18, title 54 , Idaho Code, the requirements of this section shall be enforced exclusively through the private civil causes of action described. No enforcement of this section may be taken or threatened against any person by this state, a political subdivision of this state, a prosecuting

attorney, or an executive or administrative officer or employee of this state or a political subdivision of this state.

(14) Notwithstanding any other provision of law, this state, a state official, or a prosecuting attorney may not intervene in an action brought under this section. Nothing in this subsection shall prohibit a person described in this subsection from filing an amicus curiae brief in the action.

(15) Nothing in this section shall be deemed to affect any familial rights or responsibilities or any proceedings conducted under Idaho law.

(16) In an action brought under this section, a court may not award compensatory or punitive damages if a person demonstrates that the person paid, or has been ordered to pay, compensatory or punitive damages, respectively, in a previous civil action for that particular violation of this chapter.

(17) Notwithstanding any other law to the contrary, a civil action may not be brought under this section by a person who, through an act of rape, sexual assault, incest, or other criminal conduct, impregnated the pregnant woman seeking an abortion in violation of this chapter.

(18) Notwithstanding any other law to the contrary, the following shall not be defenses to an action brought under this section:

(a) That the pregnant woman or, if the pregnant woman is a minor, a parent or guardian consented to an unlawful abortion;

(b) Ignorance or mistake of law;

(c) A person's belief that any provision of this section is or was unconstitutional;

(d) A person's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;

(e) Non-mutual issue preclusion or non-mutual claim preclusion;

(f) Contributory or comparative negligence;

(g) Assumption of risk; or

(h) A claim that an action brought under this section will violate a constitutional right of a third party.

(19) Except as provided in subsection (10) of this section and notwithstanding any other law to the contrary, a court may:

(a) Not award attorney's fees or costs to a person subject to an action brought under this section, unless the action is frivolous, without foundation, or brought in bad faith or for the sole reason for delay;

(b) Not award attorney's fees or costs to a person who prevails in challenging the constitutionality of this section under state law, unless the defense of this section is frivolous, without foundation, or brought in bad faith or for the sole reason for delay; and

(c) Award attorney's fees or costs to a person who prevails in defending the constitutionality of this section under state law, even though the challenge to the constitutionality of this section was not frivolous, without foundation, or brought in bad faith or for the sole reason for delay.

(20) The provisions of this section shall not be construed to impose liability on speech or conduct protected by the first amendment of the United States constitution or by section 9, article I of the constitution of the state of Idaho.

18-8808 — SEVERABILITY

18-8808. SEVERABILITY. The provisions of this chapter are hereby declared to be severable, and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration does not affect the validity of the remaining portions of this chapter. Any invalidity or potential invalidity of the provisions of this chapter does not impair the immediate and continuing enforceability of the remaining provisions. The provisions of this chapter do not have the effect of repealing or limiting any other laws of this state, except as specified by this chapter.

CHAPTER 89

18-8901 — use of public funds for gender transition procedures prohibited

18-8901. use of public funds for gender transition procedures prohibited.

(1) For the purposes of this section, "exempted surgical operations or medical interventions" means a surgical operation or medical intervention that is:

(a) Necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner, except that a surgical operation or medical intervention is never necessary to the health of the minor or adult on whom it is performed if it is for the purpose of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex;

(b) For the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of gender transition procedures, whether or not the procedures were performed in accordance with state and federal law; or

(c) Performed in accordance with the good faith medical decision of a parent or guardian of a child or an adult born with a medically verifiable genetic disorder of sex development, including:

(i) A person with external biological sex characteristics that are ambiguous and irresolvable, such as a person born having 46, XX chromosomes with virilization, 46, XY chromosomes with undervirilization, or with both ovarian and testicular tissue; or (ii) When a physician has otherwise diagnosed a disorder of sexual development in which the physician has determined through genetic testing that the minor or adult does not have the normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female.

(2) Public funds shall not be used, granted, paid, or distributed to any entity, organization, or individual for the provision or subsidy of any surgical operation or medical intervention described in section 18-1506C (3), Idaho Code, for purposes of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex regardless of whether the surgical operation or medical intervention is administered to a minor or an adult, except for exempted surgical operations or medical interventions.

(3) Any amount paid by an entity, organization, or individual during a taxable year for the provision of surgical operations or medical interventions described in section 18-1506C (3), Idaho Code, for purposes of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex regardless of whether the surgical operation or medical intervention is administered to a minor or an adult shall not be tax-deductible, except exempted surgical operations or medical interventions.

(4) The Idaho medicaid program shall not reimburse or provide coverage for the use of the surgical operations or medical interventions described in section 18-1506C (3), Idaho Code, for purposes of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex regardless of whether the surgical operation or medical intervention is administered to a minor or an adult, except exempted surgical operations or medical interventions.

(5) No physician or other health care professional in the course and scope of employment by the state or a county or local government may provide the surgical operations or medical interventions described in section 18-1506C (3), Idaho Code, for purposes of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex regardless of whether the surgical operation or medical intervention is administered to a minor or an adult, except exempted surgical operations or medical interventions.

(6) No state property, facility, or building may be used to provide the surgical operations or medical interventions described in section 18-1506C (3), Idaho Code, for purposes of altering the appearance of an individual in order to affirm the individual's perception of the individual's sex in a way that is inconsistent with the individual's biological sex regardless of whether the surgical operation or medical intervention is administered to a minor or an adult, except exempted surgical operations or medical interventions.

(7) Any intentional violation of the provisions of this chapter by a public officer or public employee shall be considered a misuse of public moneys punishable pursuant to section 18-5702 , Idaho Code.

CHAPTER 90

18-9001 — SHORT TITLE

18-9001. SHORT TITLE. This chapter shall be known and may be cited as the "Immigration Cooperation and Enforcement Act."

18-9002 — definitions

18-9002. definitions. As used in this chapter:

(1) "Alien" has the meaning assigned by 8 U.S.C. 1101, as that provision existed on January 1, 2023.

(2) "Custodial authority" means the director of the department of correction, county sheriffs, city chiefs of police, and any of their subordinates with the power to confine or detain a person under color of law.

(3) "Dangerous crime" means any felony crime as described in Idaho Code or in similar state or federal code, any offense for which an extended term of imprisonment may be imposed pursuant to section 19-2520B , Idaho Code, or any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code.

(4) "Dangerous illegal alien" means an illegal alien who has previously been convicted or found guilty, by judgment or withheld judgment, of a dangerous crime in this state or in any other state or nation.

(5) "DHS" means the United States department of homeland security and its subordinate agencies and divisions.

(6) "Illegal alien" means a person eighteen (18) years of age or older who is verified by the federal government to be present in the United States in violation of the federal immigration and nationality act, 8 U.S.C., and federal rules promulgated in accordance therewith.

(7) "Immigration detainer" means a notice or other documentation issued by United States immigration and customs enforcement requesting that a custodial authority or law enforcement official maintain temporary custody of an illegal alien, including a DHS form I-247 document or a similar successor form.

(8) "Law enforcement official" means all state, county, and local law enforcement officers, prosecuting attorneys, and city attorneys.

(9) "Port of entry" means a port of entry in the United States pursuant to 19 CFR 101.

(10) "Violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2)" means a conviction in federal court of violating 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2) or, in the absence of a charge or conviction, committing acts that would be a violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2).

18-9003 — illegal entry

18-9003. illegal entry.

(1) A person who is an alien and is eighteen (18) years of age or older commits an offense if the person knowingly enters or attempts to enter this state or is at any time present in this state after having entered the United States in violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2).

(2) A violation of this section shall be a misdemeanor upon a first conviction. A second or subsequent conviction shall be a felony.

(3) Law enforcement officers may enforce the provisions of this section only when a person is detained or investigated for suspected commission of an independent crime under title 18 , Idaho Code, excluding this chapter, or under chapter 27, title 37 , Idaho Code.

(4) It shall be an affirmative defense to prosecution under this section that:

(a) The federal government has affirmatively granted the defendant permission to remain in the United States under a provision of the immigration and nationality act or other federal statute; or

(b) The defendant was not investigated for, charged with, or convicted of committing the independent crime for which the defendant was detained or investigated pursuant to subsection (3) of this section.

(5) Notwithstanding any other provision of law to the contrary, a defendant shall not be eligible for deferred adjudication or a withheld judgment if the defendant is charged with or convicted of an offense pursuant to this section.

18-9004 — illegal reentry by certain aliens

18-9004. illegal reentry by certain aliens.

(1) A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state after the person:

(a) Has been denied admission to or excluded, deported, or removed from the United States; or

(b) Has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

(2) A violation of this section shall be a misdemeanor, except that the violation shall be a felony if:

(a) The defendant's removal was subsequent to a conviction for commission of two (2) or more misdemeanors involving drugs, crimes against a person, or both;

(b) The defendant was excluded pursuant to 8 U.S.C. 1225(c) because the defendant was excludable under 8 U.S.C. 1182(a)(3)(B);

(c) The defendant was removed pursuant to the provisions of 8 U.S.C. chapter 12, subchapter V; or

(d) The defendant was removed pursuant to 8 U.S.C. 1231(a)(4)(B).

(3) For purposes of this section, "removal" includes any agreement in which an alien stipulates to removal pursuant to a criminal proceeding pursuant to either federal or state law.

(4) Law enforcement officers may enforce the provisions of this section only when a person is detained or investigated for suspected commission of an independent crime under title 18 , Idaho Code, excluding this chapter, or under chapter 27, title 37 , Idaho Code.

(5) It shall be an affirmative defense to prosecution under this section that:

(a) The defendant was not investigated for, charged with, or convicted of committing the independent crime for which the defendant was detained or investigated pursuant to subsection (4) of this section;

(b) The attorney general of the United States or the secretary of the United States department of homeland security has expressly consented to the defendant's entry into, reentry into, or presence in the United States; or

(c) The federal government has affirmatively granted the defendant permission to remain in the United States under a provision of the immigration and nationality act or other federal statute.

(6) Notwithstanding any other provision of law to the contrary, a defendant shall not be eligible for deferred adjudication or withheld judgment if the defendant is charged with or convicted of an offense pursuant to this section.

18-9005 — Cooperation with federal authorities

18-9005. Cooperation with federal authorities.

(1) To the extent authorized by federal law, law enforcement officials shall be authorized to send, receive, and maintain information relating to the immigration status of illegal aliens for public safety purposes. Except as provided by federal law, law enforcement officials shall not be prohibited from receiving or maintaining information relating to the immigration status of any illegal alien or sending or exchanging such information with other federal, state, or local law enforcement agencies for official public safety purposes.

(2) Law enforcement officials shall not be prohibited from entering into memorandums of understanding, agreements, and memorandums of agreement with the United States department of justice, DHS, or any other federal law enforcement agency for the purpose of enforcing federal immigration laws, including section 287(g) of the federal illegal immigration reform and immigrant responsibility act of 1996, P.L. 104-208, or a similar federal program.

(3) Except as provided by federal law, no law enforcement official shall be prohibited from utilizing available federal resources, including databases, equipment, grant funds, training, or participation in incentive programs, for any public safety purpose related to the enforcement of federal immigration laws as against illegal aliens.

(4) Where a custodial authority has custody of a person in a correctional facility, state rehabilitation center, penitentiary, prison, county jail, or city jail, and the person is subject to an immigration detainer or other federal warrant, the custodial authority shall comply with, honor, and fulfill any reasonable request made in the immigration detainer or warrant as long as any term of state-ordered confinement has been satisfied and it does not impose undue burden, risk, or expense on the custodial authority or law enforcement officials and shall inform the person identified in the immigration detainer or warrant that the person is being held pursuant to such immigration detainer or warrant.

18-9006 — trafficking a dangerous illegal alien

18-9006. trafficking a dangerous illegal alien.

(1) The crime of trafficking a dangerous illegal alien is committed when a person knowingly and willfully transports into this state a dangerous illegal alien that the person knows, or reasonably should know, is a dangerous illegal alien.

(2) A person commits a separate offense for each individual transported into this state in violation of the provisions of this section.

(3) Whoever commits the crime of trafficking a dangerous illegal alien shall be guilty of a felony and imprisoned for not less than one (1) year and not more than two (2) years, fined not more than ten thousand dollars ($10,000), or both.

(4) The provisions of this section shall not apply if the defendant is a necessary witness to or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering where the referenced crime occurred during the defendant's act of transporting the dangerous illegal alien.

18-9007 — sentencing enhancement

18-9007. sentencing enhancement. Any person eighteen (18) years of age or older who is found guilty of or pleads guilty to any dangerous crime shall be sentenced to a mandatory minimum term of confinement to the custody of the state board of correction for a period of not less than five (5) years if it is found by the trier of fact that previous to the commission of such dangerous crime the defendant has been deported or is under order of removal or deportation pursuant to federal authority.

18-9008 — Determination of alienage upon confinement

18-9008. Determination of alienage upon confinement.

(1) Following an arrest for a criminal offense, the custodial authority shall determine as part of the booking process if the person may be a foreign national. If it is determined that the person is a foreign national, then the custodial authority shall notify DHS of the identity of the person so confined and the place of confinement. Such notification shall be provided within forty-eight (48) hours of the person being placed in confinement.

(2) A person's status as a foreign national shall be considered suspect if the person cannot provide:

(a) A valid Idaho driver's license;

(b) A valid Idaho identification card;

(c) A valid United States passport;

(d) Any valid driver's license or identification card issued by a state or district or territory of the United States, provided the issuing authority limits issuance of the foregoing to persons who demonstrate lawful presence in the United States;

(e) Any valid identification card issued by the United States, including those issued by the department of defense, provided the issuing authority limits issuance of the foregoing to persons who demonstrate lawful presence in the United States; or

(f) Any other information sufficiently reliable to demonstrate the identity of the confined person and the person's lawful presence in the United States.

18-9009 — Conditions of release of illegal alien from confinement

18-9009. Conditions of release of illegal alien from confinement. Following entry of a judgment of conviction for a criminal offense, no person eighteen (18) years of age or older that is known to be an illegal alien shall be released from confinement in any correctional facility, state rehabilitation center, penitentiary, prison, county jail, or city jail until the determinate sentence has been completed, and thereafter may only be released prior to the person's completion of his indeterminate sentence if the alien is being released into the custody of law enforcement officials from another state or the federal government for further criminal proceedings or if the custodial authority first obtains written confirmation from DHS that DHS will take custody of the person upon release and deport the person from the United States. An illegal alien shall not be eligible to participate in alternate sentencing programs such as work release, inmate labor detail, a scheduled sentence program, or similar programs.

18-9010 — Authority to transport illegal aliens

18-9010. Authority to transport illegal aliens. A law enforcement official of the custodial authority shall be authorized to securely transport such illegal alien to a federal facility in this state or to any other temporary point of detention when complying with a valid immigration detainer or a federal arrest warrant or pursuant to release arranged with DHS pursuant to section 18-9009 , Idaho Code.

18-9011 — immunity

18-9011. immunity. A law enforcement official or custodial authority acting in good faith to carry out duties or activities allowed by this chapter shall have immunity from damages or liability from such actions.

18-9012 — abatement of prosecution on basis of immigration status determination prohibited

18-9012. abatement of prosecution on basis of immigration status determination prohibited. A court may not abate the prosecution of an offense pursuant to this chapter on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.

18-9013 — interpretation

18-9013. interpretation.

(1) The provisions of this chapter relating to immigration terminology and definitions shall be construed to have the same meanings as provided under federal immigration law, unless otherwise defined in this chapter.

(2) The provisions of this chapter shall be construed and implemented in a manner consistent with federal laws and regulations and interpretive case law governing immigration and civil rights.

Title 19 — Criminal Procedure

CHAPTER 1

19-101 — Legal conviction necessary to punishment

19-101. Legal conviction necessary to punishment. No person can be punished for a public offense except upon a legal conviction in a court having jurisdiction thereof.

19-102 — Prosecution by indictment or information — Exceptions

19-102. Prosecution by indictment or information — Exceptions. Every public offense must be prosecuted by indictment, or information, except: 1. Where proceedings are had for the removal of civil officers of the state. 2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace. 3. Offenses tried in justices, and probate courts.

19-103 — Criminal action defined

19-103. Criminal action defined. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

19-104 — Parties to criminal actions

19-104. Parties to criminal actions. A criminal action is prosecuted in the name of the state of Idaho, as a party, against the person charged with the offense.

19-105 — Defendant

19-105. Defendant. The party prosecuted in a criminal action is designated in this code as the defendant.

19-106 — Rights of defendant

19-106. Rights of defendant. In a criminal action the defendant is entitled: 1. To a speedy and public trial. 2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.

19-107 — Second prosecution prohibited

19-107. Second prosecution prohibited. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

19-108 — Self-incriminating evidence — Restraint of person

19-108. Self-incriminating evidence — Restraint of person. No person can be compelled in a criminal action to be a witness against himself, nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

19-109 — Prerequisites to conviction

19-109. Prerequisites to conviction. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon a judgment of a probate or justice's court, a jury having been waived, in a criminal case not amounting to a felony.

19-110 — Expedition of court proceedings

19-110. Expedition of court proceedings. In all criminal cases and juvenile fact finding hearings that involve a child victim or witness, the court and the prosecuting attorney shall take all appropriate actions to ensure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well-being of a child victim or witness, and findings of fact shall be made on this issue.

CHAPTER 2

19-201 — Lawful resistance

19-201. Lawful resistance. Lawful resistance to the commission of a public offense may be made: 1. By the party about to be injured. 2. By other parties.

19-201A — legislative intent — castle doctrine and stand your ground

19-201A. legislative intent — castle doctrine and stand your ground. It is the intent of the legislature to incorporate provisions of the castle doctrine and stand your ground provided in Idaho case law and jury instructions into certain sections of this chapter and in section 18-4009 , Idaho Code.

19-202 — Resistance by threatened party

19-202. Resistance by threatened party.

(1) Resistance sufficient to prevent the offense may be made by the person about to be injured:

(a) To prevent an offense against his person, or his family, or some member thereof; or

(b) To prevent an illegal attempt by force to take or injure property in his lawful possession.

(2) The defensive display or declaration of a firearm by a person is justified when and to the extent a reasonable person would believe that physical force is necessary to protect the person or another person against the use or attempted use of unlawful physical force, including deadly force. The provisions of this subsection do not apply to someone who intentionally provokes another person to use or attempt to use unlawful physical force or deadly physical force. For purposes of this section, "defensive display or declaration of a firearm" shall include:

(a) Verbally informing another person that the person possesses or has available a firearm; and

(b) Exposing, displaying, or placing a person's hand on a firearm while the firearm is contained in a holster, pocket, purse, or other means of containment or transport in a manner that a reasonable person would understand was meant to protect the person or another against an unlawful use or attempted use of physical force or deadly physical force.

(3) The provisions of this section do not require a defensive display or declaration of a firearm before the use of physical force or deadly physical force, or threat of physical force or deadly physical force, by a person who is otherwise justified in the use or threatened use of physical force or deadly physical force.

(4) A person acting pursuant to this section may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury. Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the person then saw and knew without the benefit of hindsight.

19-202A — defense of self, others and certain places

19-202A. defense of self, others and certain places.

(1) No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary, or when coming to the aid of another whom he reasonably believes to be in imminent danger of or the victim of aggravated assault, robbery, rape, murder or other heinous crime.

(2) The defense of self or of another does not require a person to wait until he or she ascertains whether the danger is apparent or real. A person confronted with such danger has a clear right to act upon appearances such as would influence the action of a reasonable person.

(3) In the exercise of the right of self-defense or defense of another, a person need not retreat from any place that person has a right to be. A person may stand his ground and defend himself or another person by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge without the benefit of hindsight. The provisions of this subsection shall not apply to a person incarcerated in jail or prison facilities when interacting with jail or prison staff who are acting in their official capacities.

(4) In any prosecution for the unlawful use of force, including deadly force, or the attempted or threatened use of force contrary to title 18 , Idaho Code, the burden is on the prosecution to prove beyond a reasonable doubt that the use of force, attempted use of force or threat to use force was not justifiable.

(5) A person using force or deadly force in defense of a habitation, place of business or employment or occupied vehicle as defined in section 18-4009 (3), Idaho Code, is presumed to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the force is used against a person whose entry or attempted entry therein is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

19-203 — Resistance by other parties

19-203. Resistance by other parties. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

19-204 — Prevention of offenses by officers of justice

19-204. Prevention of offenses by officers of justice. Public offenses may be prevented by the intervention of the officers of justice: 1. By requiring security to keep the peace. 2. By forming a police in cities and towns, and by requiring their attendance in exposed places. 3. By suppressing riots.

19-205 — Prevention by persons assisting officers

19-205. Prevention by persons assisting officers. When the officers of justice are authorized to act in the prevention of public offenses, other persons who, by their command, act in their aid, are justified in so doing.

19-206 — Security to keep peace — Information of threatened offense

19-206. Security to keep peace — Information of threatened offense. An information may be laid before any magistrate that a person has threatened to commit an offense against the person or property of another.

19-207 — Examination of complainant

19-207. Examination of complainant. When the information is laid before such magistrate he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing and cause them to be subscribed by the parties making them.

19-208 — Warrant of arrest

19-208. Warrant of arrest. If it appears from the depositions that there is just reason to fear the commission of the offense threatened by the person so informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county or any constable, marshal or policeman in the state, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

19-209 — Hearing of controverted charge

19-209. Hearing of controverted charge. When the person informed against is brought before the magistrate, if the charge be controverted the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

19-210 — Discharge of accused

19-210. Discharge of accused. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

19-211 — Security to keep the peace

19-211. Security to keep the peace. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding $5,000, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this state, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

19-212 — Effect of giving or refusing security

19-212. Effect of giving or refusing security. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof and the omission to give the same.

19-213 — Commitment for not giving security

19-213. Commitment for not giving security. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate upon giving the same.

19-214 — Security filed in clerk's office

19-214. Security filed in clerk's office. The undertaking must be filed by the magistrate in the office of the clerk of the district court.

19-215 — Security for threats to assault

19-215. Security for threats to assault. A person who, in the presence of a court magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse so to do, may be committed.

19-216 — Breach of security

19-216. Breach of security. Upon the conviction of the person informed against, of a breach of the peace, the undertaking is broken.

19-217 — Action on undertaking

19-217. Action on undertaking. Upon the prosecuting attorney's producing evidence of such conviction to the district court of the county, the court must order the undertaking to be prosecuted, and the prosecuting attorney must thereupon commence an action upon it in the name of the state of Idaho.

19-218 — Evidence of breach

19-218. Evidence of breach. In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

19-219 — Provisions of chapter exclusive

19-219. Provisions of chapter exclusive. Security to keep the peace, or to be of good behavior, cannot be required except as prescribed in this chapter.

19-220 — Public peace — How preserved

19-220. Public peace — How preserved. The mayor or other officer having the direction of the police of a city or town, must order a force sufficient to preserve the peace to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

19-221 — Suppression of riots — Officers may command assistance

19-221. Suppression of riots — Officers may command assistance. When a sheriff or other public officer, authorized to execute process, finds, or has reason to apprehend, that resistance will be made to the execution of the process, he may command as many bona fide male citizens, residents of his county, as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the persons resisting, their aiders and abettors.

19-222 — Certificate of person resisting process

19-222. Certificate of person resisting process. The officer must certify to the court from which the process is issued, the names of the persons resisting and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

19-223 — Governor may call out militia

19-223. Governor may call out militia. If it appears to the governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, he must, upon the application of the sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the militia of the state, to proceed to the assistance of the sheriff.

19-224 — Commanding rioters to disperse

19-224. Commanding rioters to disperse. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies or the officials governing the town or city shall go among the persons assembled, or as near to them as possible, and command them in the name of the people of the state immediately to disperse.

19-225 — Arrest of rioters

19-225. Arrest of rioters. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

19-226 — Command of armed force

19-226. Command of armed force. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, it must obey the orders in relation thereto of such civil officer.

19-227 — Proclamation of insurrection

19-227. Proclamation of insurrection. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer or of the prosecuting attorney, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection and may order into the service of the state such number and description of volunteer or uniform companies, or other militia of the state as he shall deem necessary to serve for such term, and under the command of such officer or officers, as he shall direct.

19-228 — Disobedience of proclamation

19-228. Disobedience of proclamation. Any person who, after the publication of such proclamation, resists or aids in resisting the execution of process in any county so declared to be in a state of insurrection, or who aids or attempts the rescue or escape of any person from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, shall be punished by imprisonment in the state prison for a term not less than two (2) years.

19-229 — Revocation of proclamation

19-229. Revocation of proclamation. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

CHAPTER 3

19-301 — All offenders liable to punishment

19-301. All offenders liable to punishment.

(1) Jurisdiction – venue. Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States. Evidence that a prosecutable act was committed within the state of Idaho is a jurisdictional requisite, and proof of such must be shown beyond a reasonable doubt.

(2) Venue is nonjurisdictional. Proof that venue is proper under this chapter is satisfied if shown by a preponderance of the evidence.

19-302 — Offenses commenced without the state

19-302. Offenses commenced without the state. When the commission of a public offense, commenced without the state is consummated within its boundaries, the defendant is liable to punishment therefor in this state, though he was out of the state at the time of the commission of the offense charged. If he consummated it in this state through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the venue is in the county in which the offense is consummated.

19-304 — Offenses committed in different counties

19-304. Offenses committed in different counties.

(1) When a public offense is committed in part in one (1) county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two (2) or more counties, the venue is in either county.

(2) When more than one (1) felony is committed in more than one (1) county pursuant to a continuing criminal transaction or a common scheme or plan, venue shall be in any county in which one or more of such offenses has occurred.

(3) If a crime has been committed in the state of Idaho but it cannot be shown which county properly has venue, then in such case Ada county shall be the proper county of venue.

19-305 — Offenses committed on or near county boundaries

19-305. Offenses committed on or near county boundaries. When a public offense is committed on the boundary of two (2) or more counties, or within five hundred (500) yards thereof, if the place where the crime is committed cannot be ascertained with reasonable certainty by the law enforcing officers of either county, or if a misdemeanor or infraction is committed in a city which is located in two (2) counties, then in any such event the venue is in either county. Provided however, that a prosecution in one (1) county shall be a bar to a prosecution for the same act or offense in the other county.

19-306 — Offenses committed on boats, vessels, trains, motor vehicles or aircraft

19-306. Offenses committed on boats, vessels, trains, motor vehicles or aircraft. When an offense is committed in this state, on board a boat, vessel, railroad train, motor vehicle or aircraft, the venue is in the county through which the boat, vessel, railroad train, motor vehicle, or aircraft passes or in the county where the trip terminates.

19-307 — KIDNAPPING and similar offenses

19-307. KIDNAPPING and similar offenses. In any case where a person: 1. Seizes, confines, inveigles or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of this state, or in any way held to service or kept or detained against his will; or 2. Leads, takes, entices away or detains a child under the age of sixteen (16) years, with intent to keep or conceal it from its custodial parent, guardian or other person having lawful care or control thereof, or with intent to steal any article upon the person of the child; or 3. Abducts, entices or by force or fraud unlawfully takes or carries away another at or from a place without the state, or procures, advises, aids or abets such an abduction, enticing, taking or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state; or 4. Seizes, confines, inveigles, leads, takes, entices away or kidnaps another against his will to extort money, property or any other things of value or obtain money, property or reward or any other thing of value for the return or disposition of such person; or 5. Inveigles or entices any unmarried person of previous chaste character, under the age of eighteen (18) years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any other person; and every person who aids or assists in such inveiglement or enticement; or 6. Takes away any person under the age of eighteen (18) years from his or her father, mother, guardian, or other person having the legal charge of that person, without their consent, for the purpose of prostitution; Venue is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

19-308 — Bigamy or incest

19-308. Bigamy or incest. When the offense either of bigamy or incest is committed in one county, and the defendant is apprehended in another, the venue is in either county.

19-309 — Stolen property carried from county to county

19-309. Stolen property carried from county to county. When property taken in one county by burglary, robbery, or theft has been brought into another, the venue of the offense is in either county. But, if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

19-310 — Escape from prison

19-310. Escape from prison. The venue of a criminal action for escaping from prison is in any county of the state.

19-311 — Bringing stolen property into the state

19-311. Bringing stolen property into the state. The venue of a criminal action for stealing, in any other state, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this state, is in any county into or through which such stolen property has been brought.

19-312 — Murder or manslaughter

19-312. Murder or manslaughter. The venue of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county and the party injured dies in another county or out of the state, is in the county where the injury was inflicted.

19-313 — Venue over accessories

19-313. Venue over accessories. In the case of an accessory in the commission of a public offense, the venue is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

19-314 — Venue over absent principal

19-314. Venue over absent principal. The venue of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this code if he were so present and aiding and abetting therein.

19-315 — Conviction or acquittal in another state

19-315. Conviction or acquittal in another state. When an act charged as a public offense, is within the venue of another state, territory, or country, as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state.

19-316 — Conviction or acquittal in another county

19-316. Conviction or acquittal in another county. When an offense is within the venue of two (2) or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

CHAPTER 4

19-401 — No statute of limitations for certain felonies

19-401. No statute of limitations for certain felonies. Notwithstanding any other provision of law, there is no limitation of time within which a prosecution for the following crimes must be commenced:

(1) Murder;

(2) Voluntary manslaughter;

(3) Rape pursuant to section 18-6101

(3) through (10), Idaho Code;

(4) Sexual abuse of a child, lewd conduct with a child, or aggravated lewd conduct with a child as set forth in sections 18-1506 , 18-1508 , 18-1508B , and 18-1508C , Idaho Code;

(5) Producing or making sexually exploitative material as set forth in section 18-1507 (2)(b), Idaho Code; or

(6) An act of terrorism as set forth in sections 18-8102 , 18-8103 , 18-3322 , 18-3323 and 18-3324 , Idaho Code.

19-402 — Commencement of prosecutions for felonies

19-402. Commencement of prosecutions for felonies. A prosecution for any felony other than those specified in section 19-401 , Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission, provided however, a prosecution under sections 18-1506A and 18-1506B , Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim to law enforcement.

19-403 — Misdemeanors

19-403. Misdemeanors.

(1) Except as otherwise provided in this section, a prosecution for any misdemeanor must be commenced by the filing of the complaint or the finding of an indictment within one (1) year after its commission.

(2) A prosecution for failure to report or failure to cause to be reported the abuse, abandonment, or neglect of a child as provided for in section 16-1605 , Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within four (4) years after its commission.

(3) A prosecution for misuse of funds as provided for in section 18-5702 (1), Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission.

(4) A prosecution for a misdemeanor that was dismissed pursuant to section 19-3509 , Idaho Code, must be refiled no later than two (2) years after its dismissal.

19-404 — Absence of defendant from state

19-404. Absence of defendant from state. If, when the offense is committed, the defendant is out of the state, the indictment may be found within the term herein limited after his coming within the state, and no time during which the defendant is not an inhabitant of, or usually resident within, the state is part of the limitation.

19-405 — Indictment — When deemed found

19-405. Indictment — When deemed found. An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

19-406 — Commencement of prosecutions for sexual exploitation by medical care provider

19-406. Commencement of prosecutions for sexual exploitation by medical care provider. A prosecution for sexual exploitation by a medical care provider under section 18-919 , Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within two (2) years after its commission.

CHAPTER 5

19-501 — Definition of complaint

19-501. Definition of complaint. The complaint is the allegation in writing, made to a magistrate, that a person has been guilty of some designated public offense.

19-502 — Definition of magistrate

19-502. Definition of magistrate. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

19-503 — Who are magistrates

19-503. Who are magistrates. The following persons are magistrates:

(1) The justices of the supreme court.

(2) The judges of the court of appeals.

(3) The district judges.

(4) Magistrates of the district court.

19-504 — Person lodging complaint

19-504. Person lodging complaint. When a complaint which has been subscribed to under oath by the party or parties lodging the same is laid before a magistrate alleging facts constituting the commission of a public offense, triable within the county, and the magistrate finds that the complaint alleges a public offense under the Idaho Code or county or city ordinance, the magistrate shall order the clerk of the court to file the complaint and refer the complaint to the appropriate county or city prosecuting attorney for further action.

19-505 — Contents of complaint

19-505. Contents of complaint. The complaint must set forth the facts stated by the complaining witness, tending to establish the commission of the public offense and the guilt of the defendant.

19-506 — When warrant may issue

19-506. When warrant may issue. A magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

19-507 — Form of warrant

19-507. Form of warrant. A warrant of arrest is an order in writing, in the name of the state of Idaho, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form: County of …., state of Idaho. To any sheriff, constable, marshal, or policeman of said state, or of the county of ….: A complaint on oath, having this day been laid before me, by A.B., that the crime of (designating it) has been committed, and accusing C.D. thereof, you are therefore commanded forthwith to arrest the above named C.D. and bring him before me at (naming the place), or in the case of my absence or inability to act, before the nearest or most accessible magistrate in this county. Dated at …., this …. day of …., …..

19-508 — Additional requirements of warrant

19-508. Additional requirements of warrant. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate, with his name of office, and state the offense charged.

19-509 — To whom warrant directed

19-509. To whom warrant directed. The warrant must be directed to and executed by a peace officer.

19-510 — Peace officers enumerated

19-510. Peace officers enumerated. A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a city or town.

19-510A — Peace officers' powers to employees of the state board of correction

19-510A. Peace officers' powers to employees of the state board of correction. All employees of the state board of correction who receive peace officer certification from the Idaho peace officer standards and training council shall have all the authority given by statute to peace officers of the state of Idaho. All other employees designated by the board of correction pursuant to section 20-209C , Idaho Code, shall be empowered with the rights and duties of peace officers when engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation or parole, or when present with and at the request of a local, state or federal law enforcement officer.

19-511 — Railroad and steamboat police

19-511. Railroad and steamboat police. The governor of the state of Idaho is authorized and empowered, upon the application of any railroad or steamboat company to appoint and commission during his pleasure any person designated by such company to serve at the expense of such company as policeman, with the powers of a police officer, and who, after being duly sworn, may act as such policeman upon the premises, cars or boats of such company. The company designating such person shall be responsible civilly for any abuse of his authority. Every such policeman shall, when on duty, wear in plain view a shield bearing the words, "railroad police" or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

19-512 — Direction to officers throughout state

19-512. Direction to officers throughout state. If a warrant is issued by a magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the state, and may be executed by any of those officers to whom it may be delivered.

19-514 — Defendant to be taken before magistrate

19-514. Defendant to be taken before magistrate. If the offense charged is a felony, the officer making the arrest must cause the defendant to be taken before the magistrate who issued the warrant, or in the case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon endorsed and subscribed by him, but all hearings on preliminary examinations must, as far as possible, be had before the magistrate most convenient to the majority of the witnesses for the prosecution, unless for good cause it is ordered to be held elsewhere, and in all such cases the preliminary examinations must be had as hereinafter provided, unless such person shall waive his right to such examination. If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon the request of the defendant, take him before a magistrate in that county, who may admit him to bail in an amount which, in his

judgment, will be reasonable and sufficient for the appearance of the defendant, and said magistrate must direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than fourteen (14) days after such admittance to bail. If bail shall be forthwith given, the magistrate shall take the same and endorse thereon a memorandum of the aforesaid order for the appearance of the defendant. On taking of said bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer in charge of the defendant. The officer must then discharge the defendant from arrest, and must without delay, deliver the warrant and undertaking to the court at which the defendant is required to appear. If bail is not forthwith given by the defendant, the officer must cause the defendant to be taken before the magistrate who issued the warrant, or in case of his absence or inability to act before the nearest and most accessible magistrate in the same county, and at the same time deliver to the magistrate the warrant with his return endorsed thereon.

19-515 — No unnecessary delay — Attorney may visit defendant

19-515. No unnecessary delay — Attorney may visit defendant. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney at law entitled to practice in courts of record of the state of Idaho may, at the request of the prisoner after such arrest, visit the person so arrested.

19-516 — Complaint to be transmitted to magistrate

19-516. Complaint to be transmitted to magistrate. If the defendant is brought before a magistrate other than the one who issued the warrant, the complaint upon which the warrant was issued must be sent to that magistrate, or, if such complaint can not be procured, the complaining witness must be summoned to lodge a new complaint before such magistrate.

19-517 — Offenses triable in another county — Proceedings

19-517. Offenses triable in another county — Proceedings. When a complaint is laid before a magistrate of the commission of a public offense, triable in another county of the state, but showing that defendant is in the county where the complaint is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the magistrate most accessible to the witnesses for the prosecution, but in the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

19-518 — Duties of officer

19-518. Duties of officer. The officer who executes the warrant must take the defendant before the magistrate most accessible to the witnesses for the prosecution, but in the county in which the offense is triable, and must deliver to him the complaint and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

19-519 — Notice of defense of alibi

19-519. Notice of defense of alibi.

(1) At any time after arraignment before a magistrate upon a complaint and upon written demand of the prosecuting attorney, the defendant shall serve, within ten (10) days or at such different time as the court may direct, upon the prosecuting attorney, a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(2) Within ten (10) days after receipt of the defendant's notice of alibi but in no event less than ten (10) days before trial, unless the court otherwise directs, the prosecuting attorney shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the prosecution intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(3) If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subsection (1) or subsection (2) of this section, the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(4) Upon the failure of either party to comply with the requirements of this section, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the

alleged offense. This section shall not limit the right of the defendant to testify in his own behalf.

(5) For good cause shown the court may grant an exception to any of the requirements of subsections (1) through (4) of this section.

CHAPTER 6

19-601 — Arrest defined

19-601. Arrest defined. An arrest is taking a person into custody in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

19-602 — Arrest, how made

19-602. Arrest, how made. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

19-603 — When peace officer may arrest

19-603. When peace officer may arrest. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person: 1. For a public offense committed or attempted in his presence. 2. When a person arrested has committed a felony, although not in his presence. 3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it. 4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested. 5. At night, when there is reasonable cause to believe that he has committed a felony. 6. When upon immediate response to a report of a commission of a crime there is probable cause to believe that the person has committed a violation of section 18-901 (assault), 18-903 (battery), 18-918 (domestic violence), 18-7905 (first-degree stalking), 18-7906 (second-degree stalking), 39-6312 (violation of a protection order), 18-920 (violation of a no contact order), or 18-3302I (threatening violence upon school grounds — firearms and other deadly or dangerous weapons), Idaho Code. 7. When there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

19-604 — When private person may arrest

19-604. When private person may arrest. A private person may arrest another: 1. For a public offense committed or attempted in his presence. 2. When the person arrested has committed a felony, although not in his presence. 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

19-605 — Magistrate may order arrest

19-605. Magistrate may order arrest. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

19-606 — Person arresting may summon assistance

19-606. Person arresting may summon assistance. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

19-607 — When arrest may be made upon a warrant

19-607. When arrest may be made upon a warrant. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If the offense charged is a misdemeanor, the arrest shall not be made inside a person's residence between 8:00 p.m. and 8:00 a.m., unless upon the direction of the magistrate, as endorsed upon the warrant, or where consent was given to enter the residence by a person with real or apparent authority.

19-608 — Information to person arrested

19-608. Information to person arrested. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or after an escape.

19-609 — Warrant must be shown

19-609. Warrant must be shown. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

19-610 — What force may be used

19-610. What force may be used. When the arrest is being made by an officer under the authority of a warrant or when the arrest is being made without a warrant but is supported by probable cause to believe that the person has committed an offense, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all reasonable and necessary means to effect the arrest and will be justified in using deadly force under conditions set out in section 18-4011 , Idaho Code.

19-611 — Breaking doors and windows

19-611. Breaking doors and windows. To make an arrest, if the offense is a felony, a private person, if any public offense, a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which there is reasonable ground for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

19-612 — Force for purpose of liberation

19-612. Force for purpose of liberation. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

19-613 — Weapons may be taken

19-613. Weapons may be taken. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

19-614 — Duty of private person making arrest

19-614. Duty of private person making arrest. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

19-615 — Procedure upon arrest without warrant

19-615. Procedure upon arrest without warrant. When an arrest is made without a warrant by a peace officer or private person the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

19-616 — telecommunication of warrant for service

19-616. telecommunication of warrant for service. A warrant of arrest may be sent by telecommunication process or facsimile process to one (1) or more peace officers and a copy of a warrant sent in such manner is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant.

19-618 — Recapture after escape

19-618. Recapture after escape. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the state.

19-619 — Breaking doors and windows for recapture

19-619. Breaking doors and windows for recapture. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

19-620 — Definition

19-620. Definition. For the purpose of this act, a "temporary road block" means any structure, device or means used by duly authorized law enforcement officers of the state of Idaho and of its political subdivisions for the purpose of controlling all traffic through a point on a highway whereby all vehicles may be slowed or stopped.

19-621 — Authority to establish road blocks

19-621. Authority to establish road blocks. The duly elected or appointed sheriffs, state policemen or policemen of cities of the first or second class of the state of Idaho are hereby authorized to establish, in their respective or adjacent jurisdictions, temporary road blocks upon the highways of this state or city streets for the purpose of apprehending persons reasonably believed by such officers to be wanted for violation of the laws of this state, of any other state, or of the United States, and using such highways or streets.

19-622 — Minimum requirements

19-622. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary road blocks, if time and circumstances allow, are: 1. The temporary road block must be established at a point on the highway or street clearly visible at a distance of not less than 100 yards in either direction. 2. At the point of the temporary road block, a sign shall be placed on the center line of the highway or street displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards, in both directions, either in daytime or darkness. 3. At the same point of the temporary road block, at least one (1) blue light, on and burning, must be placed at the side of the highway or street which shall be a flashing or intermittent beam of light, clearly visible to the oncoming traffic, at a distance of not less than 100 yards. 4. At a distance of not less than 200 yards from the point of the temporary road block, warning signs must be placed at the side of the highway or street, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare or reflector must be placed near such signs for the purpose of attracting the attention of the traffic to the sign.

19-623 — Penalty

19-623. Penalty. Any person who shall proceed or travel through a road block without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than $300.00, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

19-624 — Arrest with certified copy of warrant

19-624. Arrest with certified copy of warrant. Any arrest that may be lawfully made with an original warrant, may be made with a copy thereof, certified by the issuing magistrate to be a true and correct copy of the original warrant that is in his possession.

19-625 — Detention for obtaining evidence of identifying physical characteristics

19-625. Detention for obtaining evidence of identifying physical characteristics.

(1) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense which is a felony may make written application upon oath or affirmation to a judge of any district court, or magistrates division thereof, for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the jurisdiction over which the judicial officer presides. The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the judicial officer upon a showing under oath of all the following: (A) Probable cause for belief that a specifically described criminal offense which is a felony has been committed. (B) Reasonable grounds exist, which may or may not amount to probable cause, to believe that the identified or particularly described individual committed the criminal offense. (C) Procurement of evidence of identifying physical characteristics from the identified or particularly described individual may contribute to the identification of the individual who committed such offense. (D) Such evidence cannot otherwise be obtained by the investigating officer.

(2) Any order issued pursuant to the provisions of this section shall specify the following: (A) The alleged criminal offense which is the subject of the application. (B) The specific type of identifying physical characteristic evidence which is sought. (C) The relevance of such evidence to the particular investigation. (D) The identity or description of the individual who may be detained for obtaining such evidence. (E) The name and official status of the investigative officer authorized to effectuate such detention and obtain such evidence. (F) The place at which the obtaining of such evidence shall be effectuated. (G) The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence. (H) That the individual so identified or described shall have the right to legal counsel during the detention when such evidence is obtained and if he is unable to afford

private counsel an attorney shall be provided at public expense as provided by section 19-6009 , Idaho Code. (I) That the individual will be under no legal obligation to submit to any interrogation or to make any statement during the period of his appearance unless sound of voice identification is required. (J) The period of time, not exceeding ten (10) days, during which the order shall continue in force and effect. If the order is not executed within ten (10) days, a new order may be issued, pursuant to the provisions of this section.

(3) The order issued pursuant to this section shall be returned to the court not later than fifteen (15) days after its date of issuance and shall be accompanied by a sworn statement indicating how and when the evidence was taken and the type of evidence taken. The court shall give to the person from whom such evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.

(4) For the purposes of this section, "identifying physical characteristics" shall mean the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, or photographs of an individual.

CHAPTER 7

19-701 — Officer of another state entering state in fresh pursuit of suspected felon

19-701. Officer of another state entering state in fresh pursuit of suspected felon. Any member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

19-701A — Officer of this state in fresh pursuit of suspected felon

19-701A. Officer of this state in fresh pursuit of suspected felon. Any peace officer of this state in fresh pursuit of a person who is reasonably believed by him to have committed a felony in this state or has committed, or attempted to commit, any criminal offense or traffic infraction in this state in the presence of such officer, or for whom a warrant of arrest is outstanding for a criminal offense, shall have authority to pursue, arrest and hold in custody or cite such person anywhere in this state. All privileges and immunities from liability, exemption from law, ordinances and rules, all pension relief, disability, workmen’s compensation, and other benefits which normally apply to peace officers while they perform their duties in their own jurisdiction shall also apply to them when acting as contemplated above. In addition, this protection shall also be applicable when a peace officer is acting in response to a request for assistance out of his employing jurisdiction. The cost of this protection shall be borne by the individual peace officer’s employing jurisdiction.

19-702 — Person arrested to be taken before magistrate — Extradition or discharge

19-702. Person arrested to be taken before magistrate — Extradition or discharge. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 1 of this act he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit him to bail for such purpose. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

19-703 — Construction of section

19-703. Construction of section. Section 1 of this act shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

19-704 — District of Columbia included

19-704. District of Columbia included. For the purpose of this act the word "state" shall include the District of Columbia.

19-705 — "Fresh pursuit" defined

19-705. "Fresh pursuit" defined. The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having

committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

19-706 — Certification of act to other states

19-706. Certification of act to other states. Upon the passage and approval by the governor of this act, it shall be the duty of the secretary of state (or other officer) to certify a copy of this act to the executive department of each of the states of the United States.

19-707 — Short title

19-707. Short title. This act may be cited as the "Uniform Act on Fresh Pursuit."

CHAPTER 8

19-801 — Accused to be informed of charge — Right to counsel

19-801. Accused to be informed of charge — Right to counsel. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

19-802 — Sending for counsel

19-802. Sending for counsel. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

19-804 — Preliminary examination

19-804. Preliminary examination. The magistrate shall conduct a preliminary examination unless the same is waived by the defendant. At such preliminary examination, the magistrate shall first read the complaint to the defendant unless the defendant waives such reading, and it shall be the duty of the magistrate at such examination to determine whether or not a public offense has been committed and whether or not there is probable or sufficient cause to believe that the defendant committed such public offense. Once commenced, the examination must be completed at one (1) session unless the magistrate for good cause shown by court order postpones it, or unless the parties stipulate in writing or upon the court record to a continuance to a date certain. If the defendant is incarcerated, the postponement or continuance cannot be for more than six (6) days or, if the defendant is not incarcerated, for more than twenty (20) days, unless on motion by or with the consent of the defendant the court orders a longer continuance or postponement.

19-805 — Commitment or bail on postponement

19-805. Commitment or bail on postponement. If a postponement is had the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed.

19-806 — Form of commitment

19-806. Form of commitment. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A.B. having been brought before me under this warrant, is committed for examination to the sheriff of ….." If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

19-807 — Issuance of subpoenas for witnesses

19-807. Issuance of subpoenas for witnesses. The magistrate shall, prior to the preliminary examination, issue subpoenas, subscribed by him, for witnesses required by the prosecution who are in the state, and for witnesses required by the defendant who are in the state.

19-808 — Examination of witnesses for state

19-808. Examination of witnesses for state. The witnesses for the prosecution must be examined under oath in the presence of the defendant, and may be cross-examined in his behalf.

19-809 — Examination of witnesses for defendant

19-809. Examination of witnesses for defendant. When the examination of witnesses on the part of the people is closed, the defendant may produce any material witnesses, which witnesses must be sworn, examined and cross-examined in the presence of the defendant.

19-809A — Child's out of court statements admissible in preliminary examinations

19-809A. Child's out of court statements admissible in preliminary examinations. Notwithstanding the provisions of sections 19-808 and 19-809 , Idaho Code, and any rules promulgated by the Idaho supreme court, in any preliminary examination, the magistrate shall receive into evidence any out-of-court statement of a child under the age of ten (10) years provided the magistrate finds the source of the evidence credible.

19-810 — Exclusion of witnesses

19-810. Exclusion of witnesses. While a witness is under examination the magistrate must, upon motion of either of the parties, exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until all witnesses have been examined.

19-811 — Exclusion of other persons

19-811. Exclusion of other persons. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the prosecuting attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

19-812 — Transcript of preliminary examination

19-812. Transcript of preliminary examination. In all cases which must afterward be investigated by the grand jury, or prosecuted by information, the preliminary examination must be taken and as ordered by the district court duly transcribed, unless the person charged with the offense shall waive his right to such examination, and the same can not be unreasonably delayed by either party. A verbatim record of the proceedings and evidence at the preliminary examination before a magistrate shall be maintained either by electrical devices or by stenographic means as the magistrate may direct, but if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. The opening statements and closing argument of counsel for the parties need not be transcribed and made a part of the transcript unless the transcription of the same is requested in advance by either of such parties. The transcript of the proceedings and evidence at the preliminary examination shall be certified to as true and correct by the stenographer or by the person designated to transcribe the proceedings from the electrical devices.

19-813 — Custody of transcript of preliminary examination

19-813. Custody of transcript of preliminary examination. The magistrate must keep the depositions of witnesses or transcript of preliminary examination taken at such preliminary examination until the same is returned to the proper court; and such magistrate must not permit the same to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, prosecuting attorney, or other prosecuting attorney, and the defendant and his counsel.

19-814 — Discharge of defendant

19-814. Discharge of defendant. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must dismiss the complaint and order the defendant to be discharged.

19-815 — Holding defendant to answer

19-815. Holding defendant to answer. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds that a public offense has been committed, and that there is probable or sufficient cause to believe the defendant guilty thereof, the magistrate shall enter an order holding the defendant to answer to said public offense, which order shall be substantially as follows: "It appearing to me that the offense set forth in the complaint (or any offense, according to the evidence presented at the preliminary examination, stating generally the nature thereof), has been

committed, and that there is sufficient cause to believe the within named A.B. guilty thereof, I order that he be held to answer the same."

19-815A — Challenging sufficiency of evidence of preliminary examination

19-815A. Challenging sufficiency of evidence of preliminary examination. A defendant once held to answer to a criminal charge under this chapter may challenge the sufficiency of evidence educed at the preliminary examination by a motion to dismiss the commitment, signed by the magistrate, or the information filed by the prosecuting attorney. Such motion to dismiss shall be heard by a district judge. If the district judge finds that the magistrate has held the defendant to answer without reasonable or probable cause to believe that the defendant has committed the crime for which he was held to answer, or finds that no public offense has been committed, he shall dismiss the complaint, commitment or information and order the defendant discharged.

19-816 — Offenses not bailable — Endorsement on commitment

19-816. Offenses not bailable — Endorsement on commitment. If the offense is not bailable the following words must be added to the commitment required by section 19-818 : "and he is hereby committed to the sheriff of the county of ….."

19-817 — Bailable offenses — Order admitting to bail

19-817. Bailable offenses — Order admitting to bail. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to commitment required by section 19-818 : "And that he is admitted to bail in the sum of …. dollars, and is committed to the sheriff of the county of …. until he gives such bail."

19-818 — Order of commitment

19-818. Order of commitment. If the magistrate order the defendant to be committed he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

19-819 — Form of commitment

19-819. Form of commitment. The commitment must be to the following effect: County of (as the case may be). The state of Idaho to the sheriff of the county of ….: An order having been this day made by me, that A.B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged. Dated this …. day of …., …..

19-820 — Undertaking of witnesses to appear

19-820. Undertaking of witnesses to appear. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of $500.00.

19-821 — Security for appearance

19-821. Security for appearance. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

19-822 — Security for appearance — Infants and married women

19-822. Security for appearance — Infants and married women. Infants and married women who are material witnesses against the defendant may be required to procure sureties for their appearance, as provided in the last section.

19-823 — Commitment for failure to give security

19-823. Commitment for failure to give security. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

19-824 — Conditional examination

19-824. Conditional examination. When, however, it satisfactorily appears by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this chapter to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged.

19-825 — Return of papers to district court

19-825. Return of papers to district court. When a magistrate has held a defendant to answer for the commission of a public offense, he must, without unnecessary delay and after the transcript of preliminary examination has been transcribed or the depositions of witnesses have been reduced to writing in compliance with section 19-812 , Idaho Code, return to the clerk of the district court to which the defendant has been held to answer, the complaint, the warrant, if any, the transcript of preliminary examination or depositions of witnesses testifying at the preliminary examination, a certified copy of the transcript of his docket, the order holding defendant to answer, all undertakings of bail or for the appearance of witnesses taken by him, together with any other written documents on file which the magistrate is required by law to transmit to said district court.

CHAPTER 9

19-901 — Indictment or information

19-901. Indictment or information. All public offenses triable in the district court must be prosecuted by indictment, or information, except as provided in the next section.

19-902 — Mode of prosecution for removal of officers

19-902. Mode of prosecution for removal of officers. When the proceedings are had for the removal of district, county, municipal or precinct officers they may be commenced by an accusation or information, in writing, as provided in chapter 41 of this title.

19-903 — Indictments and accusations — Where found

19-903. Indictments and accusations — Where found. All accusations against district, county, municipal and precinct officers, and all indictments, must be found in the district court.

CHAPTER 10

19-1001 — Challenge — By whom made

19-1001. Challenge — By whom made. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

19-1002 — Grounds for challenge to panel

19-1002. Grounds for challenge to panel. A challenge to the panel may be interposed for one or more of the following causes only: 1. That the requisite number of ballots was not drawn from the jury box of the county. 2. That notice of the drawing of the grand jury was not given. 3. That the drawing was not had in the presence of the officers designated by law.

19-1003 — Grounds for challenge to individual jurors

19-1003. Grounds for challenge to individual jurors. A challenge to an individual grand juror may be interposed for one or more of the following causes: 1. That he is a minor. 2. That he is an alien. 3. That he is insane. 4. That he is a prosecutor upon a charge against the defendant. 5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such. 6. That he has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offense charged; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, shall not disqualify a grand juror or be a cause of challenge. 7. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court

that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

19-1004 — Form of challenge

19-1004. Form of challenge. The challenges mentioned in the last three sections may be oral, or in writing, and must be tried by the court.

19-1005 — Decision upon challenge

19-1005. Decision upon challenge. The court must allow or disallow the challenge, and the clerk must enter its decisions upon the minutes.

19-1006 — Challenge to panel — Effect of allowance

19-1006. Challenge to panel — Effect of allowance. If a challenge to the panel is allowed the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

19-1007 — Challenge to individual — Effect of allowance

19-1007. Challenge to individual — Effect of allowance. If a challenge to an individual grand juror is allowed he can not be present or take part in the consideration of the charge as to which he was challenged against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

19-1008 — Manner of filling panel after sustaining challenge

19-1008. Manner of filling panel after sustaining challenge. If more than three challenges to individual grand jurors are allowed to the same defendant in reference to the same charge, the court must fill the panel to sixteen as to that charge by causing a sufficient number of competent jurors from those summoned and not before called, or if a sufficient number are not in attendance, then from the bystanders or from the body of the county to be sworn to act as jurors with the regular panel, upon the examination of that charge; and, if necessary to secure the full number of sixteen competent jurors, the court may require the sheriff to summon the required number.

19-1009 — Objections must be by challenge

19-1009. Objections must be by challenge. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to any individual grand juror in no other mode than by challenge.

19-1010 — Appointment of foreman

19-1010. Appointment of foreman. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

19-1011 — Oath of foreman

19-1011. Oath of foreman. The following oath must be administered to the foreman of the grand jury: You, as foreman of the grand jury, will diligently inquire into and true presentment make, of all public offenses against the state of Idaho, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said nor the manner in which you or any other grand juror may have voted in any matter before you. You will present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.

19-1012 — Oath of jurors

19-1012. Oath of jurors. The following oath must be immediately thereupon administered to the other grand jurors present: The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God.

19-1013 — Charge to jury

19-1013. Charge to jury. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

19-1014 — Retirement and discharge of jury

19-1014. Retirement and discharge of jury. The grand jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the final adjournment of the court.

19-1015 — Special grand jury

19-1015. Special grand jury. If an offense is committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

19-1016 — Special grand jury — Contents and delivery of order

19-1016. Special grand jury — Contents and delivery of order. The order must require the sheriff to summon twenty persons, qualified to serve as grand jurors, to appear at a time specified, and a copy thereof, under the seal of the court, must, by the clerk be delivered to the sheriff.

19-1017 — Special grand jury — Execution and return of order

19-1017. Special grand jury — Execution and return of order. The sheriff must execute the order and return it, with a list of names of the persons summoned.

19-1018 — Drawing of special jury

19-1018. Drawing of special jury. At the time appointed the list must be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury must be drawn.

CHAPTER 11

19-1101 — Powers and duties in general

19-1101. Powers and duties in general. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

19-1102 — Presentment defined

19-1102. Presentment defined. A presentment is a formal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

19-1103 — Indictment defined

19-1103. Indictment defined. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

19-1104 — Foreman may administer oaths

19-1104. Foreman may administer oaths. The foreman may administer an oath to any witness appearing before the grand jury.

19-1105 — Evidence receivable by grand jury

19-1105. Evidence receivable by grand jury. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay. No witness whose testimony has been taken and reduced to writing on a preliminary examination must be subpoenaed or required to appear before the grand jury, until such testimony has been first submitted to and considered by the grand jury, but if such testimony has been lost or cannot be found, or if the grand jury after considering the same still desires the presence of any such witnesses, they may be subpoenaed.

19-1106 — Evidence for defendant

19-1106. Evidence for defendant. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the prosecuting attorney to issue process for the witnesses.

19-1107 — Sufficiency of evidence to warrant indictment

19-1107. Sufficiency of evidence to warrant indictment. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

19-1108 — Duty of juror having knowledge of offense

19-1108. Duty of juror having knowledge of offense. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

19-1110 — Access to prisons and public records

19-1110. Access to prisons and public records. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

19-1111 — Who may be present at sessions of jury

19-1111. Who may be present at sessions of jury. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the prosecuting attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The prosecuting attorney of the county may at all times appear before the grand jury for the purpose of giving them information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he think it necessary, but no other person is permitted to be present during the sessions of the grand jury, except the members, witnesses actually under examination, an interpreter when necessary, a supporting person for a child witness requested by the prosecuting attorney as authorized by section 19-3023 , Idaho Code, and the person designated by the district judge or the presiding juror to report the proceedings, and no person must be permitted to be present during the expressions of their opinions, or giving their votes upon any matter before them.

19-1112 — Proceedings to be secret

19-1112. Proceedings to be secret. Every member of the grand jury must keep secret whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; and such matters shall be subject to disclosure according to chapter 1, title 74 , Idaho Code, but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

19-1113 — Juror not to be questioned

19-1113. Juror not to be questioned. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

19-1114 — Notice of refusal to give incriminating evidence — Agreement to testify with immunity — Perjury — Compelling answer

19-1114. Notice of refusal to give incriminating evidence — Agreement to testify with immunity — Perjury — Compelling answer. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person has advised the prosecuting attorney that he will refuse to answer a question or produce evidence, if called as a witness, on the ground that he may be incriminated thereby, the person may agree in writing with the prosecuting attorney of the county to testify voluntarily pursuant to this section. Upon written request of such prosecuting attorney being made to the district court in and for that county, said district court shall approve such written agreement, unless the court finds that to do so would be clearly contrary to the public interest. If after court approval of such agreement, and if, but for this section, the person would have been privileged to withhold the answer given or the evidence produced by him, the answer given, or evidence produced, and any information directly or indirectly derived

from the answer or evidence, may not be used against the person in any manner in a criminal case but the person may, nevertheless, be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or in producing evidence in accordance with such agreement. If such person fails to give any answer or to produce any evidence in accordance with such agreement, that person shall be prosecuted or subjected to penalty or forfeiture in the same manner and to the same extent as he would be prosecuted or subjected to penalty or forfeiture but for this section: provided, that if such person fails to give any answer or to produce any evidence in accordance with such agreement, the prosecuting attorney may request the district court to compel the person to answer or produce evidence, in accordance with section 19-1115 , Idaho Code.

19-1115 — Refusal to give incriminating evidence — Compelling to answer or produce evidence — Immunity — Perjury

19-1115. Refusal to give incriminating evidence — Compelling to answer or produce evidence — Immunity — Perjury. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the prosecuting attorney of the county in writing requests the district court in and for that county to order that person to answer the question or produce the evidence, a judge of the district court shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction, and that person shall comply with the order. After complying, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the answer given, or evidence produced, and any information directly or indirectly derived from the answer or evidence, may not be used against the compelled person in any manner in a criminal case, except that he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

19-1116 — Special inquiry judge

19-1116. Special inquiry judge. Upon the petition by affidavit of a prosecuting attorney of any county of the state of Idaho for the appointment of a special inquiry judge to conduct an inquiry into the existence of suspected crime or corruption within his jurisdiction, the administrative district court judge of the judicial district wherein the county is situated, may designate a judge from the magistrate division of the district court to preside over said inquiry.

19-1117 — Special inquiry judge — Petition for order

19-1117. Special inquiry judge — Petition for order.

(1) When the prosecuting attorney of any county has reason to suspect crime or corruption, within his jurisdiction, and there is reason to suspect that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may issue subpoenas directed to such persons commanding them to appear at a designated time and place in said county before the special inquiry judge and to then and there answer such questions under oath concerning the suspected crime or corruption as may be asked by the prosecuting attorney or special inquiry judge.

(2) At any time after service of such subpoenas and before the return date thereof, the prosecuting attorney may apply to the special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(3) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in district court criminal trials.

19-1118 — Special inquiry judge — Disqualification from subsequent proceedings

19-1118. Special inquiry judge — Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena.

19-1119 — Special inquiry judge — Direction to prosecuting attorney to participate in proceedings in another county — Procedure

19-1119. Special inquiry judge — Direction to prosecuting attorney to participate in proceedings in another county — Procedure. Upon petition of a prosecuting attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge shall direct the prosecuting attorney of the initiating county to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the initiating prosecuting attorney's jurisdiction at the expense of that county.

19-1120 — Witnesses — Attendance

19-1120. Witnesses — Attendance.

(1) A prosecuting attorney may call as a witness, in a special inquiry judge proceeding, any person suspected by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(2) The special inquiry judge may cause to be called as a witness any person suspected by him to possess relevant information or knowledge. If the special inquiry judge desires to hear any such witness who was not called by a prosecuting attorney, it may direct the prosecuting attorney to issue and serve a subpoena upon such witness and the prosecuting attorney must comply with such direction.

19-1121 — Self-incrimination — Right to counsel

19-1121. Self-incrimination — Right to counsel. Any individual called to testify before a special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the special inquiry judge, must be told of his privilege against self-incrimination. Such an individual must be informed that he has the right to have an attorney present to advise him as to his rights, obligations and duties before the special inquiry judge. Such attorney may be present as an observer and advisor during all proceedings, unless immunity has been granted pursuant to sections 19-1114 , 19-1115 or 19-1122 , Idaho Code. After immunity has been granted, such an individual may leave the special inquiry room to confer with his attorney.

19-1122 — Self-incrimination — Refusal to testify or give evidence — Procedure

19-1122. Self-incrimination — Refusal to testify or give evidence — Procedure. If in any proceedings before a special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a prosecuting attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but none of the testimony nor evidence presented by the witness relative to the issue under investigation before the special inquiry judge, nor any information directly or indirectly derived from his testimony, can be used against him in any further criminal proceeding. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the special inquiry judge.

19-1123 — Secrecy enjoined — Exceptions — Use and availability of evidence

19-1123. Secrecy enjoined — Exceptions — Use and availability of evidence.

(1) No individual, who is present during a special inquiry judge proceeding or who shall gain information with regard to said inquiry, shall disclose the testimony of a witness examined before the special inquiry judge or other evidence received by him, except such testimony or evidence may be disclosed in the following cases: when the district court requires disclosure of such testimony to determine whether it is consistent with testimony given by the witness before district court; by a prosecuting attorney when communicating with any law enforcement officer; upon a charge against the witness for perjury in giving his testimony in the special inquiry judge proceeding or upon trial therefor; or when permitted by the district court in the furtherance of justice.

(2) The prosecuting attorney shall have access to all special inquiry judge evidence and may introduce such evidence before any grand jury or judicial proceeding in which the same may be relevant.

(3) Any witness testimony, given before a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the district court. The district court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The cost of any such transcript made available shall be borne by the applicant.

CHAPTER 12

19-1201 — Presentment, how found

19-1201. Presentment, how found. A presentment cannot be found without the concurrence of at least twelve (12) grand jurors. When so found, it must be signed by the foreman.

19-1202 — Must be presented to court

19-1202. Must be presented to court. The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

19-1203 — Court may order bench warrant

19-1203. Court may order bench warrant. If the facts stated in the presentment constitute a public offense, triable in the county, the court must direct the clerk to issue a bench warrant for the arrest of the defendant.

19-1204 — Issuance of bench warrant

19-1204. Issuance of bench warrant. The clerk, on the application of the judge or prosecuting attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant under his signature and the seal of the court into one or more counties.

19-1205 — Form of bench warrant

19-1205. Form of bench warrant. The bench warrant, upon presentment, must be substantially in the following form: County of ….. The state of Idaho to any sheriff, constable, marshal or policeman in this state: A presentment having been made on the …. day of …., …. to the district court of the county of …., charging C.D. with the crime of …., (designating it generally) you are therefore commanded forthwith to arrest the above named C.D., and take him before E.F., a magistrate of this county, or in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand with the seal of said court affixed, this …. day of …., ….. By order of the court. (Seal.)

19-1206 — Service of bench warrant

19-1206. Service of bench warrant. The bench warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information.

19-1207 — Proceedings of magistrate

19-1207. Proceedings of magistrate. The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

CHAPTER 13

19-1301 — Power and jurisdiction of courts

19-1301. Power and jurisdiction of courts. The several courts of this state shall possess and may exercise the same power and jurisdiction to hear, try, and determine prosecutions upon information for crimes, misdemeanors and offenses, to issue writs and process, and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictments.

19-1302 — Filing and endorsement of information

19-1302. Filing and endorsement of information. All informations shall be filed in the court having jurisdiction of the offense specified therein by the prosecuting attorney as informant to which he shall subscribe his name.

19-1303 — Statement of offense charged

19-1303. Statement of offense charged. The offense charged in all informations shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases, and in all cases defendant or defendants shall have the same rights as to proceedings therein as he or they would have if prosecuted for the same offense upon indictment.

19-1304 — Provisions concerning indictment applicable to information

19-1304. Provisions concerning indictment applicable to information. The provisions of this code in relation to indictments, and all other provisions of law applying to prosecutions upon indictments, to writs and process therein, and the issuing and service thereof, to motions, pleadings, trials and punishments, or the execution of any sentence, and to all other proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as near as may be, apply to informations and all prosecutions and proceedings thereon.

19-1305 — Commitment and bail pending information

19-1305. Commitment and bail pending information. Any person who may according to law be committed to jail, or become recognized or held to bail with sureties for his appearance in court to answer to any indictment may, in like manner, so be committed to jail or become recognized and held to bail for his appearance to answer to any information or indictment, as the case may be.

19-1306 — Prosecuting attorney to inquire into facts

19-1306. Prosecuting attorney to inquire into facts. It shall be the duty of the prosecuting attorney to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination as provided by law, touching the commission of any offense wherein the offender shall be committed to jail or become recognized or held to bail, and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe and file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the term of court at which the offender shall be held for his appearance: provided, that in such case such court may examine said statement, together with the evidence filed in the case; and if, upon such examination, the court shall not be satisfied with said statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial.

19-1307 — Grand jury to be drawn only by direction of judge

19-1307. Grand jury to be drawn only by direction of judge. Grand juries shall not hereafter be drawn, summoned, or required to attend at the sittings of any court within the state, as provided by law, unless the judge thereof shall so direct in writing, under his hand, and filed with the clerk of said court.

19-1308 — Preliminary examination necessary

19-1308. Preliminary examination necessary. No information shall be filed against any person for any offense until such person shall have had a preliminary examination therefor, as provided by law, before a justice of the peace, or other examining magistrate or officer, unless such person shall waive his right to such examination: provided, that information may be filed without such examination against fugitives from justice, and any fugitive from justice against whom an information shall be filed may be demanded by the governor of this state of the executive authority of any other state or territory, or of any foreign government, in the same manner, and the same proceedings may be had thereon, as provided by law in like cases of demand upon indictment filed.

19-1309 — Discovery and inspection

19-1309. Discovery and inspection.

(1) Upon motion of a defendant the court may order the prosecuting attorney to permit the defendant to inspect and copy or photograph any relevant:

(a) written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney,

(b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney, and

(c) recorded testimony of the defendant before a grand jury.

(2) Upon motion of a defendant the court may order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, upon a showing of materiality to the preparation of his defense and that the request is reasonable. Except as provided in subsection (1)(b), this section does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by state agents in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses (other than the defendant) to agents of the state.

(3) If the court grants relief sought by the defendant under subsection (1)(b) or subsection (2) of this section, it may, upon motion of the state, condition its order by requiring that the defendant permit the state to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the state's case and that the request is reasonable. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by state or defense witnesses, or by prospective state or defense witnesses, to the defendant, his agents or attorneys.

(4) An order of the court granting relief under this section shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(5) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the state, the court may permit the state to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting relief following a showing in camera, the entire text of the state's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(6) A motion under this section may be made only within ten (10) days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this section. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(7) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the section, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

CHAPTER 14

19-1401 — Indictment, how found

19-1401. Indictment, how found. An indictment cannot be found without the concurrence of at least twelve (12) grand jurors. When so found it must be endorsed, a true bill, and the endorsement must be signed by the foreman of the grand jury.

19-1402 — Failure to find indictment — Return of depositions

19-1402. Failure to find indictment — Return of depositions. If twelve (12) grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

19-1403 — Resubmission of charge after dismissal

19-1403. Resubmission of charge after dismissal. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct, but without such direction it cannot be resubmitted.

19-1404 — Endorsement of names of witnesses

19-1404. Endorsement of names of witnesses. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.

19-1405 — Presentment and filing of indictment

19-1405. Presentment and filing of indictment. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

19-1406 — Indictment of defendant not in custody

19-1406. Indictment of defendant not in custody. When an indictment is found against a defendant not in custody, the same proceedings must be had as are described by sections 19-1501 to 19-1516 , against a defendant who fails to appear for arraignment.

19-1407 — Rules of pleading

19-1407. Rules of pleading. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

19-1408 — First pleading is indictment

19-1408. First pleading is indictment. The first pleading on the part of the people is the indictment.

19-1409 — Requirements of indictment

19-1409. Requirements of indictment. The indictment must contain: 1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties. 2. A statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

19-1410 — Form of indictment

19-1410. Form of indictment. It may be substantially in the following form: The state of Idaho against A.B., in the district court of the …. judicial district, in the county of ….. …. term, ….. A.B. is accused by the grand jury of the county of …. by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like), committed as follows: The said A.B., on the …. day of …., …., at the county of …., (here set forth the act or omission charged as an offense).

19-1411 — Certainty required of indictment

19-1411. Certainty required of indictment. It must be direct and certain as it regards: 1. The party charged. 2. The offense charged. 3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

19-1412 — Indictment by fictitious name

19-1412. Indictment by fictitious name. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

19-1414 — Allegation as to time

19-1414. Allegation as to time. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

19-1415 — Erroneous designation of person injured

19-1415. Erroneous designation of person injured. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to

the person injured, or intended to be injured, is not material.

19-1416 — Construction of words

19-1416. Construction of words. The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

19-1417 — Words of statute

19-1417. Words of statute. Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

19-1418 — Sufficiency of indictment

19-1418. Sufficiency of indictment. The indictment is sufficient if it can be understood therefrom: 1. That it is entitled in a court having authority to receive it, though the name of the court be not stated. 2. That it was found by a grand jury of the county in which the court was held. 3. That the defendant is named, or, if his name cannot be discovered that he is described by a fictitious name, with a statement that his true name is to the jury unknown. 4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein. 5. That the offense was committed at some time prior to the time of finding the indictment. 6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. 7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon conviction, according to the right of the case.

19-1419 — Defects of form

19-1419. Defects of form. No indictment is insufficient, nor can the trial, judgment, or other proceeding thereon, be affected, by reason of any defect or imperfection in matter of form, which does not tend to the prejudice of a substantial right of the defendant upon its merits.

19-1420 — Amendment of indictment

19-1420. Amendment of indictment. An indictment or information may be amended by the prosecuting attorney without leave of the court, at any time before the defendant pleads, and at any time thereafter, in the discretion of the court, where it can be done without prejudice to the substantial rights of the defendant. An information or indictment cannot be amended so as to charge an offense other than that for which the defendant has been held to answer.

19-1421 — Presumptions and facts judicially noticed

19-1421. Presumptions and facts judicially noticed. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment.

19-1422 — Pleading judgments

19-1422. Pleading judgments. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

19-1423 — Pleading private statutes

19-1423. Pleading private statutes. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

19-1424 — Indictment for libel

19-1424. Indictment for libel. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, or of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

19-1425 — Misdescription of forged instrument

19-1425. Misdescription of forged instrument. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

19-1426 — Indictment for perjury

19-1426. Indictment for perjury. In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

19-1427 — Indictment for larceny or embezzlement

19-1427. Indictment for larceny or embezzlement. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

19-1428 — Indictment for selling obscene books

19-1428. Indictment for selling obscene books. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

19-1429 — Conviction or acquittal of several defendants

19-1429. Conviction or acquittal of several defendants. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

19-1430 — Distinction between accessories and principals abolished

19-1430. Distinction between accessories and principals abolished. The distinction between an accessory before the fact and a principal and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

19-1431 — Trial of accessories without principal

19-1431. Trial of accessories without principal. An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried.

19-1432 — Charging two or more offenses in same indictment

19-1432. Charging two or more offenses in same indictment. Two (2) or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

19-1433 — Unnecessary to negate statutory defenses in certain cases

19-1433. Unnecessary to negate statutory defenses in certain cases. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any of the provisions of chapters 22, 25, 27, 28, 29, 30, 31, 32, or 33, title 37 , Idaho Code, it shall not be necessary to negate any exception, excuse, proviso, or exemption, contained in those chapters, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

CHAPTER 15

19-1501 — Place of arraignment

19-1501. Place of arraignment. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found.

19-1502 — Presence of defendant

19-1502. Presence of defendant. If the indictment is for a felony the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

19-1503 — Order for production of defendant

19-1503. Order for production of defendant. When his personal appearance is necessary, if he is in custody, the court may direct and the officer in whose custody he is must bring him before it to be arraigned.

19-1504 — Issuance of bench warrant

19-1504. Issuance of bench warrant. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

19-1505 — Clerk to issue warrant

19-1505. Clerk to issue warrant. The clerk, on the application of the prosecuting attorney, may, at any time after the order, whether the court is sitting or not, issue a bench warrant to one (1) or more counties.

19-1506 — Form of bench warrant

19-1506. Form of bench warrant. The bench warrant upon the indictment must, if the offense be a felony, be substantially in the following form: County of ….. The state of Idaho, to any sheriff, constable, marshal or policeman of this state: An indictment having been found on the …. day of …., …., in the district court of the …. judicial district, in and for the county of …., charging C.D. with the crime of …. (designating it generally); you are therefore commanded forthwith to arrest the above named C.D., and bring him before that court to answer said indictment; or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of ….. Given under my hand with the seal of said court affixed, this …. day of …., ….. By order of said court. (Seal.)

19-1507 — Bail

19-1507. Bail. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody of the sheriff of the county in which the indictment is found, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench warrant a direction to the following effect, "or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment"; and the court, upon directing it to issue, must fix the amount of bail, and an endorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of …. dollars."

19-1508 — Service of warrant

19-1508. Service of warrant. The bench warrant may be served in any county, in the same manner as a warrant of arrest.

19-1509 — Proceedings on giving bail

19-1509. Proceedings on giving bail. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

19-1510 — Increasing bail

19-1510. Increasing bail. When the indictment is for a felony and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

19-1511 — Commitment of defendant

19-1511. Commitment of defendant. If the defendant is present when the order is made he must be forthwith committed. If he is not present a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

19-1512 — Right to counsel

19-1512. Right to counsel. If the defendant appears for arraignment without counsel he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel.

19-1514 — Arraignment, how made

19-1514. Arraignment, how made. The arraignment must be made by the court, or by the clerk or prosecuting attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof and of the endorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment.

19-1515 — Question as to true name of defendant

19-1515. Question as to true name of defendant. When the defendant is arraigned he must be informed that if the name by which he is indicted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

19-1516 — Time allowed for answer

19-1516. Time allowed for answer. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one (1) day, to answer the indictment. He may, in answer to the arraignment, move to set aside, demur, or plead to, the indictment.

CHAPTER 16

19-1601 — Grounds for setting aside indictment

19-1601. Grounds for setting aside indictment. The indictment must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases: 1. When it is not found, endorsed and presented as prescribed in this code. 2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon. 3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in chapter 11 of this title. 4. When the defendant has not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

19-1602 — Waiver of objections

19-1602. Waiver of objections. If the motion to set aside the indictment is not made the defendant is precluded from afterward taking the objections mentioned in the last section.

19-1603 — Hearing and disposition of motion

19-1603. Hearing and disposition of motion. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury.

19-1604 — Order for resubmission

19-1604. Order for resubmission. If the court directs the case to be resubmitted, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment; and, unless a new indictment is found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section.

19-1605 — Order no bar to future prosecution

19-1605. Order no bar to future prosecution. An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

CHAPTER 17

19-1701 — Demurrer or plea

19-1701. Demurrer or plea. The only pleading on the part of the defendant is either a demurrer or a plea.

19-1702 — Demurrer or plea — When interposed

19-1702. Demurrer or plea — When interposed. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

19-1703 — Ground for demurrer

19-1703. Ground for demurrer. The defendant may demur to the indictment when it appears upon the face thereof, either: 1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county. 2. That it does not substantially conform to the requirements of sections 19-1409 , 19-1410 and 19-1411 . 3. That more than one offense is charged in the indictment. 4. That the facts stated do not constitute a public offense. 5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

19-1704 — Form of demurrer

19-1704. Form of demurrer. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

19-1705 — Argument on demurrer

19-1705. Argument on demurrer. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

19-1706 — Judgment on demurrer

19-1706. Judgment on demurrer. Upon considering the demurrer, the court must give judgment either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

19-1707 — Effect of judgment

19-1707. Effect of judgment. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

19-1708 — Discharge of defendant

19-1708. Discharge of defendant. If the court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

19-1709 — Resubmission of charge

19-1709. Resubmission of charge. If the court directs that the case be resubmitted, the same proceedings must be had thereon as when the indictment is set aside on motion.

19-1710 — Plea after disallowance

19-1710. Plea after disallowance. If the demurrer is disallowed, the court must permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, the plea of not guilty must be entered for him.

19-1711 — Objections must be taken by demurrer

19-1711. Objections must be taken by demurrer. When the objections declared grounds of demurrer by this chapter appear upon the face of the indictment, they can only be taken by demurrer, except that the objections to the jurisdiction

of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, or after the trial in arrest of judgment.

19-1712 — Kinds of pleas

19-1712. Kinds of pleas. There are four (4) kinds of pleas to an indictment. A plea of: 1. Guilty. 2. Not guilty. 3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty. 4. Once in jeopardy.

19-1713 — Form of pleas

19-1713. Form of pleas. Every plea must be oral, and entered upon the minutes of the court in substantially the following form: 1. If the defendant pleads guilty: "The defendant pleads that he is guilty of the offense charged." 2. If he pleads not guilty: "The defendant pleads that he is not guilty of the offense charged." 3. If he pleads a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of …. (naming it) rendered at …. (naming the place), on the …. day of ….." 4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place and court)."

19-1714 — Plea of guilty

19-1714. Plea of guilty. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted: provided, that upon the application of the defendant, a plea of guilty may be received, and sentence may be passed, at chambers as provided in section 1-901 .

19-1715 — Plea of not guilty

19-1715. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information or complaint except that mental disease or defect excluding responsibility may be raised as a defense only in the manner provided for in this act.

19-1716 — Evidence admissible under plea of not guilty

19-1716. Evidence admissible under plea of not guilty. All matters of fact tending to establish a defense other than former conviction or acquittal, or once in jeopardy, may be given in evidence under the plea of not guilty.

19-1717 — What is not a former acquittal

19-1717. What is not a former acquittal. If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

19-1718 — What is a former acquittal

19-1718. What is a former acquittal. Whenever the defendant is acquitted on the merits he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which the trial was had.

19-1719 — Conviction or acquittal bars included offenses

19-1719. Conviction or acquittal bars included offenses. When the defendant is convicted or acquitted, or has once been placed in jeopardy upon an indictment, the conviction, acquittal or jeopardy is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense included therein, of which he might have been convicted under that indictment.

19-1720 — Refusal to answer

19-1720. Refusal to answer. If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

CHAPTER 18

19-1801 — Ground for removal

19-1801. Ground for removal. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county

where the indictment is pending.

19-1802 — Form of application — Hearing in absence of defendant

19-1802. Form of application — Hearing in absence of defendant. The application must be made in open court and in writing, verified by the affidavit of the defendant, a copy of which must be served upon the prosecuting attorney at least one (1) day before the application is made. Whenever the affidavit shows that the defendant can not safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment.

19-1803 — Order of removal

19-1803. Order of removal. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a county free from a like objection.

19-1804 — Transfer of cause

19-1804. Transfer of cause. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

19-1805 — Removal of defendant

19-1805. Removal of defendant. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed.

19-1806 — Proceedings after removal

19-1806. Proceedings after removal. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, upon application of the prosecuting attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. The costs accruing upon such removal and trial are a charge against the county in which the indictment was found.

19-1807 — Certification of costs

19-1807. Certification of costs. The clerk of the court in the county to which such action is, or may be, removed must certify the amount of said costs to the auditor of the proper county, which must be allowed and paid as other county charges.

19-1808 — Removal on application of state

19-1808. Removal on application of state. The district courts of this state, within their respective districts, are hereby empowered to change the place of trial in criminal cases, other than misdemeanors, upon the application of the state, on the relation of the county attorney of the county in which any indictment or information may be filed, or upon the relation of any attorney duly and especially appointed to prosecute said cause, such application to be sustained by the affidavits of at least two (2) resident taxpayers in the county where the offense is alleged to have been committed, on the ground that a fair and impartial trial cannot be had in the county where the criminal act is alleged to have been committed.

19-1809 — Removal on application of state — Form of application

19-1809. Removal on application of state — Form of application. Such application must be made in open court and in writing, verified by the affidavit of the relator, a copy of which must be served upon the defendant or his attorney at least one (1) day before the application is made.

19-1810 — Removal on application of state — Order

19-1810. Removal on application of state — Order. If the court is satisfied, from the facts set forth in such application and affidavit, that a fair and impartial trial cannot be had, an order must be made for the removal of the action to the proper

court of a county free from a like objection.

19-1811 — Removal on application of state — Transfer of cause

19-1811. Removal on application of state — Transfer of cause. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

19-1812 — Removal on application of state — Removal of defendant

19-1812. Removal on application of state — Removal of defendant. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned to the custody of the sheriff of the county to which the action is removed.

19-1813 — Removal on application of state — Proceedings after transfer

19-1813. Removal on application of state — Proceedings after transfer. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, upon application of the county attorney or the relator, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. The costs accruing upon such removal and trial are a charge against the county from which such criminal action was removed.

19-1814 — Removal on application of state — Certificate of costs

19-1814. Removal on application of state — Certificate of costs. The clerk of the court in the county to which said action is, or may be, removed must certify the amount of said costs to the auditor of the proper county, which must be allowed and paid as other county charges.

19-1815 — Removal on application of state — Appeal from order denying application

19-1815. Removal on application of state — Appeal from order denying application. The sufficiency, in both law and fact, of the application and supporting affidavits may be reviewed by the supreme court on appeal from an order of the district court denying such application, and such appeal may be taken by the state on the relation of the county attorney of the county in which such application is made, or of any other attorney duly appointed and acting in the prosecution of such cause, and the procedure governing such appeal shall be, as near as may be, the same as provided by law for appeals in other criminal cases.

19-1816 — Impaneling jury from another county

19-1816. Impaneling jury from another county.

(a) As an alternative to entering the order of removal provided in the preceding sections of this chapter, the court may instead enter an order directing that jurors be impaneled from the county to which venue would otherwise have been transferred, if it finds: 1. That a fair and impartial jury cannot be impaneled in the county where the criminal complaint, information or indictment is filed; 2. That it would be more economical to transport the jury than to transfer the pending action; and 3. That justice will be served thereby.

(b) The jury shall be summoned and impaneled as if the trial were to take place in the county where the jury was summoned. Thereafter, the jury shall be transported for purpose of the trial to the county in which the complaint, information or indictment is filed.

(c) All court costs incurred under this section shall be paid by the county where the complaint, information or indictment is filed.

(d) The provisions of this section do not affect the power of the court to order a change of venue.

CHAPTER 19

19-1901 — Issue of fact defined

19-1901. Issue of fact defined. An issue of fact arises: 1. Upon a plea of not guilty. 2. Upon a plea of a former conviction or acquittal of the same offense. 3. Upon a plea of once in jeopardy.

19-1902 — Trial by jury

19-1902. Trial by jury. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases by the consent of both parties expressed in open court and entered in the minutes. In case of misdemeanor the jury may consist of six (6) or any number less than six (6) upon which the parties may agree in open court. There shall be no right to trial by jury for an infraction.

19-1903 — Presence of defendant

19-1903. Presence of defendant. If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant.

19-1904 — Additional jurors

19-1904. Additional jurors. A court may direct that one (1) or more jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. All jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges prior to deliberations. At the conclusion of closing arguments, jurors exceeding the number required of a regular panel shall be removed by lot. Those removed by lot may be discharged after the jury retires to consider its verdict. If more than one (1) additional juror is called, each party is entitled to two (2) peremptory challenges in addition to those otherwise allowed by law; provided however, that if only one (1) additional juror is called, each party shall be entitled to one (1) peremptory challenge in addition to those otherwise provided by law.

19-1905 — Jury to be formed as in civil actions

19-1905. Jury to be formed as in civil actions. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

19-1906 — Preparation of calendar

19-1906. Preparation of calendar. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

19-1907 — Order of trying cases

19-1907. Order of trying cases. The issues on the calendar must be disposed of in the following order, unless upon application of either party, for good causes shown by affidavit, and upon two (2) days' notice to the opposite party, with service of a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order: 1. Indictments for felony, when the defendant is in custody. 2. Indictments for misdemeanor, when the defendant is in custody. 3. Indictments for felony, when the defendant is on bail. 4. Indictments for misdemeanor, when the defendant is on bail.

19-1908 — Time to prepare for trial

19-1908. Time to prepare for trial. After his plea the defendant is entitled to at least two (2) days to prepare for trial.

19-1909 — Trial may be postponed for cause

19-1909. Trial may be postponed for cause. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day of the same or of the next term.

19-1910 — pretrial risk assessment tools

19-1910. pretrial risk assessment tools.

(1) All pretrial risk assessment tools shall be transparent, and:

(a) All documents, data, records, and information used by the builder to build or validate the pretrial risk assessment tool and ongoing documents, data, records, and written policies outlining the usage and validation of the pretrial risk assessment tool shall be open to public inspection, auditing, and testing;

(b) A party to a criminal case wherein a court has considered, or an expert witness has relied upon, a pretrial risk assessment tool shall be entitled to review all calculations and data used to calculate the defendant's own risk score; and

(c) No builder or user of a pretrial risk assessment tool may assert trade secret or other intellectual property protections in order to quash discovery of the materials described in paragraph (a) of this subsection in a criminal or civil case.

(2) For purposes of this section, "pretrial risk assessment tool" means a pretrial process that creates or scores particular factors in order to estimate a person's level of risk to fail to appear in court, risk to commit a new crime, or risk posed to the community in order to make recommendations as to bail or conditions of release based on such risk, whether made on an individualized basis or based on a grid or schedule.

CHAPTER 20

19-2001 — Kinds of challenge

19-2001. Kinds of challenge. A challenge is an objection made to trial jurors and is of two kinds: 1. To the panel. 2. To an individual juror.

19-2002 — Defendants must join in challenge

19-2002. Defendants must join in challenge. When several defendants are tried together they can not sever their challenges, but must join therein.

19-2003 — Panel defined

19-2003. Panel defined. The panel is a list of jurors returned by a sheriff to serve at a particular court or for the trial of a particular action.

19-2004 — Challenge to panel defined — Who may take

19-2004. Challenge to panel defined — Who may take. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

19-2005 — Challenge to panel — Grounds

19-2005. Challenge to panel — Grounds. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one (1) or more of the jurors drawn.

19-2006 — Challenge to panel — When and how taken

19-2006. Challenge to panel — When and how taken. A challenge to the panel must be taken before a juror is sworn, and must be in writing, and must plainly and distinctly state the facts constituting the ground of challenge.

19-2007 — Exception to challenge

19-2007. Exception to challenge. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

19-2008 — Overruling or allowance of exception

19-2008. Overruling or allowance of exception. If, on the exception, the court finds the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed the court may, in like manner, permit an amendment of the challenge.

19-2009 — Denial of challenge — Trial

19-2009. Denial of challenge — Trial. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

19-2010 — Challenge for bias of officers

19-2010. Challenge for bias of officers. When the panel is formed, or in part formed, from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the

same manner, as if made to a juror.

19-2011 — Discharge of jury on sustaining challenge

19-2011. Discharge of jury on sustaining challenge. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

19-2012 — Instruction as to right of challenge

19-2012. Instruction as to right of challenge. Before a juror is called the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so before the jury is sworn.

19-2013 — Challenge to individual juror — Kinds

19-2013. Challenge to individual juror — Kinds. A challenge to an individual juror is either: 1. For cause; or, 2. Peremptory.

19-2014 — Time for challenge

19-2014. Time for challenge. It must be taken before the jury is sworn to try the cause.

19-2015 — Peremptory challenge defined

19-2015. Peremptory challenge defined. A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

19-2016 — Number of peremptory challenges

19-2016. Number of peremptory challenges. If the offense charged is punishable with death or with imprisonment in the state prison for life, the defendant is entitled to ten (10) and the state to ten (10) peremptory challenges. On a trial for any other offense the defendant is entitled to six (6) and the state six (6) peremptory challenges.

19-2017 — Challenge for cause defined

19-2017. Challenge for cause defined. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either: 1. General–That the juror is disqualified from serving in any case; or, 2. Particular–That he is disqualified from serving in the action on trial.

19-2018 — General causes of challenge

19-2018. General causes of challenge. General causes of challenge are: 1. A conviction of felony. 2. A want of any of the qualifications prescribed by law to render a person a competent juror. 3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of performing the duties of a juror.

19-2019 — Particular causes of challenge

19-2019. Particular causes of challenge. Particular causes of challenge are of two kinds: 1. For such a bias as, when the existence of the fact is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias. 2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this code as actual bias.

19-2020 — Grounds of challenge for implied bias

19-2020. Grounds of challenge for implied bias. A challenge for implied bias may be taken for all or any of the following causes and for no other: 1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant. 2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family or boarder or lodger of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages. 3. Being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution. 4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment. 5. Having served on a trial jury which has tried another person for the offense charged in the indictment. 6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was

discharged without a verdict after the case was submitted to it, or being a witness for the prosecution, or subpoenaed as such. 7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense. 8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged. 9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

19-2021 — Exemption not ground for challenge

19-2021. Exemption not ground for challenge. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

19-2022 — Challenge for bias — How stated

19-2022. Challenge for bias — How stated. In a challenge for implied bias, one or more of the legal causes must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenged. In either case the challenge may be oral, but must be entered on the minutes of the court.

19-2023 — Exceptions to challenge

19-2023. Exceptions to challenge. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon. The adverse party may also orally deny the facts alleged as the ground of challenge.

19-2024 — Trial of challenge

19-2024. Trial of challenge. If the facts are denied the challenge must be tried by the court.

19-2025 — Examination of challenged juror

19-2025. Examination of challenged juror. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

19-2026 — Examination of witnesses

19-2026. Examination of witnesses. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

19-2027 — Disposition of challenge for bias

19-2027. Disposition of challenge for bias. On the trial of a challenge for either implied or actual bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

19-2028 — Exhaustion of challenges for cause

19-2028. Exhaustion of challenges for cause. All challenges to an individual juror, except peremptory, must be taken, first by the people, and then by the defendant, and each party must exhaust all his challenges for cause before the other begins.

19-2029 — Order of challenges for cause

19-2029. Order of challenges for cause. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: 1. To the panel. 2. To an individual juror, for a general disqualification. 3. To an individual juror, for an implied bias. 4. To an individual juror, for an actual bias.

19-2030 — Alteration of peremptory challenges

19-2030. Alteration of peremptory challenges. After the jury is passed for cause, both parties alternately, beginning with the people, may take their peremptory challenges. But no challenge is lost by failure to alternate if the panel is opened by the other party; and each party is entitled to a full panel before exercising a peremptory challenge. Provided, however, in the discretion of the court, the number of jurors who will hear the case, plus a number of jurors representing the total number of possible peremptory challenges, may be called and examined for cause before the parties begin to exercise their peremptory challenges.

CHAPTER 21

19-2101 — Order of trial

19-2101. Order of trial. The jury having been impaneled and sworn, the trial must proceed in the following order: 1. If the indictment is for a felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. 2. The prosecuting attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment. 3. The defendant or his counsel may then open the defense and offer his evidence in support thereof. 4. The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case. 5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the prosecuting attorney or other counsel for the people must open, and the prosecuting attorney may conclude, the argument. 6. The judge must then charge the jury if requested by either party; he may state the testimony and declare the law, but must not charge the jury in respect to matters of fact; such charge must be reduced to writing before it is given, unless by the mutual consent of the parties it is given orally.

19-2102 — When order may be departed from

19-2102. When order may be departed from. When the state of the pleadings requires it, or in any other case for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

19-2103 — Argument to jury

19-2103. Argument to jury. If the indictment is for an offense punishable with death, two (2) counsel on each side may argue the cause to the jury. If it is for any other offense, the court may, in its discretion, restrict the argument to one (1) counsel on each side.

19-2104 — Presumption of innocence — Reasonable doubt

19-2104. Presumption of innocence — Reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

19-2105 — Doubt as to degree of crime

19-2105. Doubt as to degree of crime. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

19-2106 — Trial of joint defendants

19-2106. Trial of joint defendants. When two (2) or more defendants are jointly indicted or informed against for a felony or for any criminal offense, the defendants may be tried separately or jointly, in the discretion of the court.

19-2107 — Discharge of codefendant for use as witness

19-2107. Discharge of codefendant for use as witness. When two (2) or more persons are included in the same indictment, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

19-2108 — Discharge of defendant to testify for codefendants

19-2108. Discharge of defendant to testify for codefendants. When two (2) or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his codefendants.

19-2109 — Discharge equivalent to acquittal

19-2109. Discharge equivalent to acquittal. The order mentioned in the last two (2) sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

19-2110 — Rules of evidence

19-2110. Rules of evidence. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

19-2111 — Conspiracy — Sufficiency of evidence

19-2111. Conspiracy — Sufficiency of evidence. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one (1) or more overt acts are expressly alleged in the indictment, nor unless one (1) of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

19-2113 — Bigamy — Proof of marriage

19-2113. Bigamy — Proof of marriage. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

19-2114 — Forging bank bills — Proof of incorporation — Expert witnesses

19-2114. Forging bank bills — Proof of incorporation — Expert witnesses. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing or attempting to pass, or having in his possession, with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by a general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

19-2115 — Abortion and abduction — Corroborating testimony

19-2115. Abortion and abduction — Corroborating testimony. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen (18) years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or withwhom the offense was committed, unless she is corroborated by other evidence.

19-2116 — False pretense — Sufficiency of evidence

19-2116. False pretense — Sufficiency of evidence. Upon a trial for having with intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person, any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the hand writing of the defendant, or unless the pretense be proven by the testimony of two (2) witnesses, or that of one (1) witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

19-2117 — Testimony of accomplice — Corroboration

19-2117. Testimony of accomplice — Corroboration. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

19-2118 — Discharge of jury for want of jurisdiction, or insufficiency of indictment

19-2118. Discharge of jury for want of jurisdiction, or insufficiency of indictment. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense punishable by law.

19-2119 — Discharge of jury for want of jurisdiction — Offense committed out of state

19-2119. Discharge of jury for want of jurisdiction — Offense committed out of state. If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged.

19-2120 — Offense committed in another county

19-2120. Offense committed in another county. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the prosecuting attorney of the proper county, the expense of which transmission is chargeable to that county.

19-2121 — Procedure if defendant not arrested — Procedure if defendant arrested

19-2121. Procedure if defendant not arrested — Procedure if defendant arrested. If the defendant is not arrested on a warrant from the proper county, as provided in the last section, he must be discharged from custody, or his bail in the action exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

19-2122 — Procedure upon discharge of jury for insufficiency of indictment

19-2122. Procedure upon discharge of jury for insufficiency of indictment. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

19-2123 — Advisory instruction to acquit

19-2123. Advisory instruction to acquit. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it must advise the jury to acquit the defendant. But the jury are not bound by the advice.

19-2124 — View of premises by jury

19-2124. View of premises by jury. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

19-2125 — Disclosure of facts known by juror

19-2125. Disclosure of facts known by juror. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declares a fact which could be evidence in the cause, as of his own knowledge, the jury may return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

19-2126 — Custody of jury during trial

19-2126. Custody of jury during trial. The jury sworn to try any felony may, at any time during the trial, and after the submission of the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in the charge of a proper officer. Provided however, that in causes where the defendant has been charged with first-degree murder, and the prosecuting attorney has filed a notice of intent to seek the death penalty pursuant to section 18-4004A , Idaho Code, and such notice has not been withdrawn, the jury may not be permitted to separate after submission of the cause and completion of the special sentencing proceeding held pursuant to section 19-2515 or 19-2515A , Idaho Code. Before permitting the jury to separate after the cause has been submitted, the court shall permit counsel to place objections, if any, on the record outside the presence of the jury. In case the court orders the jury to be kept together the county must provide a suitable place for the board and lodging of the jury, at the expense of the county, and when first

given custody of the jury the officer or bailiff must be sworn to keep the jury together during each recess and adjournment during the trial; to allow no person to speak to or communicate with them, or any of them, nor to do so himself, on any subject connected with the trial, and to return them into court as ordered by the court.

19-2127 — Admonishment of jury on adjournments

19-2127. Admonishment of jury on adjournments. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

19-2128 — Discharge of juror for illness or disability — Substitute juror

19-2128. Discharge of juror for illness or disability — Substitute juror. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled; provided, however, that where substitute jurors have been impaneled in the manner provided by law, such substitute juror or jurors shall be used as provided by the law authorizing the impaneling of substitute jurors.

19-2129 — Decision of questions of law

19-2129. Decision of questions of law. The court must decide all questions of law which arise in the course of a trial.

19-2130 — Decision of questions of law and fact — Trial for libel

19-2130. Decision of questions of law and fact — Trial for libel. On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

19-2131 — Decision of questions of law and fact in other trials — Jury bound by instructions

19-2131. Decision of questions of law and fact in other trials — Jury bound by instructions. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

19-2132 — Instructions to jury — Requests — Instructions on included offenses

19-2132. Instructions to jury — Requests — Instructions on included offenses.

(a) In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

(b) The court shall instruct the jury with respect to a lesser included offense if:

(1) Either party requests such an instruction; and

(2) There is a reasonable view of the evidence presented in the case that would support a finding that the defendant committed such lesser included offense but did not commit the greater offense.

(c) If a lesser included offense is submitted to the jury for consideration, the court shall instruct the jury that it may not consider the lesser included offense unless it has first considered each of the greater offenses within which it is included, and has concluded in its deliberations that the defendant is not guilty of each of such greater offenses.

19-2133 — Retirement of jury — Oath of bailiff

19-2133. Retirement of jury — Oath of bailiff. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

19-2134 — Commitment of defendant pending trial

19-2134. Commitment of defendant pending trial. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

19-2135 — Absence of prosecuting attorney — Appointment of substitute

19-2135. Absence of prosecuting attorney — Appointment of substitute. If the prosecuting attorney fails to attend the trial, the court must appoint some attorney at law to perform the duties of the prosecuting attorney on such trial.

CHAPTER 22

19-2201 — Jury room to be provided by commissioners

19-2201. Jury room to be provided by commissioners. A room must be provided by the commissioners of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

19-2202 — Provision of food and lodging for jury

19-2202. Provision of food and lodging for jury. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

19-2203 — Papers which may be taken by jury

19-2203. Papers which may be taken by jury. Upon retiring for deliberation, the jury may take with them all exhibits and all papers (except depositions) which have been received in evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

19-2204 — Return of jury for information

19-2204. Return of jury for information. After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney and the defendant or his counsel, or after they have been called.

19-2205 — Discharge of jury for illness or accident

19-2205. Discharge of jury for illness or accident. If, after the retirement of the jury, one (1) of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

19-2206 — When jury may be discharged

19-2206. When jury may be discharged. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

19-2207 — Retrial after discharge of jury

19-2207. Retrial after discharge of jury. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

19-2208 — Adjournment during absence of jury

19-2208. Adjournment during absence of jury. While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

19-2209 — Final adjournment of the court discharges the jury

19-2209. Final adjournment of the court discharges the jury. A final adjournment of the court discharges the jury.

19-2210 — Expenses to be paid by what county

19-2210. Expenses to be paid by what county. When two (2) or more counties are joined for judicial purposes, the expense of the trial of a cause must be paid by the county where the offense is alleged to have been committed.

CHAPTER 23

19-2301 — Return of jury

19-2301. Return of jury. When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same or another term.

19-2302 — Presence of defendant

19-2302. Presence of defendant. If indicted for a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

19-2303 — Manner of taking verdict

19-2303. Manner of taking verdict. When the jury appear they must be asked by the court or clerk whether they have agreed upon their verdict, and if the foreman answers in the affirmative they must, on being required, declare the same.

19-2304 — General and special verdicts

19-2304. General and special verdicts. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

19-2305 — Forms of general verdict

19-2305. Forms of general verdict. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment.

19-2306 — Special verdict defined

19-2306. Special verdict defined. A special verdict is that by which the jury finds the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

19-2307 — Special verdict, how rendered

19-2307. Special verdict, how rendered. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury and agreed to by them, before they are discharged.

19-2308 — Form of special verdict

19-2308. Form of special verdict. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

19-2309 — Judgment on special verdict

19-2309. Judgment on special verdict. The court must give judgment upon the special verdict as follows: 1. If the plea is not guilty and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given. 2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

19-2310 — Defective special verdict — New trial

19-2310. Defective special verdict — New trial. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

19-2311 — Jury to find degree of crime

19-2311. Jury to find degree of crime. Whenever a crime is distinguished into degrees the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

19-2312 — Conviction of included offense

19-2312. Conviction of included offense. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

19-2313 — Verdict against joint defendants

19-2313. Verdict against joint defendants. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

19-2314 — Reconsideration of verdict

19-2314. Reconsideration of verdict. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court can not require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it can not be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially and to leave the judgment to the court.

19-2315 — Judgment on informal verdict

19-2315. Judgment on informal verdict. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

19-2316 — Polling the jury

19-2316. Polling the jury. When a verdict is rendered and before it is recorded, the jury may be polled at the request of either party, in which case they must be severally asked whether it is their verdict; and if each juror answer in the affirmative, then the verdict shall be recorded; but if a less number answer in the affirmative, the jury must be sent out for further deliberation.

19-2317 — Recording verdict

19-2317. Recording verdict. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

19-2318 — Discharge or detention of defendant on acquittal

19-2318. Discharge or detention of defendant on acquittal. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred, in the same manner and with like effect as provided in case where the indictment does not state a public offense.

19-2319 — Committal of defendant on conviction

19-2319. Committal of defendant on conviction. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

CHAPTER 24

19-2402 — Transcript and exhibits on appeal to Supreme Court

19-2402. Transcript and exhibits on appeal to Supreme Court. Any party desiring to procure a record of the evidence, proceedings and exhibits made during the trial of a criminal action in the district court for use on appeal to the Supreme Court may procure such transcript and exhibits in the same way in which a transcript and exhibits are obtained in a civil action. Said transcript shall be ordered, prepared, served, settled, lodged, filed and used in the same way and with the same effect as in a civil action. The provisions of section 10-509 shall apply to a reporter's transcript in a criminal action.

19-2403 — Rulings deemed excepted to

19-2403. Rulings deemed excepted to. The ruling and decision of the court in criminal cases disallowing a challenge to the panel of the jury, or to any individual juror, for any of the causes set forth in sections 19-2018 , 19-2019 shall be deemed excepted to on the part of the defendant.

19-2404 — New trial defined

19-2404. New trial defined. A new trial is a reexamination of the issue in the same court, before another jury, after a verdict has been given.

19-2405 — Effect of new trial

19-2405. Effect of new trial. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict can not be used or referred to either in evidence or in argument.

19-2406 — Grounds for new trial

19-2406. Grounds for new trial. When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only: 1. When the trial has been had in his absence, if the indictment is for a felony. 2. When the jury has received any evidence out of court other than that resulting from a view of the premises. 3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented. 4. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the jurors. 5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial. 6. When the verdict is contrary to law or evidence. 7. When new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing in support thereof the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

19-2407 — Time for application

19-2407. Time for application. The application for a new trial may be made before or after judgment; and must be made within the time provided by the Idaho criminal rules unless the court or judge extends the time.

19-2408 — Arrest of judgment — Grounds for motion

19-2408. Arrest of judgment — Grounds for motion. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment that are grounds of demurrer, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

19-2409 — Arrest without motion

19-2409. Arrest without motion. The court may also, on its own view of any of these defects, arrest the judgment without motion.

19-2410 — Effect of sustaining motion

19-2410. Effect of sustaining motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

19-2411 — Discharge or detention of defendant

19-2411. Discharge or detention of defendant. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed, upon which he may be convicted, the court may order him to be recommitted to the office of the proper county, or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offense he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

CHAPTER 25

19-2501 — Time for judgment

19-2501. Time for judgment. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed.

19-2502 — Determination of degree of crime

19-2502. Determination of degree of crime. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

19-2503 — Presence of defendant

19-2503. Presence of defendant. For the purpose of judgment, if the conviction is for a felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

19-2504 — Defendant to be brought before court

19-2504. Defendant to be brought before court. When the defendant is in custody the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

19-2505 — Bench warrant to enforce attendance

19-2505. Bench warrant to enforce attendance. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

19-2506 — Clerk to issue warrant

19-2506. Clerk to issue warrant. The clerk, on the application of the prosecuting attorney, may, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

19-2507 — Form of warrant

19-2507. Form of warrant. The bench warrant must be substantially in the following form: County of ….. The state of Idaho, to any sheriff, constable, marshal or policeman in this state: A.B., having been on the …. day of …., …. duly convicted in the district court of the …. judicial district of the state of Idaho, in and for the county of …., of the crime of …. (designating it generally), you are therefore commanded forthwith to arrest the above named A.B. and bring him before that court for judgment; or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of ….. Given under my hand, with the seal of said court affixed, this …. day of …., ….. By order of the court. (Seal)

19-2508 — Service of warrant

19-2508. Service of warrant. The bench warrant may be served in any county in the same manner as a warrant of arrest, and when served in another county it need not be endorsed by a magistrate of that county.

19-2509 — Arrest of defendant

19-2509. Arrest of defendant. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant, according to the command thereof.

19-2510 — Arraignment for sentence

19-2510. Arraignment for sentence. When the defendant appears for judgment he must be informed by the court, or by the clerk, under its direction, of the nature of the indictment and of his plea, and the verdict if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

19-2511 — Grounds for withholding judgment

19-2511. Grounds for withholding judgment. He may show, for cause against the judgment that he has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

19-2512 — Pronouncement of judgment

19-2512. Pronouncement of judgment. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

19-2512A — collection of dna sample and thumbprint impression

19-2512A. collection of dna sample and thumbprint impression. At the time of a guilty plea, conviction, or sentencing, the court shall order the collection of a DNA sample and thumbprint impression from any person who is convicted of, or pleads guilty to, any serious crime, as defined in section 19-5502 (10), Idaho Code, according to the process set forth in this chapter.

19-2513 — Unified sentence

19-2513. Unified sentence.

(1) Whenever any person is convicted of having committed a felony, the court shall, unless it shall commute the sentence, suspend or withhold judgment and sentence or grant probation, as provided in chapter 26, title 19 , Idaho Code, or unless it shall impose the death sentence as provided by law, sentence such offender to the custody of the state board of correction. The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law. During a minimum term of confinement, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service as provided in section 20-101D , Idaho Code, or for medical parole as provided in section 20-1006 , Idaho Code. The offender may be considered for parole or discharge at any time during the indeterminate period of the sentence and as provided in section 20-1006 , Idaho Code.

(2) If the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute. If the offense is subject to an enhanced penalty as provided by statute, or if consecutive sentences are imposed for multiple offenses, the court shall, if required by statute, direct that the enhancement or each consecutive sentence contain a minimum period of confinement; in such event, all minimum terms of confinement shall be served before any indeterminate periods commence to run.

(3) Enactment of this amended section shall not affect the prosecution, adjudication or punishment of any felony committed before the effective date of enactment.

19-2514 — Persistent violator — Sentence on third conviction for felony

19-2514. Persistent violator — Sentence on third conviction for felony. Any person convicted for the third time of the commission of a felony, whether the previous convictions were had within the state of Idaho or were had outside the state of Idaho, shall be considered a persistent violator of law, and on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.

19-2515 — Sentence in capital cases — Special sentencing proceeding — Statutory aggravating circumstances — Special verdict or written findings

19-2515. Sentence in capital cases — Special sentencing proceeding — Statutory aggravating circumstances — Special verdict or written findings. [effective until January 1, 2027]

(1) Except as provided in section 19-2515A , Idaho Code, a person convicted of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death or the aggravated lewd conduct.

(2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-1005 , Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

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

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

(b) The jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance for murder and at least three (3) statutory aggravating circumstances, as listed in subsection (10) of this section, for aggravated lewd conduct with a minor child twelve (12) years of age or under. Where a statutory aggravating circumstance is found, the defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

(4) Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation shall be conducted; provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted. (5)(a) If a person is adjudicated guilty of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A , Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. Information concerning the victim and the impact that the death or aggravated lewd conduct of the victim has had on the victim's family is relevant and admissible. Such information shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community or impact caused by the victim's death or lewd conduct of the victim. Characterizations and opinions about the crime, the defendant and the appropriate sentence shall not be permitted as part of any victim impact information. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

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

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

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

aggravated lewd conduct with a minor child twelve (12) years of age or under and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(7) The jury shall be informed as follows:

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

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

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years for first-degree murder or thirty (30) years for aggravated lewd conduct with a minor child twelve (12) years of age or under.

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

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

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

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

(i) Make written findings setting forth any statutory aggravating circumstance found beyond a reasonable doubt; (ii) Set forth in writing any mitigating circumstances considered; and (iii) Upon weighing all mitigating circumstances against each statutory aggravating circumstance separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust and detail in writing its reasons for so finding.

(9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed for murder in the first degree:

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

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

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

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

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

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

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

(h) The murder was committed in the perpetration of, or attempt to perpetrate, lewd and lascivious conduct with a minor, sexual abuse of a child under sixteen (16) years of age, ritualized abuse of a child, sexual exploitation of a child, sexual battery of a minor child sixteen (16) or seventeen (17) years of age, or forcible sexual penetration by use of a foreign object, and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(i) The defendant, by his conduct, whether such conduct was before, during or after the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

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

status.

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

(10) The following are statutory aggravating circumstances, at least three (3) of which must be found to have existed during the commission of or to accomplish the lewd conduct beyond a reasonable doubt before a sentence of death can be imposed for aggravated lewd conduct with a minor child twelve (12) years of age or under, as provided in section 18-1508C , Idaho Code:

(a) The defendant engaged in three (3) or more incidents of lewd conduct of a child involving the same victim on separate occasions;

(b) The defendant penetrated, however slight, the oral, anal, or vaginal opening of the victim with a penis;

(c) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(d) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(e) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(f) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(g) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(h) The defendant used force or coercion;

(i) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(j) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(k) The defendant's commission of the offense involved more than one (1) victim;

(l) The defendant's commission of the offense involved more than one (1) perpetrator;

(m) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(n) The victim was impregnated as a result of the lewd conduct;

(o) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct;

(p) The defendant provided alcohol, drugs, or other intoxicating substances to the victim; or

(q) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (5), Idaho Code. 19-2515. Sentence in capital cases — Special sentencing proceeding — Statutory aggravating circumstances — Special verdict or written findings. [effective January 1, 2027]

(1) Except as provided in section 19-2515A , Idaho Code, a person convicted of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death or the aggravated lewd conduct.

(2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-1005 , Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

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

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

(b) The jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance for murder and at least three (3) statutory aggravating circumstances, as listed in subsection (10) of this section, for aggravated lewd conduct with a minor child twelve (12) years of age or under. Where a statutory aggravating circumstance is found, the defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

(4) Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation shall be conducted; provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted. (5)(a) If a person is adjudicated guilty of murder in the first degree or aggravated lewd conduct with a minor child twelve (12) years of age or under, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A , Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. Information concerning the victim and the impact that the death or aggravated lewd conduct of the victim has had on the victim's family is relevant and admissible. Such information shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community or impact caused by the victim's death or lewd conduct of the victim. Characterizations and opinions about the crime, the defendant and the appropriate sentence shall not be permitted as part of any victim impact information. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

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

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

(d) If a special sentencing proceeding is conducted before a newly impaneled jury pursuant to the provisions of subsection (5)(b) or (5)(c) of this section, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder or aggravated lewd conduct for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder or aggravated lewd conduct with a minor child twelve (12) years of age or under and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(7) The jury shall be informed as follows:

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

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

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years for first-degree murder or thirty (30) years for aggravated lewd conduct with a minor child twelve (12) years of age or under.

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

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

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

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

(i) Make written findings setting forth any statutory aggravating circumstance found beyond a reasonable doubt; (ii) Set forth in writing any mitigating circumstances considered; and (iii) Upon weighing all mitigating circumstances against each statutory aggravating circumstance separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust and detail in writing its reasons for so finding.

(9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed for murder in the first degree:

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

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

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

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

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

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

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

(h) The murder was committed in the perpetration of, or attempt to perpetrate, lewd and lascivious conduct with a minor, sexual abuse of a child under sixteen (16) years of age, ritualized abuse of a child, sexual exploitation of a child, sexual battery of a minor child sixteen (16) or seventeen (17) years of age, or forcible sexual penetration by use of a foreign object, and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(i) The defendant, by his conduct, whether such conduct was before, during or after the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

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

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

(10) The following are statutory aggravating circumstances, at least three (3) of which must be found to have existed during the commission of or to accomplish the lewd conduct beyond a reasonable doubt before a sentence of death can be imposed for aggravated lewd conduct with a minor child twelve (12) years of age or under, as provided in section 18-1508C , Idaho Code:

(a) The defendant engaged in three (3) or more incidents of lewd conduct of a child involving the same victim on separate occasions;

(b) The defendant penetrated, however slight, the oral, anal, or vaginal opening of the victim with a penis;

(c) The victim was kidnapped as defined in section 18-4501 , Idaho Code;

(d) The defendant committed the crime of human trafficking, as defined in section 18-8602 , Idaho Code, against the victim;

(e) The defendant has been found guilty of or has plead guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code;

(f) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the lewd conduct; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the lewd conduct;

(g) The defendant tortured the victim by the intentional infliction of extreme and prolonged pain with the intent to cause suffering or by the infliction of extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering;

(h) The defendant used force or coercion;

(i) The defendant was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(j) The defendant caused great bodily injury, as defined in section 19-2520B , Idaho Code, or mutilation to the victim;

(k) The defendant's commission of the offense involved more than one (1) victim;

(l) The defendant's commission of the offense involved more than one (1) perpetrator;

(m) The victim contracted a sexually transmitted disease as a result of the lewd conduct;

(n) The victim was impregnated as a result of the lewd conduct;

(o) The defendant willfully and unlawfully choked or attempted to strangle the victim during the commission of the lewd conduct;

(p) The defendant provided alcohol, drugs, or other intoxicating substances to the victim; or

(q) The defendant knew or had reason to know that the victim had a developmental disability as defined in section 66-402 (4), Idaho Code.

19-2515A — Imposition of death penalty upon mentally retarded person prohibited

19-2515A. Imposition of death penalty upon mentally retarded person prohibited.

(1) As used in this section:

(a) "Mentally retarded" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significant subaverage general intelligence functioning and significant limitations in adaptive functioning must occur before age eighteen (18) years.

(b) "Significantly subaverage general intellectual functioning" means an intelligence quotient of seventy (70) or below.

(2) In any case in which the state has provided notice of an intent to seek the death penalty pursuant to section 18-4004A , Idaho Code, and where the defendant intends to claim that he is mentally retarded and call expert witnesses concerning such issue, the defendant shall give notice to the court and the state of such intention at least ninety (90) days in advance of trial, or such other period as justice may require, and shall apply for an order directing that a mental retardation hearing be conducted. Upon receipt of such application, the court shall promptly conduct a hearing without a jury to determine whether the defendant is mentally retarded; provided however, that no court shall, over the objection of any party, receive the evidence of any expert witness on the issue of mental retardation unless such evidence is fully subject to the adversarial process in at least the following particulars:

(a) If a defendant fails to provide notice as required in this subsection, an expert witness shall not be permitted to testify until such time as the state has a complete opportunity to consider the substance of such testimony and prepare for rebuttal through such opposing experts as the state may choose.

(b) A party who expects to call an expert witness to testify on the issue of mental retardation shall, on a schedule to be set by the court, furnish to the opposing party a written synopsis of the findings of such expert or a copy of a written report. The court may authorize the taking of depositions to inquire further into the substance of such synopsis or report.

(c) Raising the issue of mental retardation shall constitute a waiver of any privilege that might otherwise be interposed to bar the production of evidence on the subject and, upon request, the court shall order that the state's experts shall have access to the defendant in such cases for the purpose of having its own experts conduct an examination in preparation for

any legal proceeding at which the defendant's mental retardation may be in issue.

(d) The court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental retardation. The defendant shall pay the costs of examination if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19 , Idaho Code. The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(e) If an examination cannot be conducted by reason of the unwillingness of the defendant to cooperate with either a court-appointed examiner or with any state expert, the examiner or expert shall so advise the court in writing and include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental retardation. The court may consider the defendant's lack of cooperation for its effect on the credibility of the defendant's mental retardation claim.

(3) If the court finds by a preponderance of the evidence that the defendant is mentally retarded, the death penalty shall not be imposed. The jury shall not be informed of the mental retardation hearing or the court's findings concerning the defendant's claim of mental retardation.

(4) In the event of a conviction of first-degree murder of a person who has been found to be mentally retarded pursuant to subsections (2) and (3) of this section, a special sentencing proceeding shall be held promptly to determine whether the state has proven beyond a reasonable doubt the existence of any of the statutory aggravating circumstances set forth in subsections 19-2515 (9)(a) through (k), Idaho Code.

(a) The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(i) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904 , Idaho Code. (ii) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904 , Idaho Code, unless such jury is waived. (iii) If a special sentencing proceeding is conducted before a newly impaneled jury, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(b) At the special sentencing proceeding, the state and the defendant shall be entitled to present all evidence relevant to the determination of whether or not a statutory aggravating circumstance has been proven beyond a reasonable doubt. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(c) If a unanimous jury, or the court if a jury is waived, finds the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a fixed life sentence. If a unanimous jury, or the court if a jury is waived, does not find the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service.

(5) Nothing in this section is intended to alter the application of any rule of evidence or limit or extend the right of any party to assert any claim or defense otherwise available to that party.

(6) Any remedy available by post-conviction procedure or habeas corpus shall be pursued according to the procedures and time limits set forth in section 19-2719 , Idaho Code.

19-2516 — cost of presentence investigation

19-2516. cost of presentence investigation. If a court orders a presentence investigation to be conducted, the court shall order the defendant to pay an amount to be determined by the department of correction, not to exceed one hundred

dollars ($100), of the cost of conducting the presentence investigation and preparing the presentence investigation report. Such court orders shall be included in the judgment. Any such amount to be paid by the defendant shall be determined by the department of correction and shall be based on the defendant's ability to pay. In determining a defendant's ability to pay, the department of correction may consider such factors as the defendant's income, property owned, outstanding obligations and the number and ages of dependents. Such payments shall be made to the department of correction and will be placed in the probation and parole receipts account created pursuant to section 20-225A , Idaho Code, and utilized as reimbursement for the cost of conducting the presentence investigation and preparing the presentence investigation report. Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature.

19-2517 — presentence investigation report to include recidivism rates

19-2517. presentence investigation report to include recidivism rates.

(1) If the court orders a presentence investigation to be conducted, the investigation report shall include current recidivism rates for:

(a) Offenders placed on probation after an expired period of retained jurisdiction under section 19-2601 4., Idaho Code;

(b) Offenders placed on probation under section 19-2601 2. or 3., Idaho Code; and

(c) Offenders sentenced directly to a term of imprisonment.

(2) The reported recidivism rates shall be differentiated based on offender risk levels of low, moderate and high.

19-2518 — Lien of judgment for fine

19-2518. Lien of judgment for fine. A judgment that the defendant pay a fine, pay costs, or pay fine and costs, constitutes a lien in like manner as a judgment for money in a civil action.

19-2519 — Entry of judgment — Record

19-2519. Entry of judgment — Record.

(a) When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction was had and must without unnecessary delay annex together and file the following papers, which constitute a record of the action: 1. A copy of the minutes of a challenge interposed by the defendant to the panel of a grand jury, or to an individual grand juror, and the proceedings and the decisions thereon. 2. The indictment and copy of the minutes of the plea or demurrer. 3. A copy of the minutes of a challenge interposed to the panel of the trial jury or to an individual juror, and the proceedings and decision thereon. 4. A copy of the minutes of the trial. 5. A copy of the minutes of the judgment. 6. Any bill or bills of exceptions. 7. The written charges asked of the court, and refused with the court's endorsement thereon. 8. A copy of all requested instruction showing those given and those refused with the court's endorsement thereon, together with a copy of all instructions given on the court's own motion.

(b) As soon as possible upon entry of the judgment of conviction the clerk shall deliver to the sheriff of the county a certified copy of the judgment along with a copy of the presentence investigation report, if any, for delivery to the director of correction pursuant to section 20-237 , Idaho Code.

19-2520 — Extended sentence for use of firearm or deadly weapon

19-2520. Extended sentence for use of firearm or deadly weapon. Any person convicted of a violation of sections 18-905 (aggravated assault defined), 18-907 (aggravated battery defined), 18-909 (assault with intent to commit a serious felony defined), 18-911 (battery with intent to commit a serious felony defined), 18-1401 (burglary defined), 18-1508 (3), 18-1508 (4), 18-1508 (5), 18-1508

(6) (lewd conduct with minor or child under sixteen), 18-2501 (rescuing prisoners), 18-2505 (escape by one charged with or convicted of a felony), 18-2506 (escape by one charged with or convicted of a misdemeanor), 18-4003 (degrees of murder), 18-4006 (manslaughter), 18-4015 (assault with intent to murder), 18-4501 (kidnapping defined), 18-5001 (mayhem defined), 18-6101 (rape defined), 18-6501 (robbery defined), 37-2732

(a) (delivery, manufacture or possession of a controlled substance with intent to deliver) or 37-2732B (trafficking), Idaho Code, who displayed, used, threatened, or attempted to use a firearm or other deadly weapon while committing or attempting to commit the crime, shall be sentenced to an extended term of imprisonment. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by fifteen (15) years. For the purposes of this section, "firearm" means any deadly

weapon capable of ejecting or propelling one (1) or more projectiles by the action of any explosive or combustible propellant, and includes unloaded firearms and firearms which are inoperable but which can readily be rendered operable. The additional terms provided in this section shall not be imposed unless the fact of displaying, using, threatening, or attempting to use a firearm or other deadly weapon while committing the crime is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime. This section shall apply even in those cases where the use of a firearm is an element of the offense.

19-2520B — Infliction of great bodily injury — Attempted felony or conspiracy — Extension of prison term

19-2520B. Infliction of great bodily injury — Attempted felony or conspiracy — Extension of prison term.

(1) Any person who inflicts great bodily injury, and the injury was either intended or the act causing the injury was done with a reckless disregard for the safety of another person, on any person, other than an accomplice, in the commission or attempted commission of a felony or conspiracy to commit such a felony shall be sentenced to an extended term sentence. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by twenty (20) years. A term of imprisonment shall be extended as provided in this section unless infliction of great bodily injury is an element of the offense of which he is found guilty. (2) As used in this section, "great bodily injury" means a significant or substantial physical injury.

(3) The extended term of imprisonment required by this section shall apply to any aider or abettor; a person who acts in concert with, or a person who conspires with, the perpetrator of the crime.

(4) The additional terms provided in this section shall not be imposed unless the fact of great bodily injury is separately charged in the accusatory pleading and admitted by the accused or found to be true by the trier of fact after a verdict or finding of guilty on the substantive crime.

19-2520C — Extension of prison terms for repeated sex offenses, extortion and kidnapping

19-2520C. Extension of prison terms for repeated sex offenses, extortion and kidnapping.

(1) Any person who is found guilty of violation of the provisions of sections 18-2401 (extortion), 18-4501 (kidnapping), 18-6101 (rape), or 18-1508 (lewd and lascivious conduct), Idaho Code, or any attempt or conspiracy to commit such crime(s); and committed such crime(s) by force, violence, duress, menace or threat of great bodily injury and who has been previously found guilty of any such crime, shall be sentenced to an extended term sentence. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by fifteen (15) years; provided, however, that no extension shall be imposed under this section for any such crime occurring prior to a period of fifteen (15) years during which the person remained free of prison custody, parole and being found guilty of a crime which is a felony; provided further that no extension shall be imposed under this subsection when the provisions of section 19-2520B , Idaho Code, would be applicable.

(2) Any person found guilty of an offense specified in subsection (1) of this section who has served two (2) or more prior prison terms for any crime specified in subsection (1) hereof, shall be sentenced to an extended term sentence. The extended term of imprisonment authorized in this section shall be computed by increasing the maximum sentence authorized for the crime for which the person was convicted by twenty (20) years; provided, that no extended term of imprisonment shall be imposed under this subsection for any prison term served prior to a period of fifteen (15) years during which the person remained free of prison custody, parole and being found guilty of a crime which is a felony.

(3) The extended terms of imprisonment required by this section shall apply to any aider or abettor; a person who acts in concert with, or a person who conspires with, the perpetrator of the crime.

(4) Any extended term of imprisonment required by this section shall not be imposed unless the fact of the prior commission of a crime is separately charged in the accusatory pleading and admitted by the accused or found to be true by the trier of fact after a verdict or finding of guilty on the substantive crime.

19-2520D — Prior foreign conviction

19-2520D. Prior foreign conviction. Every person who has been found guilty in any other state, country or jurisdiction of an offense for which, if committed within this state, such person could have been punished under the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if such prior conviction had taken place in a court of this state.

19-2520E — Multiple enhanced penalties prohibited

19-2520E. Multiple enhanced penalties prohibited. Notwithstanding the enhanced penalty provisions in sections 19-2520 , 19-2520A , 19-2520B and 19-2520C , Idaho Code, any person convicted of two (2) or more substantive crimes provided for in the above code sections, which crimes arose out of the same indivisible course of conduct, may only be subject to one (1) enhanced penalty.

19-2520F — Consecutive sentences for felonies committed in correctional facilities

19-2520F. Consecutive sentences for felonies committed in correctional facilities. Every person who has been found guilty of a commission of a felony on the grounds of a correctional facility located in this state shall have the sentence for such offense begin after all previous sentences have ended.

19-2520G — Mandatory minimum sentencing

19-2520G. Mandatory minimum sentencing.

(1) Pursuant to section 13, article V of the Idaho constitution, the legislature intends to provide mandatory minimum sentences for repeat offenders who have previously been found guilty of or pleaded guilty to child sexual abuse. The legislature hereby finds and declares that the sexual exploitation of children constitutes a wrongful invasion of a child and results in social, developmental and emotional injury to the child. It is the policy of the legislature to protect children from the physical and psychological damage caused by their being used in sexual conduct. In order to protect children from becoming victims of this type of conduct by perpetrators, it is necessary to provide the mandatory minimum sentencing format contained in subsection (2) of this section. By enacting mandatory minimum sentences, the legislature does not seek to limit the court's power to impose in any case a longer sentence as provided by law.

(2) Any person who is found guilty of or pleads guilty to any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code, or any attempt or conspiracy to commit such a crime, shall be sentenced to a mandatory minimum term of confinement to the custody of the state board of correction for a period of not less than fifteen (15) years, if it is found by the trier of fact that previous to the commission of such crime the defendant has been found guilty of or has pleaded guilty to a violation of any crime or an offense committed in this state or another state which, if committed in this state, would require the person to register as a sexual offender as set forth in section 18-8304 , Idaho Code.

(3) The mandatory minimum term provided in this section shall be imposed where the aggravating factor is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at a trial of the substantive crime. A court shall not have the power to suspend, withhold, retain jurisdiction, or commute a mandatory minimum sentence imposed pursuant to this section. Any sentence imposed under the provisions of this section shall run consecutive to any other sentence imposed by the court.

19-2521 — sentencing Criteria for placing defendant on probation or imposing imprisonment

19-2521. sentencing Criteria for placing defendant on probation or imposing imprisonment.

(1) The policy of the state of Idaho regarding sentencing of persons convicted of a crime is as follows, unless otherwise provided by law:

(a) The sentencing court should first consider placement in the community. The goals of sentencing include the primary consideration of the protection of society, followed by the possibility of risk reduction through rehabilitation, deterrence of the individual and the public generally, and punishment or retribution for wrongdoing and the impact on the victim; and

(b) Each discretionary sentence should be specifically tailored to the individual defendant and take into account the totality of all relevant facts and circumstances.

(2) The following factors, while not controlling the discretion of the court, shall be accorded weight in favor of avoiding a sentence of imprisonment:

(a) The defendant's criminal conduct neither caused nor threatened harm;

(b) The defendant did not contemplate that his criminal conduct would cause or threaten harm;

(c) The defendant's criminogenic needs indicate that the defendant will benefit from supervision and treatment in the community;

(d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(e) The victim of the defendant's criminal conduct induced or facilitated the commission of the crime;

(f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that was sustained; provided, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combination;

(g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) The defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely; and

(j) The defendant demonstrates amenability to treatment.

(3) The following factors, while not controlling the discretion of the court, shall be accorded weight in favor of a sentence of imprisonment:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime harmful to another person;

(b) A lesser sentence will depreciate the seriousness of the defendant's crime;

(c) Imprisonment will provide appropriate punishment and deterrent to the defendant;

(d) Imprisonment will provide an appropriate deterrent for other persons in the community; and

(e) The defendant is a multiple offender or professional criminal.

(4) As used in this section, "criminogenic needs" means those dynamic factors associated with the likelihood of reoffending but that may be changed through effective intervention.

19-2522 — Examination of defendant for evidence of mental condition — Appointment of psychiatrists or licensed psychologists — Hospitalization — Reports

19-2522. Examination of defendant for evidence of mental condition — Appointment of psychiatrists or licensed psychologists — Hospitalization — Reports.

(1) If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court shall appoint at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19 , Idaho Code. The order appointing or requesting the designation of a psychiatrist or licensed psychologist shall specify the issues to be resolved for which the examiner is appointed or designated.

(2) In making such examination, any method may be employed which is accepted by the examiner's profession for the examination of those alleged to be suffering from a mental illness or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;

(c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;

(d) A consideration of whether treatment is available for the defendant's mental condition;

(e) An analysis of the relative risks and benefits of treatment or nontreatment;

(f) A consideration of the risk of danger which the defendant may create for the public if at large.

(4) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(5) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(6) If a mental health examination of the defendant has previously been conducted, whether pursuant to section 19-2524 , Idaho Code, or for any other purpose, and a report of such examination has been submitted to the court, and if the court determines that such examination and report provide the necessary information required in subsection (3) of this section, and the examination is sufficiently recent to reflect the defendant's present mental condition, then the court may consider such prior examination and report as the examination and report required by this section and need not order an additional

examination of the defendant's mental condition. The provisions of this subsection shall not apply to examinations and reports performed or prepared pursuant to section 18-211 or 18-212 , Idaho Code, for the purpose of determining the defendant's fitness to proceed, unless the defendant knowingly, voluntarily and intelligently consents to having such examination and report used at sentencing.

(7) Nothing in this section is intended to limit the consideration of other evidence relevant to the imposition of sentence.

19-2523 — Consideration of mental illness in sentencing

19-2523. Consideration of mental illness in sentencing.

(1) Evidence of mental condition shall be received, if offered, at the time of sentencing of any person convicted of a crime. In determining the sentence to be imposed in addition to other criteria provided by law, if the defendant's mental condition is a significant factor, the court shall consider such factors as:

(a) The extent to which the defendant is mentally ill;

(b) The degree of illness or defect and level of functional impairment;

(c) The prognosis for improvement or rehabilitation;

(d) The availability of treatment and level of care required;

(e) Any risk of danger which the defendant may create for the public, if at large, or the absence of such risk;

(f) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law at the time of the offense charged.

(2) The court shall authorize treatment during the period of confinement or probation specified in the sentence if, after the sentencing hearing, it concludes by clear and convincing evidence that:

(a) The defendant suffers from a severe and reliably diagnosable mental illness or defect resulting in the defendant's inability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law;

(b) Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the defendant;

(c) Treatment is available for such illness or defect;

(d) The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment. (of the offense charged.)

(3) In addition to the authorization of treatment, the court shall pronounce sentence as provided by law.

19-2524 — consideration of community-based treatment to meet behavioral health needs in sentencing and post-sentencing proceedings

19-2524. consideration of community-based treatment to meet behavioral health needs in sentencing and post-sentencing proceedings.

(1) After a defendant has pled guilty to or been found guilty of a felony, and at any time thereafter while the court exercises jurisdiction over the defendant, behavioral health needs determinations shall be conducted when and as provided by this section.

(a) As part of the presentence process, a screening to determine whether a defendant is in need of a substance use disorder assessment and/or a mental health examination shall be made in every felony case unless the court waives the requirement for a screening. The screening shall be performed within seven (7) days after the plea of guilty or finding of guilt.

(b) At any time after sentencing while the court exercises jurisdiction over the defendant, the court may order such a screening to be performed by individuals authorized or approved by the department of correction if the court determines that one is indicated. The screening shall be performed within seven (7) days after the order of the court requiring such screening.

(2) Substance use disorder provisions.

(a) Should a screening indicate the need for further assessment of a substance use disorder, the necessary assessment shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening. The assessment may

be performed by qualified employees of the department of correction or by private providers approved by the department of health and welfare. If the screening or assessment is not timely completed, the court may order that the screening be performed by another qualified provider.

(b) Following completion of the assessment, the results of the assessment, including a determination of whether the defendant meets diagnostic criteria for a substance use disorder and the recommended level of care, shall be submitted to the court as part of the presentence investigation report or other department of correction report to the court.

(c) Following the entry of a plea of guilty or a finding of guilt, the court may order, as a condition of the defendant's continued release on bail or on the defendant's own recognizance, that, if the assessment reflects that the defendant meets diagnostic criteria for a substance use disorder, the defendant shall promptly, and prior to sentencing, begin treatment at the recommended level of care.

(d) If the court concludes at sentencing, or at any time after sentencing while the court exercises jurisdiction over the defendant, that the defendant meets diagnostic criteria for a substance use disorder, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment at the recommended level of care, subject to modification of the level of care by the court. If substance use disorder treatment is ordered, all treatment shall be performed by a qualified private provider approved by the department of health and welfare. The court may order that, if the level of care placement or the treatment plan is modified in any material term, the department of correction shall notify the court stating the reason for the modifications and informing the court as to the clinical alternatives available to the defendant. The level of care for substance use treatment shall be based on each probationer's risk assessment with priority given to probationers with high or moderate risk levels.

(e) In no event shall the persons or facility doing the substance use assessment be the person or facility that provides the substance use treatment unless this requirement is waived by the court or where the assessment and treatment are provided by or through a federally recognized Indian tribe or federal military installation where diagnosis and treatment are appropriate and available.

(f) Defendants who have completed department of correction institutional programs may receive aftercare services from qualified employees of the department of correction.

(g) The expenses of all screenings and assessments for substance use disorder provided or ordered pursuant to this section shall be borne by the department of correction. The expenses for treatment provided or ordered pursuant to this section shall be borne by the department of correction unless the defendant is placed in a treatment program that is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to the defendant for the substance use disorder assessments and treatments provided to the defendant based on the actual costs of such services and the ability of the defendant to pay. The department of correction shall determine costs pursuant to section 39-3140 , Idaho Code.

(3) Mental health provisions.

(a) Should the mental health screening indicate that a serious mental illness may be present, then the department of correction shall refer the defendant to the department of health and welfare for further examination. The examination shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening.

(b) The examination may be performed by qualified department of health and welfare employees or by private providers under contract with the department of health and welfare, provided that such examination shall at a minimum include an in-depth evaluation of the following:

(i) Mental health concerns; (ii) Psychosocial risk factors; (iii) Medical, psychiatric, developmental and other relevant history; (iv) Functional impairments;

(v) Mental status examination; (vi) Multiaxial diagnoses; and (vii) Any other examinations necessary to provide the court with the information set forth in paragraph (c) of this subsection.

(c) Upon completion of the mental health examination, the court shall be provided, as part of the presentence report or other department of health and welfare report to the court, a copy of the mental health assessment along with a summary report. The summary report shall include the following:

(i) Description and nature of the examination; (ii) Multiaxial diagnoses; (iii) Description of the defendant's diagnosis and if the defendant suffers from a serious mental illness (SMI) as that term is now defined, or is hereafter amended, in IDAPA 16.07.33.011, to also include post-traumatic stress disorder; (iv) An analysis of the degree of impairment due to the defendant's diagnosis;

(v) Consideration of the risk of danger the defendant may create for the public; and (vi) If the defendant suffers from a serious mental illness, the report shall also include a plan of treatment that addresses the following: 1. An analysis of the relative risks and benefits of treatment versus nontreatment; 2. Types of treatment appropriate for the defendant; and 3. Beneficial services to be provided.

(d) If the court, after receiving a mental health examination and plan of treatment, determines that additional information is needed regarding the mental condition of the defendant or the risk of danger such condition may create for the public, the court may order additional evaluations and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.

(e) If the court concludes that the defendant suffers from a serious mental illness as defined in paragraph (c)(iii) of this subsection and that treatment is available for such serious mental illness, then the court may order, as a condition of the defendant's release on bail or on the defendant's own recognizance or as a condition of probation, that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court. If the plan of treatment is modified in any material term, the department of health and welfare shall notify the court in a timely manner stating the reasons for the modification and informing the court as to the clinical alternatives available to the defendant.

(f) If treatment is ordered, all treatment shall be performed by a provider approved by the department of health and welfare.

(g) Mental health examinations and/or treatment provided or ordered pursuant to this section shall be secured by the department of health and welfare. The department of health and welfare shall exhaust efforts to assist the defendant in gaining access to health care benefits that will cover the defendant's mental health treatment needs. To the extent that health care benefits are not available to the defendant for the treatment, the expenses for treatment shall be borne by the department of health and welfare. The expenses of all mental health examinations provided or ordered under this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of health and welfare for the service provided to the defendant. The department of health and welfare shall determine costs pursuant to section 39-3140 , Idaho Code. The defendant shall pay the fee for the mental health examinations and treatments consistent with the rules of the department of health and welfare.

(4) Unless otherwise ordered by the court, if the defendant is in treatment for a substance use disorder or mental illness, any substance use disorder assessment required pursuant to subsection (2) of this section or mental health examination required pursuant to subsection (3) of this section need not be performed while the defendant is in such treatment. In such circumstances, the court may make such order as it finds appropriate to facilitate the completion of the sentencing process or other proceeding before the court, including providing for the assessment and treatment records to be included in the presentence investigation report or other report to the court.

(5) Any substance use disorder assessment including any recommended level of care or mental health examination including any plan of treatment shall be delivered to the court, the defendant and the prosecuting attorney prior to any sentencing hearing or probation revocation hearing.

(6) A substance use disorder assessment prepared pursuant to the provisions of this section shall satisfy the requirement of an alcohol evaluation prior to sentencing set forth in section 18-8005 (11), Idaho Code, and shall also satisfy the requirement of a substance abuse evaluation prior to sentencing set forth in section 37-2738 , Idaho Code.

(7) If the defendant is sentenced to the custody of the board of correction, then any substance use disorder assessment, mental health examination or plan of treatment shall be sent to the department of correction along with the presentence report.

CHAPTER 26

19-2601 — Commutation, suspension, withholding of sentence — Probation

19-2601. Commutation, suspension, withholding of sentence — Probation. Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion may: 1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections; 2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and may place the defendant on probation under such terms and conditions as it deems necessary and appropriate; 3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation under such terms and conditions as it deems necessary and appropriate; or 4. Suspend the execution of the judgment at any time during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction. The court may retain jurisdiction over the prisoner for a period of up to the first three hundred sixty-five (365) days. Except as provided for in section 19-2601A , Idaho Code, during the period of retained jurisdiction, the state board of correction shall be responsible for determining the placement of the prisoner and such education, programming and treatment as it determines to be appropriate. The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the period of retained jurisdiction has expired. Placement on probation shall be under such terms and conditions as the court deems necessary and appropriate. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case or following release from commitment to the department of juvenile corrections pursuant to section 19-2601A , Idaho Code. In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation. Probation is a matter left to the sound discretion of the court. Any recommendation made by the state board of correction to the court regarding the prisoner shall be in the nature of an addendum to the presentence report. The board of correction and its agency, the department of correction, and their employees shall not be held financially responsible for damages, injunctive or declaratory relief for any recommendation made to the district court under this section. 5. If the crime involved is a felony and if judgment is withheld as provided in subsection 3. of this section or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with subsection 2. of this section or as provided by subsection 4. of this section, the court may place the defendant on probation. If the court places the defendant on probation to the board of correction, the court shall include in the terms and conditions of probation a requirement that the defendant enter into and comply with an agreement of supervision with the board of correction. The agreement of supervision shall include provisions setting forth the potential sanctions for a violation of the terms or conditions imposed and potential rewards for compliance with the terms and conditions imposed, as such sanctions and rewards are set forth in rules of the board of correction. 6. If the crime involved is a misdemeanor, indictable or otherwise, or if the court should suspend any remaining portion of a jail sentence already commuted in accordance with subsection 1. of this section, the court, if it grants probation, may place the defendant on probation. 7. The period of probation ordered by a court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. Under a conviction or plea of guilty for a felony the period of probation may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

19-2601A — blended sentence

19-2601A. blended sentence.

(1) If the convicted juvenile is a juvenile held for adult criminal proceedings, the court may suspend execution of judgment of a sentence, retain jurisdiction and issue an order committing the convicted juvenile to dual custody with the state board of correction and the department of juvenile corrections.

(2) During this period of dual custody and retained jurisdiction:

(a) The department of juvenile corrections shall assume physical custody of and financial responsibility for the convicted juvenile from the time of the court's order until the court terminates the department's custody, jurisdiction is relinquished

or the juvenile reaches twenty-one (21) years of age, whichever occurs first;

(b) The department of juvenile corrections shall be responsible for determining the placement of the convicted juvenile and such education, programming and treatment as it determines to be appropriate. However, court approval is required by the sentencing court prior to the department placing a convicted juvenile in a community residential setting;

(c) The state board of correction shall be a member of the convicted juvenile's treatment team. The state board of correction shall participate in staffings and shall provide supervision pursuant to section 20-219 , Idaho Code, if the convicted juvenile is placed in a community residential setting by the department of juvenile corrections. During this period of supervision, the state board of correction shall not file a probation violation, but may petition the court to terminate the custody of the department pursuant to paragraph (d) of this subsection;

(d) While the convicted juvenile is in the physical custody of the department of juvenile corrections, if either the department or the state board of correction reasonably believes that the juvenile is failing to comply with all reasonable program requirements, the department or the state board of correction may petition the sentencing court to terminate custody of the department. If the juvenile has successfully completed the program or is sixty (60) days or less from turning twenty-one (21) years of age, the department of juvenile corrections shall return the convicted juvenile to the court for further disposition;

(e) Any recommendation made by the state board of correction or the department of juvenile corrections to the court regarding the convicted juvenile shall be in the nature of an addendum to the presentence report; and

(f) Upon the release of the juvenile by the department of juvenile corrections, its duties and obligations cease and custody of the convicted juvenile with the department is terminated.

(3) All time served under the custody of the department of juvenile corrections shall be credited toward the total sentence given the convicted juvenile. However, in no event may the total of the actual time spent by the convicted juvenile in the custody of the department, plus any adult sentence imposed by the court, exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(4) Upon the release of the convicted juvenile by the department of juvenile corrections or termination of department custody, the court may impose another period of retained jurisdiction pursuant to subsection 4. of section 19-2601 , Idaho Code, relinquish jurisdiction and impose the remainder of the sentence with the state board of correction, or place the convicted juvenile on adult felony probation.

19-2601B — ADVISEMENT TO felony PROBATIONERS REGARDING CONDITIONS OF PROBATION

19-2601B. ADVISEMENT TO felony PROBATIONERS REGARDING CONDITIONS OF PROBATION.

(1) Any person ordered to felony probation pursuant to this chapter shall be given notice that he waives his constitutional rights under the fourth amendment to the constitution of the United States and section 17, article I of the constitution of the state of Idaho and consents to warrantless search and seizure of his person, place of residence, motor vehicle, or other real or personal property, including without limitation a cellular or electronic device under his control or possession, at any time, day or night, with or without cause, by a probation and parole officer, county probation officer, or peace officer as defined in section 19-5101 (d), Idaho Code.

(2) The court shall provide such notice at the time of sentencing and shall condition probation on the terms as provided in this section and any other terms the court deems necessary.

(3) The defendant shall agree to the terms of probation as described in this section and any other terms deemed by the court and shall acknowledge acceptance in writing. If the defendant fails to agree and accept said terms, he shall be ineligible to be placed on probation.

(4) Probation and parole officers, county probation officers, and peace officers shall not conduct searches or seizures for the sole purpose of harassment.

19-2602 — Violation of probation — Arrest

19-2602. Violation of probation — Arrest. If it is proved to the satisfaction of the court that the terms and conditions upon which the defendant was placed on probation by the court or any of them have been violated or for any other cause satisfactory to the court, the court may, at any time within the longest period for which the defendant might have been originally sentenced by judgment of the court, issue a bench warrant for the rearrest of the defendant.

19-2603 — Pronouncement and execution of judgment after violation of probation

19-2603. Pronouncement and execution of judgment after violation of probation. When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence. The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227 , Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

19-2604 — Discharge of defendant — Amendment of judgment

19-2604. Discharge of defendant — Amendment of judgment.

(1) (a) Application for relief under this subsection may be made by the following persons who have pled guilty to or been found guilty of a crime:

(i) A defendant whose sentence has been suspended or who has received a withheld judgment; (ii) A defendant in a felony case whose sentence has been commuted under section 19-2601 1., Idaho Code; (iii) A defendant in a felony case upon whom the court has not imposed a sentence to the custody of the board of correction; (iv) A defendant who has not been sentenced but who has successfully completed a drug court or mental health court program;

(v) A defendant in a misdemeanor case who has not been sentenced to serve a term in the county jail or whose sentence or any portion thereof has been suspended.

(b) Upon application of the defendant and upon satisfactory showing that:

(i) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of any probation that may have been imposed; or (ii) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; the court, if convinced by the showing made that there is no longer cause for continuing the period of probation should the defendant be on probation at the time of the application, and that there is good cause for granting the requested relief, may terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to sentencing, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

(2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601 or 19-2601A , Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

(3) (a) In addition to the circumstances in which relief from a felony conviction may be granted under subsections (1) and (2) of this section, a defendant who has been convicted of a felony and who has been discharged from probation may apply to the sentencing court for a reduction of the conviction from a felony to a misdemeanor as provided in this subsection.

(b) If less than five (5) years have elapsed since the defendant's discharge from probation, the application may be granted only if the prosecuting attorney stipulates to the reduction.

(c) If at least five (5) years have elapsed since the defendant's discharge from probation, and if the defendant was convicted of any of the following offenses, the application may be granted only if the prosecuting attorney stipulates to the reduction:

(i) Assault with intent to commit a serious felony (18-909 , 18-915 , Idaho Code); (ii) Battery with intent to commit a serious felony (18-911 , 18-915 , Idaho Code); (iii) Enticing of children (18-1509 , Idaho Code); (iv) Murder in the first or second degree (18-4003 , Idaho Code);

(v) Voluntary manslaughter (18-4006 (1), Idaho Code); (vi) Assault with intent to commit murder (18-4015 , Idaho Code); (vii) Administering poison with intent to kill (18-4014 , Idaho Code); (viii) Kidnapping in the first degree (18-4502 , Idaho Code); (ix) Robbery (18-6501 , Idaho Code);

(x) Trafficking (37-2732B , Idaho Code); (xi) Threats against state officials of the executive, legislative or judicial branch, felony (18-1353A , Idaho Code); (xii) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317 , Idaho Code); (xiii) Cannibalism (18-5003 , Idaho Code); (xiv) Unlawful use of destructive device or bomb (18-3320 , Idaho Code); (xv) Attempt, conspiracy or solicitation to commit any of the crimes described in subparagraphs (i) through (xiv) of this paragraph.

(d) The decision as to whether to grant such an application shall be in the discretion of the district court, provided that the application may be granted only if the court finds that:

(i) The defendant has not been convicted of any felony committed after the conviction from which relief is sought; (ii) The defendant is not currently charged with any crime; (iii) There is good cause for granting the reduction in sentence; and (iv) In those cases where the stipulation of the prosecuting attorney is required under paragraph (b) or (c) of this subsection, the prosecuting attorney has so stipulated.

(e) If the court grants the application, the court shall reduce the felony conviction to a misdemeanor and amend the judgment of conviction for a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to the judgment of conviction.

(4) Subsections (2) and (3) of this section shall not apply to any judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code. A judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304 , Idaho Code, shall not be subject to dismissal or reduction under this section. A conviction for the purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(5) A violation of the terms of an agreement of supervision with the board of correction by a person under the supervision of the board shall not preclude the granting of relief to that person under this section.

19-2605 — Powers of judge at chambers

19-2605. Powers of judge at chambers. The powers hereby conferred upon the district court may be exercised by the judge thereof at chambers.

19-2606 — suspended offender — Duty to report — Order on report

19-2606. suspended offender — Duty to report — Order on report. As ordered by the court, it shall be the duty of each person whose sentence is suspended to appear or report during the continuance of such suspension and to furnish, at his own expense, proof to the satisfaction of the court that he has, since his sentence was suspended or since the last date at which proof has been furnished, complied with the terms and conditions upon which his sentence was suspended by the court. The court may modify the terms and conditions of suspension or vacate the order of suspension of sentence and order retained jurisdiction or execution of the judgment as though suspension had not been made.

19-2607 — Parole secured by misrepresentation

19-2607. Parole secured by misrepresentation. If at any time after suspension of sentence it shall appear to the district judge that the order suspending sentence was obtained by fraud, perjury or by any sort of misrepresentation or suppression of facts, or that the accused has failed or neglected to have a fixed place of abode and a regular occupation, the district judge shall issue a warrant for his apprehension and shall remand him for sentence.

19-2608 — Payment of court-ordered tests of breath or bodily fluids

19-2608. Payment of court-ordered tests of breath or bodily fluids. Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section 20-225 or 31-3201D , Idaho Code, to the clerk of the court if services are provided by the county or directly to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

CHAPTER 27

19-2701 — Authority for execution of judgment

19-2701. Authority for execution of judgment. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

19-2702 — Execution on judgment for fine

19-2702. Execution on judgment for fine. If the judgment includes the payment of a fine, or costs, or fine and costs, or other monetary sums, execution may be issued thereon for such sums as on a judgment in a civil action.

19-2703 — Execution of judgment of imprisonment

19-2703. Execution of judgment of imprisonment. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

19-2704 — Delivery of defendant to penitentiary guard

19-2704. Delivery of defendant to penitentiary guard. If judgment is for imprisonment in the state prison, or for the infliction of the death penalty, the sheriff of the county must, upon receipt of the certified copy of judgment, hold the prisoner in his custody until demand for such prisoner is made upon him by the duly authorized guard of said prison, who may be sent to convey such prisoner to the state prison. When such demand is made upon the sheriff by said guard, the sheriff shall deliver the prisoner and said copy of the judgment to said guard, and take a receipt from said guard for the prisoner and said copy of the judgment.

19-2705 — Death sentence or death warrant and confinement thereunder — Access to condemned person

19-2705. Death sentence or death warrant and confinement thereunder — Access to condemned person.

(1) Whenever a person is sentenced to death, the judge passing sentence shall, in accordance with section 19-2719 , Idaho Code, sign and file a death warrant fixing a date of execution not more than thirty (30) days thereafter.

(2) The warrant shall be directed to the director of the Idaho department of correction and shall be delivered to him forthwith.

(3) Whenever a person is under death warrant, execution of which has not been stayed, the warden of the prison in which the person is incarcerated shall keep the condemned person in solitary confinement until execution. No person shall be allowed access to the condemned person except law enforcement personnel investigating matters within the scope of their duties, the attorney of record, attending physicians, a spiritual adviser of the condemned's choosing, and members of the immediate family of the condemned, and then only in accordance with prison rules. Persons under death warrant will be allowed contact visits with their attorneys of record and the agents of their attorneys of record. Such visits will take place subject to prison rules. No other contact visits shall be permitted. Prison officials have authority to suspend or deny visits when the safe, secure and orderly operation of the facility or public safety could be compromised.

(4) For purposes of this section a "contact visit" is defined as a meeting between a condemned person and another person during which the parties are not separated by a screen or other partition which prohibits physical contact. Contact visits with attorneys of record or agents of the attorneys of record will take place in a private, confidential setting where the prisoner and his attorney are in the same room.

(5) For the purposes of this section, "agents of the attorneys of record" means employees of the attorneys of record including investigators, paralegals, legal interns and mitigation specialists but does not include retained experts or other independent contractors of the attorneys of record.

(6) For the purposes of this section, "legal intern" means a qualified law student or recent law school graduate who, upon application and approval by the Idaho state bar association, is granted a limited license to engage in the practice of law.

(7) No person shall be allowed access to the condemned person under death warrant except law enforcement personnel investigating matters within the scope of their duties, the condemned person's attorneys of record, the agents of the condemned person's attorneys of record, attending physicians, spiritual advisers of the condemned person's choosing and approved visitors.

(8) When a person has been sentenced to death, but the death warrant has been stayed, contact visits between the condemned person and persons other than his attorneys of record and the agents of the attorneys of record may be allowed at the discretion of prison officials.

(9) All visits, contact or noncontact, with a condemned person, whether such person is under sentence of death or death warrant, shall take place only in accordance with prison rules. Prison officials shall have the authority to suspend or deny such visits when public safety or the safe, secure and orderly operation of the prison could be compromised.

(10) In the seven (7) days immediately preceding the scheduled execution of a condemned person, the condemned person may have contact visits with spiritual advisers of the condemned person's choosing and members of the condemned person's family, in addition to the attorneys of record and the agents of the attorneys of record.

(11) When a person has been sentenced to death, but the death warrant has been stayed, the warden is not required to hold such person in solitary confinement or to restrict access to him until the stay of the death warrant is lifted or a new death warrant is issued by the sentencing court; provided however, no condemned person shall be housed in less than maximum security confinement, and provided further that nothing in this section shall be construed to limit the warden's discretion to house such person under conditions more restrictive if necessary to ensure public safety or the safe, secure and orderly operation of the facility.

(12) Nothing in this section shall be construed to create a liberty interest in the condemned person or to expand the right of access to courts under state or federal law.

19-2708 — Suspension of judgment of death

19-2708. Suspension of judgment of death. No judge, court or officer, can suspend the execution of a judgment of death, except as provided in sections 19-2715 and 19-2719 , Idaho Code.

19-2713 — Proceedings when female supposed to be pregnant

19-2713. Proceedings when female supposed to be pregnant. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three (3) physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the prosecuting attorney of the county, and the provisions of sections 19-2710 , 19-2711 apply to the proceedings upon the inquisition.

19-2714 — Finding in case of pregnancy

19-2714. Finding in case of pregnancy. If it is found by the report that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant, the warden must suspend the execution of the judgment, and transmit the report to the district court that imposed the sentence. When the district court that imposed the sentence is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

19-2715 — Ministerial actions relating to stays of execution, resetting execution dates, and order for execution of judgment of death

19-2715. Ministerial actions relating to stays of execution, resetting execution dates, and order for execution of judgment of death.

(1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719 , Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827 , Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-1016 , Idaho Code.

(2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the

district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If a stay of execution is granted pursuant to subsection (1) of this section and, as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and, upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(4) If for any reason other than those set forth in subsection (1) of this section a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court may inquire into the facts and, if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date, and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

19-2716 — methods of execution

19-2716. methods of execution.

(1) The punishment of death shall be inflicted by the following methods:

(a) Firing squad; or

(b) Continuous, intravenous administration of a lethal quantity of a substance or substances approved by the director of the Idaho department of correction until death is pronounced by a coroner or a deputy coroner.

(2) Not later than five (5) days after the issuance of a death warrant, the director of the Idaho department of correction must determine, and certify by affidavit to the court that issued the death warrant, whether execution by firing squad, as described in subsection (1)(a) of this section, is available.

(3) If the director certifies that firing squad is available, the method of execution shall be firing squad.

(4) If the director does not certify that firing squad is available or fails to file a certification as required pursuant to subsection (2) of this section, the method of execution shall be lethal injection, as described in subsection (1)(b) of this section.

(5) If a court holds that firing squad is unconstitutional, on its face or as applied, or otherwise determines that lethal injection is a constitutionally required method of execution, the method of execution shall be lethal injection.

(6) The director shall determine the procedures to be used in any execution. Such procedures shall not be subject to the provisions of chapter 52, title 67 , Idaho Code.

(7) The provisions of this section shall apply to all executions carried out on and after the effective date of this enactment, irrespective of the date sentence was imposed.

19-2716A — practice of medicine and possession of controlled substances — exemption — exceptions to governmental liability — confidentiality — licensure

19-2716A. practice of medicine and possession of controlled substances — exemption — exceptions to governmental liability — confidentiality — licensure.

(1) Notwithstanding any other provision of law, infliction of the punishment of death in the manner required by section 19-2716 , Idaho Code, shall not be construed as the practice of medicine. The director of the department of correction and all persons authorized by him to participate in an execution, as provided in section 19-2716 , Idaho Code, shall be exempt from all laws, rules and regulations governing the practice of medicine.

(2) For the purposes of carrying out the provisions of section 19-2716 , Idaho Code, any pharmacy, prescriber, manufacturer, wholesale distributor or other entity authorized by law to possess controlled substances may distribute controlled substances to the director or his designees and shall not be subject to criminal or civil liability for the death of the condemned person.

(3) For the purposes of carrying out the provisions of section 19-2716 , Idaho Code, the director and his designees may obtain, possess, store and administer controlled substances and are exempt from all laws, rules and regulations

governing pharmacies and controlled substances, notwithstanding any other provision of law. Any employee of the state of Idaho participating in an execution pursuant to section 19-2716 , Idaho Code, shall be presumed to be acting within the course and scope of his employment and without malice or criminal intent for purposes of section 6-903 , Idaho Code. Any employee, agent or contractor of the state of Idaho participating in an execution pursuant to section 19-2716 , Idaho Code, shall not be subject to criminal or civil liability for the death of the condemned person.

(4) For purposes of carrying out the provisions of section 19-2716 , Idaho Code, the identities of any of the following persons or entities involved in the planning, training, or performance of an execution shall be confidential, shall not be subject to disclosure, and shall not be admissible as evidence or discoverable in any proceeding before any court, tribunal, board, agency, or person:

(a) The on-site emergency medical personnel, any member of the escort team, medical team, or firing squad, and any person or entity that provides technical assistance during the execution process; and

(b) Any person or entity who compounds, synthesizes, tests, sells, supplies, manufactures, stores, transports, procures, dispenses, or prescribes the chemicals or substances for use in an execution or that provides the medical supplies or medical equipment for the execution process.

(5) If any person who participates or performs ancillary functions in an execution is licensed by a board, the licensing board shall not suspend or revoke the person's license, or take disciplinary action against the person, because of the person's participation in an execution.

19-2718 — Return of death warrant

19-2718. Return of death warrant. After the execution, the executioner shall make a return upon the death warrant to the district court, showing the time, mode and manner in which it was executed.

19-2719 — Special appellate and post-conviction procedure for capital cases — Automatic stay

19-2719. Special appellate and post-conviction procedure for capital cases — Automatic stay. The following special procedures shall be interpreted to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence.

(1) When the punishment of death is imposed the time for filing an appeal shall begin to run when the death warrant is filed.

(2) The death warrant shall not be filed until forty-two (42) days after the judgment imposing the death sentence has been filed, or, in the event a post-conviction challenge to the conviction or sentence is filed, until the order deciding such post-conviction challenge is filed.

(3) Within forty-two (42) days of the filing of the judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known. The defendant must file any claims of ineffective assistance of appellate counsel within forty-two (42) days of the Idaho supreme court issuing the final remittitur in the unified appeal from which no further proceedings except issuance of a death warrant are ordered.

(4) Any remedy available by post-conviction procedure, habeas corpus or any other provision of state law must be pursued according to the procedures set forth in this section and within the time limitations of subsection (3) of this section. The special procedures for fingerprint or forensic DNA testing set forth in sections 19-4901 (a)(6) and 19-4902

(b) through (g), Idaho Code, are fully applicable in capital cases and are subject to the procedures set forth in this section, and must be pursued through a petition filed within the time limitations of subsection (3) of this section or by July 1, 2002, whichever is later.

(5) If the defendant fails to apply for relief as provided in this section and within the time limits specified, he shall be deemed to have waived such claims for relief as were known, or reasonably should have been known. The courts of Idaho shall have no power to consider any such claims for relief as have been so waived or grant any such relief.

(a) An allegation that a successive post-conviction petition may be heard because of the applicability of the exception herein for issues that were not known or could not reasonably have been known shall not be considered unless the applicant shows the existence of such issues by (i) a precise statement of the issue or issues asserted together with (ii) material facts stated under oath or affirmation by credible persons with first hand knowledge that would support the issue or issues asserted. A pleading that fails to make a showing of excepted issues supported by material facts, or which is not

credible, must be summarily dismissed.

(b) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it alleges matters that are cumulative or impeaching or would not, even if the allegations were true, cast doubt on the reliability of the conviction or sentence.

(c) A successive post-conviction pleading asserting the exception shall be deemed facially insufficient to the extent it seeks retroactive application of new rules of law.

(6) In the event the defendant desires to appeal from any post-conviction order entered pursuant to this section, his appeal must be part of any appeal taken from the conviction or sentence. All issues relating to conviction, sentence and post-conviction challenge shall be considered in the same appellate proceeding.

(7) If post-conviction challenge is made under this section, questions raised thereby shall be heard and decided by the district court within ninety (90) days of the filing of any motion or petition for relief timely filed as provided by this section. The court shall give first priority to capital cases. In the event the district court fails to act within the time specified, the supreme court of Idaho shall, on its own motion or the motion of any party, order the court to proceed forthwith, or if appropriate, reassign the case to another judge. When the supreme court intervenes as provided, it shall set a reasonable time limit for disposition of the issues before the district court.

(8) The time limit provided in subsection (7) of this section for disposition of post-conviction claims may be extended only upon a showing of extraordinary circumstances which would make it impossible to fairly consider defendant's claims in the time provided. Such showing must be made under oath and the district court's finding that extraordinary circumstances exist for extending the time shall be in writing and shall be immediately reported to the supreme court, which shall at once independently consider the sufficiency of the circumstances shown and determine whether an extension of time is warranted.

(9) When a judgment imposing the penalty of death is filed, the clerk and the reporter shall begin preparation of the transcripts of the trial, and other proceedings, and the clerk's transcript.

(10) When the procedures specified in this section and section 19-2827 , Idaho Code, have been carried out and a remittitur issued, and an execution date set as provided by law, the defendant shall be deemed to have exhausted all state remedies.

(11) Any successive petition for post-conviction relief not within the exception of subsection (5) of this section shall be dismissed summarily. Notwithstanding any other statute or rule, the order of dismissal shall not be subject to any motion to alter, amend or reconsider. Such order shall not be subject to any requirement for the giving of notice of the court's intent to dismiss. The order of dismissal shall not be appealable.

(12) A stay of execution while the special appellate procedures specified herein are followed and during the pendency of automatic review of death sentences shall be automatically entered by the clerk of the supreme court at the time the district court transmits to the supreme court the report required by section 19-2827 , Idaho Code. If the sentence is upheld, the clerk shall dissolve such stay when the remittitur is filed. Thereafter the district court shall set a new execution date.

19-2719a — Applicability of sections

19-2719a. Applicability of sections 19-2705 , 19-2708 , 19-2714 , 19-2715 , 19-2719 . This act shall apply to all cases in which capital sentences where imposed on or prior to the effective date of this act but which have not been carried out, and to all capital cases arising after the effective date of this act.

19-2720 — Inquiry into need for new counsel

19-2720. Inquiry into need for new counsel. After the imposition of a sentence of death, the trial judge should advise the defendant that, upon a particularized showing that there is a reasonable basis to litigate a claim of ineffective assistance of trial counsel, new counsel may be appointed to represent the defendant to pursue such a claim in a post-conviction proceeding. If no such request is made, the trial judge shall certify of record that there are no facts that have come to the court's attention upon which such a claim could reasonably be based or, alternatively, the court may appoint new counsel. No deficiency in the application of the procedure described herein shall be grounds for relief from a judgment of conviction or from a sentence.

CHAPTER 28

19-2801 — Criminal judgments and orders appealable — Time for taking appeals

19-2801. Criminal judgments and orders appealable — Time for taking appeals. An appeal may be taken to the supreme court from the district court in a criminal action by such parties from such judgments and orders of the district court, and within such times and in such manner as prescribed by rule of the supreme court.

19-2802 — Stay of execution — Custody of defendant

19-2802. Stay of execution — Custody of defendant. An appeal to the supreme court from a judgment of conviction stays the execution of the judgment in all capital cases, and in all other cases the judgment may be stayed by the district court or the supreme court as provided by rule of the supreme court. Custody of the defendant shall be specified by the district court or in any order staying execution of the judgment.

19-2803 — Record on appeal — Oral argument — Exhibits — Presentence report on appeal

19-2803. Record on appeal — Oral argument — Exhibits — Presentence report on appeal.

(a) The clerk's record and the reporter's transcript in an appeal of a criminal action to the supreme court shall contain such portions and documents of the proceedings of the district court, and be prepared, processed and transmitted to the supreme court as provided by rule of the supreme court. Argument of a criminal appeal shall be as prescribed by rule of the supreme court, but the defendant shall not have any right to appear at the time of oral argument unless otherwise ordered by the supreme court.

(b) In any case where a presentence report is relevant to any issue on appeal, and is transmitted to the supreme court or the court of appeals for such use, the clerk of the district court shall serve a copy of the report on the attorney general and on appellate counsel for the defendant.

(c) In any case where a documentary exhibit is transmitted to the supreme court or the court of appeals for use in appellate proceedings to which the state or any of its officers is a party in an official capacity, the clerk of the district court shall serve a copy of the exhibit on the attorney general and on appellate counsel for the defendant.

19-2818 — Duties of the supreme court upon remand from a federal court

19-2818. Duties of the supreme court upon remand from a federal court. In the event a sentence of death is returned by a federal court for further proceedings in the state courts, the Idaho supreme court shall consider whether any legal or factual error alleged by a federal court may be corrected without remanding the cause to the district court and shall: (a) make any specific fact findings required by a federal court when such findings are implicit in the judgment of the district court, though not expressly stated; (b) correct any formal error that may be corrected by reference to the record without remanding to the district court for resentencing; (c) make such findings as may be necessary to uphold a death sentence and can be made on the record without remanding the cause to the district court for further proceedings.

19-2827 — Review of death sentences — Preservation of records

19-2827. Review of death sentences — Preservation of records.

(a) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the supreme court of Idaho. The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the supreme court of Idaho and to the attorney general together with a notice prepared by the clerk and, if a jury has been waived for sentencing, a report prepared by the trial judge setting forth the findings required by section 19-2515 (8)(b), Idaho Code, and such other matters concerning the sentence imposed as may be required by the supreme court. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney(s), a narrative statement of the judgment, the offense, and punishment prescribed. The report may be in the form of a standard questionnaire prepared and supplied by the supreme court of Idaho.

(b) The supreme court of Idaho shall consider the punishment as well as any errors enumerated by way of appeal.

(c) With regard to the sentence the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(2) Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance from among those enumerated in section 19-2515 , Idaho Code.

(d) Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

(e) In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by a jury or, if waived, the trial judge.

(f) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

(g) The supreme court shall collect and preserve the records of all cases in which the penalty of death was imposed from and including the year 1975.

CHAPTER 29

19-2901 — short title

19-2901. short title. This chapter shall be known and may be cited as the "Idaho Bail Act."

19-2902 — sTATEMENT OF policy

19-2902. sTATEMENT OF policy.

(1) The legislature finds and declares that:

(a) Bail, in criminal cases, is a constitutional right subject to certain limitations;

(b) It is necessary to establish a statewide process to uniformly implement this right and the limitations.

(2) The purpose of this chapter is to provide a uniform and comprehensive statewide process for the administration of bail in criminal cases in order to:

(a) Ensure the appearance of defendants before the courts;

(b) Protect the right of defendants to bail, as constitutionally provided; and

(c) Ensure the protection and safety of victims, witnesses and the public.

19-2903 — RIGHT TO BAIL — limitations

19-2903. RIGHT TO BAIL — limitations. Any person charged with a crime who is not released on his own recognizance is entitled to bail, as a matter of right, before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great. The setting of bail on a bench warrant following a failure by a defendant to appear before the court as ordered and without sufficient excuse shall be determined under the provisions of section 19-2915 , Idaho Code. In the discretion of the court, bail may be allowed in the following cases:

(1) After the defendant is found guilty or pleads guilty and before sentencing;

(2) While an appeal is pending from a judgment of conviction, an order withholding judgment or an order imposing sentence, except that a court shall not allow bail when the defendant has been sentenced to death or life imprisonment;

(3) Upon a charge of a violation of the terms of probation; and

(4) Upon a finding of a violation of the conditions of release pursuant to section 19-2919 , Idaho Code.

19-2904 — bail, RELEASE ON RECOGNIZANCE and CONDITIONS OF RELEASE

19-2904. bail, RELEASE ON RECOGNIZANCE and CONDITIONS OF RELEASE. The court may release a person on his own recognizance or set an amount of bail, and may impose any conditions of release. In making these determinations the court shall consider the following objectives:

(1) Ensuring the appearance of the defendant;

(2) Ensuring the integrity of the court process including the right of the defendant to bail as constitutionally provided;

(3) Ensuring the protection of victims and witnesses; and

(4) Ensuring public safety.

19-2905 — definitions

19-2905. definitions. As used in this chapter, unless the context requires otherwise:

(1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.

(2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.

(3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.

(4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.

(5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.

(6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.

(7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.

(8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.

(9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.

(10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.

(11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.

(12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.

(13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.

(14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.

(15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.

(16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.

(17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to title 41 , Idaho Code.

(18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

19-2906 — ADMISSION TO BAIL

19-2906. ADMISSION TO BAIL. Admission to bail is the order of a competent court that the defendant shall be released from actual custody of the sheriff upon posting bail.

19-2907 — POSTING BAIL — SUFFICIENT SURETIES

19-2907. POSTING BAIL — SUFFICIENT SURETIES.

(1) The posting of bail consists of filing sufficient sureties with the court, as required by the court, to ensure the defendant's appearance. Sufficient sureties shall consist of any one (1) of the following:

(a) A bail bond;

(b) A property bond; or

(c) A cash deposit.

(2) Although bail may be posted in the form of a cash deposit pursuant to the provisions of subsection (1) of this section, a defendant shall not be required to post bail in the form of a cash deposit.

19-2908 — cash deposit applied to payments of fines, fees, costs and restitution

19-2908. cash deposit applied to payments of fines, fees, costs and restitution. When bail has been posted by cash deposit and remains on deposit at the time of the judgment or order withholding judgment, the clerk of the court shall, under the direction of the court, apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution that have been imposed against the defendant in any other criminal or infraction action, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit.

19-2909 — property bond

19-2909. property bond. A property bond may be posted by the defendant or third person on behalf of the defendant. For real property to qualify as sufficient surety, it must be located in the state of Idaho and must have an equity value, after deducting the outstanding balance of any existing liens and encumbrances, in the amount of the bail set by the court plus anticipated collection costs. Acceptance of a property bond is in the discretion of the court. A property bond posted with and accepted by the court pursuant to this section, and recorded, shall constitute a consensual lien on the property pursuant to section 55-1005 (3), Idaho Code. All fees shall be paid by the person posting the property bond. An order of the court exonerating the property bond shall extinguish the lien and cancel the promissory note. The property bond and the promissory note shall be in a form approved by the supreme court.

19-2910 — substitution of sufficient sureties

19-2910. substitution of sufficient sureties. At any time before an order of forfeiture, the court may allow the defendant to substitute any type of surety identified in section 19-2907 , Idaho Code, for the previously posted surety. Upon substitution, the previously posted surety shall be exonerated.

19-2911 — release of defendant on posting bail

19-2911. release of defendant on posting bail. Upon the posting of bail in the amount set by the court, the defendant shall be released from the actual custody of the sheriff.

19-2912 — increasing or reducing bail

19-2912. increasing or reducing bail. After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. Any previous bail posted in the case shall be exonerated by the court. If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

19-2913 — surrender of defendant

19-2913. surrender of defendant.

(1) At any time before forfeiture of bail, a surety insurance company or its bail agent or person posting a property bond or cash deposit may surrender the defendant to the sheriff of the county where the action is pending. Upon the surrender of the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

(2) At the time of surrender of the defendant to the sheriff, the surety insurance company or its bail agent or person posting a property bond or cash deposit shall provide the sheriff with a certificate of surrender.

(3) The surety insurance company or its bail agent or person posting a property bond or cash deposit shall, within five (5) business days of the surrender of the defendant, file with the court in which the action or appeal is pending the certificate of surrender and shall deliver a copy of the same to the attorney for the state. The court shall thereupon order the bail exonerated.

(4) At any time before forfeiture of bail, a defendant may surrender himself to the sheriff of the county where the action is pending. Upon surrender by the defendant, the sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.

19-2914 — arrest of defendant for surrender

19-2914. arrest of defendant for surrender. At any time before the exoneration of bail, the surety insurance company or its bail agent or the person posting a property bond or cash deposit may empower a bail enforcement agent to arrest the defendant at any place within the state by signing an affidavit extending such authority.

19-2914A — bail enforcement agents

19-2914A. bail enforcement agents. [effective until January 1, 2027]

(1) As used in this section, "bail enforcement agent" or "agent" means a person who:

(a) Is empowered to arrest or surrender a defendant at any time before the exoneration of bail; and

(b) Meets the requirements of this section.

(2) Requirements. An agent must:

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

(b) Be a citizen or legal resident of the United States;

(c) Not have been adjudicated as having suffered from any of the following conditions, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210 , Idaho Code; (ii) Mentally ill as defined in section 66-317 , Idaho Code; (iii) Gravely disabled as defined in section 66-317 , Idaho Code; or (iv) An incapacitated person as defined in section 15-5-101 , Idaho Code; and

(d) Not be a fugitive from justice.

(3) Required items and information. During an arrest pursuant to section 19-2914 , Idaho Code, a bail enforcement agent must possess:

(a) An affidavit extending the authority to arrest the defendant;

(b) The name, last known address, and photograph of the defendant;

(c) The name and principal address of the surety insurance company, its bail agent, or the person posting a property bond or cash deposit that is empowering the bail enforcement agent to arrest the defendant; and

(d) A valid driver’s license or other photographic identifying document or information.

(4) Identification. A badge shall be worn by bail enforcement agents that is designed exclusively for bail enforcement agents. The badge must clearly delineate the title of "bail enforcement agent" directly on and below the badge.

(5) Notification to the sheriff. Prior to making a planned apprehension, an agent must first provide notice to the county sheriff of the county within which the planned apprehension is to occur.

(6) Prohibitions. Upon appointment, until either revocation of appointment or the exoneration of bail, an agent may not:

(a) Represent himself as a peace officer or an employee of any department of a federal, state, or local law enforcement agency;

(b) Wear any uniform that would represent the agent as a peace officer or an employee of any department of a federal, state, or local government;

(c) Use a fictitious name that would represent the agent as a peace officer or an employee of a department of a federal, state, or local government; or

(d) Carry a weapon, unless in compliance with all state and federal laws.

(7) Penalty. Any person who violates the provisions of subsection (2), (3), (4), or (5) of this section for the first offense shall be liable for a misdemeanor penalty of a fine not to exceed one thousand dollars ($1,000). For any second or subsequent offense, the person shall be subject to a misdemeanor penalty not to exceed six (6) months in jail and a fine not to exceed one thousand dollars ($1,000). Any person who fails to obtain authority from a surety insurance company or its bail agent, or the person posting a property bond or cash deposit in accordance with section 19-2914 , Idaho Code, or a similar law of another state, or who attempts to arrest or surrender a defendant without meeting the requirements of subsection (2) of this section, or who violates the provisions of subsection (6) of this section, is guilty of a misdemeanor.

(8) Requirements for prosecution. Venue for prosecution for a violation under the provisions of this section shall be in the county where the violation occurred, and such prosecution will be handled by the prosecuting attorney of such county. A prosecution for a violation of this section must be commenced within the time limitations set forth in section 19-403 , Idaho

Code.

(9) A bail agent who appoints a bail enforcement agent is required to keep a copy of the bail enforcement agent's appointment and may rely thereon that the bail enforcement agent has met the requirements of this section. 19-2914A. bail enforcement agents. [effective January 1, 2027]

(1) As used in this section, "bail enforcement agent" or "agent" means a person who:

(a) Is empowered to arrest or surrender a defendant at any time before the exoneration of bail; and

(b) Meets the requirements of this section.

(2) Requirements. An agent must:

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

(b) Be a citizen or legal resident of the United States;

(c) Not have been adjudicated as having suffered from any of the following conditions, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210 , Idaho Code; (ii) Mentally ill as defined in section 66-317 , Idaho Code; (iii) Gravely disabled as defined in section 66-317 , Idaho Code; or (iv) An incapacitated person as defined in section 15-1-201 , Idaho Code; and

(d) Not be a fugitive from justice.

(3) Required items and information. During an arrest pursuant to section 19-2914 , Idaho Code, a bail enforcement agent must possess:

(a) An affidavit extending the authority to arrest the defendant;

(b) The name, last known address, and photograph of the defendant;

(c) The name and principal address of the surety insurance company, its bail agent, or the person posting a property bond or cash deposit that is empowering the bail enforcement agent to arrest the defendant; and

(d) A valid driver's license or other photographic identifying document or information.

(4) Identification. A badge shall be worn by bail enforcement agents that is designed exclusively for bail enforcement agents. The badge must clearly delineate the title of "bail enforcement agent" directly on and below the badge.

(5) Notification to the sheriff. Prior to making a planned apprehension, an agent must first provide notice to the county sheriff of the county within which the planned apprehension is to occur.

(6) Prohibitions. Upon appointment, until either revocation of appointment or the exoneration of bail, an agent may not:

(a) Represent himself as a peace officer or an employee of any department of a federal, state, or local law enforcement agency;

(b) Wear any uniform that would represent the agent as a peace officer or an employee of any department of a federal, state, or local government;

(c) Use a fictitious name that would represent the agent as a peace officer or an employee of a department of a federal, state, or local government; or

(d) Carry a weapon, unless in compliance with all state and federal laws.

(7) Penalty. Any person who violates the provisions of subsection (2), (3), (4), or (5) of this section for the first offense shall be liable for a misdemeanor penalty of a fine not to exceed one thousand dollars ($1,000). For any second or subsequent offense, the person shall be subject to a misdemeanor penalty not to exceed six (6) months in jail and a fine not to exceed one thousand dollars ($1,000). Any person who fails to obtain authority from a surety insurance company or its bail agent, or the person posting a property bond or cash deposit in accordance with section 19-2914 , Idaho Code, or a similar law of another state, or who attempts to arrest or surrender a defendant without meeting the requirements of subsection (2) of this section, or who violates the provisions of subsection (6) of this section, is guilty of a misdemeanor.

(8) Requirements for prosecution. Venue for prosecution for a violation under the provisions of this section shall be in the county where the violation occurred, and such prosecution will be handled by the prosecuting attorney of such county. A prosecution for a violation of this section must be commenced within the time limitations set forth in section 19-403 , Idaho Code.

(9) A bail agent who appoints a bail enforcement agent is required to keep a copy of the bail enforcement agent's appointment and may rely thereon that the bail enforcement agent has met the requirements of this section.

19-2915 — forfeiture of bail

19-2915. forfeiture of bail.

(1) If without sufficient excuse the defendant fails to appear before the court as ordered, the court shall immediately:

(a) Enter the defendant's failure to appear in the minutes;

(b) Order forfeiture of the bail; and

(c) Issue a bench warrant for the arrest of the defendant.

(2) The court, in its discretion, may:

(a) Set the amount of bail in the bench warrant;

(b) Set the amount of bail in the bench warrant but require that the defendant appear before the court where the charge or charges are pending before being released on bail; or

(c) Set no bail on the bench warrant and require that the defendant not be released until appearing before the court where the charges are pending, at which time the court shall set bail or release the defendant on the defendant's own recognizance, and shall set any conditions of release.

(3) The clerk shall provide the person posting bail written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the person posting bail or that person's designated agent.

(4) If the court quashes the bench warrant within one hundred eighty (180) days after the order of forfeiture, the forfeiture of bail shall be set aside and the court shall notify the person posting bail of the setting aside of the forfeiture within five (5) business days of the date of the order quashing the bench warrant and reinstating the bail.

19-2916 — setting aside order of forfeiture and reinstating bail

19-2916. setting aside order of forfeiture and reinstating bail. If the defendant appears in court after the entry of the defendant's failure to appear and satisfactorily explains his failure to appear, the court may set aside the order of forfeiture and reinstate bail. Before reinstatement of bail, the court shall quash any bench warrant and set aside any order of forfeiture of the bail. The court shall provide written notice of reinstatement of bail to the person posting bail or to that person's designated agent within five (5) business days of the order reinstating bail.

19-2917 — motion to set aside forfeiture

19-2917. motion to set aside forfeiture. Pursuant to a motion filed within one hundred eighty (180) days after an order of forfeiture as provided in section 19-2915 , Idaho Code, the court that ordered forfeiture may direct that the order of forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, as provided by rules adopted by the supreme court, if it appears that justice so requires. If the court sets aside the order of forfeiture, then it may:

(1) Reinstate the bail;

(2) Exonerate the bail;

(3) Recommit the defendant to the custody of the sheriff and set new bail; or

(4) Release the defendant on his own recognizance.

19-2918 — REMITTANCE OF FORFEITURE — PAYMENT OF BAIL

19-2918. REMITTANCE OF FORFEITURE — PAYMENT OF BAIL.

(1) The person posting bail shall pay to the clerk of the court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:

(a) The order of forfeiture has been set aside by the court;

(b) The bail has been exonerated by the court; or

(c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the

clerk of the court within five (5) business days after the entry of the court's order denying the motion. A timely filed notice of appeal and motion to stay the forfeiture stays the obligation to remit payment until five (5) business days after the entry of the court's order denying the motion to stay or, in the event such motion is granted, five (5) business days following the final determination of the appeal.

(2) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond.

(3) After the notice required by section 19-2915 , Idaho Code, in the event that a surety insurance company fails to pay the amount of any bail forfeited within the time required by this section, the administrative district judge may order the sheriffs and clerks of all counties in the judicial district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. An administrative district judge in another district may also order the sheriffs and clerks of all counties in his district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid.

(4) If the administrative district judge has reasonable cause to believe that a bail agent has committed any of the actions that could form the basis for a suspension of the bail agent's license pursuant to section 41-1039 (3), Idaho Code, the court shall immediately refer the matter to the director of the department of insurance for appropriate disciplinary action pursuant to sections 41-1016 and 41-1039 , Idaho Code, and may enter an order that the sheriffs and clerks of all counties in the judicial district shall not accept bail bonds submitted by that bail agent until the director has rendered a decision as to whether to suspend the bail agent's license pursuant to section 41-1039 (3), Idaho Code. The director shall immediately notify all judicial district trial court administrators of such decision.

19-2919 — revocation of bail — violation of conditions of release

19-2919. revocation of bail — violation of conditions of release.

(1) Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for a bail revocation hearing, or the court may order the defendant to appear before the court at a time certain. At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail and remand the defendant to the custody of the sheriff. At any time thereafter, the court may reset bail in the same or a new amount and impose conditions of release. If the defendant fails to appear at the bail revocation hearing, the court shall issue a bench warrant for the defendant's arrest.

(2) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court may reset bail in the same or a new amount and impose any appropriate conditions of release.

(3) The court may deny readmittance to bail if the court finds that the defendant has intimidated or harassed a victim, potential witness, juror or judicial officer or has committed one (1) or more violations of the conditions of release and such violation or violations constituted a threat to the integrity of the judicial system.

19-2920 — revocation of bail — insufficient surety

19-2920. revocation of bail — insufficient surety.

(1) Private surety. Upon the filing of a verified petition alleging that the bail posted by a cash deposit or property bond has become insufficient by reason of bankruptcy, death or any other reason, the court may order the defendant and the private surety to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that the private surety is insufficient, the court may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(2) Surety insurance company. Upon the filing of a verified petition alleging bail posted by a surety insurance company has become insufficient by reason of bankruptcy, receivership, suspension or revocation of authority to conduct business in the state of Idaho or any other reason, the court may order the defendant and the commercial surety or its agent to appear before the court at a time certain for a bail revocation hearing. At the bail revocation hearing, if the court finds that

the commercial surety is insufficient, it may revoke the bail and recommit the defendant to the custody of the sheriff. If the defendant fails to appear for the bail revocation hearing, the court shall immediately issue a bench warrant for the defendant's arrest.

(3) In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court shall set bail in the same or a new amount and impose any appropriate conditions of release.

19-2921 — order of recommitment — readmittance to bail

19-2921. order of recommitment — readmittance to bail. In its order revoking bail, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. If the offense is bailable, the court shall fix bail in a new amount and impose any appropriate conditions of release.

19-2922 — exoneration of bail

19-2922. exoneration of bail. The court shall order the bail exonerated in the following circumstances:

(1) The defendant has appeared for all court proceedings as ordered and all charges for which the bail has been posted have been resolved by acquittal, dismissal or sentencing;

(2) Written notice of the court's order of forfeiture was not mailed to the person posting bail or his designated agent within five (5) business days of the order of forfeiture;

(3) Written notice of the court's order to set aside the order of forfeiture and reinstating bail was not mailed to the person posting bail or his designated agent within five (5) business days of the order;

(4) Before any order of forfeiture, the defendant has been surrendered or has surrendered himself to the sheriff of the county where the action is pending and the certificate of surrender has been filed with the court as required in section 19-2913 , Idaho Code;

(5) The defendant has appeared before the court within one hundred eighty (180) days of the court's order of forfeiture, unless the court has set aside the order of forfeiture and has reinstated bail pursuant to section 19-2916 , Idaho Code; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of any costs incurred by state or local authorities arising from the transport of the defendant to the jail facility of the county where the charges are pending. Such costs shall not exceed the amount of the bail posted;

(6) The court has revoked bail and has ordered that the defendant be recommitted.

19-2923 — severability

19-2923. severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

CHAPTER 30

19-3001 — Rules for determining competency

19-3001. Rules for determining competency. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

19-3002 — Husband and wife as witnesses

19-3002. Husband and wife as witnesses. Neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties, except: 1. With the consent of both, or 2. In cases of criminal violence upon one by the other; or acts of physical injury upon a child of either the husband or the wife where the injury has been caused as a result of physical abuse or neglect by one or both of the parents; or to acts or attempted acts of lewd conduct with a minor child; or 3. In cases of desertion or nonsupport of wife or child by the husband.

19-3003 — Defendant not obliged to testify

19-3003. Defendant not obliged to testify. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give such consent shall not in any manner prejudice him nor be used against him on the trial or proceeding.

19-3004 — Compelling attendance of witness — Subpoena and how issued

19-3004. Compelling attendance of witness — Subpoena and how issued. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by: 1. A magistrate before whom an information is laid, for witnesses in the state, either on behalf of the people or of the defendant. 2. The prosecuting attorney, for witnesses in the state in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct. 3. The prosecuting attorney, for witnesses in the state in support of an indictment or information, to appear before the court in which it is to be tried. 4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses in the state or without the state as provided in section 19-3005 , as the defendant may require.

19-3004A — administrative subpoena — electronic communication and remote computing services

19-3004A. administrative subpoena — electronic communication and remote computing services.

(1) A provider of an electronic communication service or remote computing service that is transacting or has transacted any business in the state shall disclose the following to a prosecuting attorney or the attorney general pursuant to an administrative subpoena issued by the prosecuting attorney or attorney general:

(a) Records and information in its possession containing the name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including the start date; and

(b) Records and information in its possession containing the types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(c) Records and information in its possession relating to the means and source of payment for such service pertaining to a subscriber to or customer of such service. The provider of an electronic communication service or remote computing service shall deliver the records to the prosecuting attorney or attorney general within fourteen (14) days of receipt of the subpoena.

(2) For the purpose of this section, the following definitions shall apply:

(a) "Electronic communication service" has the same meaning as provided in section 18-6701 (13), Idaho Code.

(b) "Remote computing service" means the provision to the public of computer storage or processing service by means of an electronic communications system as defined in section 18-6701 (12), Idaho Code.

(3) In order to obtain the records or information, the prosecuting attorney or attorney general shall certify on the face of the subpoena that there is reason to believe that the records or information being sought are relevant to a legitimate law enforcement investigation concerning a violation of section 18-1505B , 18-1506 , 18-1506A , 18-1507 , 18-1507C , 18-1508 , 18-1508A , 18-1509 , 18-1509A , 18-1515 , 18-2202 , or 18-6605 , Idaho Code.

(4) No subpoena issued pursuant to this section shall demand records that disclose the content of electronic communications or subscriber account records disclosing internet locations which have been accessed including, but not limited to, websites, chat channels and news groups, but excluding servers used to initially access the internet. No recipient of a subpoena issued pursuant to this section shall provide any such content or records accessed, in response to the subpoena.

(5) On a motion made by the electronic communication service or remote computing service provider prior to the time for appearance or the production of documents under the subpoena issued pursuant to this section, a court of competent jurisdiction may quash or modify the administrative subpoena if the provider establishes that the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

(6) No cause of action shall lie in any court against an electronic communication service or remote computing service provider, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of an administrative subpoena issued under this section.

(7) A person who is subpoenaed under this section and who fails to appear or produce materials as required by the subpoena, or who refuses to be sworn or give testimony, may be found to be in contempt of court. Proceedings to hold a person in contempt under this subsection may be brought in the county where the subpoena was issued.

(8) Nothing in this section shall limit the right of a prosecuting attorney or the attorney general to otherwise obtain records or information from a provider of electronic communication service or remote computing service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

19-3005 — Uniform act to secure attendance of witnesses

19-3005. Uniform act to secure attendance of witnesses.

(1) Subpoenaing a Witness in This State to Testify in Another State. If a judge of a court of record in any state, which by its laws has made provisions for commanding persons within that state to attend and testify in criminal hearings or prosecutions in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court that a person being within this state is a material witness in such prosecution, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall notify the witness of such time and place. If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution in the other state, and that the laws of the state in which the prosecution is pending and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process he shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the hearing or prosecution is pending at a time and place specified in the subpoena. If the witness, who is subpoenaed as above provided, after being tendered by some properly authorized person a prepaid, round trip airline ticket or, in the event that there is no regularly scheduled airline service available, a prepaid round trip ticket on any common carrier providing passenger transportation services to and from the court where the hearing or prosecution is pending and five dollars ($5.00) for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the subpoena, he may be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

(2) Witness From Another State Subpoenaed to Testify in This State. If a person in any state, which by its laws has made provisions for commanding persons within its borders to attend and testify in criminal hearings or prosecutions in this state, is a material witness in a hearing or prosecution pending in a court of record in this state, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required at such hearing or prosecution. This certificate shall be presented to a judge of a court of record in the county in which the witness is found. If the witness is subpoenaed to attend and testify in the criminal hearing or prosecution in this state he shall be tendered the sum of fifteen cents (15¢) a mile for each mile by the ordinarily traveled route, one (1) way, to and from the court where the hearing or prosecution is pending and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless such extended period of time is obtained by the written consent of such witness.

(3) Have Exemption From Arrest and Service of Process. If a person comes into this state in obedience to a subpoena directing him to attend and testify in a criminal hearing or prosecution in this state, he will not while in this state, pursuant to such subpoena, be subjected to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into this state under such subpoena. If a person passes through this state while going to another state in obedience to a subpoena to attend and testify in a criminal hearing or prosecution in that state or while returning therefrom, he shall not while so passing through this state be subjected to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into this state under such subpoena.

(4) Uniformity of Interpretation. This section shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of the states which enact it.

(5) Short Title. This section may be cited as "Uniform Act to Secure the Attendance of Witnesses in Criminal Cases."

19-3006 — Form of subpoena

19-3006. Form of subpoena. A subpoena authorized by section 19-3004 , Idaho Code, must be substantially in the following form: The state of Idaho to A.B.: You are commanded to appear before C.D., a [district] [magistrate] judge, in….

county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the state of Idaho against E.F. Given under my hand this…. day of….,….. G.H., [District] [Magistrate] Judge, (or "J.K., Prosecuting Attorney," or "By order of the court, L.M., Clerk," or as the case may be). If books, papers or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers or documents required).

19-3007 — Service of subpoena

19-3007. Service of subpoena. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

19-3007A — Service of subpoena by mail or messenger

19-3007A. Service of subpoena by mail or messenger.

(1) Notwithstanding the provisions of section 19-3007 , Idaho Code, a subpoena may be delivered by mail or messenger. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender by telephone, by mail, or in person, and identifies himself or herself by reference to his date of birth and his driver's license number or social security number. The sender shall make a written notation of the identifying information obtained during any acknowledgement by telephone or in person. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt, and the subpoena may so state; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section.

(2) A party requesting a continuance based upon the failure of a witness to appear in court at the time and place required for his appearance or testimony pursuant to a subpoena shall prove to the court that the party has complied with the provisions of this section. Such a continuance shall only be granted for a period of time which would allow personal service of the subpoena and a reasonable time for the witness to appear before the court.

19-3008 — Fees and mileage of witnesses

19-3008. Fees and mileage of witnesses. When a person shall attend before a grand jury, or the district court, as a witness, upon a subpoena, or pursuant to an undertaking, such person shall receive the same rate per mile as the state of Idaho pays for state employees pursuant to section 67-2008 , Idaho Code, but no person can receive more than one (1) mileage under this section per day of attendance in court; such person shall also receive eight dollars ($8.00) per day for each day's actual attendance as such witness and reasonable lodging expenses when approved in advance by the judge before whom the witness appears. Such mileage and per diem must be paid out of the county treasury of the county where such district court is held, upon the certificate of the clerk of said court: provided, however, that when a defendant in a criminal proceeding requires the attendance of more than five (5) witnesses in his behalf, before such witnesses shall be subpoenaed at the county's expense, or their fees and mileage be a charge against the county, such defendant must make affidavit setting forth that they are witnesses whose evidence is material to his defense, and that he can not safely go to trial without them. In such case the court, or the judge thereof, at any time application is made therefor, shall order a subpoena to issue to such of said witnesses as the court, or the judge thereof, may deem material for the defendant, and the costs incurred by the process and the fees and mileage of such witnesses shall be paid in the same manner that the costs and fees of other witnesses are paid.

19-3010 — Disobedience to subpoena

19-3010. Disobedience to subpoena. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his nonattendance, is liable to the defendant in the sum of $100, which may be recovered in a civil action.

19-3011 — Forfeiture of undertaking of witness

19-3011. Forfeiture of undertaking of witness. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

19-3012 — Production of imprisoned witness — Procedure

19-3012. Production of imprisoned witness — Procedure. When the testimony of a material witness for the people is required in a criminal action before a court of record of this state, and such witness is a prisoner in the state prison or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by a judge thereof; but in case the prison or jail is out of the county in which the application is made, such order can only be made upon the affidavit of the prosecuting attorney or other person on behalf of the people showing that the testimony is material and necessary; and even then the granting of the order is in the discretion of the court or judge. The order must be executed by the sheriff of the county in which it is made, whose duty it is to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken. The expense of executing such order must be paid by the county in which the order is made.

19-3013 — Definitions

19-3013. Definitions. As used in this act,

(a) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(b) "Penal institutions" includes a jail, prison, penitentiary, house of correction, or other place of penal detention.

(c) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

19-3014 — Summoning witness in this state to testify in another state

19-3014. Summoning witness in this state to testify in another state. A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation, by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

19-3015 — Court order

19-3015. Court order. If at the hearing the judge determines (1) that the witness may be material and necessary, (2) that his attending and testifying are not adverse to the interests of this state or to the health or legal rights of the witness, (3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and (4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, (a) directing the witness to attend and testify, (b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and (c) prescribing such conditions as the judge shall determine.

19-3016 — Terms and conditions

19-3016. Terms and conditions. The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

19-3017 — Exceptions

19-3017. Exceptions. This act does not apply to any person in this state confined as insane or mentally ill.

19-3018 — Prisoner from another state summoned to testify in this state

19-3018. Prisoner from another state summoned to testify in this state. If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in the other state may be a material witness in a proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate will be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

19-3019 — Compliance

19-3019. Compliance. The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

19-3020 — Exemption from arrest and service of process

19-3020. Exemption from arrest and service of process. If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

19-3021 — Uniformity of interpretation

19-3021. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

19-3022 — Short title

19-3022. Short title. This act may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act."

19-3023 — Child summoned as witness

19-3023. Child summoned as witness.

(1) When a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, notwithstanding any other statutory provision, parents, a counselor, friend or other person having a supportive relationship with the child, or a facility dog, shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony unless in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be unduly prejudiced.

(2) When a child is summoned as a witness in any hearing in a noncriminal matter that involves the abuse, neglect or abandonment of the child, including any preliminary hearing, notwithstanding any other statutory provision, a facility dog shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony.

(3) For purposes of this section, "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of assistance dogs international or a similar internationally recognized organization whose main purpose is to grant accreditation to assistance dog organizations based on standards of excellence in all areas of assistance dog acquisition, training and placement.

19-3024 — Statements by child

19-3024. Statements by child. Statements made by a child under the age of ten (10) years describing any act of sexual abuse, physical abuse, or other criminal conduct committed with or upon the child, although not otherwise admissible by statute or court rule, are admissible in evidence after a proper foundation has been laid in accordance with the Idaho rules of evidence in any proceedings under the child protective act, chapter 16, title 16 , Idaho Code, or in any criminal proceedings in the courts of the state of Idaho if: 1. The court finds, in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statements provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness. A child is unavailable as a witness when the child is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity. Provided, that when the child is unavailable as a witness, such statements may be admitted only if there is corroborative evidence of the act. Statements

may not be admitted unless the proponent of the statements notifies the adverse party of his intention to offer the statements and the particulars of the statements sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statements.

19-3025 — Witness psychiatric, psychological examination

19-3025. Witness psychiatric, psychological examination. Except upon the agreement of the parties, the court shall not order a witness in a prosecution for any offense or a victim of any offense to submit to a psychiatric or psychological examination for the purpose of assessing the witness's or victim's credibility.

CHAPTER 31

19-3101 — Witnesses may be conditionally examined

19-3101. Witnesses may be conditionally examined. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise.

19-3102 — Grounds for examination

19-3102. Grounds for examination. When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

19-3103 — Contents of application

19-3103. Contents of application. The application must be made upon affidavit, stating: 1. The nature of the offense charged. 2. The state of the proceedings in the action. 3. The name and residence of the witness, and that his testimony is material to the defense of the action. 4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

19-3104 — Making of application

19-3104. Making of application. The application may be made to the court during the term thereof, or to the judge in vacation, and must be upon three days' notice to the prosecuting attorney.

19-3105 — Order for examination

19-3105. Order for examination. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the prosecuting attorney, within a specified time before that fixed for the examination.

19-3106 — Proceedings in absence of county attorney

19-3106. Proceedings in absence of county attorney. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the prosecuting attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

19-3107 — Discontinuance of examination

19-3107. Discontinuance of examination. If the prosecuting attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick and infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

19-3108 — Subpoena for witness

19-3108. Subpoena for witness. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

19-3109 — Taking and authentication of testimony

19-3109. Taking and authentication of testimony. The testimony given by the witness must be reduced to writing and authenticated in the same manner as the testimony of a witness taken in support of an information.

19-3110 — Transmission of depositions

19-3110. Transmission of depositions. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

19-3111 — Use of deposition on trial

19-3111. Use of deposition on trial. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state. Upon reading the depositions in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

19-3112 — Deposition of imprisoned witness

19-3112. Deposition of imprisoned witness. When a material witness for a defendant, under a criminal charge, is a prisoner in the state prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant, in the same manner provided in the case of a witness who is sick, and the provisions of this chapter, so far as applicable, govern in the application for, and in the taking and use of, such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated. Every officer before whom testimony is taken by virtue hereof shall have authority to administer, and must administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth.

CHAPTER 32

19-3201 — Examination of nonresident witness

19-3201. Examination of nonresident witness. When an issue of fact is joined upon an indictment the defendant may have any material witness, residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise.

19-3202 — Application for order

19-3202. Application for order. When a material witness for the defendant resides out of the state the defendant may apply for an order that the witness be examined on a commission.

19-3203 — Commission defined

19-3203. Commission defined. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

19-3204 — Affidavit to accompany application

19-3204. Affidavit to accompany application. The application must be made upon affidavit, stating: 1. The nature of the offense charged. 2. The state of the proceedings in the action, and that an issue of fact has been joined therein. 3. The name of the witness, and that his testimony is material to the defense of the action. 4. That the witness resides out of the state.

19-3205 — Making of application

19-3205. Making of application. The application may be made to the court during the term, or to the judge in vacation, and must be upon three (3) days' notice to the prosecuting attorney.

19-3206 — Order for commission

19-3206. Order for commission. If the court or judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court or judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

19-3207 — Interrogatories, how settled and allowed

19-3207. Interrogatories, how settled and allowed. When the commission is ordered, the defendant must serve upon the prosecuting attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time

at which they will be presented to the court or judge. The prosecuting attorney may, in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must endorse upon them his allowance and annex them to the commission.

19-3208 — Direction as to return

19-3208. Direction as to return. Unless the parties otherwise consent, by an endorsement upon the commission, the court or judge must endorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

19-3209 — Execution of commission

19-3209. Execution of commission. The commissioner, unless otherwise specially directed, may execute the commission as follows: 1. He must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth. 2. He must cause the examination of the witness to be reduced to writing, and subscribed by him. 3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth. 4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated. 5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner. 6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents, proved by the witness, to the commission, and must close it up under seal, and address it as directed by the endorsement thereon. 7. If there is a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other direction is made by the written consent of the parties, or by the court or judge, on the commission, as to its return, he must comply with the direction. A copy of this section must be annexed to the commission.

19-3210 — Delivery of commission to agent

19-3210. Delivery of commission to agent. If the commission and return is delivered by the commissioner to an agent he must deliver the same to the clerk to whom it is directed or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

19-3211 — Death or disability of agent

19-3211. Death or disability of agent. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

19-3212 — Filing of commission

19-3212. Filing of commission. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

19-3213 — Commission open for inspection

19-3213. Commission open for inspection. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

19-3214 — Use and objections to depositions

19-3214. Use and objections to depositions. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

CHAPTER 34

19-3401 — Compromise of offenses after satisfaction

19-3401. Compromise of offenses after satisfaction. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed: 1. By or upon an officer of justice, while in the execution of the duties of his office. 2. Riotously. 3. With an intent to commit a felony. 4. As an act of domestic violence as defined in section 39-6303 (1), Idaho Code.

19-3402 — Leave of court and prosecutor required

19-3402. Leave of court and prosecutor required. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court and the prosecutor may, in their discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the offense that was originally charged.

19-3403 — Mode of compromise exclusive

19-3403. Mode of compromise exclusive. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

CHAPTER 35

19-3501 — When action may be dismissed

19-3501. When action may be dismissed. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

(1) When a person has been held to answer for a public offense, if an indictment or information is not found against him and filed with the court within six (6) months from the date of his arrest.

(2) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court.

(3) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant was arraigned before the court in which the indictment is found.

(4) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

(5) If a defendant, charged with both a felony or multiple felonies and a misdemeanor or multiple misdemeanors together in the same action or charging document, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court.

(6) If a defendant, charged with both a felony or multiple felonies and a misdemeanor or multiple misdemeanors together in the same action or charging document, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant was arraigned before the court in which the indictment is found.

19-3502 — Continuance for cause

19-3502. Continuance for cause. If the defendant is not indicted or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued to a date subsequent, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

19-3503 — Defendant to be discharged

19-3503. Defendant to be discharged. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

19-3504 — Dismissal on motion of court or prosecuting attorney

19-3504. Dismissal on motion of court or prosecuting attorney. The court may, either of its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

19-3505 — Nolle prosequi abolished

19-3505. Nolle prosequi abolished. The entry of a nolle prosequi is abolished, and neither the attorney-general nor the prosecuting attorney can discontinue or abandon a prosecution for a public offense except as provided in the last section.

19-3506 — Effect of dismissal as bar — dismissal for diversion participant

19-3506. Effect of dismissal as bar — dismissal for diversion participant.

(1) An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, except as provided in subsection (2) of this section; but it is not a bar if the offense is a felony.

(2) A prosecuting attorney may move for dismissal of a misdemeanor action, and the court may order such dismissal, if the defendant agrees to participate in a diversion program pursuant to section 19-3509 , Idaho Code. The action may be refiled for failure to complete the diversion program, and speedy trial shall be calculated from the date of refiling.

19-3507 — diversion programs — legislative intent

19-3507. diversion programs — legislative intent.

(1) For purposes of this section and sections 19-3508 and 19-3509 , Idaho Code, "diversion program" means the use of local community resources, churches, substance abuse counseling, informal probation, community service work, voluntary restitution, or other available services or programs as an alternative to adjudication of a criminal case in court.

(2) It is the intent of the legislature and the policy of the state of Idaho that a diversion program created pursuant to sections 19-3508 and 19-3509 , Idaho Code, should:

(a) Provide an opportunity to incorporate statistics and empirical research into decision-making in the criminal justice system in a way that enhances public safety and reduces recidivism, while also saving taxpayer dollars;

(b) Provide individuals with the opportunity to rectify criminal conduct through early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by such individuals; and

(c) Provide an alternative to the imposition of criminal sanctions when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct.

19-3508 — eligibility for diversion program

19-3508. eligibility for diversion program. A person is eligible to participate in a diversion program if:

(1) The person has been charged with driving under the influence pursuant to section 18-8004 or 18-8004A , Idaho Code;

(2) At the time of the conduct underlying such charge, the person:

(a) Did not hold a commercial driver’s license or commercial learner’s permit; or

(b) Was not operating a commercial vehicle;

(3) No other person is alleged to have been physically injured as a result of the conduct underlying such charge; and

(4) The person charged has not been convicted of driving under the influence or a substantially conforming foreign criminal violation within the past ten (10) years and has not previously participated in a diversion program pursuant to section 19-3509 , Idaho Code.

19-3509 — diversion program requirements

19-3509. diversion program requirements.

(1) A prosecuting attorney may, at the prosecuting attorney's discretion, establish a diversion program and may refer a defendant eligible to participate in a diversion program pursuant to section 19-3508 , Idaho Code, to such program within thirty (30) calendar days of a citation being issued or charges being filed against the defendant. Before entering an agreement to participate in the diversion program, a defendant may obtain advice from a defense attorney on the requirements and consequences of participating in the diversion program and must undergo a drug or alcohol evaluation, or both, if requested by the prosecuting attorney. The terms and conditions of the diversion program shall be set forth in a written agreement signed by the prosecuting attorney and the defendant as well as the defendant's attorney, if the defendant is represented by an attorney. If the defendant agrees to participate in the diversion program, then the prosecuting attorney shall move for dismissal of the action against the defendant pursuant to section 19-3506 , Idaho Code.

(a) A diversion program may be administered by the prosecuting attorney or by the prosecuting attorney's designee. The diversion agreement shall specify the person administering the program and shall set out the requirements for successful completion of the program and the duration of the diversion agreement. The duration of the period a person is required to participate in a diversion program under this section shall be no shorter than twelve (12) months. All persons participating in a diversion program shall be required to install and maintain, at the participant's expense, an ignition interlock system in each vehicle such person operates for the duration of the program, as further provided in subsection (5) of this section. A person participating in a diversion program for a charge unrelated to alcohol shall, in addition to installing and maintaining an ignition interlock system, be required to undergo drug testing at the person's expense for at least twelve (12) months. If the person is indigent, the prosecuting attorney may order the use of moneys from the court interlock device and electronic monitoring device fund created by section 18-8010 , Idaho Code, to assist the person in procuring an ignition interlock device. The participant in a diversion program must also complete at least thirty-two (32) hours of sheriff inmate labor detail or approved community service and at least twenty-four (24) hours of drug and alcohol counseling, therapy, or education from an approved provider.

(b) At the end of the diversion period, the prosecuting attorney shall determine whether the participant complied with the requirements of the diversion agreement. If the prosecuting attorney finds that the participant failed to comply with the requirements of the diversion agreement, then the prosecuting attorney may refile the case pursuant to section 19-3506 , Idaho Code.

(2) A prosecuting attorney may require, as a condition of entering a diversion program, that a person execute a sworn affidavit stating the facts that gave rise to the charge of driving under the influence. Such affidavit may be used as evidence of guilt during an adjudicative proceeding in a refiled case. No other statement made by the person in diversion activities or proceedings, such as in a counseling or therapy session, is admissible as evidence of guilt during an adjudicative proceeding in a refiled case.

(3) The requirements for successful completion of a diversion program may include, but are not limited to:

(a) Informal supervision with the probation department;

(b) Community service work;

(c) Inmate labor detail work;

(d) A community-based diversion program;

(e) Restitution to a victim;

(f) Alcohol monitoring and testing;

(g) Individual therapy and counseling;

(h) Group therapy and counseling; and

(i) Drug monitoring and testing.

(4) The administrator of a diversion program may require payment of restitution and fees to cover the costs of the diversion program. Any moneys collected shall be reasonably related to program costs. The administrator shall assess a diversion fee of one hundred fifty-seven dollars and fifty cents ($157.50) to each diversion participant. If the participant is indigent, the diversion fee may be waived. The diversion fee shall be paid to the clerk of the district court and distributed as follows:

(a) Seventeen dollars and fifty cents ($17.50) to be distributed as provided in section 31-3201A (2), Idaho Code;

(b) Ten dollars ($10.00) to be distributed as provided in section 31-3201 (3), Idaho Code;

(c) Ten dollars ($10.00) to be distributed as provided in section 31-3201 (5), Idaho Code;

(d) Fifteen dollars ($15.00) to be distributed as provided in section 31-3201B , Idaho Code;

(e) Fifty dollars ($50.00) to be distributed as provided in section 31-3201H , Idaho Code;

(f) Fifteen dollars ($15.00) to be distributed as provided in section 31-3204 , Idaho Code;

(g) Thirty-seven dollars ($37.00) to be distributed as provided in section 72-1025 , Idaho Code; and

(h) Three dollars ($3.00) to be distributed as provided in section 72-1105 , Idaho Code.

(5) A participant in a diversion program whose driving privileges have been suspended may be granted driving privileges by the administrator of the diversion program, in which case the participant shall be issued a restricted driving permit by the Idaho transportation department. Prior to being granted restricted driving privileges, the participant must show to the administrator proof of financial responsibility as defined and in the amounts specified in section 49-117 , Idaho Code. If a person is participating in a diversion program under this section, then the participant must have an ignition interlock system as defined in section 18-8008 , Idaho Code, installed in each vehicle operated by the participant and must pay an ignition interlock fee of fifteen dollars ($15.00) to be deposited in the court interlock device and electronic monitoring device fund created by section 18-8010 , Idaho Code. The ignition interlock system shall be removed once the participant successfully completes diversion, provided that such removal shall not occur, and the program shall not be considered successfully completed, until the administrator of the diversion program receives a declaration from the participant's ignition interlock vendor, on a form provided or approved by the administrator, certifying that none of the following incidents occurred while the system was installed in the vehicle:

(a) An attempt to start the vehicle with an alcohol concentration of 0.04 or more;

(b) Failure to take any random test;

(c) Failure to pass any random retest with an alcohol concentration of 0.025 or lower; or

(d) Failure of the participant to appear at the ignition interlock system vendor's place of business when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the system.

CHAPTER 36

19-3601 — Issuance of summons

19-3601. Issuance of summons. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

19-3602 — Form of summons

19-3602. Form of summons. The summons must be substantially in the following form: County of (as the case may be): The state of Idaho to the (naming the corporation): You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A.B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally). Dated at the city or precinct of…., this…. day of….,…..

19-3603 — Service of summons

19-3603. Service of summons. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent thereof.

19-3604 — Examination of charge

19-3604. Examination of charge. At the appointed time in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

19-3605 — Certificate of magistrate

19-3605. Certificate of magistrate. After hearing the proofs, the magistrate must certify upon the deposition, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate to the clerk of the district court of the county.

19-3606 — Investigation by grand jury

19-3606. Investigation by grand jury. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon as in case of a natural person held to answer.

19-3607 — Appearance and plea

19-3607. Appearance and plea. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

19-3608 — Collection of fine

19-3608. Collection of fine. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER 37

19-3701 — Defectively entitled affidavit valid

19-3701. Defectively entitled affidavit valid. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

19-3702 — Immaterial errors disregarded

19-3702. Immaterial errors disregarded. Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice in respect to a substantial right.

CHAPTER 38

19-3801 — Disposal of stolen property

19-3801. Disposal of stolen property. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

19-3802 — Order for delivery

19-3802. Order for delivery. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

19-3803 — Delivery to owner

19-3803. Delivery to owner. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

19-3804 — Court may order delivery

19-3804. Court may order delivery. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

19-3805 — Delivery to county treasurer

19-3805. Delivery to county treasurer. If the property stolen or embezzled is not claimed by the owner before the expiration of six (6) months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

19-3806 — Receipt for property taken from defendant

19-3806. Receipt for property taken from defendant. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent.

19-3807 — Confiscation of firearms, explosives or contraband upon conviction

19-3807. Confiscation of firearms, explosives or contraband upon conviction.

(1) At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, bombs, nitroglycerin, or explosives of any nature, including illegal fireworks, or any other deadly weapons or contraband of any kind found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court before which such person was tried. "Contraband" as used in this section shall mean any personal property, possession of which is illegal under the laws of the state of Idaho or the United States.

(2) Notice of confiscation proceedings shall be given to each owner or person who is believed to have an interest in the property in question by serving a copy of the state's motion describing the property with a notice of hearing on the motion as follows:

(a) Upon each owner or interested party whose name and address is known, by mailing a copy of the state's motion to confiscate and notice of hearing by certified mail to the owner or party's last known address, or to his attorney;

(b) Upon all other owners or interested parties whose addresses are unknown, but who are believed to have an interest in the property, by publishing one (1) notice in a newspaper of general circulation in the county where the property was seized.

(3) Within twenty (20) days after the mailing or publication of the notice, the owner of the property in question and any other interested party may file with the court a claim to the property described in the motion to confiscate.

(4) If one (1) or more claims are filed, the confiscation proceeding shall be set for hearing at least thirty (30) days after the last timely claim is filed.

(5) At the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not in the possession or control of the defendant at the time of his arrest or that the owner is innocent of any involvement in the acts which led to the defendant's arrest, in which case the court may return the property to the owner or interested person or order any other disposition which is appropriate under the circumstances.

(6) If no claim has been filed within twenty (20) days after the state's motion to confiscate and notice of hearing has been mailed or published, the court shall hear evidence concerning the defendant's possession and control of the property in question at the time of arrest. If it finds that the property was in the defendant's possession and control at the time of arrest or, if pursuant to subsection (5) of this section, the court rejects any claim which has been filed, the court may direct the delivery to the law enforcement agency which apprehended the defendant, for its use or for any other disposition in its discretion or, in the case of a firearm or ammunition, the court shall direct the delivery to the law enforcement agency which apprehended the defendant for disposition in accordance with section 55-403 (4), Idaho Code.

CHAPTER 39

19-3901 — Complaint or citation

19-3901. Complaint or citation. All proceedings and actions before the magistrates division of the district court for a public offense of which such court has jurisdiction, must be commenced by complaint setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint. A complaint for a misdemeanor must be sworn to before a magistrate or judge. A complaint for an infraction may be an unsworn complaint signed by a law enforcement officer. Provided, however, as to any misdemeanor or infraction triable by a magistrate, a law enforcement officer may, in lieu of making a written complaint, issue to the defendant a uniform citation containing a complaint and a summons to appear in a form and in the manner prescribed by rule of the supreme court. The complaint in the uniform citation shall contain a certification by the law enforcement officer to the effect that he certifies that he has reasonable grounds to believe, and

does believe, that the person cited committed the offense contrary to law. The citation shall be served upon the defendant by obtaining his written promise to appear in court at a time certain or by physically delivering the citation to the defendant. The citation shall be processed in the courts as prescribed by rule of the supreme court. If the defendant fails to appear on a misdemeanor citation at the time indicated in the summons, the defendant may be prosecuted for the misdemeanor offense of failure to appear under section 19-3901A , Idaho Code.

19-3901A — Failure to obey citation for misdemeanor

19-3901A. Failure to obey citation for misdemeanor.

(a) It shall be unlawful for any person to fail to appear in court at the time promised on a misdemeanor citation or to fail to appear at the time indicated on a misdemeanor citation served upon the defendant, regardless of the disposition of the charge upon which such citation was originally issued.

(b) The duty to appear in court at the time indicated in a misdemeanor citation may be complied with by an appearance by counsel in the manner prescribed by rule of the supreme court.

(c) Violation of the provisions of this section shall be a misdemeanor.

19-3902 — Correction of defective complaint

19-3902. Correction of defective complaint. Whenever it shall appear to the prosecuting attorney of any county of this state that any criminal complaint filed in any justice or probate court is defective or void, the said prosecuting attorney shall have the right to substitute a new complaint, and the defendant or defendants shall not be considered to have been placed in jeopardy by any proceedings previous to the filing of the said new complaint: provided, that said prosecuting attorney shall file said complaint before the case for the prosecution has been closed.

19-3903 — Issuance and form of warrant

19-3903. Issuance and form of warrant. If the magistrate judge is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form: County of….. The state of Idaho to any sheriff, constable, marshal or policeman, in this state: Complaint, upon oath, having been this day made before me…. (magistrate judge), by C.D., that the offense of…. (designating it generally), has been committed, and accusing E.F. thereof; you are therefore commanded forthwith to arrest the above named E.F. and bring him before me forthwith at…. (naming place). Witness my hand at…., this…. day of….,….. A.B.

19-3904 — Docket and minutes

19-3904. Docket and minutes. A docket must be kept by the magistrate judge, or by the clerk of the court, in which must be entered each action and the proceedings of the court therein.

19-3905 — Plea — Examination on plea of guilty

19-3905. Plea — Examination on plea of guilty. The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

19-3906 — Proceedings after plea

19-3906. Proceedings after plea. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

19-3909 — Postponement of trial

19-3909. Postponement of trial. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

19-3910 — Presence of defendant

19-3910. Presence of defendant. The defendant must be personally present before the trial can proceed.

19-3911 — Waiver of trial by jury

19-3911. Waiver of trial by jury. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter 1, of title 2 .

19-3912 — Challenge to jurors

19-3912. Challenge to jurors. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, for cause, as on the trial of an indictment for a misdemeanor; but the challenges must in all cases be tried by the court; the defendant is entitled to four (4) peremptory challenges and the prosecution to four (4).

19-3913 — Oath of jurors

19-3913. Oath of jurors. The court must administer to the jury the following oath: You do swear that you will well and truly try this issue between the state of Idaho and A.B., the defendant, and a true verdict render according to the evidence.

19-3914 — Conduct of jury

19-3914. Conduct of jury. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

19-3915 — Court to decide questions of law

19-3915. Court to decide questions of law. The court must decide all questions of law which may arise in the course of the trial.

19-3916 — Retirement of jury

19-3916. Retirement of jury. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself unless by order of the court, or to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed or when ordered by the court.

19-3917 — Verdict

19-3917. Verdict. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict they must deliver it publicly to the court, who must enter it or cause it to be entered, in the minutes.

19-3918 — Verdict against joint defendants

19-3918. Verdict against joint defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

19-3919 — Discharge of jury

19-3919. Discharge of jury. The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless, for good cause the court sooner discharges them.

19-3920 — Retrial of defendant

19-3920. Retrial of defendant. If the jury is discharged as provided in the last section, the court may proceed again to the trial in the same manner as upon the first trial, and so on until a verdict is rendered.

19-3921 — Proceedings on plea of guilty

19-3921. Proceedings on plea of guilty. When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be: provided, however, it appearing to the court that it is a proper case, the court may, in its discretion, suspend the execution of judgment, and at such time, or any time during the period of sentence in a county jail, may put the defendant on probation on such terms and for such time as it may prescribe. The period of probation ordered by the court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. The court may withhold judgment on such terms and conditions as it deems necessary or expedient.

19-3922 — payment of court ordered tests of breath or bodily fluid

19-3922. payment of court ordered tests of breath or bodily fluid. Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section 31-3201D , Idaho Code, to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

19-3923 — Acquittal — Costs of malicious prosecution

19-3923. Acquittal — Costs of malicious prosecution. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one (1) or more sureties, to pay the same within thirty (30) days after the trial.

19-3924 — Malicious prosecution — Judgment against prosecutor

19-3924. Malicious prosecution — Judgment against prosecutor. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects, in the same manner as a judgment rendered in a civil action.

19-3925 — Time for judgment

19-3925. Time for judgment. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two (2) days nor less than six (6) hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed.

19-3926 — Motions prior to judgment

19-3926. Motions prior to judgment. At any time before judgment defendant may move for a new trial or in arrest of judgment.

19-3927 — Grounds for new trial

19-3927. Grounds for new trial. A new trial may be granted in the following cases: 1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had. 2. When the jury has received any evidence out of court. 3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. 4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. 5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial. 6. When the verdict is contrary to law or evidence. 7. When new evidence is discovered, material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

19-3928 — Grounds for arrest of judgment

19-3928. Grounds for arrest of judgment. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

19-3929 — Pronouncement and entry of judgment

19-3929. Pronouncement and entry of judgment. If the judgment is not arrested, or a new trial granted judgment must be pronounced at the time appointed and entered in the minutes of the court.

19-3930 — Discharge of defendant

19-3930. Discharge of defendant. If judgment of acquittal is given, or judgment imposing a fine only without imprisonment for nonpayment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

19-3931 — Warrant for execution of judgment

19-3931. Warrant for execution of judgment. When a judgment of imprisonment is entered a certified copy thereof must be delivered to the sheriff, marshal or other officer, which is a sufficient warrant for its execution.

19-3932 — Imprisonment pending payment of fine

19-3932. Imprisonment pending payment of fine. When a judgment is entered imposing a fine, or costs, or both fine and costs, or ordering the defendant to be imprisoned until the fine, or costs, or fine and costs, be paid, he must be held in custody during the time specified in the judgment, unless the fine, or costs, or fine and costs, are sooner paid.

19-3933 — Discharge upon payment of fine

19-3933. Discharge upon payment of fine. Upon payment of the fine, or costs, or fine and costs, the officer must discharge the defendant if he is not detained for any other legal cause.

19-3934 — Admittance to bail

19-3934. Admittance to bail. The defendant, at any time after his arrest, and before conviction, may be admitted to bail.

19-3935 — Subpoenas for witnesses

19-3935. Subpoenas for witnesses. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses and punish disobedience thereof, as provided in sections 19-3004 , 19-3006 — 19-3012 inclusive.

19-3936 — Entitling affidavits

19-3936. Entitling affidavits. The provisions in respect to entitling affidavits are applicable to proceedings in the courts mentioned in this chapter.

19-3945 — Jurors and witnesses — Fees and mileage — Application for subpoenas

19-3945. Jurors and witnesses — Fees and mileage — Application for subpoenas. Witnesses before a special inquiry judge and in criminal cases in the magistrate division of district court, and witnesses in a coroner's inquest, are entitled to the same fees and mileage as provided in section 19-3008 , Idaho Code, for witnesses in criminal proceedings in the district court, which must be paid out of the county treasury; provided, however, that when the state or the defendant requires the attendance of more than three (3) witnesses in its or his behalf, before such witnesses shall be subpoenaed at the county expense, or their fees and mileages be a charge against the county, the county attorney or defendant must make affidavit setting forth that they are witnesses whose evidence is material for the state or the defense, and the facts showing such materiality, and that it or he cannot safely go to trial without them. In such case or cases, the court or judge thereof, at the time the application is made therefor, shall order a subpoena to issue to such of said witnesses as the court or judge thereof may deem material for the state or defendant, and the costs incurred by the process, and the fees and mileage of such witnesses, shall be paid in the same manner that the costs and fees of other witnesses are paid. Jurors in a coroner's inquest are entitled to the mileage and per diem payments as provided for jurors in section 2-215 , Idaho Code.

19-3946 — Affidavit as to miles traveled

19-3946. Affidavit as to miles traveled. Each juror and witness must state on oath to the judge, justice or coroner, the number of miles traveled for which he is entitled to pay; but no juror or witness shall receive mileage other than for the distance actually traveled, notwithstanding he may serve or testify in more than one case.

19-3947 — County misdemeanor probation office services

19-3947. County misdemeanor probation office services. Misdemeanor probation office services shall be as provided in section 31-878 , Idaho Code.

CHAPTER 40

19-4001 — Officers subject to impeachment

19-4001. Officers subject to impeachment. Any state officer, created by state law, shall be liable to impeachment for any misdemeanor in office.

19-4002 — Articles of impeachment — Preparation and trial

19-4002. Articles of impeachment — Preparation and trial. All impeachments must be by resolution adopted and originated in the house of representatives, and conducted by managers elected by the house, who must prepare articles of impeachment, present them at the bar of the senate, and prosecute the same. The trial must be had before the senate, sitting as a court of impeachment.

19-4003 — Delivery of articles to president of senate

19-4003. Delivery of articles to president of senate. When an officer is impeached by the house of representatives for a misdemeanor in office, the articles of impeachment must be delivered to the president of the senate.

19-4004 — Time and notice of hearing

19-4004. Time and notice of hearing. The senate must assign a day for the hearing of the impeachment and inform the house of representatives thereof. The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten (10) days before the day fixed for the hearing.

19-4005 — Service of notice

19-4005. Service of notice. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

19-4006 — Failure of defendant to appear

19-4006. Failure of defendant to appear. If the defendant does not appear, the senate, upon proof of service or publication, as provided in the last two (2) sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed in the absence of the defendant to trial and judgment.

19-4007 — Answer or demurrer

19-4007. Answer or demurrer. When the defendant appears he may, in writing, object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

19-4008 — Overruling demurrer — Plea and trial

19-4008. Overruling demurrer — Plea and trial. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the senate must render judgment of conviction against him. If he pleads not guilty, the senate must at such time as it may appoint, proceed to try the impeachment.

19-4009 — Senate to be sworn

19-4009. Senate to be sworn. At the time and place appointed and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the senate can act or vote upon the impeachment or upon any question arising thereon without having taken such oath.

19-4010 — Vote necessary for conviction

19-4010. Vote necessary for conviction. The defendant cannot be convicted on an impeachment without the concurrence of two-thirds (2/3) of the members elected, voting by ayes and noes, and if two-thirds (2/3) of the members elected do not concur in a conviction, he must be acquitted.

19-4011 — Judgment of conviction

19-4011. Judgment of conviction. After conviction the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution, entered upon the journals of the senate.

19-4012 — Adoption of judgment

19-4012. Adoption of judgment. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

19-4013 — Extent of judgment

19-4013. Extent of judgment. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office, or class of offices, or any office in this state.

19-4014 — Judgment of suspension

19-4014. Judgment of suspension. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

19-4015 — Suspension pending trial

19-4015. Suspension pending trial. Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any state officer, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled as required by law.

19-4016 — Impeachment not a bar to indictment

19-4016. Impeachment not a bar to indictment. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment, the indictment is not barred thereby.

CHAPTER 41

19-4101 — Presentation of accusation

19-4101. Presentation of accusation. An accusation in writing against any district, county, precinct, or municipal officer, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

19-4102 — Form of accusation

19-4102. Form of accusation. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

19-4103 — Service on defendant

19-4103. Service on defendant. The accusation must be delivered by the foreman of the grand jury to the prosecuting attorney of the county (except when he is the officer accused), who must cause a copy thereof to be served upon the defendant, and require by notice in writing, of not less than ten (10) days, that he appear before the district court of the county, then sitting or at its next term, and answer the accusation. The original accusation must then be filed with the clerk of the district court.

19-4104 — Appearance and answer — Default

19-4104. Appearance and answer — Default. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

19-4105 — Answer or demurrer

19-4105. Answer or demurrer. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

19-4106 — Form of demurrer

19-4106. Form of demurrer. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

19-4107 — Form of denial

19-4107. Form of denial. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

19-4108 — Answer after overruling demurrer

19-4108. Answer after overruling demurrer. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

19-4109 — Proceedings on plea

19-4109. Proceedings on plea. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

19-4110 — Trial by jury

19-4110. Trial by jury. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

19-4111 — Process for witnesses

19-4111. Process for witnesses. The prosecuting attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an indictment.

19-4112 — Judgment of removal

19-4112. Judgment of removal. Upon a conviction, the court must, at such time as it may appoint, pronounce a judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

19-4113 — Appeal — How taken and effect

19-4113. Appeal — How taken and effect. From a judgment of removal an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action; but until such judgment is reversed the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

19-4114 — Removal of prosecuting attorney

19-4114. Removal of prosecuting attorney. The same proceedings may be had on like grounds for the removal of a prosecuting attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to the district judge of the district, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the prosecuting attorney of an adjoining county, and require him to conduct the proceedings.

CHAPTER 42

19-4201 — Short title

19-4201. Short title. Sections 19-4201 through 19-4226 , Idaho Code, shall be known and may be cited as the "Idaho Habeas Corpus and Institutional Litigation Procedures Act."

19-4201A — Definitions

19-4201A. Definitions. As used in this chapter:

(1) "Correctional facility" means a facility for the confinement of prisoners. Unless otherwise specifically provided, the term shall include a state, local or private correctional facility.

(2) "In-state prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated in a correctional facility for that crime or is in custody for trial and sentencing.

(3) "Institution" or "state or county institution" means a place owned or operated by or under the control of the state or county in which a person other than a prisoner is restrained and with respect to which restraint the person may file a petition for a writ of habeas corpus under the provisions of this chapter.

(4) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include any reference to "jail" or "county jail."

(5) "Out-of-state prisoner" means a person who has been convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(6) "Prisoner" includes an in-state or out-of-state prisoner, unless otherwise specifically provided or unless the context clearly indicates otherwise.

(7) "Private correctional facility" means a correctional facility owned or operated in the state of Idaho by a private prison contractor.

(8) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(9) "State correctional facility" means a correctional facility owned or operated by or under the control of the state of Idaho.

19-4202 — Jurisdiction to consider petitions for writ of habeas corpus

19-4202. Jurisdiction to consider petitions for writ of habeas corpus. The following courts of this state shall have original jurisdiction to consider a petition for writ of habeas corpus, grant the writ and/or order relief under this chapter:

(1) The supreme court; or

(2) The district court of the county in which the person is detained.

19-4203 — Who may petition for a writ of habeas corpus

19-4203. Who may petition for a writ of habeas corpus.

(1) Any person, not a prisoner as defined in section 19-4201A , Idaho Code, who believes he is unlawfully restrained of his liberty in this state may file a petition for writ of habeas corpus to request that the court inquire into the cause and/or legality of the restraint.

(2) An in-state prisoner, as defined in section 19-4201A , Idaho Code, or a person who is restrained of his liberty while involved in parole revocation proceedings, or while held on an agent or commission warrant in this state, may file a petition for writ of habeas corpus to request that a court inquire into state or federal constitutional questions concerning:

(a) The conditions of his confinement;

(b) Revocation of parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits;

(e) A detainer lodged against him.

(3) An out-of-state prisoner, as defined in section 19-4201A , Idaho Code, may file a petition for writ of habeas corpus only to request that an Idaho court inquire into a state or federal constitutional question concerning the conditions of his confinement. Habeas corpus relief shall not be available for an out-of-state prisoner to challenge:

(a) Any issue concerning the legality of his out-of-state conviction or sentence;

(b) Any issue concerning the legality of the fact or duration of his confinement in this state;

(c) Any issue concerning the legality of the contract or agreement or any terms thereof pursuant to which he is housed in this state;

(d) Any issue concerning the grant, denial or revocation of parole for his out-of-state conviction and sentence;

(e) Miscalculation of his out-of-state sentence;

(f) Loss of out-of-state good time credits or lack of (failure to grant) good time credits under the laws of the state of Idaho;

(g) A detainer lodged against him.

(4) Habeas corpus shall not be used as a substitute for, or in addition to, a direct appeal of a criminal conviction or proceedings under Idaho criminal rule 35 or the uniform post-conviction procedures act, chapter 49, title 19 , Idaho Code, and the statutes of limitations imposed therein.

(5) Habeas corpus shall not be used as a substitute for or in addition to proceedings available in child custody matters and proceedings under the Idaho domestic violence crime prevention act, chapter 63, title 39 , Idaho Code.

(6) Habeas corpus is an individual remedy only.

(7) For purposes of this chapter and any other civil challenges to conditions of confinement, the term "conditions of confinement" shall be defined as any civil proceeding with respect to a condition in any state or county institution, or state, local or private correctional facility, as those terms are defined in section 19-4201A , Idaho Code, arising under state or federal law pertaining to the conditions of confinement or the effects of actions by government officials or employees of a private prison contractor while employed at a private correctional facility in the state of Idaho on the life of a person confined in a state or county institution, or a state, local or private correctional facility.

19-4204 — Application for writ of habeas corpus by a person not a prisoner

19-4204. Application for writ of habeas corpus by a person not a prisoner. [effective until January 1, 2027]

(1) Application for a writ of habeas corpus by a person not a prisoner shall be made by filing a petition for writ of habeas corpus in the district court of the county in which the person is restrained.

(2) The petition must be verified by the oath or affirmation of the party applying for the writ and shall specify:

(a) That the person is unlawfully restrained of his liberty;

(b) The identity and address of the person restraining the subject of the petition;

(c) The name and address of the place in which the person is restrained;

(d) A description of the facts which make the restraint illegal; and

(e) The theory of law upon which relief is sought, if known.

(3) Application under this section may be made by a guardian on behalf of a minor or by a guardian on behalf of an incapacitated person as defined in section 15-5-101 , Idaho Code. 19-4204. Application for writ of habeas corpus by a person not a prisoner. [effective January 1, 2027]

(1) Application for a writ of habeas corpus by a person not a prisoner shall be made by filing a petition for writ of habeas corpus in the district court of the county in which the person is restrained.

(2) The petition must be verified by the oath or affirmation of the party applying for the writ and shall specify:

(a) That the person is unlawfully restrained of his liberty;

(b) The identity and address of the person restraining the subject of the petition;

(c) The name and address of the place in which the person is restrained;

(d) A description of the facts which make the restraint illegal; and

(e) The theory of law upon which relief is sought, if known.

(3) Application under this section may be made by a guardian on behalf of a minor or by a guardian on behalf of an incapacitated person as defined in section 15-1-201 , Idaho Code.

19-4205 — Application for writ of habeas corpus by a prisoner

19-4205. Application for writ of habeas corpus by a prisoner.

(1) Application for a writ of habeas corpus by a prisoner shall be made by filing a petition for a writ of habeas corpus in the district court of the county in which the prisoner claims his confinement or aspects of his confinement violate provisions of the state or federal constitutions.

(2) With respect to a petition filed by an in-state prisoner, the petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning:

(a) The conditions of his confinement;

(b) The revocation of his parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits; or

(e) A detainer lodged against him.

(3) With respect to a petition filed by an out-of-state prisoner, the petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning the conditions of his confinement, as provided in section 19-4203 (3), Idaho Code.

(4) A petition filed by a prisoner under subsection (1), (2) or (3) of this section shall specify:

(a) The identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents;

(b) The name, if any, and address of the place in which the prisoner is incarcerated;

(c) The name and address of the place in which the prisoner claims the constitutional violation occurred;

(d) A short and plain statement of the facts underlying the alleged state or federal constitutional violation; and

(e) Whether the petitioner is an out-of-state prisoner.

(5) Neither the state of Idaho, any of its political subdivisions, or any of its agencies, nor any private correctional facility shall be named as respondents in a prisoner petition for writ of habeas corpus.

19-4206 — Prisoners required to exhaust administrative remedies in conditions of confinement cases

19-4206. Prisoners required to exhaust administrative remedies in conditions of confinement cases.

(1) Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus or any other civil action shall be brought by any person confined in a state or county institution, or in a state, local or private correctional facility, with respect to conditions of confinement until all available administrative remedies have been exhausted. If the institution, or state, local or private correctional facility does not have a system for administrative remedy, this requirement shall be waived.

(2) At the time of filing, the petitioner shall submit, together with the petition for writ of habeas corpus a true, correct and complete copy of any documentation which demonstrates that he has exhausted administrative remedies described in subsection (1) of this section.

(3) If at the time of filing the petition for writ of habeas corpus the petitioner fails to comply with this section, the court shall dismiss the petition with or without prejudice.

19-4207 — Application for writ of habeas corpus on behalf of another

19-4207. Application for writ of habeas corpus on behalf of another. [effective until January 1, 2027] A petition for writ of habeas corpus may only be filed by a person described in section 19-4203 , Idaho Code, or his attorney, except that a petition may be filed on behalf of an aggrieved person who is a minor, or on behalf of a person who is incapacitated as defined by section 15-5-101 , Idaho Code, by the aggrieved person's legal guardian. 19-4207. Application for writ of habeas corpus on behalf of another. [effective January 1, 2027] A petition for writ of habeas corpus may only be filed by a person described in section 19-4203 , Idaho Code, or his attorney, except that a petition may be filed on behalf of an aggrieved person who is a minor, or on behalf of a person who is incapacitated as defined by section 15-1-201 , Idaho Code, by the aggrieved person's legal guardian.

19-4208 — General procedures governing habeas corpus proceedings

19-4208. General procedures governing habeas corpus proceedings. A habeas corpus proceeding is a civil action and is governed by the provisions of this chapter and the Idaho court rules to the extent that such rules are not inconsistent with this act.

19-4209 — Procedures governing prisoner habeas corpus proceedings

19-4209. Procedures governing prisoner habeas corpus proceedings.

(1) The court may dismiss with prejudice a petition for writ of habeas corpus under this section, in whole or in part, prior to service of the petition on the respondent, if the court finds:

(a) The petition is frivolous as defined in section 12-122 , Idaho Code;

(b) The petition has been brought maliciously or solely to harass;

(c) The petition fails to state a claim of constitutional violation upon which relief can be granted;

(d) The alleged constitutional deprivation is de minimis in nature; or

(e) The relief sought is monetary damages or the return of property.

(2) If the court finds that the petition should not be dismissed, then:

(a) The court shall mail a copy of the petition and order of response to the respondent or the respondent's counsel, if known;

(b) A response must be filed within thirty (30) days from the date the respondent or the respondent's counsel is served with the petition and order for response. If the court finds that exigent circumstances exist which warrant an earlier response, the court shall set forth those circumstances and the allowed time for response; and

(c) If the court dismisses the petition in part, the court may specify which issues and/or allegations remain at issue for response.

(3) If the court orders a response to a petition for writ of habeas corpus under this section, the respondent may file any responsive motion or pleading allowed by Idaho rules of civil procedure.

(4) Upon the filing of a responsive motion or pleading, a prisoner may file a reply to the response or the court may order a reply to the response on its own motion. The court should consider any reply filed only to the extent it is relevant to the issues and allegations raised in the original petition for writ of habeas corpus.

(5) With respect to a petition filed by an in-state prisoner the court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the prisoner's state or federal constitutional rights may have been violated relative to:

(a) Conditions of confinement;

(b) Revocation of parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits; or

(e) A detainer lodged against him. If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(6) With respect to a petition filed by an out-of-state prisoner, the court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the out-of-state prisoner's state or federal constitutional rights may have been violated relative to the out-of-state prisoner's conditions of confinement. If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(7) If the court issues a writ of habeas corpus and sets the matter for evidentiary hearing, the following shall apply:

(a) The hearing shall be set as expeditiously as possible and may be at a place convenient for the court and the parties, including the institution or the state, local or private correctional facility where the prisoner is confined;

(b) The burden of proof during an evidentiary hearing pursuant to a petition for writ of habeas corpus lies with the prisoner; and

(c) As soon as possible after the conclusion of the hearing, the court shall enter its findings of fact and conclusions of law, and either dismiss the petition in part or in its entirety, or grant injunctive relief consistent with this act.

19-4210 — Discovery in habeas corpus proceedings

19-4210. Discovery in habeas corpus proceedings.

(1) Discovery shall not ordinarily be permitted in habeas corpus cases.

(2) No discovery shall be permitted if the issues raised by the petition, the response or reply are wholly legal in nature.

(3) If factual issues are raised by the pleadings, the court may, upon motion, grant leave for discovery in accordance with Idaho rules of civil procedure.

(a) The party must file a motion for leave to conduct discovery, attaching a copy of the discovery sought.

(b) If the court finds that discovery is necessary to protect or defend a substantive state or federal constitutional right at issue, it shall enter an order tailored to allow discovery for that limited purpose.

19-4211 — Issuance of writ of habeas corpus

19-4211. Issuance of writ of habeas corpus.

(1) Any court authorized under section 19-4202 , Idaho Code, may grant a writ of habeas corpus pursuant to a petition filed by, or, pursuant to section 19-4207 , Idaho Code, on behalf of a person not a prisoner if it finds that the restraint of the person's liberty is illegal.

(2) Any court authorized under section 19-4202 , Idaho Code, may grant a writ of habeas corpus and order a hearing pursuant to a petition filed by a prisoner, or, pursuant to section 19-4207 , Idaho Code, on behalf of a prisoner when:

(a) The court has considered the factual allegations contained in the petition together with any responsive pleading filed by the respondent, and a reply filed by the prisoner, if any;

(b) The court finds that the petitioner is likely to prevail on the merits of his state or federal constitutional challenge;

(c) The court finds that the petitioner will suffer irreparable injury if some relief is not granted;

(d) The court finds that the balance of potential harm to the petitioner substantially outweighs any legitimate governmental interest; and

(e) The court finds that equity favors granting relief to the petitioner.

(3) Any order granting the writ should issue without delay and a hearing should be scheduled. The court may provide a statement of the issues to be addressed, and whether evidence will be accepted.

(4) If a court issues an order granting the writ and setting the matter for hearing, the court may set the hearing at the state, local or private correctional facility or other appropriate place.

19-4212 — Injunctive relief available to a person not a prisoner

19-4212. Injunctive relief available to a person not a prisoner. If a court finds that a person not a prisoner is being illegally restrained, the court may fashion appropriate injunctive relief to cure the illegality, including release.

19-4213 — Relief available for constitutional violations during the course of revocation of parole

19-4213. Relief available for constitutional violations during the course of revocation of parole.

(1) If a court finds that an in-state prisoner's constitutional rights have been violated during the course of revocation of his parole, the court may, upon specific findings of fact and conclusions of law, enter an order directing that the parole revocation proceedings be reconvened. The order shall identify the constitutional violation which occurred and direct that the violation be cured.

(2) The Idaho commission of pardons and parole has the exclusive authority to order release of an in-state prisoner on parole pursuant to chapter 10, title 20 , Idaho Code.

19-4214 — Relief available for miscalculation of sentence

19-4214. Relief available for miscalculation of sentence.

(1) If, upon findings of fact and conclusions of law, a court finds that an in-state prisoner's sentence has been miscalculated, the court may order the sentence to be recalculated consistent with the court's findings and conclusions.

(2) The court may order the prisoner released under this section only if the prisoner would be entitled to release due to expiration of his sentence correctly calculated.

19-4215 — Relief available for loss of good time credits

19-4215. Relief available for loss of good time credits.

(1) If the court finds that an in-state prisoner has lost good time credits without constitutionally sufficient due process, the court may order a rehearing by the correctional facility authority.

(2) Any court order requiring rehearing shall specify:

(a) How due process was constitutionally insufficient and direct that the insufficiency be cured; and

(b) Provide that the officials of the correctional facility shall have not less than thirty (30) days in which to convene the rehearing.

(3) The correctional facility authority shall have the responsibility for the recalculation and restoration of good time credits. If good time credits are restored to the petitioner as a result of the rehearing, and restoration of good time credits entitles

the petitioner to release, he shall be so released.

19-4216 — Relief available for detainers

19-4216. Relief available for detainers.

(1) An in-state prisoner may petition for writ of habeas corpus to challenge the legality of a detainer which has been lodged against him by another state under the interstate agreement on detainers, chapter 50, title 19 , Idaho Code.

(2) The court may set a hearing on a petition for writ of habeas corpus to inquire into factual issues involving the legality of the detainer or the legality of delivery of the prisoner to the prosecuting state under the detainer. However, if the petition involves legal issues only, the court shall decide the matter without hearing consistent with section 19-4209 , Idaho Code.

19-4217 — Injunctive relief available to prisoners and other institutionalized persons in conditions of confinement cases

19-4217. Injunctive relief available to prisoners and other institutionalized persons in conditions of confinement cases.

(1) If the court finds that a prisoner's or other institutionalized person's constitutional rights have been violated involving conditions of confinement, the court may order injunctive relief consistent with and subject to the limitations set forth in this chapter.

(2) If the court concludes that injunctive relief is necessary to cure unconstitutional conditions of confinement, the court shall enter an order subject to the following limitations:

(a) Any order for injunctive relief shall be accompanied by specific findings of fact and conclusions of law;

(b) Injunctive relief shall be narrowly drawn and extend no further than necessary to correct the violation of the constitutional right;

(c) Injunctive relief must be the least intrusive means necessary to correct the constitutional violation;

(d) The court shall give substantial weight to any adverse impact on public safety;

(e) The court shall give substantial deference to the discretion of administrators of the institution or the state, local or private correctional facility;

(f) The administrator of the institution, or of the state, local or private correctional facility shall be given all reasonable opportunities to correct state or federal constitutional errors made in the internal operations of the institution and shall be charged with the task of devising constitutionally sound modifications to their operations.

19-4218 — Termination of injunctive relief order or decree in conditions of confinement cases

19-4218. Termination of injunctive relief order or decree in conditions of confinement cases. In any civil action with respect to conditions of confinement in which prospective relief is ordered or obtained pursuant to consent decree, the relief order or decree shall be terminated upon the motion of any party or intervenor:

(1) Two (2) years after the date the court granted or approved the prospective relief;

(2) One (1) year after the date the court has entered an order or decree denying termination of prospective relief under this section; or

(3) In the case of an order issued on or before the date of enactment of this act, one (1) year after such date of enactment.

19-4219 — Immediate termination of order or decree for prospective relief in conditions of confinement cases

19-4219. Immediate termination of order or decree for prospective relief in conditions of confinement cases.

(1) In any civil action with respect to conditions of confinement, the administrator of the institution, or of the state, local or private correctional facility, or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of an express finding by the court that the relief:

(a) Is narrowly drawn;

(b) Extends no further than necessary to correct the violation of the constitutional right; and

(c) Is the least intrusive means necessary to correct the violation of the constitutional right.

(2) Prospective relief shall not terminate if the court makes written findings based on the record that the prospective relief:

(a) Remains necessary to correct a current or ongoing violation of the constitutional right;

(b) Extends no further than necessary to correct the violation of the constitutional right;

(c) Is narrowly drawn; and

(d) Is the least intrusive means to correct the violation.

(3) Nothing in this section shall prevent the administrator of the institution, or of the state, local or private correctional facility, or intervenor from seeking modification or termination before the relief is terminable under subsection (1) or (2) of this section to the extent that modification or termination would otherwise be legally permissible.

19-4220 — Settlements and consent decrees in conditions of confinement cases

19-4220. Settlements and consent decrees in conditions of confinement cases.

(1) In any civil action with respect to conditions of confinement, the court shall not enter or approve a settlement or consent decree unless it complies with the limitations on relief set forth in section 19-4217 , Idaho Code.

(2) This section, together with sections 19-4217 , 19-4218 and 19-4219 , Idaho Code, applies to all settlements or consent decrees in effect at the time of passage of this act. Any settlement or consent decree entered into before enactment of this act shall not be construed as a waiver of the application of this section by any party to the settlement or consent decree, and may be terminated consistent with sections 19-4218 and 19-4219 , Idaho Code.

19-4221 — Successive claims

19-4221. Successive claims. In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding if the prisoner has, on two (2) or more prior occasions, while incarcerated or detained in any state, local or private correctional facility, brought an action or appeal in a court of this state that was dismissed on any ground set forth in section 19-4209 (1)(a) through (d), Idaho Code, unless:

(1) The prisoner first obtains leave from the district court having jurisdiction over the case; or

(2) The prisoner's action or petition is submitted for filing by an attorney licensed to practice law in the state of Idaho.

19-4222 — Prior showing of physical injury or mental illness required

19-4222. Prior showing of physical injury or mental illness required. No civil action may be brought by a prisoner confined in a state, local or private correctional facility for mental or emotional injury suffered while in custody without a prior showing of either:

(1) Physical injury; or

(2) Diagnosed severe and disabling mental illness.

19-4223 — Right of access to court not expanded

19-4223. Right of access to court not expanded. Nothing in this chapter shall be construed to expand the right of access to courts for institutionalized persons under federal or state law.

19-4224 — Exclusive remedy

19-4224. Exclusive remedy. This chapter sets forth the exclusive procedures and remedies in habeas corpus actions.

19-4225 — Liberty interest not created

19-4225. Liberty interest not created. Nothing in this chapter shall be construed to create a liberty interest.

19-4226 — Severability

19-4226. Severability. The provisions of this act are declared to be severable and if any provision of this act or the application of a provision to any person or circumstance is declared invalid for any reason, the declaration shall not affect the validity of the remaining portions of this act.

CHAPTER 43

19-4301 — County coroner to investigate deaths

19-4301. County coroner to investigate deaths.

(1) When a county coroner is informed that a person has died, the county coroner shall investigate that death if:

(a) The death is a suspected homicide, suicide, or occurring under suspicious or unknown circumstances;

(b) The death appears to be accidental or following an injury;

(c) The death was a result of suspected unlawful use of controlled substances or the use or abuse of chemicals or toxic agents;

(d) The death occurred while the person was incarcerated in any jail or correctional facility or the person was a ward of the state;

(e) The death appears to be by disease, injury, or toxic agent during or arising from employment;

(f) The death was an unattended death that occurred outside of a physician's current care or hospice care;

(g) The remains of the deceased are scientifically or visually unidentifiable due to the remains being skeletal or charred;

(h) The person was admitted to a hospital emergency room unconscious and unresponsive, with or without cardiopulmonary resuscitative measures being performed, and died within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a pre-diagnosed terminal or bedfast condition, a physician was in attendance within thirty (30) days preceding presentation to the hospital;

(i) The death may constitute a threat to public health; or

(j) The death is of a child if there is a reasonable articulable suspicion to believe that the death occurred without a known medical disease to account for the child's death.

(2) If a death occurs that is not attended by a physician and the cause of death cannot be certified by a physician, the coroner shall perform a medicolegal death investigation working with the sheriff of the county or the chief of police of the city in which the incident causing the death occurred or, if such county or city is unknown, to the sheriff or chief of police of the county or city where the body was found. The criminal investigation shall be the responsibility of the appropriate law enforcement agency. The medicolegal death investigation shall be the responsibility of the coroner. Upon completion of the criminal investigation, a written report shall be provided to the coroner of the county in which the death occurred or, if such county is unknown, to the coroner of the county where the body was found, and the coroner's medicolegal death investigation report shall be given to the law enforcement agency responsible.

(3) A coroner in the county where the incident causing the death occurred or, if such county is unknown, the coroner in the county where the body was found, may conduct an inquest if there are reasonable grounds to believe as a result of the investigation that the death occurred as provided in subsection (1) of this section.

(4) If an inquest is to be conducted, the coroner shall summon six (6) persons qualified by law to serve as jurors for the inquest.

(5) Nothing in this section shall be construed to affect the tenets of any church or religious belief.

19-4301A — Deaths to be reported to law enforcement officials and coroner

19-4301A. Deaths to be reported to law enforcement officials and coroner.

(1) Where any death occurs which would be subject to investigation by the coroner under section 19-4301 (1), Idaho Code, the person who finds or has custody of the body shall promptly notify either the coroner, who shall notify the appropriate law enforcement agency, or a law enforcement officer or agency, which shall notify the coroner. Pending arrival of a law enforcement officer, the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation.

(2) Except as otherwise provided in subsection (3) of this section, any person who fails to notify the coroner or law enforcement pursuant to subsection (1) of this section shall be guilty of a misdemeanor and shall be punished by up to one (1) year in the county jail or by a fine not to exceed one thousand dollars ($1,000), or by both such imprisonment and fine.

(3) Any person who, with the intent to prevent discovery of the manner of death, fails to notify or delays notification to the coroner or law enforcement pursuant to subsection (1) of this section, shall be guilty of a felony and shall be punished by

imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed fifty thousand dollars ($50,000) or by both such fine and imprisonment.

19-4301B — Performance of autopsies

19-4301B. Performance of autopsies.

(1) The coroner may, in the performance of his duties under this chapter, summon a forensic pathologist authorized to practice medicine and surgery in the state of Idaho to inspect the body and give a professional opinion as to the cause of death. The coroner or the prosecuting attorney may order a forensic autopsy performed if it is deemed necessary to determine accurately and scientifically the cause of death. Before an autopsy pursuant to this chapter may be performed on the body of any person who at the time of death was under eighteen (18) years of age, the coroner shall provide written notification to the parent or guardian of such minor person that an autopsy has been ordered, a general description of the autopsy to be performed, and a general description of the expected physical appearance of the body after the autopsy; provided that if the parent or guardian of such minor person is not reasonably identifiable or ascertainable, then no such notice is required. When a forensic autopsy has been performed, pursuant to an order of a coroner or a prosecuting attorney, no cause of action shall lie against any person, firm, or corporation for participating in or requesting such autopsy.

(2) As used in this section:

(a) "Cause of death" means a medical opinion of the disease or injury that resulted in a person's death.

(b) "Forensic autopsy" means an internal postmortem examination to discover the cause and manner of death or the extent of disease, authorized by law, and typically performed under the legal jurisdiction of a coroner for criminal justice and public health purposes.

(c) "Forensic pathologist" means a physician who is board-certified in the practice of medicine in which the principles of pathology are applied to problems of potential legal, public health, or public safety significance, including the performance of autopsies to determine the cause of death and assist in determining the manner of death.

19-4301C — Release of body

19-4301C. Release of body. Where a body is held for investigation or autopsy under this act the coroner shall, if requested by next of kin, release the body for funeral preparation not later than 24 hours after death or discovery of the body, whichever is later. Any district judge may ex parte order the 24 hour period extended upon a showing of reasonable cause by the prosecuting attorney by petition supported by affidavit.

19-4301D — Coroner to make reports

19-4301D. Coroner to make reports. When the cause and manner of death is established under the provisions of this chapter the coroner shall make and file a written report of the material facts concerning the cause and manner of death in the office of the clerk of the district court. The coroner shall promptly deliver to the prosecuting attorney of each county having criminal jurisdiction over the case copies of all records relating to every death as to which further investigation may be advisable. Any prosecuting attorney or other law enforcement official may upon request secure copies of the original of such records or other documents or pertinent objects or information deemed necessary by him to the performance of his official duties.

19-4302 — Jurors to be sworn

19-4302. Jurors to be sworn. When six (6) or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence offered them.

19-4303 — Examination of witnesses

19-4303. Examination of witnesses. Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion, or that of any of the jury, or the prosecuting attorney, has any knowledge of the facts.

19-4304 — Compelling attendance of witnesses

19-4304. Compelling attendance of witnesses. A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a magistrate judge.

19-4305 — Verdict of jury

19-4305. Verdict of jury. After hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

19-4306 — Reduction of testimony to writing

19-4306. Reduction of testimony to writing. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him with the inquisition, in the office of the clerk of the district court of the county.

19-4307 — Transmission of testimony to magistrate

19-4307. Transmission of testimony to magistrate. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the district court of the county.

19-4308 — Warrant for arrest of accused

19-4308. Warrant for arrest of accused. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one (1) or more counties, as may be necessary, for the arrest of the person charged.

19-4309 — Form of warrant

19-4309. Form of warrant. The coroner's warrant must be in substantially the following form: County of ….. The state of Idaho, to any sheriff, constable, marshal, or policeman in this state: An inquisition having been this day found by a coroner's jury before me, stating that A.B. has come to his death by the act of C.D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above named C.D., and take him before the nearest or most accessible magistrate in this county. Given under my hand this …. day of …., …..

19-4310 — Service of warrant

19-4310. Service of warrant. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate; when served in another county it need not be indorsed by a magistrate of that county.

CHAPTER 44

19-4401 — Search warrant defined

19-4401. Search warrant defined. A search warrant is an order in writing, in the name of the state of Idaho, signed by a magistrate, judge or justice directed to an officer or officers named therein, or other officer authorized by law to execute search warrants directing the officer to search for and seize property or intangibles.

19-4402 — Use of search warrant

19-4402. Use of search warrant.

(1) A search warrant may be issued to search for and seize: 1. Any property or intangible that constitutes evidence of a criminal offense. 2. Contraband, the fruits of crime, or things otherwise criminally possessed. 3. Weapons or other things by means of which a crime has been committed or reasonably appears about to be committed. 4. A person named in an arrest warrant.

19-4403 — Affidavit of probable cause

19-4403. Affidavit of probable cause. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

19-4404 — Oral affidavit — Telephonic affidavit — Procedures

19-4404. Oral affidavit — Telephonic affidavit — Procedures. In lieu of a written affidavit, the magistrate may take an oral statement under oath which shall be recorded and transcribed. The judge is authorized to administer an oath or affirmation by telephone, and to take testimony by telephone. All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. The affidavit or oral testimony as recorded must be filed with the clerk of the court.

19-4406 — Issuance of warrant

19-4406. Issuance of warrant. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate. If the affidavit for the warrant is related to the court telephonically, the magistrate may verbally authorize a peace officer to sign the magistrate's name on a duplicate original warrant, which verbal authorization shall be recorded and transcribed. After service of the warrant, this duplicate original warrant must be returned to the magistrate who authorized the signing of his name on it. The magistrate shall then endorse his name and enter the date on the warrant when it is returned to him. Any failure of the magistrate to make such an endorsement does not in itself invalidate the warrant.

19-4407 — Form of warrant

19-4407. Form of warrant. The warrant must be in substantially the following form: County of….. The state of Idaho to any sheriff, constable, marshal, or policeman in the county of….: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, or, if the affidavit be not positive, that there is probable cause for believing that — stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be) to make immediate search of the person of C.D. (or in the house situated…., describing it or any other place to be searched, with reasonable particularity, as the case may be) for the…. following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at…. (stating the place). Given under my hand, and dated this…. day of….,…..

19-4408 — Service of warrant

19-4408. Service of warrant. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it. Service of a warrant may be made by the officers mentioned in its directions in person, by mail or facsimile transmission, or by electronic mail. Unless an investigation necessitates otherwise, the officer should attempt notification on the person whom it is served prior to electronic mail service.

19-4409 — Service of warrant — Breaking open doors

19-4409. Service of warrant — Breaking open doors. The officer may break open any outer or inner door or window of a house, or any part of a house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

19-4410 — Breaking doors to liberate officer or assistant

19-4410. Breaking doors to liberate officer or assistant. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

19-4411 — Service of warrant at night

19-4411. Service of warrant at night. The magistrate must insert a direction in the warrant that it be served in the day time unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

19-4412 — Time for executing warrant

19-4412. Time for executing warrant. A search warrant must be executed and returned to the magistrate who issued it, within fourteen (14) days after its date; after the expiration of this time the warrant, unless executed, is void.

19-4413 — Receipt for property taken

19-4413. Receipt for property taken. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

19-4414 — Disposition of property

19-4414. Disposition of property. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 19-3801 — 19-3806 inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section 19-4402 , he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

19-4415 — Return of warrant

19-4415. Return of warrant. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R.S., the officer by whom this warrant was executed do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

19-4416 — Copy of inventory

19-4416. Copy of inventory. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

19-4417 — Contest of warrant

19-4417. Contest of warrant. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated by the magistrate.

19-4418 — Restoration of property

19-4418. Restoration of property. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

19-4419 — Return of papers to court

19-4419. Return of papers to court. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the court having power to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

19-4420 — Search of accused person

19-4420. Search of accused person. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or any thing which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER 45

19-4501 — Definitions

19-4501. Definitions. Where appearing in this chapter:

(1) The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state;

(2) The term "governor" includes any person performing the functions of governor by authority of the law of this state; and

(3) The term "state" refers to a state other than this state, and includes any other state or territory, organized or unorganized, of the United States of America.

19-4502 — Fugitives from justice — Duty of governor

19-4502. Fugitives from justice — Duty of governor. Subject to the provisions of this chapter, and the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

19-4503 — Form of demand

19-4503. Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing, alleging, except in cases arising under section 19-4506 , Idaho Code, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state. Such demand must be accompanied by a copy of an indictment or by information supported by affidavit of probable cause, judicial finding of probable cause, or plea of guilty, as reflected in any document from the court in the demanding state, or by affidavit made before a judge or magistrate, together with a copy of any warrant which was issued thereupon, or by a copy of a judgment of conviction or sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has fled the state after being charged with a crime, escaped from confinement, or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the judge or magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of the indictment, information, affidavit, or judgment of conviction or sentence must be authenticated by the executive authority making the demand.

19-4504 — Governor may investigate case

19-4504. Governor may investigate case. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney-general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

19-4506 — Extradition of persons not present in demanding state at time of commission of crime

19-4506. Extradition of persons not present in demanding state at time of commission of crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 19-4503 , Idaho Code, with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

19-4507 — Issue of governor’s warrant of arrest — Recitals

19-4507. Issue of governor’s warrant of arrest — Recitals. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

19-4508 — Manner and place of execution — Facsimile and electronic service

19-4508. Manner and place of execution — Facsimile and electronic service.

(1) Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

(2) A certified copy of the warrant, signed by the governor, may be sent via facsimile or in electronic format, to be executed pursuant to subsection (1) of this section.

19-4509 — Authority of arresting officer

19-4509. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

19-4510 — Rights of accused person — Application for writ of habeas corpus

19-4510. Rights of accused person — Application for writ of habeas corpus. No person arrested upon such warrant shall be delivered over to the appointed agent for the executive authority demanding him unless he shall first be taken forthwith before a judge or magistrate of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or magistrate of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

19-4511 — Penalty for noncompliance with section

19-4511. Penalty for noncompliance with section 19-4510 , Idaho Code. Any officer who shall deliver to the agent of the demanding state a person in his custody for extradition under the governor's warrant, in willful disobedience to section 19-4510 , Idaho Code, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000), or be imprisoned not more than six (6) months, or both.

19-4512 — Confinement in jail when necessary

19-4512. Confinement in jail when necessary. The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may when necessary, confine the prisoner in the jail of any county or city through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping; provided however, that such officer or agent shall produce and show to the keeper of such jail, satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

19-4513 — Arrest prior to requisition

19-4513. Arrest prior to requisition.

(1) Except in cases arising under section 19-4506 , Idaho Code, a judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge or magistrate which may be available in or of convenient access to the place where the arrest may be made, to answer to the charge or complaint and affidavit:

(a) Whenever any person within this state is charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and has fled from justice, or has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole; or

(b) Whenever complaint is made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and has fled from justice, or has been convicted of a crime in that state and has escaped from confinement, or has broken the terms of his bail, probation or parole and is believed to be in this state.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

19-4514 — Arrest without a warrant

19-4514. Arrest without a warrant. The arrest of a person may be lawfully made by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year. When so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the grounds for the arrest as provided in section 19-4513 , Idaho Code, and thereafter his answer shall be heard as if he had been arrested on a warrant.

19-4515 — Commitment to await requisition — Bail

19-4515. Commitment to await requisition — Bail. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 19-4506 , Idaho Code, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in section 19-4516 , Idaho Code, or until he shall be legally discharged.

19-4516 — Bail — In what cases — Conditions of bond

19-4516. Bail — In what cases — Conditions of bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

19-4517 — Extension of time of commitment

19-4517. Extension of time of commitment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, as provided in section 19-4515 , Idaho Code, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty (60) days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 19-4516 , Idaho Code, but within a period not to exceed sixty (60) days after the date of such new bond.

19-4518 — Forfeiture of bail

19-4518. Forfeiture of bail. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within the state. Recovery may be had on such bond in the name of this state, as in the case of other bonds given by the accused in criminal proceedings within this state.

19-4519 — Persons under criminal prosecution in this state at time of requisition

19-4519. Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor in his discretion, either may surrender such person on demand of the executive authority of another state or hold him until he has been tried and discharged, or convicted and punished in this state.

19-4520 — Guilt or innocence of accused — When inquired into

19-4520. Guilt or innocence of accused — When inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition is presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

19-4521 — Governor may recall warrant or issue alias

19-4521. Governor may recall warrant or issue alias. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

19-4522 — Fugitives from this state — Duty of governor

19-4522. Fugitives from this state — Duty of governor. Whenever the governor of this state shall demand a person charged with crime, escaping from confinement, or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia, or other official authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged and convey him to the proper officer of the county in this state in which the offense was committed.

19-4523 — Application for issuance of requisition — By whom made — Contents

19-4523. Application for issuance of requisition — By whom made — Contents.

(1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, and the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the director of the commission of pardons and parole, or the director of the department of correction or his designee, or head of any institution or facility operated by or under contract with the department of correction, or sheriff of the county from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, and the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two (2) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or sentence. The prosecuting officer, director of the department of correction or his designee, or head of any institution or facility operated by or under contract with the department of correction, may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the governor indicated by endorsement thereon, and one (1) of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

19-4524 — Immunity from service of process in certain civil actions

19-4524. Immunity from service of process in certain civil actions. A person brought into this state by or after waiver of extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he is being or has been returned, until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

19-4525 — No right of asylum — No immunity from other criminal prosecution while in this state

19-4525. No right of asylum — No immunity from other criminal prosecution while in this state. After a person has been brought back to this state by or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

19-4526 — Interpretation

19-4526. Interpretation. The provisions of this chapter shall be so interpreted and construed as to effectuate the general purposes to make uniform the law of those states which enact it.

19-4528 — Costs and expenses

19-4528. Costs and expenses. When the governor of this state, in the exercise of the authority conferred by section 2 of article 4 of the Constitution of the United States, or by the laws of this state, demands from the executive authority of any state or territory of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state, territory, or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners and paid out of the state treasury, provided that in any case where a person against whom criminal proceedings are pending in any court of this state is to be brought into this state for such proceedings, whether with or without any demand or proceedings by the governor of this state and there is no appropriation of state funds available for the purpose at the time, reasonable compensation for the services of any person employed to bring the defendant in such criminal proceedings to this state

and his expenses and the expenses on the account of the said defendant may be allowed and paid at the discretion of the board of county commissioners of the county where such criminal proceedings are pending from the general fund of said county, but no compensation for services as distinguished from expenses other than the regular salary shall be allowed any sheriff or deputy sheriff from either state or county funds.

19-4529 — Extradition of persons imprisoned or charged in another state or who have left demanding state involuntarily — Authorized signature of governor

19-4529. Extradition of persons imprisoned or charged in another state or who have left demanding state involuntarily — Authorized signature of governor.

(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 19-4523 , Idaho Code, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(3) Any written, stamped, photocopied or electronic signature of the governor on documents executed pursuant to subsections (1) and (2) of this section, applied at his direction and under his supervision, is deemed to be the authorized signature of the governor.

19-4530 — Written waiver of extradition proceedings

19-4530. Written waiver of extradition proceedings.

(1) Any person who is arrested in this state and who is charged with having committed a crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 19-4507 and 19-4508 , Idaho Code, and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge or magistrate of a court of record within this state a writing which states that he consents to return to the demanding state, except that before the waiver is executed or subscribed to by the person it is the duty of the judge or magistrate to inform the person of his right to the issuance or service of a warrant of extradition and the right to contest extradition by habeas corpus as provided in section 19-4510 , Idaho Code.

(2) If the consent is duly executed, the judge or magistrate shall direct the officer who has custody of the person to deliver the person promptly to the accredited agent or agents of the demanding state and to deliver or cause to be delivered to the agent or agents a copy of the consent.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a law enforcement agency holding a person who is alleged to have broken the terms of his probation, parole, bail or other release shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a governor's warrant if all of the following apply:

(a) The person has signed a prior waiver of extradition as a term of his current probation, parole, bail or other release in the demanding state.

(b) The law enforcement agency holding the person has received both of the following:

(i) An authenticated copy of the prior waiver of extradition signed by the person. (ii) A photograph and fingerprints properly identifying the person as the person who signed the waiver.

(4) The delivery of a fugitive to an agent of the demanding state does not constitute a waiver by this state of its right, power or privilege to regain custody of the person by extradition, detainer proceedings or other process for the purpose of trial, sentencing or punishment for any criminal offense charged against the person in this state.

(5) In any criminal proceeding wherein a court in this state has issued a warrant for the arrest of a person and that person was arrested in any other state, territory or possession of the United States, and that person waives extradition and consents to return to this state, the sheriff of the county where the warrant was issued may contract with an agent for the return of such person to this state, or the sheriff or his deputy may return such person to this state.

19-4531 — Short title

19-4531. Short title. This chapter may be cited as the "Uniform Criminal Extradition Act."

CHAPTER 46

19-4601 — Order for production of prisoner

19-4601. Order for production of prisoner. When it is necessary to have a person imprisoned in the state prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

CHAPTER 47

19-4702 — Disposition of other funds

19-4702. Disposition of other funds. Whenever any money shall be or shall come into the possession of any clerk of court, or other public officer authorized to receive the same, and no fund is specified by law into which such money shall be paid, or purpose to which the same shall be applied, the officer in possession of, or who may come into the possession of any money in such cases, shall pay the same to the state treasurer, who shall add the same to the permanent school fund, and such money shall thereafter be and remain a part of said fund.

19-4705 — Payment of fines and forfeitures — Satisfaction of judgment — Disposition — Apportionment

19-4705. Payment of fines and forfeitures — Satisfaction of judgment — Disposition — Apportionment.

(1) Except as otherwise provided in subsection (2) of this section:

(a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which the judgment was rendered. The judgment shall then be satisfied by entry in the docket of the court. The clerk of the court shall daily remit all fines and forfeitures to the county auditor, who shall at the end of each month apportion the proceeds according to the provisions of this chapter. Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this chapter, except as provided in section 49-1013 (5), Idaho Code.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned two and one-half percent (2 1/2%) to the state treasurer for deposit in the state general fund, ten percent (10%) to the search and rescue account, twenty-two and one-half percent (22 1/2%) to the district court fund, and sixty-five percent (65%) to the public shooting range fund as provided in section 36-418 , Idaho Code.

(c) Fines and forfeitures remitted for violations of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, forty-five percent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half percent (22 1/2%) to the district court fund, and twenty-two and one-half percent (22 1/2%) to the state treasurer for deposit in the public school income fund; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, where an arrest is made or a citation is issued by a city law enforcement official or by a law enforcement official of a governmental agency under contract to provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, motor vehicle laws, state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the district court fund of the county

in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and forfeitures remitted for violations not specified in this chapter shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred, except in cases where a duly designated officer of any city police department or city law enforcement official made the arrest for any such violation, in which case ninety percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving any of the provisions of chapter 71, title 67 , Idaho Code, shall be apportioned ten percent (10%) to the state treasurer, of which eighty-six percent (86%) shall be deposited to the state general fund and fourteen percent (14%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116 , Idaho Code, and ninety percent (90%) to the general fund of the county or city whose law enforcement official issued the citation.

(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013 (3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(j) Fines remitted for violations of section 18-7008 , Idaho Code, shall be apportioned ten percent (10%) to the district court fund, sixty-five percent (65%) to the county where the trespass occurred for appropriation to the sheriff's office, and twenty-five percent (25%) to the Idaho rangeland resources commission for expanded education programs regarding private property rights and land user responsibility.

(k) Fines remitted for violations of section 18-9101 , Idaho Code, shall be apportioned ninety percent (90%) to the county where the violation occurred for appropriation to the sheriff's office and ten percent (10%) to the district court fund of the county where the violation occurred.

(2) Any fine or forfeiture remitted for any misdemeanor violation for which an increase in the maximum fine became effective on or after July 1, 2005, shall be apportioned as follows:

(a) Any funds remitted, up to the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation shall be apportioned according to the applicable provisions of subsection (1) of this section; and

(b) Any other funds remitted, in excess of the maximum amount that could have been imposed before July 1, 2005, as a fine for the misdemeanor violation shall be remitted to the state treasurer and shall be deposited in the drug court, mental health court and family court services fund as set forth in section 1-1625 , Idaho Code.

(3) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

19-4706 — Remission of fines to state treasurer

19-4706. Remission of fines to state treasurer. The ten per cent (10%) apportionment of fines and forfeitures to be remitted to the state treasurer for deposit in the state general fund shall be remitted within five (5) days after the end of the month in which such fines and forfeitures were remitted to the county auditor.

19-4707 — Designation of other than clerk of court to collect fines

19-4707. Designation of other than clerk of court to collect fines. If it appears that there is a necessity that fines and forfeitures be initially collected by a person other than the clerk of the district court or a person appointed by the clerk for that purpose, the Supreme Court by rule or administrative order may provide for the designation of persons to receive

such fines and forfeitures. Persons so designated shall account for such fines and forfeitures in the same manner required of the clerk of the district court and shall pay such fines and forfeitures to the clerk of the district court of the county in which such fines and forfeitures are collected.

19-4708 — Collection of debts owed to courts — Contracts for collection

19-4708. Collection of debts owed to courts — Contracts for collection.

(1) The supreme court, or the clerks of the district court with the approval of the administrative district judge, may enter into contracts in accordance with this section for collection services for debts owed to courts. The cost of collection shall be paid by the defendant or juvenile offender as an administrative surcharge when the defendant or juvenile offender fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section.

(2) As used in this section:

(a) "Contracting agent" means a person, firm or other entity who contracts to provide collection services.

(b) "Cost of collection" means the fee specified in contracts to be paid to or retained by a contracting agent for collection services.

(c) "Debts owed to courts" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, moneys expended in providing counsel and other defense services to indigent defendants or juvenile offenders or other charges which a court judgment or disposition has ordered to be paid to the court in civil, criminal, or juvenile cases, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law.

(3) The supreme court may adopt rules as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section, procedures to be followed by courts which utilize collection services under such contracts, and procedures for the compromise of debts owed to courts in criminal or juvenile cases.

(4) Each contract entered into pursuant to this section shall specify the scope of work to be performed and provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection and shall not exceed thirty-three percent (33%) of the amount collected. The cost of collection shall be deducted from the amount collected but shall not be deducted from the debts owed to courts.

(5) Contracts entered into shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person’s amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(6) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute the amounts collected in accordance with the law.

CHAPTER 48

19-4801 — short title

19-4801. short title. This chapter shall be known and may be cited as the "Criminal Justice Integrated Data System Act."

19-4802 — legislative intent

19-4802. legislative intent. The local governments and state agencies and departments that comprise and interact with the criminal justice system in Idaho possess a wealth of data. A centralized data repository to manage and link data across separate entities will aid in evaluating the effectiveness of the criminal justice system and enable data-driven, cost-saving decision-making on issues facing the criminal justice system in Idaho. The Criminal Justice Integrated Data System establishes the legal framework by which the various contributing entities may share, integrate, merge, observe, examine, and research siloed data in a way that protects sensitive or legally protected personal information.

19-4803 — criminal justice integrated data system

19-4803. criminal justice integrated data system.

(1) There is hereby created in the office of the state controller the criminal justice integrated data system to receive, store, secure, and maintain data and information from local governments, state agencies and departments, or volunteer nongovernmental entities.

(2) The office of the state controller, as the managing agency of the criminal justice integrated data system, may:

(a) Require contributing local governments, state agencies and departments, or volunteer nongovernmental entities to deliver data and information in a certain format and on schedules established for the criminal justice integrated data system; and

(b) Enter into or adopt a memorandum of understanding with each contributing local government, state agency and department, or volunteer nongovernmental entity, and such memorandum must identify the confidentiality of the information and any conditions or restrictions on the use of the data or information.

(3) No memorandum of understanding with a contributing volunteer nongovernmental entity shall:

(a) Give said volunteer nongovernmental entity priority in determining the use of the data system or compel the criminal justice integrated data system to produce any project, report, or data analysis for or on behalf of any contributing volunteer nongovernmental entity; or

(b) Waive or otherwise inhibit a contributing volunteer nongovernmental entity's option to discontinue further contribution of data or information to the criminal justice integrated data system at any time.

(4) The records and data collected and stored by the criminal justice integrated data system shall be exempt from disclosure as set forth in section 74-105 (19), Idaho Code. The confidentiality of all records and data collected by the criminal justice integrated data system shall comply with applicable state and federal laws governing the privacy of records, data, and personal identifiable information.

19-4804 — data oversight council

19-4804. data oversight council.

(1) There is hereby created in the office of the state controller the data oversight council. All requests for projects, reports, and data analyses generated from the criminal justice integrated data system must be approved by the data oversight council.

(2) The data oversight council shall be comprised of:

(a) The governor or his designee;

(b) The chief justice of the Idaho supreme court or his designee;

(c) The attorney general or his designee;

(d) The state controller or his designee;

(e) The director of the department of correction or his designee;

(f) The executive director of the commission of pardons and parole or his designee;

(g) The director of the department of juvenile corrections or his designee;

(h) The director of the department of health and welfare or his designee;

(i) The director of the Idaho state police or his designee;

(j) The administrator of the office of information technology services or his designee; and

(k) A designee from the state board of education or the state department of education selected by the governor.

(3) Any designee under subsection (2) of this section must be an employee in the office, agency, or department of his respective designating authority. Members of the data oversight council shall serve without any additional compensation or honorarium.

(4) The data oversight council, by majority vote, shall elect a chairman and vice chairman among its members who shall serve a term of two (2) years while serving on the council.

(5) All meetings of the data oversight council shall be held in compliance with the open meetings law as provided in chapter 2, title 74 , Idaho Code.

(6) The state controller shall work in collaboration with the data oversight council to manage the criminal justice integrated data system. It shall be the duty of the state controller, in conjunction with the data oversight council, to assure

confidentiality of all records and data collected by the criminal justice integrated data system and to assure compliance with applicable state and federal laws and rules governing the privacy of records, data, and personal identifiable information.

(7) Any projects, reports, or data analyses in final form produced by persons authorized to conduct research and analyses under this chapter shall belong to the requesting local government or state agency or department and not the office of the state controller.

(8) The Idaho legislature, as well as the contributing state agencies and departments and local governments, shall have priority in requesting any projects, reports, or data analyses to be produced by persons authorized by the data oversight council. The data oversight council may, in its discretion, deny any requested project, report, or data analysis where it determines the request is unduly burdensome, voluminous, or cost-prohibitive.

(9) The office of the state controller, members of the data oversight council, and all contributing local governments, state agencies and departments, or volunteer nongovernmental entities shall be immune from liability to any person or entity for any invasion of the right to privacy or use of records or data generated by the criminal justice integrated data system.

(10) In collaboration with contributing local governments, state agencies and departments, or volunteer nongovernmental entities and the data oversight council, the state controller may establish policies addressing the creation of reports generated through the query of records and data possessed by the criminal justice integrated data system. Provided, however, contributing volunteer nongovernmental entities may collaborate only with respect to the data or information contributed by that volunteer nongovernmental entity.

CHAPTER 49

19-4901 — Remedy — To whom available — Conditions

19-4901. Remedy — To whom available — Conditions.

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, or conditional release was unlawfully revoked by the court in which he was convicted, or that he is otherwise unlawfully held in custody or other restraint;

(6) Subject to the provisions of section 19-4902

(b) through (g), Idaho Code, that the petitioner is innocent of the offense; or

(7) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy: may institute, without paying a filing fee, a proceeding under this act to secure relief.

(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction. Any issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings, unless it appears to the court, on the basis of a substantial factual showing by affidavit, deposition or otherwise, that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier. Except as otherwise provided in this act, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

19-4902 — Commencement of proceedings — Verification — Filing — Service — DNA testing

19-4902. Commencement of proceedings — Verification — Filing — Service — DNA testing.

(a) A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction took place. An application may be filed at any time within one (1) year from the expiration of the time for

appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

(b) A petitioner may, at any time, file a petition before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing on evidence that was secured in relation to the trial which resulted in his or her conviction but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of trial. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

(c) The petitioner must present a prima facie case that:

(1) Identity was an issue in the trial which resulted in his or her conviction; and

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material aspect.

(d) A petitioner who pleaded guilty in the underlying case may file a petition under subsection (b) of this section.

(e) The trial court shall allow the testing under reasonable conditions designed to protect the state's interests in the integrity of the evidence and the testing process upon a determination that:

(1) The result of the testing has the scientific potential to produce new, noncumulative evidence that would show that it is more probable than not that the petitioner is innocent; and

(2) The testing method requested would likely produce admissible results under the Idaho rules of evidence.

(f) In the event the fingerprint or forensic DNA test results demonstrate, in light of all admissible evidence, that the petitioner is not the person who committed the offense, the court shall order the appropriate relief.

(g) The cost of the forensic DNA test shall be at the petitioner's expense, except to the extent the petitioner qualifies for the test at public expense pursuant to chapter 8, title 19 , Idaho Code, in which case the fingerprint or forensic DNA test shall be performed by, and paid for by funds allocated for, Idaho state police forensic services, provided the requested method of testing or specific technology is validated by the lab, within the laboratory accreditation scope, and laboratory staff are qualified and satisfactorily performing proficiency testing in the testing method. If the laboratory does not offer the specific type of testing required, the Idaho state police shall not be required to outsource the testing or in any way pay for or reimburse any entity for the testing to be performed. For the purposes of this subsection, "validated" means the accumulation of test data within the laboratory to demonstrate that established methods and procedures perform as expected in the laboratory. The petitioner may choose an ISO/IEC 17025 or an American society of crime laboratory directors/laboratory accreditation board accredited DNA testing laboratory to perform the DNA testing. Such testing shall be at the petitioner's expense.

19-4903 — Application — Contents

19-4903. Application — Contents. The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 19-4902 . Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

19-4904 — Inability to pay costs

19-4904. Inability to pay costs. If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, witness fees and expenses, and legal services, these costs and expenses, and a court-appointed attorney may be made available to the applicant in the preparation of the application, in the trial court, and on appeal, and paid, on order of the district court, by the county in which the application is filed.

19-4905 — Costs of state

19-4905. Costs of state. All costs and expenses necessarily incurred by the state in the proceedings shall be paid by the county in which the application is filed.

19-4906 — Pleadings and judgment on pleadings

19-4906. Pleadings and judgment on pleadings.

(a) Within 30 days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

19-4907 — Hearing — Evidence — Order — Presence of applicant

19-4907. Hearing — Evidence — Order — Presence of applicant.

(a) The application shall be heard in, and before any judge of, the court in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pre-trial, discovery and appellate procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

(b) The applicant should be produced at the hearing on a motion attacking a sentence where there are substantial issues of fact as to evidence in which he participated. The sentencing court has discretion to ascertain whether the claim is substantial before granting a full evidentiary hearing and requiring the applicant to be present.

19-4908 — Waiver of or failure to assert claims

19-4908. Waiver of or failure to assert claims. All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

19-4909 — Review

19-4909. Review. A final judgment entered under this act may be reviewed by the Supreme Court of this state on appeal brought either by the applicant or by the state within forty-two (42) days from the entry of the judgment. On appeal the state shall be represented by the attorney general.

19-4910 — Uniformity of interpretation

19-4910. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

19-4911 — Short title

19-4911. Short title. This act may be cited as the Uniform Post-Conviction Procedure Act.

CHAPTER 50

19-5001 — Text of agreement

19-5001. Text of agreement. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

(a) The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

(b) As used in this agreement:

(1) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(2) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to subsection (c) of this section or at the time that a request for custody or availability is initiated pursuant to subsection (d) of this section.

(3) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to subsections (c) and (d) of this section.

(c) (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in paragraph (1) of this subsection shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to paragraph (1) of this subsection shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of

imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to paragraph (1) of this subsection shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (4) of this subsection, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(d) (1) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with subsection (e)(1) of this section upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in paragraph (1) of this subsection, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this paragraph, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this act shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (1) of this subsection, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to subsection (e)(5) of this section, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) (1) In response to a request made under subsections (c) or (d) of this section, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in subsection (c) of this section. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand: (A) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given. (B) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in subsections (c) or (d) of this section, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any

detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one (1) or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receiving custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one (1) or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payments of costs, or responsibilities therefor.

(f) (1) In determining the duration and expiration dates of the time periods provided in subsections (c) and (d) of this section, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

(g) Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

(h) This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

(i) This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

19-5002 — Appropriate court — Defined

19-5002. Appropriate court — Defined. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean the state district courts.

19-5003 — Cooperation of officials

19-5003. Cooperation of officials. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

19-5004 — Persistent violators

19-5004. Persistent violators. Nothing in this act or in the agreement on detainers shall be construed to require the application of section 19-2514 , Idaho Code, to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

19-5005 — Escape from custody obtained pursuant to request for final disposition — Effect

19-5005. Escape from custody obtained pursuant to request for final disposition — Effect. Escape from custody while in another state pursuant to the agreement on detainers and escape from custody in this state by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information or complaint voids the request.

19-5006 — Mandatory delivery of custody

19-5006. Mandatory delivery of custody. It shall be lawful and mandatory upon the director of correction in charge of the Idaho state prison to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

19-5007 — Administration

19-5007. Administration. The attorney general, or his designee, shall serve as the administrator of the agreement on detainers.

19-5008 — Distribution of copies of act

19-5008. Distribution of copies of act. Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

CHAPTER 51

19-5101 — Definitions

19-5101. Definitions. As used in this act:

(a) "Council" means the Idaho peace officer standards and training council.

(b) "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates.

(c) "Law enforcement" means any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, probation, rehabilitation, and juvenile delinquency.

(d) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(e) "Political subdivision" means any city or county.

(f) "Emergency communications officer" means any emergency call taker or dispatcher whose primary responsibility is to receive or dispatch calls for emergency services in the state of Idaho.

19-5102 — Council established — Chairman — Members

19-5102. Council established — Chairman — Members.

(1) There is hereby established in the Idaho state police the Idaho peace officer standards and training council. The chairman of the council shall be appointed by the governor and shall be a voting member of the council. The council shall be composed of the following members, which shall reflect a reasonable geographic balance throughout the state:

(a) Three (3) city chiefs of police or their designees;

(b) Three (3) county sheriffs or their designees;

(c) The director of the Idaho state police or his designee;

(d) A county prosecuting attorney or his designee;

(e) The attorney general or his designee;

(f) The special agent in charge of the Idaho division of the federal bureau of investigation or his designee;

(g) The director of the department of correction or his designee;

(h) The director of the fish and game department or his designee;

(i) The director of the department of juvenile corrections or his designee; and

(j) A representative from the Idaho association of counties juvenile justice administrators or the Idaho association of counties adult misdemeanor probation administrators association.

(2) In addition, there shall be advisory to the council, as ex officio nonvoting members of the council, the executive directors of the Idaho association of counties and association of Idaho cities.

19-5103 — Council — Terms of office

19-5103. Council — Terms of office. Council members not serving by virtue of their office shall be appointed for four (4) year terms initially staggered as specified by the governor.

19-5104 — Council — Expiration of term — Vacancies — Additional terms

19-5104. Council — Expiration of term — Vacancies — Additional terms. No member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment and any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired portion of the term of the member whom he succeeds. Any member may be appointed for additional terms.

19-5105 — Chairman — Vice-chairman

19-5105. Chairman — Vice-chairman. The governor shall appoint a chairman, and the council annually shall elect a vice-chairman from among the membership.

19-5106 — Membership no disqualification for other public office

19-5106. Membership no disqualification for other public office. Notwithstanding any provision of any statute, ordinance, local law or charter provision to the contrary, membership on the commission shall not disqualify any member from holding any other public office or cause the forfeiture thereof.

19-5107 — Rules and regulations

19-5107. Rules and regulations. The council shall promulgate, amend and rescind such rules and regulations in accordance with the provisions of chapter 52, title 67 , Idaho Code, it deems necessary to carry out the provisions of this chapter.

19-5108 — Meetings — Quorum — Votes — Advisory and ex officio members

19-5108. Meetings — Quorum — Votes — Advisory and ex officio members. The council shall meet a minimum of once each calendar year and more often at the call of the chairman. The presence of a majority of the voting members of the council shall constitute a quorum for doing business. Advisory and ex officio members shall be entitled to participate in the business and deliberation of the council, but shall not be entitled to vote. The council shall establish its own procedures and requirements with respect to place and conduct of its meetings.

19-5109 — Powers of the council — Standards of training, education and employment of peace officers — Certification — Penalties

19-5109. Powers of the council — Standards of training, education and employment of peace officers — Certification — Penalties.

(1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training that peace officers shall complete in order to be eligible for permanent employment as peace officers and the time within which such basic training must be completed. One (1) component of minimum basic training shall be a course in the investigation and collection of evidence in cases involving an allegation of sexual assault or battery;

(b) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions;

(c) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position;

(d) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers;

(e) To establish the minimum requirements of courses of study, attendance, equipment, and facilities of all approved schools and the scholastic requirement, experience, and training of instructors at all approved schools;

(f) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers;

(g) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state;

(h) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision;

(i) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advanced courses of instruction successfully completed by such peace officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency; and

(j) To allow a peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal peace officer shall receive a certificate of satisfactorily completing the academy.

(2) After January 1, 1974, any peace officer as defined in section 19-5101 (d), Idaho Code, employed after January 1, 1974, except any elected official or deputy serving civil process, the deputy director of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the Idaho state police, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers who, because of the number of full-time peace officers they supervise, have duties that are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(3) The council is designated as a criminal justice agency as defined in section 67-3012 (7)(A)(ii), Idaho Code, for the purposes of obtaining and retaining confidential criminal justice information by means of criminal justice services as defined in section 67-3012 (8), Idaho Code. Such information shall be used to provide for the certification, suspension or revocation of certification of peace officers and public safety personnel subject to certification by the council. The council may not record or retain any confidential criminal justice information without complying with the provisions of chapter 30, title 67 , Idaho Code.

(4) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date on which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council shall decertify any officer who is convicted of any felony or offense that would be a felony if committed in this state. The council may decertify any officer who:

(a) Is convicted of any misdemeanor;

(b) Willfully or otherwise falsifies or omits any information to obtain any certified status; or

(c) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council. All proceedings taken by the council shall be conducted in accordance with chapter 52, title 67 , Idaho Code.

(5) Any law enforcement agency as defined in section 19-5101 (c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action shall, within fifteen (15) days of such action, make a report to the council.

(6) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

(7) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training and certification standards for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.

(8) The council may, upon recommendation of the correction standards and training council and pursuant to the requirements of this section, establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers.

(9) The council may, upon recommendation from the misdemeanor probation training council and pursuant to the requirements of this section, establish minimum basic training, continuing education, and certification standards for misdemeanor probation officers, whether those officers are employees of, or by private sector contract with, a county.

(10) The council may reject any applicant for certification who has been convicted of a misdemeanor. The council shall reject an applicant for certification who has been convicted of any felony the punishment for which could have been imprisonment in a federal or state penal institution and that is either enumerated in section 18-310 (2), Idaho Code, or is a substantially equivalent offense from a jurisdiction other than the state of Idaho. The council may reject any applicant for certification who has been convicted of a felony that has been set aside, expunged, or pardoned or reduced to a misdemeanor or dismissed pursuant to the terms of section 19-2604 , Idaho Code, or that is subject to the terms of a withheld judgment.

(11) As used in this section, "convicted" means a plea or finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred or withheld, and regardless of whether the plea or conviction is set aside or withdrawn or the case is dismissed or reduced under section 19-2604 , Idaho Code, or any other comparable statute or procedure where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt or conviction.

19-5110 — Political subdivisions — Application for aid — Requirements

19-5110. Political subdivisions — Application for aid — Requirements. Any political subdivision or state agency which desires to receive aid pursuant to this chapter shall make application upon a form supplied by the council. Applications submitted pursuant to section 19-5109 , Idaho Code, shall be accompanied by a certified copy of an ordinance adopted by its governing body providing that, while receiving any aid pursuant to this act, such political subdivision will adhere to the standards for recruitment and training established by the council or a certified copy of the agency's or political subdivision's merit rules, regulations or requirements.

19-5111 — Application for training — Approval by council

19-5111. Application for training — Approval by council. The council shall be the exclusive body for the approval of applications to attend the schools and programs supported under the provisions of section 19-5109 , Idaho Code.

19-5112 — Agreement by officer to serve — Violations

19-5112. Agreement by officer to serve — Violations.

(1) Any peace officer attending such schools or programs shall execute an agreement whereby said officer promises to remain within the law enforcement profession in the state of Idaho in a position approved by rules and regulations of the council for two (2) years following graduation, subject only to such disqualifications as established by the council and included within the agreement.

(2) Violation of the provisions of this section or the terms of any contract or agreement entered into pursuant to such section shall give rise to a civil action which may be commenced by the council for and on behalf of the state of Idaho for restitution of any and all sums paid by the council plus costs and reasonable attorney's fees.

19-5113 — Investigations — Authority to administer oaths — Subpoenas

19-5113. Investigations — Authority to administer oaths — Subpoenas. To determine whether the standards, training, qualifications of instructors or schools, the obligations of applicants for aid, or recipients of aid, are being complied with and for such other purposes as the council deems necessary and not inconsistent with the intent of this act, the director of the Idaho state police or his authorized representative may administer oaths, take depositions and/or issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information. If any person fails to comply with any subpoena issued under this section or refuses to testify on any matter on which he lawfully may be interrogated, compliance with such subpoena shall be sought in the district court wherein such subpoena was served.

19-5114 — Annual reports

19-5114. Annual reports. The council shall report annually to the governor and legislature through the director of the Idaho state police on its activities and may make such other reports and recommendations as it deems desirable.

19-5115 — Reimbursement for expenses

19-5115. Reimbursement for expenses. Members of the council shall be compensated as provided in section 59-509 (b), Idaho Code, to be paid from the funds authorized and appropriated to the council pursuant to the provisions of section 23-404 , Idaho Code.

19-5116 — Peace officers standards and training fund

19-5116. Peace officers standards and training fund.

(a) There is hereby established in the state treasury the peace officers standards and training fund. All moneys deposited to the fund shall be expended by the peace officer standards and training council for the following purposes:

(1) Training peace officers, county detention officers, and self-sponsored students within the state of Idaho, including, but not limited to, sheriffs and their deputies, officers of the Idaho state police, conservation officers of the Idaho department of fish and game, emergency communications officers, and city and county prosecutors and their deputies;

(2) Salaries, costs and expenses relating to such training as provided in paragraph (1) of this subsection;

(3) Such capital expenditures as the peace officer standards and training council may provide for the acquisition, construction and/or improvement of a peace officer standards and training academy; and

(4) Such expenditures as may be necessary to aid approved peace officers training programs or county detention officer programs certified as having met the standards established by the peace officer standards and training council.

(b) The peace officers standards and training fund shall be funded as provided in sections 31-3201A , 31-3201B , and 23-404 , Idaho Code.

(c) All contributions and other moneys and appropriations designated for peace officers standards and training shall be deposited in the peace officers standards and training fund.

(d) Moneys received into the fund as provided in subsection (c) of this section shall be accounted for separately.

(e) If the fiscal year-end balance in the fund pursuant to sections 31-3201A , 31-3201B , and 23-404 , Idaho Code, exceeds one million dollars ($1,000,000), the excess shall revert to the general fund.

(f) Moneys received into the fund pursuant to the provisions of section 31-3201D , Idaho Code, shall be used for the purposes of providing basic training, continuing education and certification of misdemeanor probation officers, whether those officers are employees of or by private sector contract with a county.

19-5117 — Powers of the council — Standards of training, education and employment of county detention officers — Certification — Penalties

19-5117. Powers of the council — Standards of training, education and employment of county detention officers — Certification — Penalties.

(1) It shall be the duty of and the council shall have the power:

(a) To establish the requirements of minimum basic training which county detention officers shall complete in order to be eligible for permanent employment as a county detention officer;

(b) To establish such basic training and certification so that it can be completed within one (1) year of employment as a county detention officer;

(c) To establish the requirements of minimum training standards for employment as a county detention officer in probationary, temporary, part-time and/or emergency situations;

(d) To certify county detention officers as having completed all requirements established by the council in order to be eligible for permanent employment as a county detention officer;

(e) To receive applications for financial assistance from counties and disburse available state funds to the counties for salaries and allowable living expenses or any part thereof, incurred while in attendance at approved training programs and schools, as authorized by the council. The annual reimbursement authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B , Idaho Code;

(f) To maintain permanent files and transcripts for all county detention officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such county detention officers while employed in this state and to include the law enforcement employment history by agency and dates of service of the officer. Such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

(2) Any county detention officer employed after July 1, 1997, shall be trained and certified within one (1) year of employment. Current county detention officers, who were employed prior to July 1, 1997, shall comply with the training and certification provisions of this section by July 1, 1999.

19-5118 — power of the council to establish and assess fees

19-5118. power of the council to establish and assess fees.

(1) The council may establish and assess fees for:

(a) The use of its facilities and equipment by private entities and non-law enforcement institutions;

(b) The use of its facilities and equipment by law enforcement agencies for purposes other than basic training; and

(c) Facilitating, arranging, providing or assisting with the training, certification or continuing education requirements of private entities, non-law enforcement institutions and law enforcement agencies.

(2) The council shall deposit assessed fees into the peace officer standards and training fund established in section 19-5116 , Idaho Code. The council may expend moneys as deemed necessary to cover the costs for the uses identified in this section.

19-5119 — powers of the council — standards of training, education and employment of emergency communications officers — certification — penalties

19-5119. powers of the council — standards of training, education and employment of emergency communications officers — certification — penalties.

(1) The council shall have the duty and the power to:

(a) Establish the requirements of minimum basic training for all emergency communications officers, in order to be eligible for permanent employment as an emergency communications officer, that can be completed within eighteen (18) months of employment as an emergency communications officer;

(b) Establish such basic training and certification, to include alternative authorized council training, so that certification can be attained within eighteen (18) months of employment as an emergency communications officer;

(c) Establish the requirements of minimum training standards for employment as an emergency communications officer in probationary, temporary, part-time and emergency situations;

(d) Certify emergency communications officers as having completed all requirements established by the council to be eligible for permanent employment as an emergency communications officer; and

(e) Maintain permanent files and transcripts for all emergency communications officers certified by the council, to include only courses or advanced courses of instruction successfully completed by such emergency communications officers and specifically required to obtain and maintain emergency communications officer certification while employed in this state. Such information shall be made available by the council to any employer upon the receipt of a signed waiver from the emergency communications officer to release such files and transcripts.

(2) The council shall, upon recommendation of the Idaho public safety communications commission and pursuant to the requirements of this section, establish minimum basic training and certification standards for all emergency communications officers whose primary responsibility is to receive and dispatch calls for emergency services in the state of Idaho, and that can be completed within eighteen (18) months of employment.

(3) The council shall decertify any emergency communications officer convicted of any felony or offense that would be a felony if committed in this state. The council may decertify any emergency communications officer who:

(a) Is convicted of a misdemeanor;

(b) Willfully or otherwise falsifies or omits any information to obtain any certified status; or

(c) Violates any of the standards of conduct as established by the council's code of ethics, as adopted and amended by the council. All decertification proceedings taken by the council shall be conducted in accordance with chapter 52, title 67 , Idaho Code.

(4) Any emergency communications officers who begin employment after July 1, 2017, shall be trained and certified within eighteen (18) months of employment. Current emergency communications officers who began employment between July 1, 2012, and June 30, 2017, shall comply with the training and certification provisions of this section by January 1, 2019. Current emergency communications officers who began employment prior to July 1, 2012, may comply with the training and certification provisions of this section at the discretion of their employers.

CHAPTER 52

19-5201 — Idaho public safety and security information system — Intent and purpose

19-5201. Idaho public safety and security information system — Intent and purpose. The maintenance of law and order is, and always has been, a primary function of government and is so recognized in both federal and state constitutions. The state has an unmistakable responsibility to give full support to all public agencies of the criminal justice system. This responsibility includes the provision of an efficient law enforcement information system available to all state and local agencies. It is the intent of the legislature that such a system be established and maintained in a condition adequate to the needs of public safety and security. It is the purpose of this chapter to establish a public safety and security information system, known as "ILETS," for the state of Idaho.

19-5202 — Establishment of information system — Use — Access charge — Interstate connection

19-5202. Establishment of information system — Use — Access charge — Interstate connection.

(1) Establishment of information system. The director of the Idaho state police shall establish a public safety and security information system, known as "ILETS," which will interconnect the criminal justice agencies of this state and its political subdivisions and all agencies engaged in the promotion of highway safety into a unified information system. The director is authorized to lease such transmitting and receiving facilities and equipment as may be necessary to establish and maintain such a system.

(2) Use of information system. The public safety and security information system, known as "ILETS," shall be used exclusively for the law enforcement and criminal justice business of the state of Idaho and all the political subdivisions thereof, including all agencies engaged in the promotion of traffic safety.

(3) Judiciary and traffic safety. Nothing in this chapter shall prohibit the use of or participation in the information system herein provided by the judicial branch of the state government or by any other department, agency or branch of state or local government engaged in traffic safety.

(4) Access. The quarterly access fee to be charged each department or agency participating in the information system shall be set by the public safety and security information board, known as the "ILETS board," and in setting such fee the board shall take into consideration the usage of said system by each participant. There is hereby created the public safety and security information fund, to be known as the ILETS fund. All access fees collected under the provisions of this chapter shall be paid into the fund.

(5) Interstate connection. The public safety and security information system provided for herein is hereby authorized to connect and participate with information systems of other states and provinces of Canada.

19-5203 — Public safety and security information system board — Creation — Composition — Terms — Rules — Compensation of members

19-5203. Public safety and security information system board — Creation — Composition — Terms — Rules — Compensation of members.

(1) There is hereby created within the Idaho state police a public safety and security information system board, to be known as the ILETS board, which shall be composed of five (5) members appointed by the governor. The members of the information system board shall be composed of the following:

(a) Two (2) incumbent county sheriffs;

(b) Two (2) incumbent city chiefs of police;

(c) One (1) member of the Idaho state police.

(2) The term of office of the first board shall be staggered with the one (1) appointment expiring January 1, 1972; one (1) appointment expiring January 1, 1973; one (1) appointment expiring January 1, 1974; one (1) appointment expiring January 1, 1975; and one (1) appointment expiring January 1, 1976. Thereafter, the term of office of each chief of police, sheriff and member of the Idaho state police shall be for a term of five (5) years. The director of the Idaho state police shall be a permanent member of the board. In the event any chief of police, sheriff or member of the Idaho state police ceases to be such chief of police, sheriff, or member of the Idaho state police his appointment to said board shall terminate and cease immediately and the governor shall appoint a qualified person in such category to fill the unexpired term of such member.

(3) The board shall, upon their appointment, adopt such rules, procedures and methods of operation as may be necessary to establish and put into use the most efficient and economical statewide public safety and security information system and shall publish and distribute said rules and procedures to each participating department, agency or office.

(4) The public safety and security information system board shall have exclusive management control over the entire Idaho public safety and security information system, which includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry which make up the system and any access thereto. The term public safety and security information system shall mean the information system established by the director of the Idaho state police pursuant to subsection (1) of section 19-5202 , Idaho Code, and shall not apply to any type of voice-oriented transmission whether it be by mobile radio, microwave or telephone.

(5) Salaries and expenses. Members of said board shall be compensated as provided by section 59-509 (b), Idaho Code, which expenses shall be paid from moneys appropriated for the funding of this chapter. The performance of duties under this chapter by a member of the board shall be deemed to be in performance of his duties as an employee of his particular branch of government.

(6) Federal funding, gifts, donations. The director is authorized to apply for and accept federal funds granted by the congress of the United States, or by executive order, all of which must be deposited in the ILETS fund, and which may be expended only after a legislative appropriation. The director may accept gifts and donations from individuals and private organizations or foundations for all or any of the purposes of chapter 52, title 19 , Idaho Code.

19-5204 — Executive officer of board

19-5204. Executive officer of board. The director of the Idaho state police shall be the executive officer of the ILETS board and shall be responsible for the carrying out of the policies and rules of the board and with the management and expenditures of such funds as may be appropriated to implement this chapter.

CHAPTER 53

19-5302 — Victims of crime

19-5302. Victims of crime. If a district court or a magistrate division orders the defendant to pay restitution, the court shall order the defendant to pay such restitution to the victim or victims injured by the defendant’s action.

19-5303 — Cost of medical exams to be paid by law enforcement agency

19-5303. Cost of medical exams to be paid by law enforcement agency. When the victim of any crime is directed or authorized by a law enforcement agency to obtain a medical examination for the purpose of procuring evidence for use by a law enforcement agency in the investigation or prosecution of the crime, the expense incurred shall be paid by the law enforcement agency. Provided however, the cost of forensic and/or medical examinations of alleged victims of sexual assault shall be paid for from the crime victims compensation account, as established by section 72-1009 , Idaho Code.

The provisions of this section shall not be construed to require a law enforcement agency to bear the expense of any medical treatment of the victim.

19-5304 — Restitution for crime victims — Orders to be separate — When restitution is not appropriate — Other remedies — Evidentiary hearings — Definitions

19-5304. Restitution for crime victims — Orders to be separate — When restitution is not appropriate — Other remedies — Evidentiary hearings — Definitions.

(1) As used in this chapter:

(a) "Economic loss" includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

(b) "Found guilty of any crime" shall mean a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.

(c) "Value" shall be as defined in section 18-2402 (11), Idaho Code.

(d) "Property" shall be as defined in section 18-2402 (8), Idaho Code.

(e) "Victim" shall mean:

(i) The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases; (ii) Any health care provider who has provided medical treatment to a directly injured victim if such treatment is for an injury resulting from the defendant's criminal conduct, and who has not been otherwise compensated for such treatment by the directly injured victim or the immediate family of the directly injured victim; (iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72 , Idaho Code, from which payment was made to or on behalf of a directly injured victim pursuant to the requirements of Idaho law as a result of the defendant's criminal conduct; (iv) A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract, or payments to or on behalf of a directly injured victim to pay or settle a claim or claims against such person or entity in tort or pursuant to statute and arising from the crime.

(2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

(3) If the court determines that restitution is inappropriate or undesirable or if only partial or nominal restitution is ordered, it shall enter an order articulating the reasons therefor on the record.

(4) If a separate written order of restitution is issued, an order of restitution shall be for an amount certain and shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later. An order of restitution may provide for interest from the date of the economic loss or injury.

(5) The court may order the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.

(6) Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

(7) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.

(8) In determining restitution, where it appears that more than one (1) person is responsible for a crime that results in economic loss to a victim, and one (1) or more of the suspects or defendants are not found, apprehended, charged, convicted or ordered to pay restitution, the court may require the remaining defendant or defendants, who are convicted of or plead guilty to the crime, to be jointly and severally responsible for the entire economic loss to the victim.

(9) The court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court.

(10) A defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry of the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.

(11) An order of restitution shall not preclude the victim from seeking any other legal remedy.

(12) Every presentence report shall include a full statement of economic loss suffered by the victim or victims of the defendant's crime or crimes.

(13) If there is more than one (1) victim, the restitution order shall provide that the directly injured victim(s) be fully compensated for so much of the loss caused by the defendant's criminal conduct which has not been paid by a third party, including persons referred to in subsection (1)(e)(ii), (iii) and (iv) of this section.

(14) When a person is found guilty of violating section 18-8007 , Idaho Code, the court, in addition to any other sentence imposed, may order the person to pay to any victim an amount of money equal to the amount of that victim's economic loss caused by the person as a result of the incident that created the duties as provided in section 18-8007 , Idaho Code.

19-5305 — Collection of judgments

19-5305. Collection of judgments.

(1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

(2) The clerk of the district court may take action to collect on the order of restitution on behalf of the victim and, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708 , Idaho Code, for the collection of the restitution.

19-5306 — Rights of victim during investigation, prosecution, and disposition of the crime

19-5306. Rights of victim during investigation, prosecution, and disposition of the crime.

(1) Each victim of a criminal or juvenile offense shall be:

(a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;

(b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;

(c) Entitled to a timely disposition of the case;

(d) Given prior notification of trial court, appellate, probation and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant;

(e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result;

(f) Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children;

(g) Allowed to refuse an interview, ex parte contact or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law;

(h) Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct had upon the victim and shall be allowed to read,

prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court;

(i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;

(j) Notified whenever the defendant or suspect is released or escapes from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. When the release is granted subsequent to a final conviction, notice shall be given to the victim by the law enforcement authority from whose custody the defendant was released unless release is granted by the commission of pardons and parole, in which case the commission shall notify the victim. When a release on probation is being considered following a period of retained jurisdiction, notice of the hearing shall be given to the victim by the prosecuting attorney.

(2) Upon the filing of a criminal complaint or juvenile petition, the prosecuting attorney shall inform the victim of the various opportunities provided by this section. The victim may exercise any of the rights provided by this section by completing a written request on a form provided by the prosecuting attorney to the clerk of the district court. The clerk thereafter shall notify the appropriate authorities of the victim's requests. Notice thereafter shall be given to the victim at the address provided unless the victim subsequently provides a different address. The victim's address shall be kept confidential by the court except for carrying out the provisions of this chapter.

(3) The provisions of this section shall apply equally to the immediate families of homicide victims or immediate families of victims of such youthful age or incapacity as precludes them from exercising these rights personally. The court may designate a representative from the immediate family to exercise these rights on behalf of a deceased, incapacitated, or minor victim.

(4) Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney's fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute; nor be construed to require the court appointment of legal counsel or the payment of transportation costs.

(5) As used in this section:

(a) "Victim" is an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense;

(b) "Criminal offense" is any charged felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense;

(c) "Juvenile offense" is charged conduct that is a violation of law that brings a juvenile within the purview of chapter 5, title 20 , Idaho Code, and which conduct committed by a juvenile would be a felony if committed by an adult.

19-5307 — Fines in cases of crimes of violence

19-5307. Fines in cases of crimes of violence.

(1) Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, may impose a fine not to exceed five thousand dollars ($5,000) against any defendant found guilty of any felony listed in subsections (2) and (3) of this section. The fine shall operate as a civil judgment against the defendant and shall be entered on behalf of the victim named in the indictment or information, or the family of the victim in cases of homicide or crimes against children, and shall not be subject to any distribution otherwise required in section 19-4705 , Idaho Code. The clerk of the district court may collect the fine in the same manner as other fines imposed in criminal cases are collected and shall remit any money collected in payment of the fine to the victim named in the indictment or information or to the family of the victim in a case of homicide or crimes against minor children, provided that none of the provisions of this section shall be construed as modifying the provisions of chapter 6, title 11 , Idaho Code, chapter 10, title 55 , Idaho Code, or section 72-802 , Idaho Code. A fine created under this section shall be a separate written order in addition to any other sentence the court may impose. The fine contemplated in this section shall be ordered solely as a punitive measure against the defendant and shall not be based upon any requirement

of showing of need by the victim. The fine shall not be used as a substitute for an order of restitution as contemplated in section 19-5304 , Idaho Code, nor shall such an order of restitution or order of compensation entered in accordance with section 72-1018 , Idaho Code, be offset by the entry of such fine. A defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court. The imposition of a fine created under this section shall not preclude the victim from seeking any other legal remedy; provided that in any civil action brought by or on behalf of the victim, the defendant shall be entitled to offset the amount of any fine imposed pursuant to this section against any award of punitive damages.

(2) The felonies for which a fine created under this section may be imposed are those described in: Section 18-805 , Idaho Code (Aggravated arson); Section 18-905 , Idaho Code (Aggravated assault); Section 18-907 , Idaho Code (Aggravated battery); Section 18-909 , Idaho Code (Assault with intent to commit a serious felony); Section 18-911 , Idaho Code (Battery with intent to commit a serious felony); Section 18-913 , Idaho Code (Felonious administration of drugs); Section 18-918 , Idaho Code (Felony domestic violence); Section 18-923 , Idaho Code (Attempted strangulation); Section 18-1501 , Idaho Code (Felony injury to children); Section 18-1506 , Idaho Code (Sexual abuse of a child under the age of sixteen); Section 18-1506A , Idaho Code (Ritualized abuse of a child); Section 18-1506B , Idaho Code (Female genital mutilation of a child); Section 18-1506C , Idaho Code (Vulnerable child protection); Section 18-1507 , Idaho Code (Sexual exploitation of a child); Section 18-1508 , Idaho Code (Lewd conduct with a child under the age of sixteen); Section 18-1508A , Idaho Code (Sexual battery of a minor child sixteen or seventeen years of age); Section 18-4001 , Idaho Code (Murder); Section 18-4006 , Idaho Code (Felony manslaughter); Section 18-4014 , Idaho Code (Administering poison with intent to kill); Section 18-4015 , Idaho Code (Assault with intent to murder); Section 18-4502 , Idaho Code (First degree kidnapping); Section 18-5001 , Idaho Code (Mayhem); Section 18-5501 , Idaho Code (Poisoning food, medicine or wells); Section 18-6101 , Idaho Code (Rape); Section 18-6501 , Idaho Code (Robbery).

(3) Notwithstanding the provisions of section 18-306

(4) and (5), Idaho Code, the fine created under this section may also be imposed up to five thousand dollars ($5,000) for attempts of the felonies described in: Section 18-4001 , Idaho Code (Murder); Section 18-6101 , Idaho Code (Rape).

CHAPTER 55

19-5501 — Legislative findings — Statement of purpose

19-5501. Legislative findings — Statement of purpose. The legislature finds that DNA (deoxyribonucleic acid) identification analysis is a useful law enforcement tool for identifying and prosecuting offenders who have committed serious crimes, as defined in this chapter. The legislature further finds that it is in the best interest of justice and the protection of the public that the collection of DNA samples and thumbprint impressions from qualifying offenders takes place as expeditiously as possible following a conviction or guilty plea and that the duties of those responsible for collection be clearly defined. The purpose of this act is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the detection and prosecution of individuals responsible for such serious crimes, as well as in the exclusion of suspects who are being investigated for such crimes.

19-5502 — Definitions

19-5502. Definitions.

(1) "CODIS" means the federal bureau of investigation’s combined DNA index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

(2) "Director" means the director of the Idaho state police.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA analysis" means the scientific test of a DNA sample for the purpose of obtaining a DNA profile.

(5) "DNA profile" means the list of one (1) or more genetic types determined for an individual based on variations in DNA sequence.

(6) "DNA record" means DNA information stored in the statewide DNA database system of the bureau of forensic services or CODIS and includes information commonly referred to as a DNA profile.

(7) "DNA sample" means a body fluid or tissue sample provided by any person convicted of a felony crime or any body fluid or tissue sample submitted to the statewide DNA database system for analysis pursuant to a criminal investigation or

missing person investigation.

(8) "Forensic laboratory" means the bureau of forensic services of the Idaho state police.

(9) "Law enforcement purpose" means to assist federal, state, or local criminal justice and law enforcement agencies within and outside the state of Idaho in identification or prosecution of felony crimes or other crimes and the identification and location of missing and unidentified persons.

(10) "Serious crime" means, for purposes of this chapter, any felony crime; the attempt to commit any felony crime; any crime that requires sex offender registration pursuant to sections 18-8304 and 18-8410 , Idaho Code; misdemeanor domestic violence (18-918 , Idaho Code); or sexual battery (18-924 , Idaho Code).

(11) "Statewide DNA databank" or "databank" means the state repository of DNA samples collected under this chapter and administered by the Idaho bureau of forensic services.

(12) "Statewide DNA database system" or "database" means the DNA record system administered by the Idaho bureau of forensic services.

19-5503 — Responsibility for managing DNA programs — Bureau of forensic services

19-5503. Responsibility for managing DNA programs — Bureau of forensic services. The Idaho state police through the bureau of forensic services shall be responsible for the policy management and administration of the state's database and databank identification program. The bureau of forensic services shall be responsible for liaison with the FBI regarding the state's participation in the CODIS program.

19-5504 — Implementation of the chapter — Rules

19-5504. Implementation of the chapter — Rules. The Idaho state police, in consultation with the Idaho attorney general's office, the Idaho department of correction, the Idaho chiefs of police association, the Idaho state sheriff's association, and the Idaho prosecuting attorney's association, shall adopt policies, procedures and rules for implementation of this chapter, and ensure that DNA samples are collected from qualifying offenders in a timely manner. The director may designate additional persons and organizations to provide consultation in implementing the provisions of this chapter.

19-5505 — Use of the state databank and database — Duties of bureau of forensic services

19-5505. Use of the state databank and database — Duties of bureau of forensic services.

(1) The bureau of forensic services shall perform or contract for DNA analysis for law enforcement purposes.

(2) The bureau of forensic services shall serve as a repository for DNA samples collected and shall analyze samples, or contract for analysis, and shall store, compile, correlate, maintain and use DNA profiles and records related to:

(a) Forensic casework;

(b) Offenders required to provide samples under this chapter;

(c) The identification and location of missing persons; and

(d) Anonymous DNA records used for research or quality control.

(3) A match between evidence DNA samples from a criminal investigation and DNA samples from a state or federal database may be used to sustain probable cause for the arrest of a suspect upon application for a warrant.

(4) The DNA profile may also be used at trial as evidence, provided that the evidence is otherwise admissible at trial. The DNA profile may also be used in developing statistical calculations of populations frequencies.

19-5506 — Scope of law — Offenders subject to sample collection — Early collection of samples — Restitution

19-5506. Scope of law — Offenders subject to sample collection — Early collection of samples — Restitution.

(1) Any person, including any juvenile tried as an adult, who is convicted of, or pleads guilty to, any serious crime, as defined in section 19-5502 (10), Idaho Code, shall be required to provide to the Idaho state police a DNA sample and a right thumbprint impression, as set forth in this chapter.

(2) Absent consent or a warrant authorizing DNA collection based on probable cause, no person shall be required to provide a DNA sample unless the person has been convicted of, or pleads guilty to, a serious crime, as defined in section 19-5502 (10), Idaho Code. (3)(a) This chapter's requirements for submission to tests and procedures for obtaining a DNA sample and thumbprint impression from the persons who are convicted of, or who plead guilty to, any felony crime, the

attempt to commit any felony crime or any crime that requires sex offender registration pursuant to sections 18-8304 and 18-8410 , Idaho Code, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, are mandatory and apply to those persons convicted of, or who plead guilty to, such felony crimes, prior to the effective date of this chapter, and who, as a result of the conviction or plea, are incarcerated in a county jail facility or a penal facility, are under probation or parole supervision or are required to register as a sex offender pursuant to sections 18-8304 and 18-8410 , Idaho Code, after the effective date of this chapter.

(b) This chapter's requirements for submission to tests and procedures for obtaining a DNA sample and thumbprint impression from the persons who are convicted of, or who plead guilty to, any misdemeanor crime that qualifies as a serious crime, regardless of the form of judgment or withheld judgement, and regardless of the sentence imposed or disposition rendered, are mandatory and shall apply to those persons convicted of, or who plead guilty to, such qualifying misdemeanor serious crimes on or after July 1, 2026.

(4) The collection of samples and impressions specified in this chapter are required, regardless of whether the person previously has supplied a DNA sample to law enforcement agencies in any other jurisdiction. The collection facility is not required to collect a DNA sample if it can be verified that a sample already exists for such person in the Idaho DNA database.

(5) The requirements of this chapter are mandatory and apply, regardless of whether a court advises a person that samples and impressions must be provided to the databank and database as a condition of probation or parole.

(6) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.

(7) The court may order such person to pay restitution for DNA analysis in an amount not to exceed five hundred dollars ($500) per DNA sample analysis, or in the aggregate not more than two thousand dollars ($2,000), regardless of whether:

(a) The source of the sample is the person, the victim, or other persons of interest in the case;

(b) Results of the analysis are entered into evidence in the person's criminal case;

(c) The DNA sample was previously analyzed for another criminal case; or

(d) Restitution for that DNA sample analysis was ordered in any other criminal case.

(8) Law enforcement agencies entitled to restitution under this section include the Idaho state police, county and city law enforcement agencies, the office of the attorney general, county prosecuting attorneys, and city attorneys.

(9) In the case of reimbursement for DNA analysis performed by the Idaho state police, those moneys shall be paid to the Idaho state police and deposited in the law enforcement fund. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund.

(10) Persons who have been sentenced to death, or life without the possibility of parole, or to any life or indeterminate term are not exempt from the requirements of this chapter.

19-5507 — RESPONSIBILITY FOR SAMPLE COLLECTION — TIMING OF SAMPLE COLLECTION — SITE FOR SAMPLE COLLECTION

19-5507. RESPONSIBILITY FOR SAMPLE COLLECTION — TIMING OF SAMPLE COLLECTION — SITE FOR SAMPLE COLLECTION.

(1) Process for collection. The process for collection of DNA samples and thumbprint impressions from persons subject to the provisions of this chapter shall be as provided in this section.

(2) Order for collection prior to sentencing. Where a person subject to the provisions of this chapter has been convicted of or pleaded guilty to a serious crime but has not yet been sentenced, the prosecuting attorney, attorney general, or Idaho state police may, at the time of conviction or guilty plea or thereafter, apply to the court for an order requiring the person to submit a DNA sample and thumbprint impression prior to sentencing. The court shall order a sample and impression to be taken prior to sentencing upon a showing that early collection is in the best interest of justice. The DNA sample and thumbprint impression shall be collected in accordance with procedures established by the bureau of forensic services. The director may designate a state correctional facility or county jail for such collection.

(3) Order for collection at sentencing. Except as otherwise provided in this section, in every case in which any person, including any juvenile tried as an adult, who has been convicted of or pleaded guilty to a serious crime, the court shall, at

the time of sentencing, order the person to submit a DNA sample and thumbprint impression to the bureau of forensic services, and order the collection of such sample and impression as set forth in this section.

(a) Persons to be released following sentencing.

(i) The court shall order any person subject to the provisions of this chapter who is incarcerated at the time of sentencing and who has not previously provided a DNA sample and thumbprint impression to provide such sample and impression at an Idaho state police-designated sample collection location prior to physical release from custody. (ii) At the time of sentencing, the court shall order any person subject to the provisions of this chapter who is not incarcerated, who has not previously provided a DNA sample and thumbprint impression, and who is granted probation or other supervised or conditional release following sentencing to report before the end of the following business day to provide a DNA sample and thumbprint impression at an Idaho state police-designated sample collection location.

(b) Persons committed to county jails or other local detention facilities at sentencing. At the time of sentencing, the court shall order any person subject to the provisions of this chapter who has not previously submitted a DNA sample and thumbprint impression and who is sentenced to a period of incarceration in a county jail or other local detention facility to provide a DNA sample and thumbprint impression, and the court shall order the chief administrative officer of such jail or facility to cause a DNA sample and thumbprint impression to be collected from the person as soon as possible during the intake process at the facility, or immediately thereafter at another facility designated for such collections, but in all cases, no later than ten (10) days after the person's arrival at the jail or facility.

(c) Persons committed to the department of correction or department of juvenile corrections at sentencing. At the time of sentencing, the court shall order any person subject to the provisions of this chapter who has not previously submitted a DNA sample and thumbprint impression and who is committed to the custody of the department of correction or department of juvenile corrections to submit a DNA sample and thumbprint impression as directed by the director of the department of correction or department of juvenile corrections, and the court shall order the chief administrative officer at the designated reception center to cause a DNA sample and thumbprint impression to be collected from the person during the intake process at the reception center designated by the director of the department of correction or department of juvenile corrections as soon as possible, but no later than ten (10) days after the person's arrival at the facility.

(4) Incarcerated persons who have not submitted a DNA sample or thumbprint impression. Any person subject to the provisions of this chapter who is serving a term of imprisonment or confinement in a local, county, or state jail, prison, or other correctional facility and who did not, for any reason, including oversight or error, provide a DNA sample and thumbprint impression to the bureau of forensic services shall provide such sample and impression, and the administrator of the jail, prison, or other correctional facility in which such person is confined shall cause the sample and impression to be collected as soon as practicable, but in any event no later than ten (10) days following notice from the bureau of forensic services that the person has not previously submitted the sample and impression, or prior to final discharge, probation, parole, or release from imprisonment or confinement, whichever is earlier. A person who was convicted of any felony crime, the attempt to commit any felony crime, or any crime that requires sex offender registration pursuant to sections 18-8304 and 18-8410 , Idaho Code, prior to the effective date of this chapter is not exempt from these requirements.

(5) Persons on parole following incarceration. Prior to release on parole, any person subject to the provisions of this chapter must have submitted a DNA sample and thumbprint impression to the bureau of forensic services. It shall be a condition of parole that any person subject to the provisions of this chapter who has not, for any reason, including oversight or error, previously provided a DNA sample and thumbprint impression and who is released on parole shall, upon notice by the bureau of forensic services, a law enforcement agency, or an agent of the department of correction, be required to provide a DNA sample and thumbprint impression if such sample and thumbprint impression are not in the possession of the bureau of forensic services. Such person shall be required to have the sample and impression taken within ten (10) working days of such notice at an Idaho state police-designated sample collection location.

(6) Persons returned to state or local correctional facilities, jails, or other detention facilities following supervised or conditional release. Any person subject to the provisions of this chapter who was released on parole, probation, furlough, or other supervised or conditional release, who is returned to a state or local juvenile or adult correctional facility for any reason, and who has not previously provided a DNA sample and thumbprint impression shall provide a sample and impression upon returning to the state or local correctional facility. The chief administrative officer of such facility shall cause the sample and impression to be taken as soon as possible, but no later than ten (10) days following notice from the bureau of forensic services or discovery that the person has not yet provided a sample and impression, or prior to final

discharge, parole, or release from imprisonment or confinement, whichever is earlier. (7)(a) Persons in Idaho pursuant to interstate agreement. When the state accepts an offender from another state under any interstate compact or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing a DNA sample and thumbprint impression if the offender was convicted of or pleaded guilty to an offense that would qualify as a serious crime, as defined in section 19-5502 (10), Idaho Code, or if the offender was convicted of an equivalent offense in any other jurisdiction, regardless of the form of judgement or withheld judgement, and regardless of the sentence imposed or disposition rendered.

(b) If the offender from another state is not confined, the offender must provide the sample and impression required by this chapter within ten (10) days after the offender reports to the supervising agent or within ten (10) days of notice to the offender from the bureau of forensic services, any law enforcement agency, or the offender's supervising agency, whichever occurs first. The offender shall report to an Idaho state police-designated sample collection facility or facilities to have the sample and impression taken.

(c) If the offender from another state is confined in a state, county, or local correctional facility, jail, or other detention facility, the offender shall provide, and the administrative officer of such facility shall cause to be collected, the DNA sample and thumbprint impression as soon as practicable but no later than ten (10) days after the offender is received into such jail or facility, or ten (10) days following notice from the bureau of forensic services that the person has not yet provided a sample and impression, whichever is earlier, and in all cases, before completion of the offender's term of imprisonment or discharge from that facility, whichever is earlier.

(8) Persons previously convicted of or pleading guilty to a serious crime. Any person, including any juvenile tried as an adult, who was previously convicted of or pleaded guilty to a serious crime, as defined in section 19-5502 (10), Idaho Code, whether or not that person is incarcerated, who has not provided a DNA sample and thumbprint impression for any reason, including the person's release prior to the enactment of this chapter, an oversight or error, or because of the person's transfer from another jurisdiction, shall provide a DNA sample and thumbprint impression for inclusion in the state's DNA database and databank within ten (10) working days of such person being notified of this requirement by the Idaho state police, the department of correction, any law enforcement officer, or an officer of the court. The samples and impressions shall be collected in a facility designated by the Idaho state police.

(9) Verification. The collection facility and sex offender registration location shall verify that the individual's DNA sample has been collected in Idaho. The collection facility shall not be required to collect a DNA sample if it can be verified that a sample already exists for the individual in the Idaho DNA database.

19-5508 — Additional samples authorized

19-5508. Additional samples authorized. Whenever the bureau of forensic services notifies the department of correction or other responsible agency that a DNA sample or thumbprint impression is not adequate for any reason, the department of correction or other custodial agency shall draw or take additional samples and impressions as necessary to satisfy the requirements of this chapter, and transmit such samples and impressions to the bureau of forensic services.

19-5509 — Genetic testing of samples given for another purpose

19-5509. Genetic testing of samples given for another purpose. If a person has been convicted of a crime as provided by this chapter and has given a DNA sample or samples to law enforcement for any purpose, the bureau of forensic services is authorized to analyze such samples for DNA, and include the DNA profiles from such samples in the state's convicted felon DNA databank and databases. This provision applies whether the DNA sample originally collected was from a sexual or violent offender pursuant to the databank and database program, and whether the crime committed predated the effective date of this chapter, or any amendments thereto. This provision does not relieve a person subject to the terms of this chapter from giving a DNA sample and thumbprint impression for the DNA databank and database.

19-5511 — Collection and forwarding of samples — Liability — Use of force

19-5511. Collection and forwarding of samples — Liability — Use of force.

(1) The director of the department of correction or the chief administrative officer of the detention facility, jail, other facility at which the DNA sample and thumbprint impression were collected shall forward the samples and impressions to the bureau of forensic services according to requirements set forth in the bureau of forensic services rules.

(2) The bureau of forensic services shall provide all specimen collection materials, thumbprint cards, mailing tubes, envelopes, labels and instructions for the collection of the samples and thumbprint impressions. The DNA samples and thumbprint impressions shall thereafter be forwarded to the bureau of forensic services for analysis of DNA.

(3) The bureau of forensic services shall adopt rules specifying how DNA samples are to be taken. The right thumbprint impression shall be taken on a form prescribed by the Idaho state police.

(4) No person or governmental agency shall be subject to civil or criminal liability for obtaining DNA samples or obtaining thumbprint impressions absent a showing of reckless disregard for medically accepted practices or a showing of malice.

(5) Duly authorized law enforcement and correction personnel shall employ reasonable force in cases where an individual who is incarcerated refuses or resists submission to procedures for collecting a DNA sample or thumbprint impression authorized by this chapter, and no employee shall be subject to criminal or civil liability for the reasonable use of force absent a showing of malice.

19-5512 — Penalties

19-5512. Penalties. Any person subject to the terms of this chapter who fails to give a DNA sample or thumbprint impression, after a request by the bureau of forensic services, the department of correction, any law enforcement personnel, or any officer of the court, is guilty of a felony. The samples and impressions required by this chapter may be taken by the use of reasonable force once a person is imprisoned for failure to give the required sample.

19-5513 — Expungement of information

19-5513. Expungement of information.

(1) A person whose DNA profile has been included in the database and databank pursuant to this chapter may make a written request for expungement of materials from the database and databank on the grounds that the conviction upon which the authority for including the DNA profile was based has been reversed and the case dismissed.

(2) The person requesting expungement must send a copy of his request, with proof of service on all parties to the following: the trial court which entered the conviction or rendered disposition in the case; the bureau of forensic services; and the prosecuting attorney of the county in which he was convicted. The court has the discretion to grant or deny the request for expungement. A trial court's denial of a request for expungement is an order not subject to appeal.

(3) Except as provided below, the Idaho state police shall expunge the DNA sample and all identifiable information in the database and databank relating to the subject of the conviction upon receipt of a court order which verifies that the applicant has made the necessary showing at a noticed hearing, and which includes the following documents:

(a) Written request for expungement pursuant to this section;

(b) A certified copy of the court order reversing and dismissing the conviction;

(c) Proof of written notice to the prosecuting attorney and the bureau of forensic services that such expungement is being sought; and

(d) A court order finding that no retrial or appeal of the case is pending and verifying that at least sixty (60) days have passed since the defendant has notified the prosecuting attorney and the bureau of forensic services of the expungement request and that the court finds no reason, based on the interests of justice, to deny expungement.

(4) Upon order of the court, the Idaho state police shall destroy the DNA sample relating to the subject of conviction, unless the state police determines that the person has otherwise become obligated to submit to DNA sample and thumbprint impression as a result of a separate conviction subject to the terms of this chapter.

(5) The bureau of forensic services is not required to destroy an item of physical evidence obtained from the DNA sample if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or identifiable information is affected by an order to set aside a conviction.

19-5514 — Limitations on disclosure of information

19-5514. Limitations on disclosure of information.

(1) All DNA profiles retained by the bureau of forensic services pursuant to this chapter shall be treated as confidential as provided by chapter 1, title 74 , Idaho Code.

(2) The DNA information shall be filed with the offender's file maintained by the Idaho state police.

(3) The DNA information shall not be included in the state summary criminal history information.

(4) The DNA information, and thumbprint impressions, shall be released only to law enforcement agencies, including, but not limited to, parole officers of the department of correction, hearing officers of the parole authority, and prosecuting attorneys' offices, at the request of the agency, except as specified in this chapter. Dissemination of this information to law enforcement agencies and prosecuting attorneys' offices outside the state shall be done in conformity with the provisions of this chapter.

(5) Any person who, by virtue of employment or official position, or any person contracting to carry out any function under this chapter, including any officers, employees and agents of such contractor who has possession of or access to individual identifiable DNA information contained in the state DNA database or databank and who willfully discloses such information in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor.

(6) Furnishing DNA information or thumbprint comparison results to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(7) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, or any of the bureau of forensic services' databases provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding or in any other public record when the inclusion of the information in the public record is authorized by a court, statute or case law.

19-5515 — Dissemination of data, information, and samples for forensic laboratory analysis

19-5515. Dissemination of data, information, and samples for forensic laboratory analysis.

(1) Nothing in this chapter shall prohibit the sharing or disseminating of population database information with the following:

(a) Federal, state or local law enforcement agencies;

(b) Forensic laboratories that serve federal, state and local law enforcement agencies approved by the bureau of forensic services;

(c) A state's attorney general's office;

(d) A prosecuting attorney's office; or

(e) Any third party that the chief of the bureau of forensic services deems necessary to assist the bureau of forensic services with statistical analyses of the population database or to assist in the recovery or identification of missing persons.

(2) Nothing in this chapter shall prohibit the sharing or dissemination of protocol and forensic DNA methods and quality control procedures with any of the parties identified in subsection (1) of this section.

(3) The state's DNA population database and databank may be made available to and searched by the FBI and any agency participating in CODIS.

(4) The bureau of forensic services may provide samples from the DNA samples collected pursuant to this chapter to public DNA laboratories for law enforcement purposes provided that the privacy provisions of this section are followed and each of the following conditions are met:

(a) The methodologies and procedures used by the public DNA laboratory for analysis are approved by the bureau of forensic services;

(b) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the bureau of forensic services;

(c) All provisions concerning privacy and security enumerated in this section are followed.

19-5516 — Disposal of samples

19-5516. Disposal of samples. The bureau of forensic services is authorized to have unused portions of samples or expired samples disposed of in the normal course of business and in an environmentally approved manner as long as such disposal method is designed to protect the identity and origin of samples from disclosure to third persons who are not part of law enforcement.

19-5517 — Operation with existing law — Authority of law enforcement officers

19-5517. Operation with existing law — Authority of law enforcement officers. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and use DNA information or thumbprint impressions for law enforcement purposes.

19-5518 — Severability

19-5518. Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

CHAPTER 56

19-5601 — Short title

19-5601. Short title. This chapter shall be known and may be cited as the "Idaho Drug Court and Mental Health Court Act."

19-5602 — Statement of policy

19-5602. Statement of policy. The legislature finds that:

(1) Substance abuse is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever increasing jail and prison populations and adversely impacts Idaho children;

(2) Drug courts which closely supervise, monitor, test and treat substance abusers have proven effective in certain judicial districts in Idaho and in other states in reducing the incidence of drug use, drug addiction, and crimes committed as a result of drug use and drug addiction. Successful drug courts are based on partnerships among the courts, law enforcement, corrections and social welfare agencies;

(3) Mental illness is a substantial contributing cause to crime in Idaho. Crimes committed by persons suffering from mental illness cause substantial losses to persons and business throughout the state and endanger public safety. In addition, millions of dollars are spent each year on the incarceration, supervision and treatment of mentally ill offenders;

(4) Mental health courts in Idaho and other jurisdictions that closely supervise and monitor mentally ill adult and juvenile offenders and oversee their treatment are an innovative alternative to incarceration for certain offenders. Such courts, which can be operated in conjunction with drug courts, have provided a cost-effective approach to addressing the mental health needs of offenders, reducing recidivism, providing community protection, easing the caseload of the courts, and alleviating the problem of increasing prison, jail and detention populations; and

(5) It is in the best interests of the citizens of this state to expand the use of drug courts and mental health courts in Idaho. The goals of the drug courts and mental health courts created by this chapter are to reduce the overcrowding of jails and prisons, to reduce alcohol and drug abuse and dependency among criminal and juvenile offenders, to hold offenders accountable, to reduce recidivism, and to promote effective interaction and use of resources among the courts, justice system personnel and community agencies.

19-5603 — Drug court — Establishment

19-5603. Drug court — Establishment. The district court in each county may establish a drug court which shall include a regimen of graduated sanctions and rewards, substance abuse treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as may be established by the district court, in accordance with standards developed by the Idaho supreme court drug court and mental health court coordinating committee.

19-5604 — Eligibility

19-5604. Eligibility.

(1) No person has a right to be admitted into drug court. The drug court in each county shall determine the eligibility of persons who may be admitted into drug court except that each candidate, prior to being admitted, must undergo: (a) a substance abuse assessment; and (b) a criminogenic risk assessment.

(2) No person shall be eligible to participate in drug court if any of the following apply:

(a) The person is currently charged with, has pled or has been adjudicated or found guilty of, a felony crime of violence or a felony crime in which the person used either a firearm or a deadly weapon or instrument.

(b) The person is currently charged with, or has pled or been found guilty of, a felony in which the person committed, attempted to commit, conspired to commit, or intended to commit a sex offense.

(3) A drug court may, after consultation with the drug court team and with the consent of the prosecuting attorney, allow a person to participate in drug court who would otherwise be ineligible only because of the provisions of subsection (2)(a) of this section.

19-5605 — Drug court evaluation

19-5605. Drug court evaluation. The district court of each county which has implemented a drug court program shall annually evaluate the program's effectiveness and provide a report to the supreme court as requested. A report evaluating the effectiveness of drug courts in the state shall be submitted to the governor and to the legislature by the first day of the legislative session each year.

19-5606 — Implementation of drug courts and mental health courts

19-5606. Implementation of drug courts and mental health courts. The supreme court shall establish a drug court and mental health court coordinating committee consisting of judges, court administrators, drug court coordinators, mental health court coordinators, prosecuting attorneys, public defenders, state and county probation officers, treatment providers, representatives of the department of correction, the department of education, the commission of pardons and parole, the department of health and welfare, the department of juvenile corrections, the Idaho state police, the Idaho transportation department, legislators, a representative of the governor's office, law enforcement officers, mental health professionals, and others, which shall establish a drug court and mental health court implementation plan and oversee ongoing drug court and mental health court programs. The implementation plan shall include a strategy to forge partnerships among drug courts, mental health courts, public agencies, and community-based organizations to enhance drug court and mental health court effectiveness. The committee shall also develop guidelines for drug courts and mental health courts addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision, and evaluation. The coordinating committee shall also solicit specific drug court and mental health court plans, and recommend funding priorities and decisions per judicial district; pursue all available alternate funding; provide technical assistance, develop procedural manuals, and schedule training opportunities for the drug court and mental health court teams; design an evaluation strategy, including participation in the statewide substance abuse evaluation plan; and design an automated drug court and mental health court management information system, which promotes information sharing with other entities.

19-5607 — Drug court and mental health court funding

19-5607. Drug court and mental health court funding. Subject to the appropriation power of the legislature, the supreme court shall be responsible for administering, allocating and apportioning all appropriations from the legislature for drug courts and mental health courts.

19-5608 — Drug court and mental health court fee

19-5608. Drug court and mental health court fee. Each person admitted into a drug court or mental health court shall pay the drug court and mental health court fee as established in section 31-3201E , Idaho Code.

19-5609 — Mental health courts

19-5609. Mental health courts.

(1) The district court in each county may establish a mental health court which shall include a regimen of graduated sanctions and rewards, mental health and other appropriate treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, eligibility standards and other requirements as may be established by the district court, in accordance with standards developed by the Idaho supreme court drug court and mental health court coordinating committee. No person has a right to be admitted into a mental health court. A mental health court may be operated in conjunction with a drug court.

(2) The district court of each county that has implemented a mental health court shall annually evaluate the mental health court's effectiveness and provide a report to the supreme court as requested. If the mental health court is operated in conjunction with a drug court, a single report may be submitted for the drug court and mental health court. A report

evaluating the effectiveness of mental health courts in the state shall be submitted to the governor and to the legislature by the first day of the legislative session each year.

19-5610 — counseling service in drug courts and mental health courts

19-5610. counseling service in drug courts and mental health courts. Any licensee licensed under chapter 34, title 54 , Idaho Code, who is in good standing with the Idaho state licensing board of professional counselors and marriage and family therapists shall be eligible to provide professional counseling services to an adult receiving service through a drug court or mental health court established pursuant to this chapter. No licensee shall be automatically disqualified from providing professional counseling services because of a prior criminal conviction. For purposes of this section, the relevancy of a licensee's prior criminal conviction shall be evaluated pursuant to section 67-9411 , Idaho Code.

CHAPTER 57

19-5701 — Purpose

19-5701. Purpose. The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, stalking, human trafficking or malicious harassment frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, malicious harassment, human trafficking or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, malicious harassment, human trafficking or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

19-5702 — Definitions

19-5702. Definitions. Unless the context clearly requires otherwise, for purposes of this chapter, the following terms have the following meanings:

(1) "Address" means a residential street address of an individual as specified on the individual's application to be a program participant under this chapter.

(2) "Domestic violence" means an act pursuant to section 18-918 , Idaho Code.

(3) "Human trafficking" means an act pursuant to chapter 86, title 18 , Idaho Code.

(4) "Malicious harassment" means an act pursuant to section 18-7902 , Idaho Code.

(5) "Program participant" means a person certified as a program participant pursuant to section 19-5703 , Idaho Code.

(6) "Sexual assault" means an act pursuant to section 18-1506 , 18-1508 , 18-1508A or 18-6101 , Idaho Code.

(7) "Stalking" means an act pursuant to section 18-7905 or 18-7906 , Idaho Code.

19-5703 — Address confidentiality program — Application — Certification

19-5703. Address confidentiality program — Application — Certification. [effective until January 1, 2027]

(1) An adult person, a parent or a guardian acting on behalf of a minor, or a guardian appointed pursuant to section 15-5-304 , Idaho Code, acting on behalf of an incapacitated person, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe:

(i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, rape or malicious harassment, or any other crime listed in section 19-5701 , Idaho Code; and
(ii) That the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the telephone number or numbers where the applicant can be called by the secretary of state; and

(d) The address or addresses that the applicant requests not be disclosed.

(2) If the applicant alleges that the basis for the application is that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault or human trafficking, the application must be accompanied by evidence including, but not limited to, any of the following:

(a) Police, court, or other government agency records or files;

(b) Documentation from a domestic violence or sexual assault program or facility if the person is alleged to be a victim of domestic violence, sexual assault or human trafficking;

(c) Documentation from a legal, clerical, medical or other professional from whom the applicant or person on whose behalf the application is made has sought assistance in dealing with the alleged domestic violence, sexual assault or human trafficking; and

(d) A certified copy of a no contact order or a temporary or permanent civil protection order.

(3) If the applicant alleges that the basis for the application is that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of stalking or malicious harassment, the application must be accompanied by evidence including, but not limited to, any of the following:

(a) Police, court or other government agency records or files;

(b) Documentation from a legal, clerical, medical or other professional from whom the applicant or person on whose behalf the application is made has sought assistance in dealing with the alleged stalking or malicious harassment; and

(c) A certified copy of a no contact order or a temporary or permanent civil protection order.

(4) Applications shall be filed with the office of the secretary of state.

(5) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four (4) years following the date of filing unless the certification is withdrawn or invalidated before that date. The application may be renewed at the end of four (4) years.

(6) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under section 18-5414 , Idaho Code, or other applicable statutes. 19-5703. Address confidentiality program — Application — Certification. [effective January 1, 2027]

(1) An adult person, a parent or a guardian acting on behalf of a minor, or a guardian appointed pursuant to section 15-5-309 , Idaho Code, acting on behalf of an incapacitated person, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe:

(i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, rape or malicious harassment, or any other crime listed in section 19-5701 , Idaho Code; and
(ii) That the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the telephone number or numbers where the applicant can be called by the secretary of state; and

(d) The address or addresses that the applicant requests not be disclosed.

(2) If the applicant alleges that the basis for the application is that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault or human trafficking, the application must be accompanied by evidence including, but not limited to, any of the following:

(a) Police, court, or other government agency records or files;

(b) Documentation from a domestic violence or sexual assault program or facility if the person is alleged to be a victim of domestic violence, sexual assault or human trafficking;

(c) Documentation from a legal, clerical, medical or other professional from whom the applicant or person on whose behalf the application is made has sought assistance in dealing with the alleged domestic violence, sexual assault or human trafficking; and

(d) A certified copy of a no contact order or a temporary or permanent civil protection order.

(3) If the applicant alleges that the basis for the application is that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of stalking or malicious harassment, the application must be accompanied by evidence including, but not limited to, any of the following:

(a) Police, court or other government agency records or files;

(b) Documentation from a legal, clerical, medical or other professional from whom the applicant or person on whose behalf the application is made has sought assistance in dealing with the alleged stalking or malicious harassment; and

(c) A certified copy of a no contact order or a temporary or permanent civil protection order.

(4) Applications shall be filed with the office of the secretary of state.

(5) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four (4) years following the date of filing unless the certification is withdrawn or invalidated before that date. The application may be renewed at the end of four (4) years.

(6) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under section 18-5414 , Idaho Code, or other applicable statutes.

19-5704 — Certification cancellation

19-5704. Certification cancellation.

(1) The secretary of state may cancel a program participant's certification if there is a change in the name or residential address from that listed on the application, unless the program participant provides the secretary of state with seven (7) days' prior notice of the change of name or address.

(2) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(3) The secretary of state may cancel certification of a program participant who applies using false information.

19-5705 — Use of designated address

19-5705. Use of designated address.

(1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the agency shows that:

(a) The agency has a bona fide statutory or administrative requirement for the use of a program participant's address which would otherwise be confidential under this chapter;

(b) The program participant's address will be used only for those statutory and administrative purposes; and

(c) The agency takes reasonable precautions to protect the confidentiality of the program participant.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first class priority and other mail as deemed necessary by the secretary of state to the appropriate program participant.

19-5706 — Disclosure of records prohibited — Exceptions

19-5706. Disclosure of records prohibited — Exceptions. Notwithstanding any other provision of state law, the secretary of state shall not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; or

(2) If directed by a court order, to a person identified in the order.

19-5707 — Immunity from liability

19-5707. Immunity from liability. Neither a governmental entity nor its employees, while acting within the course and scope of their employment and without malice or criminal intent, shall be liable under the Idaho tort claims act, chapter 9, title 6 , Idaho Code, for any injury resulting from the release of confidential information under this act.

19-5708 — Adoption of rules

19-5708. Adoption of rules. The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies.

CHAPTER 58

19-5801 — definitions

19-5801. definitions. As used in this chapter:

(1) "Alternative Idaho mailing address" means the address of a law enforcement officer's employing entity.

(2) "Application" means a written form prescribed and made available by the Idaho peace officer standards and training council. Such application shall contain, at minimum, all of the following:

(a) A sworn statement by the law enforcement officer's employing entity that the applicant is in fact a law enforcement officer as defined in subsection (6) of this section;

(b) A sworn statement by the law enforcement officer that names such officer's residing household member(s), if any, as defined in subsection (11) of this section;

(c) The alternative Idaho mailing address as defined in subsection (1) of this section, and the telephone number or numbers where the law enforcement officer and such officer's residing household member(s) can be contacted by the public agency; and

(d) A sworn statement by the law enforcement officer that such officer knowingly and voluntarily designates his or her employing entity as agent for purposes of service of process and receipt of first class, certified or registered mail.

(3) "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection and monitoring of county jail inmates.

(4) "Custodian" as defined in section 74-101 , Idaho Code.

(5) "Federal officer" means a special agent or law enforcement officer who is a resident of this state employed by a federal agency and who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(6) "Law enforcement officer" means any current federal officer, peace officer, parole officer, probation officer, correctional officer, county detention officer and any person who prosecutes criminal cases. The term "law enforcement officer" shall not include a person who holds an elected office.

(7) "Parole officer" means an employee of the Idaho department of correction who is charged with or whose duties include supervision of parolees.

(8) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(9) "Probation officer" means an employee of the Idaho department of correction or of the Idaho department of juvenile corrections who is charged with or whose duties include supervision of probationers.

(10) "Public agency" as is defined in section 74-101 , Idaho Code.

(11) "Residing household member(s)" means a law enforcement officer's spouse and any child or children who currently reside at the same residential street address as such officer.

19-5802 — disclosure of residential street address and telephone number prohibited — exceptions

19-5802. disclosure of residential street address and telephone number prohibited — exceptions. Notwithstanding any other provision of state law, a public agency shall not disclose to any person or entity the Idaho residential street address and telephone number of a law enforcement officer and such officer's residing household member(s) upon submission of an application and fee consistent with the provisions of section 19-5803 , Idaho Code, except under any of the following circumstances:

(1) If directed by a court order, to a person identified in the court order;

(2) If requested by a law enforcement agency, to the law enforcement agency;

(3) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(4) If the law enforcement officer provides written permission for disclosure of such information.

19-5803 — address confidentiality — eligibility

19-5803. address confidentiality — eligibility.

(1) Law enforcement officers desiring that their Idaho residential street address and telephone number, and the Idaho residential street address and telephone number of their residing household member(s) be exempt from disclosure pursuant to this chapter and section 74-106 (30), Idaho Code, may submit an application and a fee, if any, to the custodian of the public record that contains such information. Upon receipt of an application and fee, the public agency shall comply with the provisions of this chapter for a period of four (4) years. Thereafter, law enforcement officers may renew the exemption by submitting a new application and fee, if any. The public agency may establish a fee schedule not to exceed the actual cost to the agency of complying with the provisions of this chapter.

(2) Law enforcement officers may submit an application to a public agency requesting that the public agency use an alternative Idaho mailing address rather than the Idaho residential street address of any such officer and of any such officer's residing household member(s) on all applications and on all identification cards, licenses, certificates, permits, tags and other similar documents that are issued to the officer or to such officer's residing household member(s) by the public agency. A public agency receiving such application shall comply with the request.

(3) A person shall cease to be eligible for an exemption under this chapter if such person ceases to be a law enforcement officer or a residing household member(s). Within thirty (30) days of such cessation, the person shall notify, in writing, every public agency to which the person has made an application stating that he or she is no longer eligible for such exemption. If a law enforcement officer changes employment but is still eligible for an exemption under this chapter, such law enforcement officer shall, within thirty (30) days of changing employment, submit a new application to every public agency to which such officer has made an application.

(4) Nothing in this chapter shall prevent a public agency from obtaining the residential street address and telephone number of a law enforcement officer and of any residing household member(s). A law enforcement officer who has submitted an application pursuant to the provisions of this chapter shall provide his or her current Idaho residential street address to his or her employing entity.

19-5804 — immunity from liability

19-5804. immunity from liability. Neither a public agency nor its employees, while acting within the course and scope of their employment and without malice or criminal intent, shall be liable under the Idaho tort claims act, chapter 9, title 6 , Idaho Code, for any injury resulting from the release of confidential information under this chapter.

CHAPTER 59

19-5901 — Short title

19-5901. Short title. This chapter shall be known and may be cited as the "State Appellate Public Defender Act."

19-5902 — legislative intent

19-5902. legislative intent. The legislature recognizes that the cost of legal representation of indigent defendants upon the appeal of their criminal convictions, particularly convictions for first-degree murder, is an extraordinary burden on the counties of this state. In order to reduce this burden and provide competent counsel, but avoid paying high hourly rates to independent counsel to represent indigent defendants in appellate proceedings, the legislature finds it necessary to create the office of the state appellate public defender.

19-5903 — Creation OF OFFICE of the state appellate public defender

19-5903. Creation OF OFFICE of the state appellate public defender. The office of the state appellate public defender is hereby created in the department of self-governing agencies.

19-5904 — state appellate public defender — appointment — term — qualifications — prohibited conduct — removal — vacancies — compensation

19-5904. state appellate public defender — appointment — term — qualifications — prohibited conduct — removal — vacancies — compensation.

(1) The state appellate public defender shall be appointed by the governor, with the advice and consent of the senate, to serve a four (4) year term and may be reappointed to subsequent terms in the same manner.

(2) The state appellate public defender must meet the following qualifications on the effective date of his appointment:

(a) Be at least thirty (30) years of age;

(b) Be a citizen of the United States;

(c) Have held a license to practice law or a judicial office in one (1) or more jurisdictions of the United States for at least five (5) continuous years immediately preceding such appointment;

(d) Be or become an active member of the Idaho state bar within one (1) year of appointment and remain an active member in good standing thereafter; and

(e) Have at least five (5) years of criminal defense or appellate experience, or a combination thereof.

(3) The state appellate public defender shall not:

(a) Engage in the practice of law outside his role in the office of the state appellate public defender, except for the practice of law that is permitted for a judge by the Idaho code of judicial conduct;

(b) Hold or be a candidate for any federal, state, county, municipal, judicial, district, or other elective office; provided, however, this section shall not be interpreted to prohibit the state appellate public defender from seeking appointment to another office, including state or federal judicial office;

(c) Serve as the agent, representative, officer, political treasurer, or employee, for profit or otherwise, of any political party, political committee, or candidate, as such terms are defined in chapter 66, title 67 , Idaho Code; or

(d) Hold any other public or private sector position, for profit or otherwise, except for volunteer positions that are not inconsistent with the duties of the state appellate public defender.

(4) The state appellate public defender may be removed from office by the governor for failing to retain the qualifications of his office established in subsection (2) of this section, for engaging in prohibited conduct set forth in subsection (3) of this section, or for good cause shown. If the state appellate public defender is removed from office, the governor shall provide the house of representatives and the senate written notice of the removal, the effective date of removal, and the reason or reasons therefor.

(5) If the state appellate public defender resigns, dies, or is removed from office as provided by law, the governor shall appoint a person who meets the qualifications established in this section, subject to the advice and consent of the senate, to fill the remainder of the unexpired term.

(6) The state appellate public defender shall be compensated in an amount determined by the governor.

19-5905 — Powers and duties

19-5905. Powers and duties.

(1) Consistent with the state of Idaho’s obligation to provide indigent public defense pursuant to the sixth amendment to the constitution of the United States, section 13, article I of the constitution of the state of Idaho, and the provisions of this chapter, the state appellate public defender, upon appointment by the court, shall provide representation for indigent

defendants in the following cases:

(a) Appeals from convictions or post-judgment orders in district court;

(b) Interlocutory criminal appeals from district court;

(c) Appeals from the district court of misdemeanor cases;

(d) Appeals from the district court of orders or final judgments affecting a juvenile offender under the juvenile corrections act, chapter 5, title 20 , Idaho Code;

(e) Appeals from the district court in post-conviction relief proceedings brought pursuant to the uniform post-conviction procedure act, chapter 49, title 19 , Idaho Code;

(f) Appeals from the district court in habeas corpus proceedings brought pursuant to chapter 42, title 19 , Idaho Code; and

(g) Post-conviction relief proceedings in district court in capital cases.

(2) The state appellate public defender may employ deputy state appellate public defenders and other employees necessary to carry out the responsibilities of the office. A deputy state appellate public defender must be licensed to practice law in the state of Idaho and possess any other qualifications required by the state appellate public defender. The state appellate public defender shall fix the compensation of all employees of the office and they shall serve at his pleasure.

(3) The state appellate public defender, deputy state appellate public defenders, and all employees of the office of the state appellate public defender shall be nonclassified employees pursuant to section 67-5303 , Idaho Code.

(4) The state appellate public defender, in his discretion, may contract with private attorneys to provide representation on a case-by-case basis when such contracts would conserve budgetary resources.

(5) The state appellate public defender shall have any and all other powers and duties necessary to carry out the purposes of this chapter.

19-5906 — Appointment of additional counsel

19-5906. Appointment of additional counsel. Should the state appellate public defender be unable to carry out the duties required in this chapter because of a conflict of interest or any other reason, the state appellate public defender shall arrange for counsel for indigent defendants to be compensated out of the budget of the state appellate public defender.

19-5907 — Annual report

19-5907. Annual report. The state appellate public defender shall make an annual report to the state board of examiners, the supreme court, the legislature, and all counties for which the office has provided services concerning the cases handled by the office during the preceding year.

CHAPTER 60

19-6001 — short title

19-6001. short title. This chapter shall be known and may be cited as the "State Public Defender Act."

19-6002 — Definitions

19-6002. Definitions. As used in this chapter:

(1) "Defending attorney" means any attorney employed by an indigent defense provider or otherwise under contract to represent adults or juveniles at public expense, consistent with the provisions of this chapter.

(2) "Detain" means to have in custody or otherwise deprive of freedom of action.

(3) "Expenses," when used with reference to representation pursuant to this chapter, includes the expenses of investigation, experts, testing, and other pretrial preparation, trials, post-verdict motions, and post-conviction relief proceedings brought pursuant to the uniform post-conviction procedure act, chapter 49, title 19 , Idaho Code.

(4) "Indigent defense provider" means the office of the state public defender or any agency, entity, organization, or person selected by the office for the direct provision of indigent defense services as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public

expense.

(5) "Indigent person" means a person who, at the time his need is determined pursuant to section 19-6009 , Idaho Code, is unable to provide for the full payment of an attorney and all other necessary expenses of representation.

(6) "Serious crime" means any offense for which the penalty includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility, regardless of whether actually imposed.

19-6003 — office of THE state public defender created

19-6003. office of THE state public defender created. The office of the state public defender is hereby created in the department of self-governing agencies.

19-6004 — STATE PUBLIC DEFENDER — APPOINTMENT — TERM — PROHIBITED CONDUCT — REMOVAL — VACANCIES — reappointment — COMPENSATION

19-6004. STATE PUBLIC DEFENDER — APPOINTMENT — TERM — PROHIBITED CONDUCT — REMOVAL — VACANCIES — reappointment — COMPENSATION.

(1) The state public defender shall reside in the office of the state public defender and shall be appointed by the governor, in a manner consistent with subsection (6) of this section, to serve a four (4) year term.

(2) The state public defender must meet the following qualifications on the effective date of appointment:

(a) Be at least thirty (30) years of age;

(b) Be a citizen of the United States;

(c) Have held a license to practice law or a judicial office in one (1) or more jurisdictions of the United States for at least five (5) continuous years immediately preceding the appointment;

(d) Be or become an active member of the Idaho state bar within one (1) year of appointment and remain an active member in good standing thereafter; and

(e) Have at least five (5) years of criminal defense experience.

(3) The state public defender shall not:

(a) Engage in the practice of law outside his role in the office of the state public defender, except for the practice of law that is permitted for a judge by the Idaho code of judicial conduct;

(b) Hold or be a candidate for any federal, state, county, municipal, judicial, district, or other elective office; provided, however, this paragraph does not prohibit the state public defender from seeking appointment to another office, including state or federal judicial office;

(c) Serve as the agent, representative, officer, political treasurer, or employee, whether for profit or otherwise, of any political party, political committee, or candidate, as such terms are defined in chapter 1, title 34 , Idaho Code, and chapter 66, title 67 , Idaho Code; or

(d) Hold any other public or private sector position, for profit or otherwise, except for volunteer positions that are not inconsistent with the duties of the state public defender.

(4) The state public defender may be removed from office by the governor for failing to retain the qualifications of his office provided in subsection (2) of this section, for engaging in prohibited conduct set forth in subsection (3) of this section, or for good cause shown. If the state public defender is removed from office, the governor shall provide the house of representatives and the senate written notice of the removal, the effective date of removal, and the reason or reasons therefor.

(5) If the state public defender resigns, dies, or is removed from office as provided by law, the governor shall appoint a person who meets the qualifications established in this section, in a manner consistent with subsection (6) of this section, to fill the unexpired term.

(6) The governor shall appoint a state public defender in the following manner:

(a) Whenever a vacancy arises in the position of state public defender, the governor shall appoint a panel with seven (7) members, with one (1) panel member appointed from the membership of each of the seven (7) district magistrates commissions. Not less than two (2) but not more than (3) panel members shall be attorneys, not more than two (2) but not less than one (1) panel member shall be a county commissioner, and one (1) member shall be a mayor. The governor shall not appoint to the panel any member of a district magistrates commission who is a judge, who is employed as a

criminal prosecutor, or who otherwise prosecutes or aids in the prosecution of criminal cases, or any person employed in a law enforcement agency. The governor shall select a member of the panel to serve as chairman. The provisions of section 1-2203B (4), Idaho Code, regarding current or former law partners shall apply to any attorney serving on the panel. Members of the panel shall be compensated by the office of the state public defender as provided in section 59-509 (b), Idaho Code.

(b) It shall be the duty of the panel to recruit applicants, review candidates, and submit to the governor a list of not less than three (3), but not more than five (5), attorneys who meet the qualifications established in this chapter, and the governor shall appoint the state public defender from the list, with the advice and consent of the senate. If three (3) qualified candidates or fewer apply, the panel shall submit all applicants to the governor and may communicate to the governor or the governor's representative, in executive session pursuant to section 74-206 (1)(a), Idaho Code, a ranking of the applicants, and the governor shall appoint the state public defender from the list, with the advice and consent of the senate. The governor and the office of the state public defender may assist the panel in drawing the largest pool of qualified applicants.

(c) Once the governor appoints the state public defender, the panel shall disband until reconstituted by the governor consistent with this section.

(7) When the state public defender's term expires under the law, the governor may reappoint the state public defender to subsequent four (4) year terms, with the advice and consent of the senate, or the governor may constitute a panel consistent with subsection (6) of this section to nominate candidates and appoint a state public defender from the list produced by the panel, with the advice and consent of the senate.

(8) The state public defender shall be compensated in an amount determined by the governor.

19-6005 — POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER

19-6005. POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER. Consistent with the state of Idaho's obligation to provide indigent public defense pursuant to the sixth amendment to the United States constitution; section 13, article I of the constitution of the state of Idaho; and this chapter, the state public defender shall have the power to:

(1) Ensure that qualified defending attorneys, experts, investigators, mitigation specialists, stenographers, paralegals, or other support staff and assistants are employed or contracted as necessary to carry out the purposes of this chapter, that the same deliver indigent defense services in compliance with applicable indigent defense standards, and that any persons hired or contracted to provide indigent individuals charged with an offense or offenses punishable by a sentence of death be qualified to provide team representation. Provided, however, the terms of any contract with a defending attorney shall not include any pricing structure that charges or pays a single fixed fee for the services of the defending attorney and client-related expenses;

(2) Provide appropriate facilities, including office space, furniture, equipment, books and other legal research tools, postage, supplies, and secure information and communication technology equipment that is reasonably necessary for the proper performance of the state public defender;

(3) Implement procedures for the oversight, implementation, enforcement, and improvement of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in this state;

(4) Collaborate with district public defenders to establish Idaho standards for defending attorneys that, to the extent reasonably practical and considering factors such as case complexity, support services, and travel, utilize the following principles:

(a) The delivery of indigent defense services should be independent of political and judicial influence, though the judiciary is encouraged to contribute information and advice concerning the delivery of indigent defense services;

(b) Defending attorneys should have sufficient time and private physical space so that attorney-client confidentiality is safeguarded during meetings with clients;

(c) Defending attorneys' workloads should permit effective representation;

(d) Economic disincentives or incentives that impair defending attorneys' ability to provide effective representation should be avoided;

(e) Defending attorneys' abilities, training, and experience should match the nature and complexity of the cases in which they provide services, including but not limited to cases involving complex felonies, juveniles, and child protection;

(f) The defending attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee the representation of that case and appear at every substantive court hearing;

(g) There should be reasonable parity between defending attorneys and prosecuting attorneys with respect to resources, staff, and facilities;

(h) Defending attorneys shall be regularly reviewed and supervised for compliance with indigent defense standards and, if applicable, compliance with indigent defense standards as set forth in contractual provisions; and

(i) Defending attorneys shall identify and resolve conflicts of interest in conformance with the Idaho rules of professional conduct and other applicable constitutional standards;

(5) Collaborate with district public defenders to establish and implement Idaho-based workload standards for defending attorneys taking into consideration the following factors:

(a) The education, training, abilities, and experience of the defending attorney;

(b) The number of cases assigned to the defending attorney; and

(c) Case complexity;

(6) Provide training and continuing legal education approved by the Idaho state bar for defending attorneys and employees that promotes competency and consistency in case types defended by the state public defender;

(7) Require defending attorneys, contractors, and employees to keep appropriate records, consistent with uniform data-reporting requirements, respecting each person to whom the state public defender is responsible for providing defense, including but not limited to caseload, workload, and expenditures;

(8) Establish contracts both for contract defending attorneys, where utilized throughout the state or when caseload volumes require their use, and for conflict defending attorneys, when carrying out the purposes of this chapter. Contract pay rates shall be informed by the prevailing statewide market rate, local market conditions, and case complexity;

(9) Establish a uniform system for contracting with qualified attorneys to carry out the purposes of this chapter, including a system for application, payment for services, and reimbursement;

(10) Collaborate with district public defenders on the policies of the office and in the formation of a budget request sufficient to meet the state's constitutional obligation to provide indigent services, which the state public defender shall submit to the division of financial management as required by law; and

(11) Seek reimbursement from any applicable federal funds at the department of health and welfare for any allowable costs of representation or administrative costs for any representation authorized by this chapter, whether provided by employees of the office of the state public defender or by contract.

19-6006 — district public defender

19-6006. district public defender.

(1) In each judicial district described in chapter 8, title 1 , Idaho Code, the state public defender shall employ a district public defender. The district public defender must be an employee of the office of the state public defender, meet and maintain the qualifications set forth in section 19-6004 (2), Idaho Code, and not engage in any conduct prohibited by section 19-6004 (3), Idaho Code, while employed as district public defender. The district public defender may be removed by the state public defender for failing to maintain the qualifications of the position established in this section, for engaging in conduct prohibited by this section, or for good cause shown. The duty station of each district public defender must be within the judicial district that the district public defender oversees.

(2) Under the direction and supervision of the state public defender, each district public defender shall carry out the purposes of this chapter in the judicial district, including supervising the defending attorneys, investigators, administrative staff, and other personnel in that judicial district, whether hired or contracted, coordinating litigation within that judicial district, assuring compliance with the provisions of section 19-6005 , Idaho Code, as well as other duties assigned by the state public defender.

(3) The district public defender shall be the principal liaison with the administrative district judge, the trial court administrator, the boards of county commissioners, county clerks, and county prosecutors on administrative matters concerning the provision of public defense in the judicial district. Upon invitation, but not less than annually, the district public defender shall report to each board of county commissioners within the judicial district concerning public defense in the respective county.

19-6007 — hiring the district public defender

19-6007. hiring the district public defender.

(1) Whenever a vacancy arises in the position of district public defender, it shall be the duty of the district magistrates commission to recruit applicants, review candidates, and hire a district public defender who meets the qualifications established in this chapter. The office of the state public defender may assist the district magistrates commission in drawing the largest pool of qualified applicants.

(2) In addition to the provisions of sections 1-2203 , 1-2203A , 1-2203B , 1-2204 , and 1-2205 , Idaho Code, when a district magistrates commission is carrying out the purposes of this section:

(a) The administrative district judge or district judge designated by the administrative district judge shall not participate in any proceedings of the district magistrates commission pursuant to the provisions of this section. The county commissioner on the district magistrates commission from the county that operated an office of public defender by January 1, 2023, shall chair the district magistrates commission. If there is more than one (1) county in the judicial district that operated an office of public defender or that was part of a joint office of public defender by January 1, 2023, the county commissioner on the district magistrates commission from such a county with the longest continuous service as county commissioner shall chair the district magistrates commission. If no county in the judicial district operated an office of public defender or was part of a joint office of public defender by January 1, 2023, the county commissioner on the district magistrates commission with the longest continuous service as county commissioner shall chair the district magistrates commission.

(b) The state public defender shall appoint two (2) attorneys who practice in the judicial district and whose practice as certified by each attorney at the time of his appointment is predominantly criminal defense, one (1) of whom must be a defending attorney employed or contracted by an indigent defense provider, to temporarily serve on the district magistrates commission; provided, however, the provision of section 1-2203B (4), Idaho Code, regarding current or former law partners shall apply to any attorney appointed by the state public defender.

(c) No person employed as a criminal prosecutor or who otherwise prosecutes or aids in the prosecution of criminal cases may participate on the district magistrates commission, nor shall any person employed in a law enforcement agency participate on the district magistrates commission. A temporary vacancy, pursuant to section 1-2203B , Idaho Code, shall occur for any commission member prohibited from participating by this paragraph.

19-6008 — INDIGENT PUBLIC DEFENSE — role of counties

19-6008. INDIGENT PUBLIC DEFENSE — role of counties.

(1) All counties are released from any further financial or legal obligation to provide indigent public defense. On and after such date, the state assumes the full financial and legal obligation to provide indigent public defense required by the sixth amendment to the United States constitution and section 13, article I of the constitution of the state of Idaho.

(2) This release of financial and legal obligation to provide indigent public defense includes the release of any requirement for counties: to employ or contract with defending attorneys, investigators, social workers, legal assistants, or other personnel necessary to provide indigent public defense; to provide office furnishings, equipment, office materials, or office supplies; to provide information technology equipment, information technology software, communication equipment, communication software, equipment, or software licenses or subscriptions; to provide general office technology or equipment; or to assume any other expense necessary for indigent defense services on and after October 1, 2024.

(3) Notwithstanding the provisions of this section, any county providing office space to a county office of public defense or a joint county office of public defense as of January 1, 2023, shall continue to make available the same or substantially similar office space for the use of the office of the state public defender until July 1, 2029, provided that:

(a) Not later than January 1, 2027, the state public defender must provide to the board of county commissioners of any county providing office space to the office of the state public defender a facility transition plan outlining the state public defender's intent to either procure other office space to house defending attorneys or enter into a contract with the board of county commissioners to lease office space from the board of county commissioners necessary to house defending attorneys;

(b) Nothing in this section shall be construed to obligate a board of county commissioners to provide office space to the office of the state public defender on and after July 1, 2029;

(c) Nothing in this section shall prohibit the state public defender from notifying a board of county commissioners that provides office space to the office of the state public defender that the state public defender no longer needs part or all of the space obligated by this section prior to July 1, 2029. Such notice shall relieve the county board of commissioners of the obligation to provide office space to the office of the state public defender; and

(d) Notwithstanding the provisions of this section, each county must continue providing interviewing facilities in the county jail necessary for carrying out the state public defender's responsibilities in law.

(4) The state public defender shall reimburse a board of county commissioners for any expenses incurred in providing such office space, including but not limited to office furnishings, equipment, office materials, or office supplies; information technology equipment, information technology software, communication equipment, communication software, equipment, or software licenses or subscriptions; or general office technology or equipment or related expenses. Provided however, that counties providing such office space shall be responsible for costs related to office utilities, office cleaning, building maintenance, snow removal, and repair and replacement costs due to reasonable use of the office space. The board of county commissioners and the state public defender shall annually enter into a memorandum of understanding regarding the use of such office space.

19-6009 — Right to counsel of indigent person — Representation at all stages of criminal and commitment proceedings — Payment

19-6009. Right to counsel of indigent person — Representation at all stages of criminal and commitment proceedings — Payment. [effective until January 1, 2027]

(1) An indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section 18-212 , 66-322 , 66-326 , 66-329 , 66-404 or 66-406 , Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime is entitled:

(a) To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and

(b) To be provided with the necessary services and facilities of representation, including investigation and other preparation. The attorney, services and facilities, and the court costs shall be provided at public expense to the extent that the person is, at the time the court determines indigency pursuant to section 19-6011 , Idaho Code, unable to provide for their payment.

(2) An indigent person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation;

(b) To be represented in any appeal; and

(c) To be represented in any other post-conviction or post-commitment proceeding that the attorney or the indigent person considers appropriate, unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.

(3) Upon a finding of indigency, representation by an attorney under subsection (1) of this section shall include the following cases, excluding those cases where the state appellate public defender has jurisdiction pursuant to section 19-5905 , Idaho Code, and excluding those cases of guardian ad litem representation pursuant to section 16-1614 (4), Idaho Code:

(a) Felony and misdemeanor cases;

(b) Actions arising under the Idaho juvenile corrections act, chapter 5, title 20 , Idaho Code;

(c) Proceedings under the uniform post-conviction procedure act, chapter 49, title 19 , Idaho Code;

(d) Civil contempt proceedings where incarceration is sought;

(e) Actions arising under the child protective act, chapter 16, title 16 , Idaho Code, but excluding actions brought exclusively under chapter 20, title 16 , Idaho Code; and

(f) Appeals from adjudicatory decrees or orders under section 16-1625 , Idaho Code.

(4) The office of the state public defender shall be required to provide indigent defense services only in cases listed in subsection (3) of this section, provided that such limitations shall not obligate a county to finance or oversee indigent defense service for any action not provided for in this chapter.

(5) An indigent person's right to a benefit under subsection (1) or (2) of this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage. 19-6009. Right to counsel of indigent person — Representation at all stages of criminal and commitment proceedings — Payment. [effective January 1, 2027]

(1) An indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section 18-212 , 66-322 , 66-326 , 66-329 , or 66-406 , Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime is entitled:

(a) To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and

(b) To be provided with the necessary services and facilities of representation, including investigation and other preparation. The attorney, services and facilities, and the court costs shall be provided at public expense to the extent that the person is, at the time the court determines indigency pursuant to section 19-6011 , Idaho Code, unable to provide for their payment.

(2) An indigent person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation;

(b) To be represented in any appeal; and

(c) To be represented in any other post-conviction or post-commitment proceeding that the attorney or the indigent person considers appropriate, unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.

(3) Upon a finding of indigency, representation by an attorney under subsection (1) of this section shall include the following cases, excluding those cases where the state appellate public defender has jurisdiction pursuant to section 19-5905 , Idaho Code, and excluding those cases of guardian ad litem representation pursuant to section 16-1614 (4), Idaho Code:

(a) Felony and misdemeanor cases;

(b) Actions arising under the Idaho juvenile corrections act, chapter 5, title 20 , Idaho Code;

(c) Proceedings under the uniform post-conviction procedure act, chapter 49, title 19 , Idaho Code;

(d) Civil contempt proceedings where incarceration is sought;

(e) Actions arising under the child protective act, chapter 16, title 16 , Idaho Code, but excluding actions brought exclusively under chapter 20, title 16 , Idaho Code; and

(f) Appeals from adjudicatory decrees or orders under section 16-1625 , Idaho Code.

(4) The office of the state public defender shall be required to provide indigent defense services only in cases listed in subsection (3) of this section, provided that such limitations shall not obligate a county to finance or oversee indigent defense service for any action not provided for in this chapter.

(5) An indigent person's right to a benefit under subsection (1) or (2) of this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

19-6010 — Duty to notify accused or detained of right to counsel

19-6010. Duty to notify accused or detained of right to counsel. [effective until January 1, 2027]

(1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to section 66-322 , 66-326 , 66-329 , 66-404 or 66-406 , Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge or hearing, as the case may be, shall:

(a) Clearly inform him of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense; and

(b) If the person detained or charged does not have an attorney, notify the indigent defense provider or trial court concerned, as the case may be, that he is not so represented. As used in this subsection, the term "commencement of

detention" includes the taking into custody of a probationer.

(2) Upon commencement of any later judicial proceeding relating to the same matter including, but not limited to, preliminary hearing, arraignment, trial, any post-conviction proceeding or post-commitment proceeding, the presiding officer shall clearly inform the person so detained or charged of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense. Provided, the appointment of an attorney at public expense in uniform post-conviction procedure act proceedings shall be in accordance with section 19-4904 , Idaho Code.

(3) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the state public defender.

(4) Upon notification by the court, the state public defender shall represent the person with respect to whom the notification is made. 19-6010. Duty to notify accused or detained of right to counsel. [effective January 1, 2027]

(1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to section 66-322 , 66-326 , 66-329 , or 66-406 , Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge or hearing, as the case may be, shall:

(a) Clearly inform him of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense; and

(b) If the person detained or charged does not have an attorney, notify the indigent defense provider or trial court concerned, as the case may be, that he is not so represented. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer.

(2) Upon commencement of any later judicial proceeding relating to the same matter including, but not limited to, preliminary hearing, arraignment, trial, any post-conviction proceeding or post-commitment proceeding, the presiding officer shall clearly inform the person so detained or charged of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense. Provided, the appointment of an attorney at public expense in uniform post-conviction procedure act proceedings shall be in accordance with section 19-4904 , Idaho Code.

(3) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the state public defender.

(4) Upon notification by the court, the state public defender shall represent the person with respect to whom the notification is made.

19-6011 — Determination of indigency — Factors considered — Partial payment by accused — Reimbursement

19-6011. Determination of indigency — Factors considered — Partial payment by accused — Reimbursement.

(1) The determination of whether a person covered under section 19-6009 , Idaho Code, is an indigent person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under section 19-6015 , Idaho Code, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is an indigent person.

(2) The court concerned shall presume that the following persons are indigent persons unless such a determination is contrary to the interests of justice:

(a) Persons whose current monthly income does not exceed one hundred eighty-seven percent (187%) of the federal poverty guidelines issued annually by the federal department of health and human services;

(b) Persons who receive, or whose dependents receive, public assistance pursuant to title 56 , Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance; or

(c) Persons who are currently serving a sentence in a correctional facility or are being housed in a mental health facility.

(3) The court concerned may determine that persons other than those described in subsection (2) of this section are indigent persons. In determining whether a person is an indigent person and in determining the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations, the number and ages of his dependents and the cost of bail. Participation in the Idaho health insurance exchange shall not result in the

presumption of indigency.

(4) Release on bail does not necessarily prevent a person from being an indigent person.

(5) In each case, the person shall, subject to the penalties for perjury, certify in writing or by other record such material factors relating to his ability to pay as the court prescribes by rule. No information provided by a person pursuant to this subsection may be used as substantive evidence in any criminal or civil proceeding against the person except:

(a) For impeachment purposes;

(b) In a prosecution for perjury or contempt committed in providing the information; or

(c) In an attempt to enforce an obligation to reimburse the state for the cost of counsel.

(6) To the extent that a person covered under section 19-6009 , Idaho Code, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to provide for their payment.

(7) Upon conviction, notwithstanding the form of judgment or withheld judgment, plea of guilty or finding of guilt for any crime regardless of the original crime or number of counts, an indigent person who receives the services of a defending attorney may be required by the court to reimburse the state public defense fund for all or a portion of the cost of those services related to the conviction, plea of guilty or finding of guilt, unless the requirement would impose a manifest hardship on the indigent person. Any funds received due to an existing or future order for reimbursement for the services of a defending attorney shall be deposited into the state public defense fund. The current inability of the indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

19-6012 — Qualifications of counsel

19-6012. Qualifications of counsel. No person may be given the primary responsibility of representing an indigent person unless he is licensed to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime.

19-6013 — Waiver of counsel — Consideration by court

19-6013. Waiver of counsel — Consideration by court. A person who has been appropriately informed of his right to counsel may waive any right provided by this chapter if the court concerned, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person’s age, education and familiarity with the English language and the complexity of the crime involved.

19-6014 — Facilities

19-6014. Facilities. A defending attorney is entitled to use the same state facilities for the evaluation of evidence as are available to the county prosecutor. If the defending attorney considers the use of the state facilities impractical, the court concerned may authorize the use of private facilities, to be paid for by the state public defender.

19-6015 — Reimbursement — When authorized

19-6015. Reimbursement — When authorized.

(1) The attorney general or the appropriate county prosecutor may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this chapter:

(a) To which he was not entitled;

(b) With respect to which he was not an indigent person when he received it; or

(c) With respect to which he has failed to make the certification required under section 19-6011 , Idaho Code, and for which he refuses to pay or reimburse. Suit must be brought within five (5) years after the date on which the aid was received.

(2) The attorney general or the appropriate county prosecutor may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person other than a person covered under subsection (1) of this section who has received legal assistance under this chapter and who, on the date on which suit is brought, is financially able to pay or reimburse for legal assistance without manifest hardship according to the standards of ability to pay applicable under sections 19-6009 and 19-6011 , Idaho Code, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.

(3) Amounts recovered under this section shall be paid into the state public defense fund pursuant to section 57-827 , Idaho Code.

19-6016 — Records of defending attorneys

19-6016. Records of defending attorneys. Indigent defense providers and defending attorneys shall keep appropriate records respecting each person whom they represent under this chapter.

19-6017 — Application of chapter — State courts — Federal courts

19-6017. Application of chapter — State courts — Federal courts. This chapter applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing an indigent person in a federal court of the United States, if:

(1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or

(2) Representation is under a plan of the United States district court as required by the criminal justice act of 1964, 18 U.S.C. 3006A, and is approved by the state public defender.

19-6018 — Provisions not exclusive

19-6018. Provisions not exclusive. The protections provided by this chapter do not exclude any protection or sanction that the law otherwise provides.

19-6019 — contracting with defending attorneys

19-6019. contracting with defending attorneys.

(1) When contracting with defending attorneys to provide primary or conflict indigent defense services, to the greatest extent that is practicable, the office of the state public defender shall contract with local defending attorneys who practice in the county. If no qualified attorneys who practice in the county are available, the office of the state public defender shall contract with local defending attorneys who practice within the judicial district.

(2) In counties that did not operate an office of public defender or joint office of public defender by January 1, 2023, the office of the state public defender shall continue to provide primary indigent defense services by contract through July 1, 2029, unless the board of county commissioners, at the request of the office of the state public defender, votes to allow the office to transition from primary contract indigent defense providers. Notice of no less than six (6) months is required in advance of any change in delivery of public defense from primary contract indigent defense providers in a county pursuant to this subsection.

(3) Nothing in this section:

(a) Prohibits the office of the state public defender from continuing to contract with defending attorneys to provide indigent defense services in any county after July 1, 2029;

(b) Requires the office of the state public defender to contract with defending attorneys who do not meet the requirements and standards for defending attorneys; or

(c) Restricts the office of the state public defender from using defending attorneys employed by the office of the state public defender to represent indigent defendants in any capital case.

19-6020 — APPOINTMENT OF ADDITIONAL COUNSEL — PRO BONO PROGRAMS

19-6020. APPOINTMENT OF ADDITIONAL COUNSEL — PRO BONO PROGRAMS.

(1) Should the office of the state public defender be unable to carry out the duties required in this chapter because of a conflict of interest, or any other reason, the state public defender or his designee shall arrange for counsel for indigent defendants to be compensated out of the budget of the office of the state public defender. The state public defender, in his discretion, may also contract with private attorneys to provide representation pursuant to this chapter on a case-by-case basis when such contracts would conserve budgetary resources.

(2) The state public defender is authorized to facilitate and develop with the judicial branch, the Idaho state bar, law schools, and private attorneys and law offices pro bono opportunities to take cases pursuant to this chapter; however, nothing in this subsection requires the office of the state public defender to assign pro bono cases to attorneys who do not meet the requirements and standards for defending attorneys.

CHAPTER 61

19-6101 — DEFINITIONS

19-6101. DEFINITIONS. As used in this chapter:

(1) "Peace officer" means any employee of a police or law enforcement agency that is a part of, or administered by, the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of this state or any political subdivision. Peace officer also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(2) "Policy" means a formal, written rule, order, ordinance, or policy and an informal, unwritten policy.

(3) "Political subdivision" means any county, city, municipal corporation, health district, school district, irrigation district, operating agent of any irrigation district whose board consists of directors of its member districts, special improvement or taxing district, or any other political subdivision or public corporation. As used in this chapter, "county" and "city" also mean state-licensed hospitals and attached nursing homes established by counties pursuant to chapter 36, title 31 , Idaho Code, or jointly by cities and counties pursuant to chapter 37, title 31 , Idaho Code.

(4) "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

19-6102 — LOCAL GOVERNMENT POLICY REGARDING IMMIGRATION ENFORCEMENT

19-6102. LOCAL GOVERNMENT POLICY REGARDING IMMIGRATION ENFORCEMENT.

(1) A governmental entity shall not adopt, enforce, or endorse a policy under which the entity prohibits or discourages the enforcement of immigration laws.

(2) In compliance with subsection (1) of this section, a governmental entity shall not prohibit or discourage a person who is a commissioned peace officer, a corrections officer, a booking clerk, a magistrate, or a prosecuting attorney, and who is employed by or otherwise under the direction or control of the entity, from doing any of the following:

(a) Inquiring into the immigration status of a person under a lawful detention or under arrest;

(b) With respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest:

(i) Sending the information to, or requesting or receiving the information from, United States citizenship and immigration services or United States immigration and customs enforcement, including information regarding a person's place of birth; (ii) Maintaining the information; or (iii) Exchanging the information with another governmental entity, including a federal or state governmental entity;

(c) Assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or

(d) Permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws.

19-6103 — COMPLAINT — EQUITABLE RELIEF

19-6103. COMPLAINT — EQUITABLE RELIEF.

(1) Any person, including the federal government, may file a complaint with the attorney general if the person offers evidence to support an allegation that a governmental entity has adopted, enforced, or endorsed a policy under which the entity prohibits or discourages the enforcement of immigration laws or that the entity, by consistent actions, prohibits or discourages the enforcement of those laws. The person must include with the complaint the evidence the person has that supports the complaint.

(2) If the attorney general determines that a complaint filed under subsection (1) of this section against a governmental entity is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Ada county, or in a county in which the principal office of the entity is located, to compel the entity that adopts, enforces, or endorses a policy under which the governmental entity prohibits or discourages the enforcement of

immigration laws or that, by consistent actions, prohibits or discourages the enforcement of those laws to comply with section 19-6102 , Idaho Code. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

CHAPTER 62

19-6201 — DEFINITIONS

19-6201. DEFINITIONS. As used in this chapter:

(1) "Alternative Idaho mailing address" means the address of a judicial officer's chambers.

(2) "Application" means a written form prescribed and made available by the Idaho supreme court. Such application shall contain, at a minimum, all of the following:

(a) A sworn statement by the judicial officer's employing entity that the applicant is in fact a judicial officer as defined in subsection (4) of this section;

(b) A sworn statement by the judicial officer that names such officer's residing household members, if any, as defined in subsection (6) of this section;

(c) The alternative Idaho mailing address as defined in subsection (1) of this section and the telephone number or numbers where the judicial officer and such officer's residing household members can be contacted by the public agency; and

(d) A sworn statement by the judicial officer that such officer knowingly and voluntarily designates his employing entity as agent for purposes of service of process and receipt of first class, certified, or registered mail.

(3) "Custodian" is as defined in section 74-101 , Idaho Code.

(4) "Judicial officer" means a justice, judge, or magistrate judge with chambers in the state of Idaho.

(5) "Public agency" is as defined in section 74-101 , Idaho Code.

(6) "Residing household member" means a judicial officer's spouse and any child or children who currently reside at the same residential street address as such officer.

(7) "Idaho residential street address" means the street address of the judicial officer's residence and includes a legal description of real estate that contains the location of such address.

19-6202 — DISCLOSURE OF RESIDENTIAL STREET ADDRESS AND TELEPHONE NUMBER PROHIBITED — EXCEPTIONS

19-6202. DISCLOSURE OF RESIDENTIAL STREET ADDRESS AND TELEPHONE NUMBER PROHIBITED — EXCEPTIONS. Notwithstanding any other provision of state law, a public agency shall not disclose to any person or entity the Idaho residential street address and telephone number of a judicial officer and such officer's residing household members upon submission of an application and fee consistent with the provisions of section 19-6203 , Idaho Code, except under any of the following circumstances:

(1) If directed by a court order, to a person identified in the court order;

(2) If requested by a law enforcement agency, to the law enforcement agency;

(3) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(4) If the judicial officer provides written permission for disclosure of such information.

19-6203 — ADDRESS CONFIDENTIALITY — ELIGIBILITY

19-6203. ADDRESS CONFIDENTIALITY — ELIGIBILITY.

(1) Judicial officers desiring that their Idaho residential street address and telephone number and the Idaho residential street address and telephone number of their residing household members be exempt from disclosure pursuant to this chapter and sections 34-704

(6) and 74-106 (30), Idaho Code, may submit an application and a fee, if any, to the custodian of the public record that contains such information. Upon receipt of such application and fee, the public agency shall comply with the provisions of this chapter for a period of four (4) years. Thereafter, judicial officers may renew the exemption by submitting a new

application and fee, if any. The public agency may establish a fee schedule not to exceed the actual cost to the agency of complying with the provisions of this chapter.

(2) Judicial officers may submit an application to a public agency requesting that the public agency use an alternative Idaho mailing address rather than the Idaho residential street address of any such officer and of any such officer's residing household members on all applications and on all identification cards, licenses, certificates, permits, tags, and other similar documents that are issued to the officer or to such officer's residing household members by the public agency. A public agency receiving such application shall comply with the request.

(3) A person shall cease to be eligible for an exemption under this chapter if such person ceases to be a judicial officer or a residing household member. Within thirty (30) days of such cessation, the person shall notify, in writing, every public agency to which the person has made an application stating that he is no longer eligible for such exemption. If a judicial officer changes employment but is still eligible for an exemption under this chapter, such judicial officer shall, within thirty (30) days of changing employment, submit a new application to every public agency to which such officer has made an application.

(4) Nothing in this chapter shall prevent a public agency from obtaining the Idaho residential street address and telephone number of a judicial officer and of any residing household member. A judicial officer who has submitted an application pursuant to the provisions of this chapter shall provide his current Idaho residential street address to his employing entity. The judicial officer's employing entity, or any public agency that has obtained the Idaho residential street address of a judicial officer, shall upon request identify the county in which the judicial officer's Idaho residential street address is situated.

19-6204 — immunity FROM LIABILITY

19-6204. immunity FROM LIABILITY. Neither a public agency nor its employees, while acting within the course and scope of their employment and without malice or criminal intent, shall be liable under the Idaho tort claims act, chapter 9, title 6 , Idaho Code, for any injury resulting from the release of confidential information under this chapter.

CHAPTER 63

19-6301 — short title

19-6301. short title. This chapter shall be known and may be cited as the "Idaho Son of Sam Law."

19-6302 — purpose

19-6302. purpose. The purpose of this chapter is to ensure that victims of crime may recover restitution or damages from money or property that offenders earn because of the publicity of their crimes. This chapter regulates only the money made, not speech itself, in order to protect constitutional free expression. This chapter shall apply to proceeds derived from criminal notoriety without regard to the expressive content or medium through which such proceeds are generated and shall not be construed to regulate speech or expression.

19-6303 — definitions

19-6303. definitions. As used in this chapter:

(1) "Crime" means any felony or misdemeanor committed in this state that results in a conviction.

(2) "Exploit" or "exploitation" means knowingly and commercially deriving financial gain where the criminal notoriety of a crime is a substantial contributing factor to the value of the proceeds. Incidental, educational, journalistic, or expressive references to a crime that are not undertaken for the purpose of deriving commercial gain from criminal notoriety shall not constitute exploitation under the provisions of this chapter.

(3) "Notoriety of a crime" means the public attention from a crime when directly connected to the offender's part in the crime.

(4) "Offender" means a person convicted of a criminal offense in this state.

(5) "Proceeds" means any money, royalties, or other thing of value received by an offender that is derived from the criminal notoriety of a crime, regardless of the medium or form in which the proceeds are generated.

(6) "Victim" is as defined in section 19-5304 , Idaho Code.

19-6304 — escrow account

19-6304. escrow account. Any person or company who pays an offender for work that exploits the notoriety of a crime shall send such payment to the Idaho state treasurer, who shall place the payment in an interest-bearing escrow account for five (5) years unless extended by court order upon a showing of good cause. The state treasurer, in consultation with the attorney general and subject to legislative approval, shall adopt rules for such escrow administration.

19-6305 — Notice to victims

19-6305. Notice to victims. The attorney general shall notify all known victims within thirty (30) days after money is deposited in escrow. Victims may file lawsuits or use restitution orders to claim funds during the escrow period.

19-6306 — distribution

19-6306. distribution.

(1) If a victim wins a judgment, the court shall order payment to the victim from the escrow account.

(2) If more than one (1) victim has a valid claim, funds shall be divided fairly unless the court orders otherwise.

(3) Any money remaining after five (5) years and after all valid claims are paid shall be returned to the offender.

19-6307 — exceptions

19-6307. exceptions. The provisions of this chapter shall not apply to:

(1) Payments for legal services;

(2) Works of art or fiction that only briefly mention the crime;

(3) Regular wages or income not related to the crime;

(4) Money earned before the crime was committed; or

(5) News or documentary works created mainly to inform or educate and where the offender is paid only normal interview fees.

19-6308 — freedom of speech

19-6308. freedom of speech.

(1) Nothing in this chapter shall be interpreted as restricting or censoring freedom of speech. The provisions of this chapter shall apply only to money made from the publicity of a crime, not to the content of expression itself.

(2) The provisions of this chapter shall be construed narrowly to comply with the first amendment to the constitution of the United States and section 9, article I of the constitution of the state of Idaho.

19-6309 — penalties

19-6309. penalties. Any person or company that knowingly fails to submit proceeds as required by this chapter shall be subject to a civil penalty of up to three (3) times the amount withheld, plus attorney's fees. The attorney general may bring a civil action to recover such penalties.

Title 23 — Alcoholic Beverages

CHAPTER 1

23-101 — Short title

23-101. Short title. This act may be cited as the "Idaho Liquor Act."

23-102 — Purpose of act

23-102. Purpose of act. This act is passed in the exercise of the police power of the state. It is not designed to abridge the personal privilege of a responsible adult to consume alcoholic liquor as a beverage, except in cases of the abuse of that privilege to the detriment of others. The public interest requires that traffic in alcoholic liquor be regulated and controlled by the state, through the medium of a state liquor division vested with exclusive authority to import and sell such liquor, with certain exceptions, which are subject to its regulation.

23-104 — Separability

23-104. Separability. Should any section, clause, sentence, or provision of this act, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the legislature would have adopted the remainder of this act, notwithstanding the invalidity of any such section, clause, sentence, or provision.

23-105 — Alcoholic liquor defined

23-105. Alcoholic liquor defined. "Alcoholic liquor," as the term is used in this act, includes:

(a) "Alcohol," meaning the product of distillation of any fermented liquor, rectified once or more than once, whatever may be the origin thereof, or synthetic ethyl alcohol.

(b) "Spirits," meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey and gin.

(c) Any liquid or solid, patented or not, containing spirits, and susceptible of being consumed by a human being for beverage purposes and containing more than four percent (4%) of alcohol by volume.

CHAPTER 2

23-201 — director — Appointment and term

23-201. director — Appointment and term. There shall be a state liquor division (in this act referred to as the "division"), in the office of the governor. The division shall be a division of the office of the governor for the purposes of chapter 8, title 67 , Idaho Code, and the administrator of the division shall be known as the director of the state liquor division. The director shall be appointed by the governor for a term of three (3) years, but may be removed by the governor at will.

23-202 — Principal place of business

23-202. Principal place of business. The principal place of business of the division shall be in Ada county.

23-203 — Powers and duties

23-203. Powers and duties. The division shall have the following general powers and duties:

(a) Regulation of Liquor Traffic. To permit, license, inspect and regulate the manufacture, importation, transportation, storage, sale and delivery of alcoholic liquor for purposes permitted by this act.

(b) Traffic in Liquor. To buy, import, transport, store, sell and deliver alcoholic liquor, wine containing more than sixteen percent (16%) alcohol by volume, table wine, as defined in section 23-1303 , Idaho Code, that is manufactured in Idaho, and sparkling wine.

(c) Operation of Liquor Stores. To establish, maintain and discontinue warehouses, state liquor stores and distribution stations, and in the operation thereof to buy, import, transport, store, sell and deliver such other nonalcohol merchandise as may be reasonably related to its sale of alcoholic liquor.

(d) Acquisition of Real Estate. To acquire, buy and lease real estate and to improve and equip the same for the conduct of its business.

(e) Acquisition of Personal Property. To acquire, buy and lease personal property necessary and convenient for the conduct of its business.

(f) Making Reports. To report to the governor annually, and at such other times as he may require, concerning the condition, management and financial transactions of the division.

(g) General Powers. To do all things necessary and incidental to its powers and duties under this act. The division shall so exercise its powers as to curtail the intemperate use of alcoholic beverages. It shall not attempt to stimulate the normal demands of temperate consumers thereof, irrespective of the effect on the revenue derived by the state from the resale of intoxicating liquor.

23-206 — Powers and duties of director as successor to Idaho liquor board

23-206. Powers and duties of director as successor to Idaho liquor board. The director of the division shall have the following general powers and duties. (a) Supervision: To exercise general supervision of the conduct and business of the division. (b) Rules and Regulations: To promulgate rules and regulations in the exercise of the governmental and proprietary powers and duties of the division.

23-207 — Specific rules and regulations

23-207. Specific rules and regulations. Without attempting or intending to limit the general powers of the director of the division contained in section 23-206 , Idaho Code, such powers shall extend to and include the following:

(a) Subject to the provisions of chapter 53, title 67 , Idaho Code, to prescribe the qualifications of and to select personnel to conduct its business and perform its functions; to require that those holding positions of trust be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59 , Idaho Code; to fix the compensation of all appointees and employees, assign their duties, and to discharge them.

(b) To regulate the management, operation, bookkeeping, reporting, equipment, records, and merchandise of state liquor stores and distribution stations and warehouses.

(c) To regulate the importation, purchase, transportation, and storage of alcoholic liquor and the furnishing of alcoholic liquor to state liquor stores, distribution stations, and warehouses established under this act.

(d) To determine the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses and for sale at state liquor stores and distribution stations.

(e) To determine the nature, form, and capacity of packages containing liquor kept or sold.

(f) To prescribe the kinds and character of official seals or labels to be attached to packages of liquor sold to a licensee as defined in chapter 9, title 23 , Idaho Code. No official seals or labels shall be required to be attached to packages of liquor sold to the general public, at a liquor store or a distributing station.

(g) From time to time to fix the sale prices, which shall be uniform throughout the state, of the different classes, varieties, or brands of alcoholic liquor, and to issue and distribute price lists thereof.

(h) To prescribe, prepare, and furnish printed forms and information blanks necessary or convenient for administering this act, and printed copies of the regulations made thereunder. To contract for the printing thereof and of all necessary records and reports.

(i) To regulate the issuance, suspension and revocation of permits and licenses to purchase, manufacture and handle or traffic in alcoholic liquor.

(j) To prescribe the conditions and qualifications necessary for obtaining permits and licenses, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of use of permittees and licensees.

(k) To prescribe the kind, quality, and character of alcoholic liquors which may be purchased or sold under any and all licenses and permits, including the quantity which may be purchased or sold at any one (1) time or within any specified period of time.

23-208 — director — Powers and duties

23-208. director — Powers and duties. The director as the executive officer of the division, shall exercise all the powers and duties vested in the division.

23-209 — Official bond of director

23-209. Official bond of director. The director shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59 , Idaho Code.

23-211 — Personnel not to be interested in private liquor traffic

23-211. Personnel not to be interested in private liquor traffic. Neither the director nor any other officer or employee of the division shall, directly or indirectly, individually, or as a member of a partnership or as a shareholder in a corporation, have any private interest whatsoever in the business of manufacturing, transporting, distributing, or selling of alcoholic liquor; nor shall he receive any kind of profit whatsoever, or have any interest whatsoever in the purchases or sale by the persons herein authorized to purchase and sell alcoholic liquor, except that such provisions shall not prevent any such person from purchasing and keeping in his possession for the personal use of himself, his family, or his guests, of any liquor which may be lawfully purchased.

23-212 — Personnel disqualified from other office or business

23-212. Personnel disqualified from other office or business. No officer or employee of the division shall, while holding such office or position, hold any other office or position or engage in any occupation or business inconsistent or interfering with the duties of such employment.

23-214 — Officers and employees not personally liable

23-214. Officers and employees not personally liable. Neither the director nor any of the officers or employees of the division shall be liable for damages sustained by any person because of any act done in the performance of their respective duties under this act.

23-217 — Surcharge added to price of alcoholic liquor and all other merchandise sold — Collection and remission by director

23-217. Surcharge added to price of alcoholic liquor and all other merchandise sold — Collection and remission by director.

(1) The director of the division is hereby authorized and directed to include in the price of alcoholic liquor and all other merchandise sold in the division, and its branches, a surcharge equal to two percent (2%) of the current price per unit computed to the nearest multiple of five cents (5¢).

(2) After the price of the surcharge has been included, the director of the division is hereby authorized and directed to allow a discount of five percent (5%) from the price of each order of alcoholic liquor and all other merchandise sold to any licensee, as defined in section 23-902 (8), Idaho Code.

(3) The surcharge imposed pursuant to this section shall be collected and credited monthly to the drug court, mental health court and family court services fund, as set forth in section 1-1625 , Idaho Code.

CHAPTER 3

23-301 — Liquor stores — Notice of intent to locate

23-301. Liquor stores — Notice of intent to locate.

(a) The division may establish and maintain liquor stores in any city organized under general or special law. Before any store site or distributing station may be established within a city or unincorporated area that does not have a distributing station, the division shall have printed in the city's official newspaper, as defined in section 50-213 , Idaho Code, a legal notice of the division's intent to establish a liquor store or distributing station in the city and that a public hearing will be held regarding the proposed liquor store if the requirements specified herein are satisfied. The legal notice shall contain the time, date and place of the hearing and the address where the liquor store or distributing station is proposed to be located, notice of the right to protest the location, the requirements necessary to be satisfied before a public hearing will be held, and shall be a twenty (20) days' notice as described in section 60-109 , Idaho Code. If the lesser of twenty-five (25) people or ten percent (10%) of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site, sign a petition which protests the proposed site of the liquor

store or distributing station and present it to the director or his designated representative, a public hearing shall be held within one (1) week after the last legal notice has been published.

(b) If fifty percent (50%) or more of the eligible voters living in precincts, any part of which is located within a one thousand (1,000) foot radius surrounding the proposed site of the liquor store or distributing station, sign a petition which protests the proposed site of the liquor store or distributing station and present it to the director or his designated representative within five (5) business days after the public hearing, the division shall not place a liquor store or distributing station at the proposed site.

(c) The division may classify liquor stores according to the volume of their sales.

23-302 — Distributing stations — Notice of intent to locate

23-302. Distributing stations — Notice of intent to locate.

(a) The division may select a special distributor in any municipality where in its judgment a liquor store is not required; or in any unincorporated locality, but only if satisfied of the existence therein of adequate local police protection, upon the furnishing by said distributor of a bond satisfactory to the division, conditioned for his faithful observance of this act and the rules and regulations of the division thereunder, and if the provisions of section 23-301 , Idaho Code, are complied with.

(b) In maintaining the location of any such store or station, or in discontinuing the same, the division shall give due consideration to the normal local demand for alcoholic liquor by resident temperate adult consumers and the local community sentiment with respect to the liquor traffic as expressed by ordinance or otherwise; provided, however, that if the division located a state liquor store in a municipality with a special distributor on or after January 1, 2023, then any store or station that was in operation as such a special distributor shall be allowed to continue to operate as a special distributor in that location and municipality as long as the store or station otherwise complies with the provisions of this chapter and the rules and regulations of the division, including the provisions of the special distributor agreement. Such special distributor agreements shall not be assignable or transferable.

23-303 — Proximity of school

23-303. Proximity of school. No liquor store or distribution station shall be located within three hundred (300) feet of a school.

23-304 — Qualifications of special distributors

23-304. Qualifications of special distributors. A special distributor shall have been a resident of the state for at least six (6) months prior to his selection and shall be a person having a reputation for probity, temperance and integrity.

23-305 — Compensation of special distributors

23-305. Compensation of special distributors. Special distributors shall receive uniform compensation, which compensation shall be considered a part of the cost of sales, according to classifications fixed by the division.

23-306 — General conduct and management

23-306. General conduct and management. In the conduct and management of liquor stores and distributing stations, special distributors shall be subject to the provisions of this act and the rules and regulations of the division.

23-307 — Days when sales are prohibited

23-307. Days when sales are prohibited. It shall be unlawful to transact the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station:

(a) After the closing hours as established by the division.

(b) On any Thanksgiving, Christmas or Memorial Day.

(c) On any Sunday, except as provided by county option pursuant to section 23-308 , Idaho Code.

(d) During such other periods or days as may be designated by the division.

23-308 — County option Sunday liquor sales — Resolution of county commissioners — Local option county election

23-308. County option Sunday liquor sales — Resolution of county commissioners — Local option county election.

(1) The board of county commissioners of each county may, by resolution regularly adopted, allow for the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, and such sales shall be allowed so long as the resolution remains in effect. If such a resolution is adopted by the board, a copy of such resolution shall be delivered to the director of the division and to the director of the Idaho state police.

(2) Within thirty (30) days after the effective date of this act, a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any county may be filed with the clerk of said county requesting an election to be held to determine whether or not the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, shall be allowed.

(3) In the event a petition is presented, the county commissioners of any such county shall, within five (5) days after the presentation of the petition, meet and determine the sufficiency thereof by ascertaining whether such petition is signed by the required number of registered, qualified electors of the county affected.

(4) In the event that a petition does not contain the required number of certified signatures, the commissioners shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the commissioners find the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the commissioners shall declare the petition null and void ab initio in its entirety.

(5) In the event the county commissioners of said county determine that the petition is signed by the required percentage of registered, qualified electors, the commissioners shall forthwith make an order calling an election to be held within the county, subject to the provisions of section 34-106 , Idaho Code, in the manner provided by law for holding elections for county officers. All the laws of the state of Idaho relating to the holding of elections of county officers for such county shall apply to the holding of the election provided for in this section. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election.

23-308A — Form of local option county election ballot

23-308A. Form of local option county election ballot. The county clerk shall furnish the ballots to be used in the local option county election, which ballots shall contain the following words: "Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes." "Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, No." and the elector in order to vote must mark an "X" or other mark sufficient to show his intent, opposite one (1) of the questions in a space provided therefor.

23-308B — Effect of local option county election

23-308B. Effect of local option county election. Upon a canvass of the votes cast, the clerk of the county shall certify the result thereof to the director of the Idaho state police and to the director of the division. If a majority of the votes cast are "Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes," then all liquor stores and distributing stations in the county shall be allowed to transact the sale or delivery of any alcoholic liquor in, on, or from all such premises in the county on any Sunday which does not fall on Christmas Day.

23-308C — Subsequent local option county elections

23-308C. Subsequent local option county elections. A similar local county option election may be subsequently called and held upon the issue of whether the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station shall be allowed on any Sunday which does not fall on Christmas Day. Such subsequent election shall be held upon the filing of a petition, as provided in section 23-308 , Idaho Code, signed by the requisite percentage of qualified electors. No such subsequent election shall be held more often than two (2) years after the holding of any local option county election or subsequent election.

23-309 — Sales

23-309. Sales. No state liquor store or special distributor shall sell any alcoholic liquor or any other merchandise on behalf of the division except for cash, check, money order, credit card, electronic funds transfer or debit card. In addition, the

division shall, under such rules as may be adopted by it, authorize state liquor stores or special distributors to accept a check, credit cards, electronic funds transfer or debit card from persons licensed for the retail sale of liquor by the drink pursuant to chapter 9, title 23 , Idaho Code, as payment for purchases from the division. Dishonor of any credit device given by such person shall constitute grounds for suspension or revocation of such person's license pursuant to section 23-933 , Idaho Code, in addition to any other remedy provided by law.

23-310 — Original package

23-310. Original package. Alcoholic liquor shall be sold and purchased only in the original package.

23-311 — Containers

23-311. Containers. No alcoholic liquor shall be sold to any purchaser, who is not a licensee as defined in chapter 9, title 23 , Idaho Code, except in a sealed container and no such container shall be opened upon the premises of any state warehouse, store, or distributing station. No alcoholic liquor shall be sold to a licensee as defined in chapter 9, title 23 , Idaho Code, except in a sealed container with the official seal or label prescribed by the division.

23-312 — Persons under twenty-one and intoxicated persons — Inhibited sales

23-312. Persons under twenty-one and intoxicated persons — Inhibited sales. No officer, agent, or employee of the division shall sell any alcoholic liquor to a person under the age of twenty-one (21) years or to any person intoxicated or apparently intoxicated.

23-313 — Liquor not to be consumed on premises

23-313. Liquor not to be consumed on premises. No vendor, officer, clerk, servant, agent, or employee of the division employed in any state liquor store, state-owned warehouse, or distributing station shall allow any alcoholic liquor to be consumed on the premises of such state warehouse, store, or distributing station, except for sampling purposes only, as described in section 23-314 , Idaho Code. Nor shall any vendor, officer, clerk, servant, agent, or employee of the division consume any such liquor on such premises.

23-314 — sample tastings in retail stores

23-314. sample tastings in retail stores.

(1) As used in this section:

(a) "Distilled spirits supplier" means any manufacturer, rectifier, importer, or broker of liquor products offered for sale by the division.

(b) "Retail store" means any state liquor store and does not include any distributing station that is authorized by the state of Idaho.

(2) A distilled spirits supplier or its representative may offer sample tastings on the premises of a retail store.

(3) A distilled spirits supplier shall not charge for sample tastings.

(4) Sample sizes for tasting events permitted pursuant to the provisions of this section shall not exceed one-quarter of one ounce (0.25 oz) of alcoholic liquor. A sample may be mixed with another alcoholic liquor or nonalcoholic beverage.

(5) The maximum number of samples allowed shall not exceed three (3) samples per person in any twenty-four (24) hour period.

(6) Samples may be served only by persons twenty-one (21) years of age or older.

(7) In accordance with state law, alcoholic liquor shall be served only to persons who are twenty-one (21) years of age or older.

(8) Samples shall be served in a specifically identified sample area or areas within the retail store. Such area or areas shall be of a size and design such that the person conducting the tasting can observe and control persons in the area to ensure that no persons under twenty-one (21) years of age or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retail store shall keep on file at the premises a floor plan identifying the tasting area or areas.

(9) The distilled spirits for sample tastings shall be purchased from the Idaho state liquor division, and all taxes for such distilled spirits shall be paid by the manufacturer of the distilled spirits.

(10) Any unused product must be removed from the premises by the supplier or its representative.

(11) The division must approve of the time, location, method, and items to be sampled at tastings. The distilled spirits supplier must notify the Idaho state police in advance of any tasting approved pursuant to the provisions of this section.

(12) The division may not advertise or otherwise promote to the public a tasting event permitted pursuant to the provisions of this section.

(13) It shall be the responsibility of the distilled spirits supplier to conduct a sample tasting in accordance with the provisions of this section. A retail store that hosts such a sample tasting shall not incur liability arising from a right of action directly resulting from consumption of liquor authorized by this section.

CHAPTER 4

23-401 — Liquor account created

23-401. Liquor account created. The state treasurer shall be custodian of an account in the agency asset fund, which is hereby created, to be known as the "liquor account," into which shall be paid all revenues derived from sales of alcoholic beverages and other merchandise, excise taxes, licenses, permits, fees, profits on sales, sales of equipment and supplies, and all other moneys accruing or received under any of the provisions of this act. All moneys, properties, buildings, plants, apparatus, real estate, securities acquired by or through the moneys belonging to the liquor account, including interest earned thereon, shall be the property of the liquor account.

23-402 — Appropriation

23-402. Appropriation. All moneys appropriated for, accruing to, or received by said fund are hereby appropriated for the purpose of this act for the purchase of alcoholic liquor, and the purchase of other nonalcohol merchandise sold through the division and payment of expenses of administration and operation of the division, and the same shall be paid out by the state treasurer only upon vouchers prepared and certified to by the division and approved by the state board of examiners.

23-403 — Reserve

23-403. Reserve. No distribution of any surplus from the liquor fund shall be made as provided in the following section, unless there shall be moneys in said fund after setting aside and reserving the following:

(a) Funds sufficient to pay all current obligations of the division.

(b) A cash reserve of fifty thousand dollars ($50,000) over and above all other assets.

23-404 — Distribution of moneys in liquor account

23-404. Distribution of moneys in liquor account.

(1) The moneys received into the liquor account shall be transferred or appropriated as follows:

(a) An amount of money equal to the actual cost of purchase of alcoholic liquor and payment of expenses of administration and operation of the division, as determined by the director and certified quarterly to the state controller, shall be transferred back to the division; provided, that the amount so transferred back for administration and operation of the division shall not exceed the amount authorized to be expended by regular appropriation authorization.

(b) Fifty percent (50%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated pursuant to this paragraph as follows:

(i) Two million eighty thousand dollars ($2,080,000) shall be transferred annually to the substance abuse treatment fund created in section 23-408 , Idaho Code; (ii) Eight hundred thousand dollars ($800,000) shall be transferred annually to the state community college account created in section 33-2139 , Idaho Code; (iii) One million two hundred thousand dollars ($1,200,000) shall be transferred annually to the public school income fund as defined in section 33-903 , Idaho Code; (iv) Six hundred fifty thousand dollars ($650,000) shall be transferred annually to the cooperative welfare fund in the dedicated fund;

(v) Six hundred eighty thousand dollars ($680,000) shall be transferred annually to the drug court, mental health court and family court services fund; (vi) Four hundred forty thousand dollars ($440,000) shall be transferred annually to the drug and mental health court supervision fund created in section 23-409 , Idaho Code; (vii) Two million dollars ($2,000,000) shall be transferred annually to the Idaho law enforcement fund established in section 67-2914 , Idaho Code, and shall be used exclusively for the purposes described in section 49-454 (3), Idaho Code; and (viii) The balance

shall be transferred to the general fund, after one and one-half percent (1.5%) of such balance is transferred to the peace officers standards and training fund created in section 19-5116 , Idaho Code.

(c) Fifty percent (50%) of the balance remaining after transferring the amounts authorized by paragraph (a) of this subsection shall be transferred or appropriated and paid as follows:

(i) Eighty-five percent (85%) of such balance remaining shall be transferred or appropriated as follows: 1. Two million dollars ($2,000,000) shall be transferred annually to the Idaho law enforcement fund established in section 67-2914 , Idaho Code, and shall be used exclusively for the purposes described in section 49-454 (3), Idaho Code. 2. Forty-two and three-tenths percent (42.3%) of the balance remaining after the transfer authorized by subparagraph (i)1. of this paragraph has been made is hereby appropriated to and shall be paid to the several counties. Each county shall be entitled to an amount in the proportion that liquor sales through the division in that county during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no county shall be entitled to an amount less than that county received in distributions from the liquor account during the state's fiscal year 1981. 3. Fifty-seven and seven-tenths percent (57.7%) of the balance remaining after the transfer authorized by subparagraph (i)1. of this paragraph has been made is hereby appropriated to and shall be paid to the several cities. Amounts paid to the several cities shall be distributed as follows: (A) Ninety percent (90%) of the amount appropriated to the cities shall be distributed to those cities that have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that liquor sales through the division in that city during the state's previous fiscal year bear to total liquor sales through the division in the state during the state's previous fiscal year, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981; (B) Ten percent (10%) of the amount appropriated to the cities shall be distributed to those cities that do not have a liquor store or distribution station located within the corporate limits of the city. Each such city shall be entitled to an amount in the proportion that its population bears to the population of all cities in the state that do not have a liquor store or distribution station located within the corporate limits of the city, except that no city shall be entitled to an amount less than that city received in distributions from the liquor account during the state's fiscal year 1981. (ii) Fifteen percent (15%) of such balance remaining is hereby appropriated to the several counties for deposit in the district court fund. Such funds shall be dedicated to provide for the suitable and adequate quarters of the magistrate division of the district court, including the facilities and equipment necessary to make the space provided functional for its intended use, and shall provide for the staff personnel, supplies and other expenses of the magistrate division. Amounts paid to the several counties pursuant to this subparagraph shall be distributed as follows: 1. The first four hundred forty thousand dollars ($440,000) shall be distributed to each of the forty-four (44) counties in equal amounts; 2. Fifty percent (50%) of the remaining funds shall be distributed to the forty-four (44) counties in proportion to the population of the county in relation to the population of the state; and 3. Fifty percent (50%) of the remaining funds shall be distributed to the forty-four (44) counties in proportion to the number of misdemeanor and infraction filings initiated by city law enforcement officers in the county during the state's previous fiscal year in relation to the proportion of the number of misdemeanor and infraction filings initiated by all city law enforcement officers in the state.

(2) All transfers and distributions shall be made periodically, but not less frequently than quarterly, but the apportionments made to any county or city that may during the succeeding three (3) year period be found to have been in error either of computation or transmittal shall be corrected during the fiscal year of discovery by a reduction of apportionments in the case of over-apportionment or by an increase of apportionments in the case of under-apportionment. The decision of the director on entitlements of counties and cities shall be final and shall not be subject to judicial review.

(3) For purposes of this section, "city law enforcement officer" means an individual, either employed directly by a city or by way of a contract for law enforcement services with another city or county, authorized to investigate, enforce, prosecute or punish violations of city or state statutes, ordinances or regulations.

23-406 — Administrative expense

23-406. Administrative expense. Claims for salaries, wages, and other compensation, premiums on official bonds, traveling and other expenses of the director and other officers and employees, and all other expenditures made by the division in the exercise of its powers hereunder shall be paid from the liquor fund as a part of the cost of the administration of this act.

23-407 — Deposit of revenue

23-407. Deposit of revenue. It shall be the duty of all special distributors, officers, agents, and employees to report and pay over to the division, in such manner and pursuant to such rules as may be adopted by it, all revenues derived from the sale of alcoholic beverages, all revenues derived from the sale of all other merchandise sold on behalf of the division, excise taxes, licenses, permits, fees, profits on sales, or other revenues resulting from the operation of this act, and the division shall deposit the same with the state treasurer to the credit of the liquor fund.

23-408 — Substance abuse treatment fund

23-408. Substance abuse treatment fund. There is hereby created in the state treasury, the substance abuse treatment fund. Moneys remitted to the substance abuse treatment fund by the division and from the tax on beer and wine are intended to be utilized for substance abuse treatment services at both the state and local levels. Moneys in the fund may be expended pursuant to appropriation and are intended to assist state government and local units of government in providing affordable, accessible substance abuse treatment services, including crisis intervention and detoxification services, inpatient and outpatient treatment services, and recovery support services for all Idaho residents. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on such investment shall be returned to the fund.

23-409 — Drug and mental health court supervision fund

23-409. Drug and mental health court supervision fund. There is hereby created in the state treasury, the drug and mental health court supervision fund. Moneys remitted to the drug and mental health court supervision fund by the division are intended to be utilized by the Idaho department of correction for the supervision of offenders sentenced to drug or mental health court. Moneys in the fund may be expended pursuant to appropriation and are intended to assist the courts in managing and monitoring this high-risk and high-need population. The state treasurer is authorized to invest all idle moneys in the fund and the interest earned on such investment shall be returned to the fund.

CHAPTER 5

23-501 — wine, beer, mead, cider, and other fermented beverages for personal use

23-501. wine, beer, mead, cider, and other fermented beverages for personal use.

(1) Any person shall have the privilege of manufacturing wine, beer, mead, cider, or other fermented beverages for the personal use of himself, family, and guests.

(2) The production of wine, beer, mead, cider, or other fermented beverages per household for family or personal use pursuant to this section may not exceed:

(a) Two hundred (200) gallons per calendar year if there are two (2) or more adults residing in the household; or

(b) One hundred (100) gallons per calendar year if there is one (1) adult residing in the household.

23-502 — Sacramental wine

23-502. Sacramental wine. A minister, priest, rabbi, or religious organization shall have the privilege of purchasing wine for sacramental purposes from the division or from any other source within or without the state.

23-503 — Denatured alcohol

23-503. Denatured alcohol. Any person, firm, or corporation may manufacture or sell denatured or wood alcohol.

23-504 — Alcoholic nonbeverages

23-504. Alcoholic nonbeverages. Any person may manufacture or sell patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and other like commodities, which are not generally classified or used as beverages, although they contain as one of their ingredients alcoholic liquor.

23-505 — Transportation of alcoholic beverages

23-505. Transportation of alcoholic beverages.

(1) Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. Provided however, that an unsealed alcoholic beverage container may be transported in an enclosed trunk compartment or behind the last upright seat of a vehicle which has no trunk compartment.

(2) No person in a motor vehicle, while the vehicle is on a public highway or the right-of-way of a public highway may drink or possess any open beverage containing alcoholic liquor, as defined in section 23-105 , Idaho Code, beer as defined in section 23-1001 , Idaho Code, or wine as defined in section 23-1303 , Idaho Code, unless such person is a passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a recreational vehicle as that term is defined in section 49-119 , Idaho Code. Violation of this section is a misdemeanor for the individual in actual physical control of the vehicle, as defined in section 18-8004 , Idaho Code, and an infraction for other individuals violating this section.

23-506 — Permissive uses subject to regulation

23-506. Permissive uses subject to regulation. Any person shall have the privilege of the permissive uses hereinbefore referred to in this article without payment of fee, subject to such reasonable general regulations as the division may promulgate for the purpose of preventing any abuses of the privileges thereby permitted.

23-507 — Manufacturers' licenses

23-507. Manufacturers' licenses. The division may grant a license to a manufacturer of alcoholic liquor for sale to the division and to customers outside of the state, subject to such regulations as the division may adopt. The fee for such permit shall be one hundred dollars ($100).

23-508 — Manufacturer's bond

23-508. Manufacturer's bond. As a condition precedent to the issuance of a manufacturer's license, the applicant shall post a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars ($1,000), conditioned for the faithful observation of the provisions of this act and the rules of the division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund.

23-509 — Manufacturers and wholesalers not to give liquor away

23-509. Manufacturers and wholesalers not to give liquor away. No manufacturer, wholesaler, or distributor shall give away any alcoholic liquor of any kind at any time in connection with his business, except for testing or sampling purposes only.

23-509A — Sample Tasting for manufacturers of distilled spirits

23-509A. Sample Tasting for manufacturers of distilled spirits.

(1) For purposes of this section, "manufacturer of distilled spirits" means a distillery that holds a permit issued by the alcohol and tobacco tax and trade bureau (TTB) and is licensed by the state of Idaho as an Idaho state manufacturer of distilled spirits.

(2) A manufacturer of distilled spirits may offer sample tastings on the premises of such distillery.

(3) A manufacturer of distilled spirits shall not charge for sample tastings.

(4) Sample sizes for tasting events permitted pursuant to the provisions of this section shall not exceed one-quarter of one ounce (0.25 oz).

(5) The maximum number of samples allowed shall not exceed three (3) samples per person in any twenty-four (24) hour period.

(6) Samples at distilleries may be served only by persons twenty-one (21) years of age or older.

(7) In accordance with state law, distilled spirits shall be served only to persons that are twenty-one (21) years of age or older.

(8) The distilled spirits for sample tastings shall be purchased from the Idaho state liquor division, and all taxes for such distilled spirits shall be paid by the manufacturer of distilled spirits.

23-509B — donations for benevolent, charitable, or public purposes — permit required

23-509B. donations for benevolent, charitable, or public purposes — permit required.

(1) As used in this section:

(a) "Director" means the director of the Idaho state police.

(b) "Event" means an event held for benevolent, charitable, or public purposes where all proceeds from the event, after deducting reasonable expenses, must be donated for a benevolent, charitable, or public purpose.

(c) "Licensee" is as defined in section 23-902 , Idaho Code.

(d) "Liquor producer" means any liquor manufacturer, producer, or supplier or a representative of a manufacturer, producer, or supplier.

(e) "Person" is as defined in section 23-902 , Idaho Code, and who has not been issued a license in this state for the sale of alcoholic beverages.

(2) Notwithstanding the provisions of section 23-509 , Idaho Code, any liquor producer may donate packaged, unopened, and sealed liquor to a person for an event as provided in this section. Any liquor donated under this section must have been acquired from the state liquor division.

(3) To sell or dispense packaged, unopened, and sealed liquor, a person must apply for a permit from the alcohol beverage control bureau. The director may issue the permit. All proceeds from the sale, after deducting reasonable expenses, must be donated for a benevolent, charitable, or public purpose.

(4) The director shall prescribe the form of application, pursuant to his duties in section 23-932 , Idaho Code. Such form of application shall be substantially similar to the form described in section 23-1336 , Idaho Code, and may include any other information the director deems necessary.

(5) A licensee may, on behalf of a person granted a permit under this section, receive and store liquor to be used at the event and may dispense such liquor to attendees of the event for which the permit was issued. The licensee must act in accordance with any applicable provisions of this title.

(6) The director may suspend, revoke, or refuse to renew a license for any violation of or failure to comply with the provisions of chapter 9, title 23 , Idaho Code. Procedures for the suspension, revocation, or refusal to grant or renew licenses shall be in accordance with the provisions of chapter 52, title 67 , Idaho Code.

(7) If a permittee fails to comply with permit requirements, the director may revoke existing permits or deny future permits under this section until the permittee cures the failure.

23-510 — Inspection of manufactory

23-510. Inspection of manufactory. The division shall have the power at all times to inspect any manufactory for which a license is granted hereunder.

23-512 — Sales for medical or scientific purposes

23-512. Sales for medical or scientific purposes. Under such rules and regulations as the division may adopt, it has authority to make sales of alcoholic liquor and ethyl alcohol from the division only:

(a) To a registered pharmacist operating a drug store, for scientific and mechanical purposes and for compounding and preparing medicines.

(b) To a licensed physician, dentist, or veterinarian or other licensed practitioner entitled to prescribe for healing purposes, for administering medicinally and in compounding prescriptions.

(c) To a person in charge of a regularly conducted hospital or sanitorium for administering to the sick and aged.

(d) To a person in charge of a laboratory for use in scientific pursuits and experiments.

(e) For other purposes, similar to those mentioned in this section and not specifically covered by this act.

23-513 — Term of permits or licenses

23-513. Term of permits or licenses. Every permit or license issued by the division shall expire twelve (12) months from the date issued.

23-514 — Nature of permit

23-514. Nature of permit. A permit shall be a personal privilege, subject to be denied, revoked, or canceled for its abuse. It shall not constitute property; nor shall it be subject to attachment and execution; nor shall it be alienable or assignable. Every permit shall be issued in the name of the applicant and no person holding a permit shall allow any other person to use the same. The division, if not satisfied of the integrity and good faith of an applicant for a permit, may refuse to issue the same, or may refuse to issue a renewal thereof.

23-515 — Inspection and examination of records of permits and sales

23-515. Inspection and examination of records of permits and sales. The records of the division with respect to permits and sales thereunder shall be subject to disclosure according to chapter 1, title 74 , Idaho Code.

23-516 — Automatic voiding of permits

23-516. Automatic voiding of permits. Whenever a permittee has been convicted by any court of any violation of the provisions of this act or of any crime in which the handling or use of intoxicating liquor was a contributing factor, such conviction ipso facto shall operate to void the permit of such person so convicted and any and all privileges thereunder.

23-517 — Suspension and revocation of permits

23-517. Suspension and revocation of permits. The division may suspend or revoke a permit, for the abuse of its privileges, after reasonable notice and fair hearing in accordance with reasonable rules of procedure prescribed by it. In lieu of other remedies in this section authorized, the division may, as a condition precedent to a continuance of his permit, in any case where the permittee has not theretofore given bond, exact from him a bond, written by a surety company authorized to do business in Idaho, in the penal sum of one thousand dollars ($1,000), conditioned for the faithful observance of the provisions of this act and the regulations of the division promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund.

23-518 — Surrender of permits

23-518. Surrender of permits. Whenever a permit shall have been voided, canceled or suspended, the holder thereof shall forthwith deliver the same to the division. The division shall notify all vendors and special distributors of voidances, cancellations and suspensions. No permit shall be issued to a person whose permit has been voided or canceled within a period of one (1) year from the date of voidance or cancellation of his former permit.

23-519 — Specific grounds of suspension and revocation of permits

23-519. Specific grounds of suspension and revocation of permits. Without limiting the powers of the division in the matter of revocation of permits for other cause of abuse of the privilege, the division is hereby empowered to revoke or suspend a permit of any permittee upon satisfactory proof of any of the following grounds or causes:

(a) Drunkenness or apparent drunkenness, within or without the state of Idaho.

(b) Desertion or nonsupport of family or dependents.

(c) Dependence upon public assistance or relief in any case where it appears that the purchase or consumption of intoxicating liquor by the permittee tends to deprive his family and dependents of needed subsistence.

23-520 — Homemade beer, wine, mead, cider, and other fermented beverages at licensed premises

23-520. Homemade beer, wine, mead, cider, and other fermented beverages at licensed premises. In addition to any other privilege granted to a licensee under this chapter, a licensee may conduct an organized judging, tasting, exhibition, contest, or competition of homemade beer, wine, mead, cider, or other fermented beverages produced pursuant to section 23-501 , Idaho Code. Consumption at such events shall be limited solely to the participants in and designated judges of such events. Fermented beverages used for the purposes described in this section shall be served in portions not exceeding six (6) ounces and shall not be sold to, offered for sale to, or made available for consumption by the general public.

23-521 — storage of homemade beer, wine, mead, cider, and other fermented beverages

23-521. storage of homemade beer, wine, mead, cider, and other fermented beverages.

(1) In addition to any other privilege granted to a licensee under this chapter, a licensee may allow homemade beer, wine, mead, cider, or other fermented beverages produced under section 23-501 , Idaho Code, to be stored at the premises described in a full or limited on-premises sales license, off-premises sales license, brewery-public house license, brewery license, winery license, or warehouse license of the licensee. Homemade beer, wine, mead, cider, or other fermented beverages stored pursuant to this subsection must be clearly identified by the producer and kept separate from the alcoholic beverage stock of the licensee and may not be sold or made available for sale to the general public.

(2) A licensee may not acquire any ownership interest in any homemade beer, wine, mead, cider, or other fermented beverages produced under section 23-501 , Idaho Code, that are stored pursuant to this section. However, this section

does not prohibit a licensee from storing homemade beer, wine, mead, cider, or other fermented beverages produced under section 23-501 , Idaho Code, in conducting an organized judging, tasting, exhibition, contest, or competition of the homemade beer, wine, mead, cider, or other fermented beverages, or related events, if the homemade beer, wine, mead, cider, or other fermented beverages are stored with the licensee for that purpose.

CHAPTER 6

23-601 — Violation of duty by officers and employees of division

23-601. Violation of duty by officers and employees of division. Any officer or employee of the division who shall knowingly and willfully violate any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction, shall be punishable by a fine of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

23-602 — Unlawful manufacture, traffic in, transportation, and possession of alcohol beverage

23-602. Unlawful manufacture, traffic in, transportation, and possession of alcohol beverage. Except as authorized by title 23 , Idaho Code, any person who shall have in possession, manufacture, transport, purchase, sell, or dispose of any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of a misdemeanor, and upon conviction shall be punished as otherwise provided by law. Upon conviction of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

23-603 — Dispensing to a person under the age of twenty-one years

23-603. Dispensing to a person under the age of twenty-one years. Any person who is eighteen (18) years of age or older who shall sell, give, or furnish, or cause to be sold, given, or furnished, alcohol beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21) years shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) per violation, or by imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. A second or subsequent violation of this section by the same defendant shall constitute a misdemeanor and upon conviction thereof the defendant shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) per violation, or imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. Notwithstanding the provisions of section 19-4705 , Idaho Code, moneys received pursuant to such fines shall be deposited in the substance abuse treatment fund, as created in section 23-408 , Idaho Code. Upon conviction of any person for a violation of the provisions of this section, the court shall notify the director of the Idaho state police. The director shall review the circumstances of the conviction, and if the dispensing took place at a licensed establishment or other retailer or distributor, the director may take administrative action he considers appropriate against the licensee or business including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine.

23-604 — Minors — Purchase, consumption or possession prohibited

23-604. Minors — Purchase, consumption or possession prohibited. Any person under twenty-one (21) years of age who shall purchase, attempt to purchase, or otherwise consume or possess any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of an infraction upon a first violation and shall be guilty of a misdemeanor upon a subsequent conviction and shall be punished according to the schedule set out in section 18-1502 , Idaho Code.

23-604A — MINORS — LIMITED USE IMMUNITY

23-604A. MINORS — LIMITED USE IMMUNITY.

(1) Any person under twenty-one (21) years of age who, acting in good faith and for a medical emergency:

(a) Is a person seeking or needs emergency medical assistance for himself or others;

(b) Remains on the scene until emergency medical assistance or law enforcement officers arrive; and

(c) Cooperates with emergency medical assistance and law enforcement personnel at the scene; shall have limited use immunity such that evidence obtained solely as a result of the person having sought, received or rendered emergency medical services as set forth in this section may not be used against the person for any violation of section 23-604 or 23-949, Idaho Code, for consuming or possessing an alcoholic beverage.

(2) The provisions of this section shall have no applicability to the prosecution of any criminal charges other than the consumption or possession of an alcoholic beverage by a person under twenty-one (21) years of age under section 23-604 or 23-949, Idaho Code, and shall not prevent a prosecution based on evidence not obtained as described in subsection (1) of this section.

23-605 — Dispensing to drunk

23-605. Dispensing to drunk. Any person who sells, gives, or dispenses any alcohol beverage, including any distilled spirits, beer or wine, to another person who is intoxicated or apparently intoxicated shall be guilty of a misdemeanor.

23-606 — False procurement of permit or license

23-606. False procurement of permit or license. Any person who procures, or attempts to procure, a permit or license under the provisions of title 23 , Idaho Code, by false or fraudulent representations, or under a false or fictitious name, shall be guilty of a misdemeanor.

23-607 — Advertising

23-607. Advertising. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Idaho.

(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the division and then only in strict accordance with such regulations.

(2) This section of the act shall not apply however:

(a) To the division.

(b) To the correspondence or general communications of the division, or its agents and employees. A violation of this section shall constitute a misdemeanor.

23-608 — Added penalty — Forfeiture of license or permit — Transmission of record

23-608. Added penalty — Forfeiture of license or permit — Transmission of record. Whenever, in any court in this state, a defendant is convicted of a violation of title 23 , Idaho Code, or of any law of this state relating to alcohol beverages including distilled spirits, beer or wine, or in any case in which it appears that the crime was committed while the defendant was under the influence of alcohol beverages, it shall be the duty of the court to include in its judgment the forfeiture of any license or permit issued to the defendant by the division or the Idaho state police pursuant to title 23 , Idaho Code, and the court shall forthwith transmit to the issuing authority a certified copy of its judgment.

23-610 — Possession of liquor not subject to regulation by division — illegal — Exceptions

23-610. Possession of liquor not subject to regulation by division — illegal — Exceptions. It shall be unlawful for any person, who is not a licensee as defined in chapter 9, title 23 , Idaho Code, to possess more than two (2) quarts of alcoholic liquor that has not been subjected to regulation by the division, except public carriers transporting alcoholic liquor for the division. All licensees as defined in chapter 9, title 23 , Idaho Code, shall have liquor to which is affixed the official seal or label prescribed by the liquor division.

23-611 — Officers may seize illegal alcoholic liquor

23-611. Officers may seize illegal alcoholic liquor. The director of the Idaho state police or any of his agents, any sheriff, constable or other peace officer who shall find any liquor, possessed, manufactured, transported, purchased, sold or disposed of by any person in violation of the provisions of this act, or any other laws of the state of Idaho, may forthwith seize and remove the same and keep the same as evidence, and upon conviction of the person, the said liquor and all packages and receptacles containing the same shall be forfeited to the state of Idaho and, in addition, persons so violating this act shall be subject to the other penalties herein prescribed.

23-612 — Beer, wine or other alcoholic beverages on public school grounds

23-612. Beer, wine or other alcoholic beverages on public school grounds. Every person who possesses or consumes any beer, wine or other alcoholic beverage while present at any public school function on the property of a school district is guilty of a misdemeanor. Persons under twenty-one (21) years of age who are found to be in violation of the provisions of this section because of their age shall be punished according to section 18-1502 , Idaho Code.

23-614 — Prohibited acts — Misdemeanors — Penalties

23-614. Prohibited acts — Misdemeanors — Penalties.

(1) It shall be unlawful for a licensee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(a) Any live conduct or entertainment by any person whose genitals, female areola, anal cleft, anus, or pubic hair are exposed or who is wearing transparent clothing that reveals the genitals, female areola, anal cleft, anus, or pubic hair;

(b) Any live conduct or entertainment that includes sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes the penetration, however slight, by any object into the genital or anal opening of a person's body;

(c) Any live conduct or entertainment that simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that simulates the penetration, however slight, by any object into the genital or anal opening of a person's body;

(d) Any live conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals;

(e) Individuals who are personally present and wearing or using any clothing or device that exposes in any way simulated genitals, female areola, anal cleft, anus, or pubic hair; or

(f) The showing of films, still pictures, electronic reproductions or other visual reproductions which are in violation of chapter 41, title 18 , Idaho Code (indecency and obscenity), or are in violation of federal law regarding pornography, indecency or obscenity.

(2) Supervision. It shall be unlawful for a licensee to fail to supervise in person or through a manager the business for which a permit is issued.

(3) Exception. With the exception of subsection (l)(b) above, this section does not apply to any theatrical or artistic performance which, when considered as a whole and in the context that it is used, expresses matters of serious literary, artistic, scientific or political value and is:

(a) Held at a theater, concert hall, art center, museum, event center, or any other establishment or venue licensed under title 23 , Idaho Code, and is held out to the public as predominately offering and which does offer such performances; or

(b) Held at a theater, concert hall, art center, museum, event center, or any other establishment or venue that does not fall within subsection (3)(a) above and is not predominately used to serve alcohol with live entertainment regulated under subsection (1)(a) through (e) of this section, but has a valid license under title 23 , Idaho Code, and, if required by the city or county, a valid permit from the city or county to serve alcohol at such performance; and

(c) Is not in violation of chapter 41, title 18 , Idaho Code (indecency and obscenity), or in violation of federal law regarding pornography, indecency or obscenity.

(4) A violation of any of the provisions of this section by any agent, employee, or other person in any way acting on behalf of a licensee shall constitute a misdemeanor, and upon conviction such person shall be fined not less than the sum of one hundred dollars ($100) nor more than the sum of three hundred dollars ($300), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction is entered shall certify a copy thereof to the director, and the director shall thereupon commence administrative proceedings. The director shall review the circumstances and may take action he considers appropriate against the licensee including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine or may revoke the license.

(5) In addition to misdemeanor violations or other criminal proceedings instituted under this section, upon sufficient proof to the director, the director shall take administrative action as provided in subsection (4) of this section against any licensee in the event any person is found to have committed any of the above proscribed acts. The proceedings shall be in accordance with provisions of the administrative procedure act.

23-615 — Restrictions on sale

23-615. Restrictions on sale. No person licensed pursuant to title 23 , Idaho Code, or his or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, or allowed to be consumed, any alcohol beverage, including any distilled spirits, beer or wine, to:

(1) Any person under the age of twenty-one (21) years, proof of which shall be a validly issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military identification card bearing a photograph and date of birth, or a valid passport.

(2) Any person actually, apparently or obviously intoxicated.

(3) An habitual drunkard.

(4) An interdicted person. Any person under the age of twenty-one (21) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of entering licensed premises or for obtaining alcohol beverages from such licensee shall be equally guilty with such licensee and shall, upon conviction thereof, be guilty of a misdemeanor.

23-616 — Alcohol without liquid device — powdered alcohol

23-616. Alcohol without liquid device — powdered alcohol.

(1) As used in this section:

(a) "Alcohol without liquid device" means any machine, device or process that mixes an alcoholic product with oxygen or another gas to produce vaporized alcohol for the purpose of consumption through inhalation.

(b) "Powdered alcohol" means any powder or crystalline substance containing alcohol that is produced for direct use or reconstitution. "Powdered alcohol" does not include alcoholic nonbeverages listed in section 23-504 , Idaho Code.

(c) "Vaporized alcohol" means an alcoholic product created by mixing alcohol with oxygen or another gas to produce a vapor or mist for the purpose of consumption through inhalation.

(2) A person shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device or powdered alcohol. No person licensed pursuant to title 23 , Idaho Code, or his or its employed agents, servants or bartenders shall use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device or powdered alcohol.

(3) The Idaho state police may promulgate rules to allow for the possession, sale or use of an alcohol without liquid device or powdered alcohol by certain hospitals, universities, or pharmaceutical or biotechnology companies for bona fide research or medical purposes.

(4) A person who violates this section shall be guilty of a misdemeanor. Upon conviction or a finding of guilt of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

(5) Any violation of the provisions of this section by a person licensed pursuant to title 23 , Idaho Code, shall constitute grounds for the suspension and revocation of any and all such licenses issued to such person.

(6) An alcohol without liquid device or powdered alcohol as defined in this section and except as in this section authorized is hereby declared to be a public nuisance and in this title is referred to as a liquor nuisance pursuant to section 23-701 , Idaho Code.

CHAPTER 7

23-701 — Liquor nuisance defined — Maintaining

23-701. Liquor nuisance defined — Maintaining. The conducting or maintaining of a place or of a vehicle of any sort for the manufacture, storage, transportation, sale, or dispensing of alcoholic liquor, except as in this act authorized, permitted, or licensed, is hereby declared to be a public nuisance and in this article is referred to as a liquor nuisance.

23-702 — Building and equipment

23-702. Building and equipment. A building, vehicle, car, or boat where alcoholic liquors are manufactured, stored, transported, sold, or otherwise dispensed, or where persons are permitted to resort for the purpose of purchasing or drinking alcoholic liquor, except as in this act authorized, permitted, or licensed, and all alcoholic liquor, vessels, glasses, kegs, pumps, bars, and other property and equipment found or used in connection therewith are hereby declared to be a public nuisance and in this article such a public nuisance is referred to as a liquor nuisance.

23-703 — Maintenance a misdemeanor

23-703. Maintenance a misdemeanor. Any person who conducts or maintains a liquor nuisance is guilty of a misdemeanor.

23-704 — Abatement and prosecution

23-704. Abatement and prosecution. Except as in this article otherwise provided, a liquor nuisance may be abated and a person maintaining a liquor nuisance may be prosecuted and punished, as provided by law in other cases of public nuisance.

23-705 — Action for maintenance

23-705. Action for maintenance. The prosecuting attorney may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a liquor nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a liquor nuisance.

23-706 — Temporary injunction

23-706. Temporary injunction. Upon the filing of a verified complaint therefor, in any court of competent jurisdiction, the court or a judge at chambers, if satisfied that the liquor nuisance complained of exists, may allow a temporary writ of injunction, without bond, enjoining the defendant from maintaining any such nuisance within the jurisdiction of the court issuing such writ; but no such injunction shall issue unless it be made to appear to the satisfaction of the court that the owner or agent of the owner of such building or place knew, or had been personally served with notice, that such building or place was being so used and had failed to abate such nuisance, or that upon diligent inquiry such owner or agent of the owner could not be found within the state for the service of such preliminary notice.

23-707 — Evidence of reputation admissible

23-707. Evidence of reputation admissible. At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance.

23-708 — Perpetual injunction and order of abatement — Execution of order

23-708. Perpetual injunction and order of abatement — Execution of order. If the existence of the nuisance is established, the court shall enter a decree perpetually restraining all persons from maintaining or permitting such nuisance, and from using the building or place in which the same is maintained for any purpose, for a period of one (1) year thereafter, unless such decree is sooner vacated, as hereinafter provided. While said decree remains in effect, such building or place shall be in the custody of the court. An order of abatement shall also issue as a part of such decree, which order shall direct the sheriff of the county to remove from such building or place all fixtures and movable property used in conducting or aiding or abetting such nuisance, to sell the same in the manner provided by law for the sale of chattels under execution, to close such building or place against its use for any purpose, and to keep it closed for a period of one (1) year, unless sooner released as hereinafter provided. The sheriff's fees for removing and selling the movable property shall be taxed as a part of the costs, and shall be the same as those for levying upon and selling like property under execution. For closing the building and keeping it closed the court shall allow a reasonable fee to be taxed as a part of the costs.

23-709 — Disposition of proceeds of sale

23-709. Disposition of proceeds of sale. The proceeds of the sale of the movable property shall be applied in payment of the costs of the proceeding and of the abatement, and the balance, if any, shall be paid to the defendant or person owning said property upon the return of such sale.

23-710 — Violation of injunction and order of abatement a contempt

23-710. Violation of injunction and order of abatement a contempt. In case of the violation of any injunction or order of abatement issued under the provisions of this article, the court, or a judge at chambers, may summarily try and punish the

offender for his contempt of court.

23-711 — Release of building from injunction

23-711. Release of building from injunction. If the owner of such building or place has not been guilty of any contempt of court in the proceeding, and pays all costs of the proceeding and of the abatement and files a bond, with sureties to be approved by the court, in the penal sum of the full value of the property, to be ascertained by the court, or by a judge at chambers, conditioned that such owner will immediately abate such nuisance and prevent the same from being established or maintained therein within a period of one (1) year thereafter, the court shall vacate such decree and order of abatement, so far as the same may relate to such building or place, and shall also vacate the order directing the sale of the movable property. The release herein provided for shall not release such property from any judgment, lien, penalty, or liability to which it may otherwise be subject by law.

23-712 — Costs a lien

23-712. Costs a lien. Whenever the costs shall be assessed under the provisions of this chapter against the owner of any property declared to be a liquor nuisance, such costs shall constitute a lien upon such property to the extent of the interest of such owner, and writ of execution shall issue thereon.

CHAPTER 8

23-801 — Primary duty of enforcement

23-801. Primary duty of enforcement. The penal provisions of this act shall be deemed to be an integral part of the penal code of this state and the sheriffs of the several counties and local peace officers are charged with the primary duty of enforcing such provisions; and the prosecuting attorneys of the several counties are charged with the primary duty of prosecuting violators thereof in penal actions and abatement proceedings.

23-802 — Supervisory duty of attorney general

23-802. Supervisory duty of attorney general. If any prosecuting attorney, sheriff or local peace officer is guilty of nonfeasance, misfeasance or malfeasance in respect to his duties under this act, the attorney general of the state shall proceed against said offender in ouster or removal proceedings under chapter 41 of title 19 , or as may be otherwise provided by law.

23-803 — Attorney general may act as prosecutor

23-803. Attorney general may act as prosecutor. The attorney general shall, in every county in the state, have the same powers as the prosecuting attorney thereof with respect to the prosecution of criminal actions and abatement proceedings under this act.

23-804 — Duties of the Idaho state police and officers thereof

23-804. Duties of the Idaho state police and officers thereof. The Idaho state police and the director thereof are hereby charged with the responsibility and duty of assisting in the policing of the state of Idaho to enforce and require the enforcement of the penal provisions of the Idaho liquor act in addition to other duties imposed upon them by law, notwithstanding the duties now, or which may be hereafter imposed upon sheriffs, police, or other officers to enforce the provisions of such laws. To accomplish such enforcement it is hereby made the duty of said director and every officer of the Idaho state police, whether employed specifically for the enforcement of the liquor act, or otherwise, to officially report every violation of such liquor act of which they have knowledge, or which is made known to them, to the sheriff, and prosecuting attorney of the respective county or counties in which such violations occur and sign complaints for such violations, which complaints said prosecuting attorney, sheriff, and other officers shall faithfully prosecute. Said Idaho state police under the direction of the director thereof shall conduct investigations to obtain facts involving violations of the provisions of such laws and the said director shall appoint a chief of enforcement of such laws and may employ expert investigators, detectives, and secret officers to obtain such information and assist in such policing and enforcement.

23-805 — Duties of prosecuting attorneys, sheriffs, and other officers

23-805. Duties of prosecuting attorneys, sheriffs, and other officers. It shall be the duty of the director of the division and every prosecuting attorney, sheriff, police or other peace officer to cooperate with the Idaho state police in the enforcement of such laws, and any such officer refusing to so cooperate or divulge any information he may have in any

such prosecution shall be subject to action against him as provided in chapter 41, title 19 , Idaho Code. Any such action may be brought in the name of the state of Idaho by any resident of the county, or officer of the state or county. Upon the conviction of a person for a violation of the provisions of the Idaho liquor act, or of the provisions of chapter 9, title 23 , Idaho Code, the judge of the court imposing the judgment of conviction shall immediately send to the director of the Idaho state police a statement setting forth the title of the court, the name and residence of the defendants, the nature of the offense and the fine and sentence or judgment imposed.

23-807 — Compelling attendance of witnesses — Immunity of witnesses — Authority of enforcement officers

23-807. Compelling attendance of witnesses — Immunity of witnesses — Authority of enforcement officers. The director of the Idaho state police and any prosecuting attorney of any county, for the purposes contemplated by this act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the state of Idaho, as now provided by law, compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. If a person in attendance before such director or prosecuting attorney refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered so to do by the director or prosecuting attorney, said director or prosecuting attorney may apply to the judge of the district court of the county where such person is in attendance, upon affidavit for an order returnable not less than two (2) or more than five (5) days, directing such person to show cause before such judge, or any other judge of such district, why he should not be punished for contempt; upon the hearing of such order, if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry by or upon any hearing before any officer so authorized upon the ground that the testimony or evidence, books, papers or documents required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have, by order of the said officer, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury testified by him. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state. Inspectors and investigators employed by the Idaho state police for the enforcement of this act shall have all the authority given by statute to peace officers of the state of Idaho, including authority to serve and execute warrants of arrest and warrants of search and seizure.

23-808 — Legislative finding and intent — Cause of action

23-808. Legislative finding and intent — Cause of action.

(1) The legislature finds that it is not the furnishing of alcoholic beverages that is the proximate cause of injuries inflicted by intoxicated persons and it is the intent of the legislature, therefore, to limit dram shop and social host liability; provided, that the legislature finds that the furnishing of alcoholic beverages may constitute a proximate cause of injuries inflicted by intoxicated persons under the circumstances set forth in subsection (3) of this section.

(2) No claim or cause of action may be brought by or on behalf of any person who has suffered injury, death or other damage caused by an intoxicated person against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, except as provided in subsection (3) of this section.

(3) A person who has suffered injury, death or any other damage caused by an intoxicated person, may bring a claim or cause of action against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, only if:

(a) The intoxicated person was younger than the legal age for the consumption of alcoholic beverages at the time the alcoholic beverages were sold or furnished and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known at the time the alcoholic beverages were sold or furnished that the intoxicated person was younger than the legal age for consumption of the alcoholic beverages; or

(b) The intoxicated person was obviously intoxicated at the time the alcoholic beverages were sold or furnished, and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known that the intoxicated person was obviously intoxicated.

(4) (a) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or representatives.

(b) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of a person who is a passenger in an automobile driven by an intoxicated person nor on behalf of the passenger's estate or representatives.

(5) No claim or cause of action may be brought under this section against a person who sold or otherwise furnished alcoholic beverages to an intoxicated person unless the person bringing the claim or cause of action notified the person who sold or otherwise furnished alcoholic beverages to the intoxicated person within one hundred eighty (180) days from the date the claim or cause of action arose by certified mail that the claim or cause of action would be brought.

(6) For the purposes of this section, the term "alcoholic beverage" shall include alcoholic liquor as defined in section 23-105 , Idaho Code, beer as defined in section 23-1001 , Idaho Code, and wine as defined in section 23-1303 , Idaho Code.

CHAPTER 9

23-901 — Declaration of policy — Retail sale of liquor

23-901. Declaration of policy — Retail sale of liquor. It is hereby declared as the policy of the state of Idaho that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages and to eliminate certain illegal traffic in liquor now existing and to insure the entire control of the sale of liquor it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the director of the Idaho state police and the county commissioners and the councils of cities in the state of Idaho be empowered and authorized to grant licenses to persons qualified under this act to sell liquor purchased by them at state liquor stores at retail posted prices in accordance with this act and under the rules promulgated by said director and under his strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, rules, and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state of Idaho and for the purpose of promoting and encouraging temperance in the use of alcoholic beverages within the state of Idaho.

23-902 — Definitions

23-902. Definitions. The following words and phrases used in this chapter shall be given the following interpretation:

(1) "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members and to bona fide guests of members only:

(a) A post, chapter, camp or other local unit composed solely of veterans and their duly recognized auxiliary, and which is a post, chapter, camp or other local unit composed solely of veterans which has been chartered by the congress of the United States for patriotic, fraternal or benevolent purposes, and which has, as the owner, lessee or occupant, operated an establishment for that purpose in this state; or

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization, which has, as the owner, lessee or occupant, operated an establishment for fraternal purposes in this state and actively operates in not less than thirty-six (36) states or has been in continuous existence for not less than twenty (20) years; and which has no fewer than fifty (50) bona fide members in each unit, and which owns, maintains or operates club quarters, and is authorized and incorporated to operate as a nonprofit club under the laws of this state, and which has recognized tax exempt status under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code, and has been continuously incorporated and operating for a period of not less than one (1) year. The club shall have had, during that period of one (1) year, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club membership shall consist of bona fide dues-paying members, recorded by the secretary of the club, paying at least six dollars ($6.00) per year in dues, payable monthly, quarterly or annually; and the members at the time of application for a club license shall be in good standing, having paid dues for at least one (1) full year.

(2) "Convention" means a formal meeting of members, representatives, or delegates, as of a political party, fraternal society, profession or industry.

(3) "Director" means the director of the Idaho state police.

(4) "Festival" means a period or program of festive activities, cultural events or entertainment lasting three (3) or more consecutive days.

(5) "Gaming" means any and all gambling or games of chance defined in chapters 38 and 49, title 18 , Idaho Code, or any section or sections thereof, whether those games are licensed or unlicensed.

(6) "Interdicted person" means a person to whom the sale of liquor is prohibited under law.

(7) "License" means a license issued by the director to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor by the drink at retail, as provided by law.

(8) "Licensee" means the person to whom a license is issued under the provisions of law.

(9) "Liquor" means all kinds of liquor sold by and in a state liquor store of the state of Idaho.

(10) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(11) "Municipal license" means a license issued by a municipality of the state of Idaho under the provisions of law.

(12) "Party" means a social gathering especially for pleasure or amusement and includes, but is not limited to, such social events as weddings, birthdays, and special holiday celebrations to include, but not be limited to, New Year's celebrations, Super Bowl Sunday, St. Patrick's Day, the Fourth of July and Labor Day.

(13) "Person" means any individual, corporation, business corporation, nonprofit corporation, benefit corporation as defined in section 30-2002 (1), Idaho Code, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, estate, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate trust, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, any entity defined in section 30-21-102 , Idaho Code, or any other commercial entity, whether conducting the business singularly or collectively.

(14) "Plaza" means a public square, marketplace, or similar open space in a city or town.

(15) "Premises" means the building and contiguous property owned or leased or used under a government permit by a licensee, as part of the business establishment in the business of sale of liquor by the drink at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of liquor by the drink at retail is authorized under the provisions of law.

(16) "Rules" means rules promulgated by the director in accordance with the provisions of law.

(17) "State liquor store" means a liquor store or distributor established under and pursuant to the laws of the state of Idaho for the package sale of liquor at retail.

(18) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(19) "Brewery" means a place, premises or establishment for the manufacture, bottling or canning of beer.

(20) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale. Two (2) or more wineries may use the same premises and the same equipment to manufacture their respective wines, to the extent permitted by federal law.

(21) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

23-903 — License to retail liquor

23-903. License to retail liquor.

(1) The director of the Idaho state police is hereby empowered, authorized, and directed to issue licenses to qualified applicants, as provided in this chapter, whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail, and, upon the issuance of such license, the licensee shall be authorized to sell liquor at retail by the drink, but only in accordance with the rules promulgated by the director and the provisions of this chapter. No license shall be issued for the sale of liquor on any premises outside the incorporated limits of any city except as provided in this chapter, and the number of licenses so issued for any city shall not exceed one (1) license for each one thousand five hundred (1,500) of population of said city or fraction thereof, as established in the last preceding census, or any subsequent special census

conducted by the United States census bureau or by an estimate that is statistically valid including adding the number of new residential utility connections or including adding the population of areas annexed into the city after the last census or special census was conducted, except that upon proper application thereof not more than two (2) licenses may be issued for each incorporated city with a population of one thousand five hundred (1,500) or less, unless the retail licensing of liquor by the drink has been previously disapproved under the provisions of sections 23-917 , 23-918 , 23-919 , 23-920 and 23-921 , Idaho Code; provided however, that any license heretofore issued may be renewed from year to year without regard to the population or status of the city for which such license is issued. Any license issued that has remained in effect at its location for a consecutive period of ten (10) years or more shall be deemed to have been validly issued and may be renewed from year to year, provided that the applicant for the renewal of such license is not otherwise disqualified for licensure pursuant to section 23-910 , Idaho Code, and, if the premises required special characteristics for original licensure, other than being either within or without the incorporated limits of a city, that said premises continue to have such special characteristics at the time of the application for renewal.

(2) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of an actual bona fide golf course whether located within or without the limits of any city, or located on premises also operated as a winery or ski resort, or to the lessee of any premises situate thereon, whether located within or without the limits of any city. For the purpose of this section, a golf course shall comprise an actual bona fide golf course, which is regularly used for the playing of the game of golf, having not less than nine (9) tees, fairways, and greens laid out and used in the usual and regular manner of a golf course. Nine (9) hole courses must have a total yardage of at least one thousand (1,000) yards, and eighteen (18) hole courses must have a total yardage of at least two thousand (2,000) yards as measured by totaling the tee-to-green distance of all holes. The course must be planted in grass except that it may provide artificial tee mats. Where any such golf course is owned or leased by an association of members and is used or enjoyed by such members or their guests, none of the disqualifications contained in section 23-910 , Idaho Code, shall apply to such association as a licensee where such disqualifications, or any of them, would apply only to a member of such association where such member has no interest therein except as a member thereof. Provided, a building that is located on a lake of not less than one hundred sixty (160) acres with not less than two hundred (200) feet of lake frontage, owned or leased and operated exclusively by an actual bona fide golf course licensed for the sale of liquor by the drink, as otherwise defined in this subsection, located not more than five tenths (.5) of a mile from the golf course exterior boundaries, and accessible by that golf course by private or public roadway or right-of-way shall be deemed part of and contiguous to the licensed golf course premises for purposes of the sale of liquor by the drink upon such premises.

(3) For purposes of this section, a ski resort shall comprise real property of not less than ten (10) acres in size, exclusive of the terrain used for skiing and upon which the owner, operator, or lessee of the ski resort has made available himself or through others, including but not limited to the owners of condominiums, permanent bona fide overnight accommodations available to the general public for one hundred (100) persons or more, and which real property is contiguous to or located within the area in which skiing occurs and is regularly operated as a ski resort in the wintertime where the owner, operator, or lessee of the ski resort is also the owner, operator, or lessee of the area served by a bona fide chair ski lift facility or facilities. Alternatively, for the purpose of this section, a ski resort may also be defined as a downhill ski area, open to the public, comprising real property of not less than two hundred fifty (250) skiable acres, operating two (2) or more chairlifts with a vertical lift of one thousand (1,000) feet or more, and capable of transporting a minimum of one thousand eight hundred (1,800) skiers per hour. A ski resort qualifying under this definition shall also have on the premises a lodge facility providing shelter and food service to the public, the operator of which shall also be the valid owner or lessee of the grounds and facilities upon which the ski resort offers downhill skiing services to the public. The fees for licenses granted to ski resorts shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. Not more than one (1) licensed premises shall be permitted on any golf course or any ski resort or within the area comprising the same.

(4) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of an actual bona fide equestrian facility located on not less than forty (40) contiguous acres, with permanently erected seating of not less than six thousand (6,000) seats, no part of which equestrian facility or the premises thereon is situate within the incorporated limits of any city, and which facility shall have at least three (3) days per year of a professionally sanctioned rodeo. Not more than one (1) licensed premises shall be permitted at any equestrian facility or within an area comprising such a facility. The fees for licenses granted to equestrian facilities shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code.

(5) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a restaurant operated on an airport owned or operated by a county or municipal corporation or on an airport owned or operated jointly by a county and municipal corporation, and which said airport is served by a trunk or local service air carrier holding a certificate of public convenience and necessity issued by the civil aeronautics board of the United States of America. Not more than one (1) license shall be issued on any airport.

(6) Nothing in this chapter shall prohibit the issuance of one (1) club license to a club as defined in section 23-902 , Idaho Code. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased, or occupied by the club and only to bona fide members of the club and to bona fide members' guests. A club license issued pursuant to the provisions of this section is not transferable and may not be sold. Any club license issued pursuant to the provisions of this section will revert to the director when, in his judgment, the licensee ceases to operate as a bona fide club as defined in section 23-902 , Idaho Code. No club may hold a liquor license and a club license simultaneously. A club that on July 1, 1983, holds a liquor license may continue to possess that license. Any club that possesses a liquor license on January 1, 1983, or thereafter, and then sells that liquor license, may not obtain a club license, and the director shall not issue a club license to that club for a period of five (5) years following such sale. The fee for any license issued to a qualifying club within an incorporated municipality shall be as prescribed in subsections (1), (2) and (3) of section 23-904 , Idaho Code. The fee for any license issued to a qualifying club not situate within an incorporated municipality shall be as specified for golf courses under section 23-904 (6), Idaho Code. The provisions of section 23-916 , Idaho Code, regarding county and city licenses shall pertain to club licenses. The burden of producing sufficient documentation of qualifications for club licensure shall be with the club applicant.

(7) Nothing in this chapter to the contrary shall prohibit the issuance of a license to the owner, operator, or lessee of an actual bona fide convention center that is within the incorporated limits of a city having a population of three thousand (3,000) or greater, and which city does not have located therein a convention center with a valid convention center license to sell liquor by the drink. For the purpose of this section, a convention center means a facility having at least thirty-five thousand (35,000) square feet of floor space or a facility having at least one hundred twenty (120) sleeping rooms and an adjoining meeting room that will accommodate not less than three hundred fifty (350) persons, whether or not such room may be partitioned into smaller rooms, and provided that such meeting room shall contain at least three thousand (3,000) square feet of floor space. Such license must be placed in actual use in said convention center within one (1) year from the date of its issuance. The fee for any license issued to a qualifying convention center shall be as prescribed in subsection (3) of section 23-904 , Idaho Code. The holder of a convention center license shall not be eligible for the issuance of a license in the same city pursuant to any other provision of this chapter. For purposes of this section, the term "holder" shall include an owner, operator, or lessee and shall include a stockholder, director, or officer of a corporation or a partner in a partnership, which corporation or partnership has been issued a convention center license pursuant to this chapter. Not more than one (1) licensed premises shall be permitted on any convention center or within the area comprising the same, including convention centers that also comprise golf courses or ski resorts as defined in this section.

(8) If an owner, operator, or lessee has a validly issued retail liquor by the drink license at the time of application, nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a food, beverage, and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction, or a food, beverage, and lodging facility serving the public by reservation only, having a minimum of five (5) rooms operating in a structure that has been in existence for at least seventy-five (75) years and has been on the historic register for a minimum of ten (10) years, is situated within five hundred (500) yards of a natural lake containing a minimum of thirty-six thousand (36,000) acre feet of water when full with a minimum of thirty-two (32) miles of shoreline, and is located in a county with a minimum population of sixty-five thousand (65,000). The provisions of section 23-910 , Idaho Code, shall apply to licenses issued to continuous operation facilities. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. No license shall be issued under this subsection on or after July 1, 2028.

(9) Nothing in this chapter shall prohibit the issuance of a license to a federally recognized Indian tribe as defined in section 67-4001 , Idaho Code, which is an owner, operator, or lessee of a food, conference, and lodging facility located within the boundaries of the Indian tribe's reservation and containing a minimum of thirty-five thousand (35,000) square feet and fifty (50) guest rooms. Licenses issued to Indian tribes are not transferable.

(10) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of the lodging, dining, and entertainment facilities owned by a gondola resort complex and operated in conjunction with the other public services provided by a gondola resort complex located within the ownership/leasehold boundaries of a gondola resort complex. For purposes of this subsection, a gondola resort complex means an actual bona fide gondola capable of transporting people for recreational or entertainment purposes at least three (3) miles in length with a vertical rise of three thousand (3,000) feet, portions of which may be located within or over the limits of one (1) or more cities.

(11) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a winery also operating a golf course on the premises.

(12) Subject to approval of the mayor and city council, nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a food, conference, and lodging facility constructed after May 1, 2000, containing a minimum of thirty-five thousand (35,000) square feet and fifty-five (55) guest rooms with a minimum taxable value of three million dollars ($3,000,000) in a city with a population of less than five thousand (5,000) according to the most recent census.

(13) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a conference and event center that is within the city limits of a resort city as defined in section 50-1044 , Idaho Code, that has enacted local option nonproperty taxes in accordance with section 50-1046 , Idaho Code, including, at the time of issuance, a resort city tax on sales of liquor by the drink, wine, and beer sold at retail for consumption on the licensed premises. There shall be only one (1) conference and event center license to sell liquor by the drink issued per resort city pursuant to this subsection. For the purposes of this section, a conference and event center means facilities situated on premises consisting of a building or buildings and the contiguous property owned or leased and under common ownership or control by the licensee. Such facilities must provide no less than four thousand (4,000) square feet of enclosed space for conference and event purposes, exclusive of space dedicated by the licensee to the commercial kitchen. The commercial kitchen must include a type 1 commercial hood and cooking equipment, exclusive of microwave ovens and grills. The fee for any license issued to a qualifying licensee shall be as prescribed in section 23-904 (1), (2), or (3), Idaho Code, depending on the population of the resort city in which the conference and event center is located and as prescribed in section 23-916 , Idaho Code. A license issued pursuant to this subsection may be renewed without regard to the population or status of the city for which the license was issued and without regard for the continuation of local option nonproperty taxes by the city, provided the applicant for renewal is not otherwise disqualified from licensure pursuant to section 23-910 , Idaho Code. Not more than one (1) license shall be issued to a conference and event center. A conference and event center license shall not be transferable and may not be sold. For the purpose of issuance and maintenance of a license under this subsection, such facilities may serve liquor only while such facilities are hosting a conference or event. Nothing in this subsection shall excuse a conference and event center from complying with actual use standards in title 23 , Idaho Code, or administrative rules promulgated pursuant to statutory authority granted under this title.

(14) Nothing in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide distillery. A license issued pursuant to this subsection shall authorize the sale of liquor explicitly from brands that are owned by the distillery. The fees for a license issued pursuant to this subsection shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. As used in this section, "bona fide distillery" means a legally authorized premises that manufactures and bottles liquor and is located on no less than five (5) acres of agricultural zoned property in an unincorporated area of Idaho.

(15) The provisions of section 23-910 , Idaho Code, shall apply to licenses issued under the provisions of this section. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. Except for licenses issued pursuant to subsection (1) of this section, licenses issued under the provisions of this section are not transferable to any other location, facility, or premises.

(16) A license issued pursuant to subsection (1) of this section on or after July 1, 2023:

(a) May not be transferred to another licensee except as provided in subsections (17)(a), (b), and (c) and subsection (19) of this section or section 23-950 , Idaho Code, provided that the licensee must elect to associate such license with the real property at the time of the initial license issuance; and

(b) Shall not qualify for the discount established in section 23-217 (2), Idaho Code.

(17) A license issued pursuant to subsection (1) of this section prior to July 1, 2023, may be transferred to another licensee one (1) time only on or after July 1, 2023, and shall thereafter be nontransferable. Prior to such onetime-only

transfer, the licensee shall be entitled to the discount established in section 23-217 (2), Idaho Code. After any onetime-only transfer, the licensee placing the license in actual use shall not be entitled to such discount. For purposes of this subsection only, the following circumstances shall not qualify as a onetime-only transfer:

(a) The license is inherited or otherwise acquired through a will, trust, or other estate-planning document;

(b) The license is given to a person by the person's parent, grandparent, child, grandchild, sibling, aunt, uncle, or first cousin without consideration or remuneration;

(c) To the extent not already included in paragraphs (a) and (b) of this subsection, any of the events listed in section 23-908 (5)(a) through (e), Idaho Code;

(d) The sale of the business assets of an entity or individual licensee, including the transfer of an associated license placed in actual use, either owned or leased prior to July 1, 2023, to a qualified applicant, provided that:

(i) The transferring licensee has occupied its location, facility, or premises at the time of sale for at least one (1) year prior to the sale of business assets; and (ii) The qualified new licensee operates at the same location, facility, or premises for one (1) year following the sale of assets and transfer of the associated liquor license placed in actual use. Any sale that does not conform to the provisions of this paragraph shall be considered a onetime-only transfer of the license pursuant to this subsection;

(e) The sale or transfer of some or all of the ownership interests of an entity licensee to a qualified applicant provided that:

(i) The entity licensee has occupied its location, facility, or premises at the time of sale for at least one (1) year prior to the sale and transfer of the ownership interests; and (ii) The existing entity licensee operates at the same location, facility, or premises for one (1) year following the closing of the sale or transfer of the ownership interests. Any sale that does not conform to the provisions of this paragraph shall be considered a onetime-only transfer of the license pursuant to this subsection;

(f) The licensee owns, operates, or leases more than one (1) business or entity and transfers the license from one business or entity to another owned, operated, or leased by such licensee;

(g) A transfer pursuant to subsection (19) of this section; or

(h) A transfer pursuant to section 23-950 , Idaho Code.

(18) If a license that was issued pursuant to subsection (1) of this section was under lease before July 1, 2023, then such lease may continue pursuant to its own terms and may be amended or renewed, or such lease may be assigned to a purchaser pursuant to subsection (17)(d) or (e) of this section. At the end of the term of such lease, the license shall revert to the license owner's possession, and the license owner may opt for one (1) of the following alternatives:

(a) The owner may transfer the license pursuant to the provisions of subsection (17) of this section, including a onetime-only transfer under an installment contract wherein such contract shall not exceed a term of five (5) years;

(b) The owner may retain the license and apply to become the actual user of the license, which retention and use shall be exempt from the onetime-only transfer pursuant to subsection (17) of this section;

(c) The owner may proceed under subsections (17)(a) through (g) of this section; or

(d) If the owner of the license is also the owner of an estate in real property, the owner may proceed under subsection (19) of this section. (19)(a) An entity or person who owns a license issued pursuant to subsection (1) of this section and holds, in whole or in part, an estate in real property that is leased to a tenant pursuant to a written lease may permit such tenant to operate the license at the leased premises during the term of the premises lease, provided that the license shall identify on the face of the license the name of the license owner, the name of the premises tenant as the qualified licensee who places the licenses in actual use, and the location of the associated licensed premises.

(b) The license owner may permit a subsequent tenant under a new premises lease to place the license into actual use upon termination of the prior premises lease as provided in this subsection.

(c) A license operated pursuant to this subsection may be transferred to any third-party purchaser of the licensed premises where the license is placed in actual use at the time of such transfer.

(d) The onetime-only transfer of the license under subsection (17) of this section shall no longer be available to the license owner once placed in use under this subsection, but the license owner may thereafter proceed under subsections (17)(a) through (g) or subsection (18) of this section or under this subsection.

(e) The license owner shall be jointly responsible with the tenant to the director for all renewals, filings, payment of fees, and administrative actions taken with respect to the license.

(20) If the director maintains a priority list of the applicants for a license to be issued pursuant to subsection (1) of this section and an applicant receives notice in writing from the director that a license is available, the applicant may elect to have the license issued in the name of:

(a) The original applicant;

(b) Persons as set forth in subsection (17)(a) through (c) of this section as its designee; or

(c) A single purpose entity owned only by the original applicant or any party set forth in subsection (17)(a) through (c) of this section or such combination of the original applicant or a party set forth in subsection (17)(a) through (c) of this section.

23-903a — License to retail liquor — Ski resorts — Cross-country skiing facilities

23-903a. License to retail liquor — Ski resorts — Cross-country skiing facilities. If the director determines that an applicant or applicants are qualified to receive a ski resort or cross-country skiing facility license, he shall notify the chairman of the board of county commissioners in the county in which the ski resort or cross-country skiing facility license is to be issued. The county commissioners shall, within fifteen (15) days after receipt of notification from the director, approve or disapprove the issuance of the license. In the event the county commissioners do not approve the proposed license, a license shall not be issued.

23-903b — Licenses issued to owners, operators or lessees of golf courses, ski resorts, cross-country skiing facilities and waterfront resorts — Limitations on sales or transfers

23-903b. Licenses issued to owners, operators or lessees of golf courses, ski resorts, cross-country skiing facilities and waterfront resorts — Limitations on sales or transfers. No license issued to an owner, operator, or lessee of a golf course, ski resort, cross-country skiing facility or waterfront resort, as defined in sections 23-903 , 23-948 and 23-952 , Idaho Code, shall be transferable to another location or facility, except as otherwise provided in section 23-956 , Idaho Code.

23-903c — licenses issued to resort city restaurants

23-903c. licenses issued to resort city restaurants.

(1) Resort city restaurant liquor license. Upon a finding of proof by the mayor and city council and subject to approval of the mayor and city council and notwithstanding the population limitations set forth in section 23-903 (1), Idaho Code, nothing in this chapter shall prohibit the issuance of a resort city restaurant liquor license to the owner, operator, or lessee for use at a qualifying restaurant within the incorporated limits of a city that qualified as a resort city as of July 1, 2024, subject to the provisions of this section. For purposes of this section, "resort city" shall have the same meaning as provided in section 50-1044 , Idaho Code, and means a city that is farther than fifteen (15) miles by road from any city with a population of fifty thousand (50,000) or more as established in the last preceding census and has sewage flows that exceed low-season flows by twenty percent (20%) or more. "Restaurant" shall have the same meaning as provided in section 23-942 , Idaho Code.

(2) Qualifying restaurant. To be eligible for issuance of a resort city restaurant liquor license, a restaurant shall demonstrate that the primary source of revenue from the operation of the restaurant to be licensed will be derived from food services and not from the sale of liquor. Subsequent license renewals shall be conditioned upon a showing that no less than sixty percent (60%) of gross sales from the preceding twelve (12) month operation of a licensed restaurant be derived from food services. (3)(a) Restaurant operations. A restaurant selling liquor pursuant to a resort city restaurant liquor license shall abide by the following:

(i) Liquor shall be dispensed and prepared for consumption by a restaurant licensed pursuant to this section only in areas approved by the local licensing authority; and (ii) All liquor sales shall cease at the time food sales and services cease. The local licensing authority may impose additional date and time restrictions on liquor sales.

(b) No resort city restaurant licensed pursuant to this section shall promote or operate the restaurant as a bar and lounge. (4)(a) Licenses per city. No more than three (3) resort city restaurant liquor licenses may be issued for use within the incorporated limits of a single resort city. In the event the mayor and city council do not approve the proposed license, a license shall not be issued. Priority shall be given on a first-come, first-served basis according to date of application and the following:

(i) First to those who applied for a license within the incorporated city prior to July 1, 2024, contingent on the ability for actual use as a resort city restaurant liquor license; and (ii) Second to those who apply for a resort city restaurant liquor license on or after July 1, 2024.

(b) Resort city liquor licenses shall not count toward the limitation on the number of licenses issued according to population, as provided in section 23-903 (1), Idaho Code.

(5) Sale, lease, and transfer prohibited. A resort city restaurant liquor license may not be sold or leased and shall not be transferable to any other location, facility, or premises.

(6) The fees for licenses granted pursuant to this section shall be the same as those set forth in section 23-904 (1), (2), and (3), Idaho Code.

23-904 — License fees

23-904. License fees. Each licensee licensed under the provisions of this act shall pay an annual license fee to the director as follows:

(1) For each license in a city of one thousand (1,000) population or less, three hundred dollars ($300) per annum.

(2) For each license in a city of from one thousand (1,000) to three thousand (3,000) population, five hundred dollars ($500) per annum.

(3) For each license in a city having a population of more than three thousand (3,000), seven hundred fifty dollars ($750) per annum.

(4) For each railroad train for sale only in buffet, club or dining cars, fifty dollars ($50.00) per annum of the scheduled run of such train within the state of Idaho; provided, that such license shall be in full, and in lieu of all other licenses herein provided for.

(5) For each common carrier boat line for sale only in buffet, club dining rooms, two hundred fifty dollars ($250) per annum. Such license shall be in full, and in lieu of all other licenses herein provided for.

(6) For each license issued to the owner, operator, or lessee of a golf course as described in section 23-903 , Idaho Code, or to the lessee of any premises situate on such golf course, situate in any county having a population of:

(a) Less than twenty thousand (20,000), two hundred dollars ($200) per annum;

(b) Twenty thousand (20,000) but less than forty thousand (40,000), three hundred dollars ($300) per annum; and

(c) Forty thousand (40,000) or more, four hundred dollars ($400) per annum.

(7) For each common carrier airline for sale only in common carrier aircraft, two hundred fifty dollars ($250) per annum. Such license shall be in full, and in lieu of all other licenses herein provided for.

(8) For each license issued to the owner, operator, or lessee of a restaurant operated on an airport, as described in section 23-903 , Idaho Code, situate within the corporate limits of a city, the fee shall be the same as provided in paragraphs (1) through (3), inclusive, of this section.

(9) For each license issued to the owner, operator, or lessee of a restaurant operated on an airport, as described in section 23-903 , Idaho Code, situate without the corporate limits of a city, the fee shall be the same as provided in paragraph (6) of this section. Licenses issued under and pursuant to the provisions of this act shall expire at 1:00 o'clock a.m. on the first day of January of the following year.

(10) For each license issued to an owner or operator of a year-round resort as described in section 23-957 , Idaho Code, a one (1) time fee of twenty-five thousand dollars ($25,000), with a subsequent renewal fee of three thousand five hundred dollars ($3,500) per annum. For each license issued to an owner or operator of a beverage, lodging or dining facility within the premises of a year-round resort as described in section 23-957 , Idaho Code, a one (1) time fee of twenty-five thousand dollars ($25,000) with a subsequent renewal fee of three thousand five hundred dollars ($3,500) per annum. For each license issued to a lessee of a beverage, lodging or dining facility within the premises of the year-round resort as described in section 23-957 , Idaho Code, a one (1) time fee of twenty-five thousand dollars ($25,000) with a subsequent renewal fee of three thousand five hundred dollars ($3,500) per annum. Provided that any licensee who operates for only a portion of a year may have his license fee prorated from the date he commences operation to the end of the calendar year, but in no event for less than six (6) months. In the event a licensee who was previously issued a license on a prorated basis under the provisions hereof desires to have such license renewed for the same period for the next succeeding year, he shall file his intention to so apply for such license with the director, accompanied by the fee

required for the issuance of such license on or before December 31 of the year preceding. The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Idaho. The basis upon which respective populations of municipalities shall be determined is the last preceding census or any subsequent special census conducted by the United States bureau of the census, unless a direct enumeration of the inhabitants thereof be made by the state of Idaho, in which case such later direct enumeration shall constitute such basis.

23-905 — Application for licenses — Penalty for false statements

23-905. Application for licenses — Penalty for false statements. Prior to the issuance of a license as herein provided, the applicant shall file with the director an application, in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the liquor is to be sold as may be required by the director. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths and shall be accompanied with the license fee herein required. In addition to setting forth the qualifications required by other provisions of this act, the application must show:

(1) A detailed description of the premises for which a license is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of all persons who will have any financial interest in any business to be carried on in and upon the licensed premises, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) The name and address of the applicant, which shall include all members of a partnership or association and the officers, members of the governing board and ten (10) principal stockholders of a corporation.

(5) A copy of the articles of incorporation and bylaws of any corporation, the articles of association and the bylaws of any association, or the articles of partnership of any partnership.

(6) If during the period of any license issued hereunder any change shall take place in any of the requirements of subparagraph (3), (4), or (5) of this section, the licensee shall forthwith make a written report of such change to the director.

(7) If during the period of any license issued hereunder the licensee seeks to move his business from one premise to another in the same city, he may do so subject to the director's approval that the new premise is suitable for the carrying on of the business. If any false statement is made in any part of said application, or any subsequent report, the applicant, or applicants, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years and fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or both such fine and imprisonment.

23-906 — Licenses for dining, buffet and club cars, common carrier boats, and common carrier airlines

23-906. Licenses for dining, buffet and club cars, common carrier boats, and common carrier airlines. Any person operating any line of railroad using dining club or buffet cars in connection with regularly operated train service, or any common carrier boat or boats, or any common carrier airline, desiring a license to sell liquor under the provisions of this act in any such cars, boats, or common carrier aircraft shall apply to the director for a license, as in this act provided, accompanying the application with the license fee herein prescribed.

23-907 — Investigation of applications

23-907. Investigation of applications. Upon receipt of an application for a license under this act, accompanied by the necessary license fee, the director, within ninety (90) days thereafter, shall cause to be made a thorough investigation of all matters pertaining thereto. 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 and the fee to cover the cost of the criminal history background check for such person with the application. If the director shall determine that the contents of the application are true, that such applicant is qualified to receive a license, that his premises are suitable for the carrying on of the business, and that the requirements of this act and the rules promulgated by the director are met and complied with, he shall issue such license; otherwise the application shall be denied and the license fee, less the costs and expenses of investigation, returned to the applicant. In making the investigation required by this section the director shall have the power to investigate and examine the books and records of the licensee and any person having a financial interest in any

business to be conducted on the licensed premises, including, but not limited to, their bank accounts, returns filed under the Idaho income tax act, as amended, and any other sources of information deemed desirable by the director and not specifically prohibited by law.

23-908 — Form of license — Authority — Expiration — Limitations

23-908. Form of license — Authority — Expiration — Limitations.

(1) Every license issued under the provisions of this chapter shall set forth the name of the person to whom issued, the location by street and number, or other definite designation, of the premises, and such other information as the director shall deem necessary. If issued to a partnership, the names of the persons constituting such partnership shall be set forth in the application. If issued to a corporation or association, the names of the principal officers and the governing board shall be set forth in the application. Such license shall be signed by the licensee and prominently displayed in the place of business at all times. Every license issued under the provisions of this chapter is separate and distinct and no person except the licensee therein named except as herein otherwise provided, shall exercise any of the privileges granted thereunder. All licenses shall expire at 1:00 o'clock a.m. on the first day of the renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for liquor by the drink licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of his current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee shall not be permitted to sell and dispense liquor by the drink at retail during the thirty-one (31) day extended time period unless and until the license is renewed. In any city of less than sixteen thousand (16,000) population, as established in the last preceding census or any subsequent special census conducted by the United States bureau of the census, no person shall be granted more than one (1) license in any city for any one (1) year; and no partnership, association or corporation in such city of less than sixteen thousand (16,000) population holding a license under the provisions of this chapter shall have as a member, officer or stockholder any person who has any financial interest of any kind in, or is a member of, another partnership or association or an officer of another corporation holding a license in the same city for the same year; provided that this section shall not prevent any person, firm or corporation, owning two (2) or more buildings on connected property in a city from making application for and receiving licenses permitting the sale of liquor by the drink in such building.

(2) An application to transfer any license issued pursuant to chapter 9, title 23 , Idaho Code, shall be made to the director. Upon receipt of such an application, the director shall make the same investigation and determinations with respect to the transferee as are required by section 23-907 , Idaho Code, and if the director shall determine that all of the conditions required of a licensee under chapter 9, title 23 , Idaho Code, have been met by the proposed transferee, then the license shall be indorsed over to the proposed transferee by said licensee for the remainder of the period for which such license has been issued and the director shall issue a license to the transferee.

(3) The director, in his discretion, may deny the transfer of a license during the pendancy of any proceedings for suspension or revocation which were instituted pursuant to the terms of this chapter.

(4) Each new license issued on or after July 1, 1980, shall be placed into actual use by the original licensee at the time of issuance and remain in use for at least six (6) consecutive months or be forfeited to the state and be eligible for issue to another person by the director after compliance with the provisions of section 23-907 , Idaho Code. Such license shall not be transferable for a period of two (2) years from the date of original issuance, except as provided by subsection (5)(a), (b), (c), (d) or (e) of this section.

(5) The fee for transferring a liquor license shall be ten percent (10%) of the purchase price of the liquor license or the cost of good will, whichever is greater; except no fee shall be collected in the following events:

(a) The transfer of a license between husband and wife in the event of a property division; or

(b) The transfer of a license to a receiver, trustee in bankruptcy or similar person or officer; or

(c) The transfer of a license to the heirs or personal representative of the estate in the event of the death of the licensee; or

(d) The transfer of a license arising out of the dissolution of a partnership where the license is transferred to one (1) or more of the partners; or

(e) The transfer of a license within a family whether an individual, partnership or corporation.

(6) The fee for transferring a liquor license for other than a sale shall be fifty percent (50%) of the per annum license fee set forth in section 23-904 , Idaho Code; except no fee shall be collected for transfers as outlined in subsection (5)(a), (b), (c), (d) or (e) of this section.

23-910 — Persons not qualified to be licensed

23-910. Persons not qualified to be licensed. No license shall be issued to:

(1) Any person, or any one (1) of its members, officers, or governing board, who has, within three (3) years prior to the date of making application, been convicted of any violation of the laws of the United States, the state of Idaho, or any other state of the United States, or of the resolutions or ordinances of any county or city of this state, relating to the importation, transportation, manufacture or sale of alcoholic liquor or beer; or who has been convicted of, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within five (5) years prior to the date of making application for any license.

(2) A person who is engaged in the operation, or interested therein, of any house or place for the purpose of prostitution or who has been convicted of any crime or misdemeanor opposed to decency and morality.

(3) A person whose license issued under this act has been revoked; an individual who was a member of a partnership or association which was a licensee under this act and whose license has been revoked; an individual who was an officer, member of the governing board or one (1) of the ten (10) principal stockholders of a corporation which was a licensee under this act and whose license has been revoked; a partnership or association one (1) of whose members was a licensee under this act and whose license was revoked; a corporation one (1) of whose officers, member of the governing board or ten (10) principal stockholders was a licensee under the provisions of this act and whose license has been revoked; an association or partnership, one (1) of whose members was a member of a partnership or association licensed under the provisions of this act and whose license has been revoked; a partnership or association, one (1) of whose members was an officer, a member of the governing board, or one (1) of the ten (10) principal stockholders of a corporation licensed under the provisions of this act and whose license has been revoked; a corporation, one (1) of whose officers, member of the governing board, or ten (10) principal stockholders was a member of a partnership or association licensed under the provisions of this act and whose license was revoked; a corporation, one (1) of whose officers, member of the governing board, or ten (10) principal stockholders was an officer, member of the governing board, or one (1) of the ten (10) principal stockholders of a corporation licensed under the provisions of this act and whose license was revoked.

(4) Any officer, agent, or employee of any distillery, winery, brewery, or any wholesaler, or jobber, of liquor or malt beverages except as provided in section 23-912 , Idaho Code. This prohibition shall not apply to officers, agents, or employees of any winery operating a golf course on the same premises as the winery or officers, agents, or employees of any distillery, as described in section 23-903 (14), Idaho Code.

(5) A person who does not hold a retail beer license issued under the laws of the state of Idaho.

(6) Any license, held by any licensee disqualified under the provisions of this section from being issued a license, shall forthwith be revoked by the director.

23-911 — Restrictions on manufacturers, transporters or distillers

23-911. Restrictions on manufacturers, transporters or distillers. Except as provided in section 23-912 , Idaho Code, no manufacturer, rectifier, wholesaler, stockholder, shareholder, partner, or the owner of any other interest in any corporations, association or partnership financially interested in the manufacture, transportation or sale of liquor shall furnish, give, rent, lend or sell any equipment or fixtures directly or indirectly, or through a subsidiary or affiliate or by any officer, director, or firm member of the industry or otherwise furnish financial aid to any person engaged in the sale of liquor hereunder and no licensee hereunder shall receive or be the beneficiary of any of the benefits hereby prohibited.

23-912 — Restrictions of persons interested in premises

23-912. Restrictions of persons interested in premises.

(1) Except as provided in subsection (2) of this section, no manufacturer, rectifier, wholesaler, stockholder, shareholder, partner or the owner of any other interest in any corporation, association or partnership financially interested in the manufacture, transportation (except public carriers) or sale of liquor shall hold any interest in any premise licensed hereunder for the sale of liquor or receive any rental or remuneration from any such premise.

(2) A manufacturer, rectifier, wholesaler, stockholder, shareholder, partner or the owner of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor may hold interest in a licensed premises if the licensed premises serves food cooked on the site of the licensed premises, and the person or entity can show through recordkeeping that no more than fifty percent (50%) of the gross revenue to the licensed premises is derived from the sale of alcoholic beverages on-site. The owner of the licensed premises pursuant to this subsection shall comply with and be subject to all other rules, regulations or other provisions of law which apply to manufacturers, rectifiers, wholesalers, stockholders, shareholders, partners or the owners of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor save and except as such rules, regulations or laws may restrict such sales at the licensed premises. The holder of a license pursuant to this section shall not be disqualified from holding a beer license, a retail wine license or wine by the drink license for the sale of beer or wine at the licensed premises on the grounds that the licensee is also a manufacturer, wholesaler, stockholder, shareholder, partner or the owner of any interest in any corporation, association or partnership financially interested in the manufacture, transportation or sale of liquor, beer or wine. This subsection shall not be deemed to grant a license for the retail sale of liquor by the drink and the license must be obtained through normal lawful means. A distillery, as described in section 23-903 (14), Idaho Code, shall not be required to serve food cooked on the site of the licensed premises and shall be authorized to sell liquor from brands explicitly owned by the distillery. Such sale of liquor shall not be considered to be in conflict with the provisions of this chapter.

23-913 — Licensee not allowed near churches or schools — Exceptions

23-913. Licensee not allowed near churches or schools — Exceptions. No license shall be issued for any premises in any neighborhood which is predominantly residential or within 300 feet of any public school, church, or any other place of worship, measured in a straight line to the nearest entrance to the licensed premises, except with the approval of the governing body of the municipality; provided, that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing same therein.

23-914 — Licensee must purchase from division — Price

23-914. Licensee must purchase from division — Price. All liquor sold by any licensee shall be purchased from the division through its regular retail stores and distributing stations at the posted price thereof. The division is hereby authorized and directed to make such sales pursuant to section 23-309 , Idaho Code, upon a special permit issued to such licensee in such form as shall be prescribed by the director of the division. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the division. It shall be unlawful for any licensee to sell, or keep for sale, or have on his premises for any purpose whatsoever, any liquor except that purchased as herein authorized and provided, and any licensee found in possession of, selling or keeping for sale any liquor not purchased as herein authorized shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment. Any license issued to such person shall be immediately and permanently revoked. The amount of liquor to be sold to licensees hereunder in any city or village shall be determined by the director or other executive officer of the division, but such sales shall be regulated so as to maintain adequate stocks of merchandise for sale to persons other than said licensees. The provisions of this section notwithstanding, railroad companies shall have the right to have in their possession liquors other than those purchased from the division.

23-915 — Officers may seize illegal liquor

23-915. Officers may seize illegal liquor. The director, or any of his agents, any sheriff, constable, or other police officer who shall find any liquor kept or held by any person in violation of the provisions of this act may forthwith seize and remove the same and keep the same as evidence and upon conviction of the person for violation of the provisions hereof, the said liquor, and all packages or receptacles containing the same, shall be forfeited to the state of Idaho and in addition the person so violating this act shall be subject to the other penalties herein prescribed.

23-916 — County and city licenses

23-916. County and city licenses. In addition to the licensing and control herein provided for the retail sale of liquor by the drink, each county and incorporated city in the state of Idaho is hereby authorized and empowered to license the sale of liquor by the drink at retail within the corporate limits of such city. The respective local authorities may impose and collect license fees for the use and benefit of such city not to exceed seventy-five percent (75%) of the amount of the license fee collected by the director as herein provided and for the use and benefit of such county not to exceed twenty-five percent (25%) of the amount of the license fee collected by the director as herein provided. The governing authority of such city may provide further regulations for the control of such business, and the board of county commissioners of any county may fix the fee for, and may regulate and control the use of, any license issued for the sale of liquor by the drink at retail in any licensed premises not situate within the incorporated limits of any city, not in conflict with the provisions of this act.

23-917 — Referendum — Local option

23-917. Referendum — Local option. No license shall be issued hereunder until on or after July 1, 1947. Within sixty (60) days after the effective date of this chapter a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any city may be filed with the clerk of said city as their protest against the issuance of any license in said city under the provisions of this chapter. In the event said petition is presented, the governing body of any such city shall, within five (5) days after the presentation of said petition, meet and determine the sufficiency thereof by ascertaining whether said petition is signed by the required number of registered, qualified electors of the city affected. In the event the governing body of said city determines that said petition is signed by the required percentage of registered, qualified electors, said city governing body shall forthwith make an order calling an election to be held within said city, subject to the provisions of section 34-106 , Idaho Code, in accordance with the provisions of title 34 , Idaho Code, which shall apply to the holding of the election provided for in this section, except where specifically modified herein. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election.

23-918 — Form of ballot

23-918. Form of ballot. The county clerk must furnish the ballots to be used in such election, which ballots must contain the following words: "Sale of liquor by the drink, Yes," "Sale of liquor by the drink, No," and the elector in order to vote must indicate the elector’s choice opposite one (1) of the questions in a space provided therefor.

23-919 — Effect of election — Liquor store sales not affected

23-919. Effect of election — Liquor store sales not affected. Upon a canvass of the votes cast, the county board of canvassers shall certify the result to the city who shall report the results to the director. If a majority of the votes cast are "Sale of liquor by the drink, Yes," licenses shall be issued in said city as in this chapter provided. If a majority of the votes cast are "Sale of liquor by the drink, No," then no licenses shall be issued in said city unless thereafter authorized by a subsequent election in said city; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store or state distributor.

23-920 — Subsequent elections

23-920. Subsequent elections. A similar election may be subsequently called and held upon the issue of whether the sale of liquor by the drink shall be prohibited or, if prohibited, then an election to determine whether the sale of liquor by the drink shall be licensed. Such subsequent election shall be held upon the filing of a petition, as provided in section 23-917 , signed by the requisite percentage of qualified electors. No such subsequent election shall be held prior to November 1, 1949, or oftener than two (2) years after the holding of any such subsequent election.

23-921 — No retail sale except by the drink

23-921. No retail sale except by the drink. It shall be unlawful for any licensee to sell, keep for sale, dispense, give away, or otherwise dispose of any liquor in the original containers or otherwise than by retail sale by the drink.

23-926 — Destruction of stamps — Sanitary requirements

23-926. Destruction of stamps — Sanitary requirements. It shall be the duty of any licensee hereunder immediately upon emptying any liquor container to deface, so that the same may not again be used, all government or state stamps or labels. Any licensed premises shall be maintained in sanitary condition according to the requirements of chapter 16, title 39 , Idaho Code, and any city ordinances pertaining thereto.

23-927 — Hours of sale of liquor

23-927. Hours of sale of liquor.

(1) No liquor shall be sold, offered for sale, or given away upon any licensed premises, and all liquor not in sealed bottles must be locked in a separate room or cabinet during the following hours: a. Sunday, Memorial Day, Thanksgiving and Christmas from 1 o'clock A.M., to 10 o'clock A.M. the following day; provided however, that on any Sunday not otherwise being a prescribed holiday, it shall be lawful for a licensee having banquet area or meeting room facilities, separate and apart from the usual dispensing area (bar room) and separate and apart from a normal public dining room unless such dining room is closed to the public, to therein dispense liquor between the hours of 2 o'clock P.M. and 11 o'clock P.M. to bona fide participants of banquets, receptions or conventions for consumption only within the confines of such banquet area or meeting room facility. b. On any other day between 1 o'clock A.M. and 10 o'clock A.M. c. When any city or county has any ordinance further limiting the hours of sale of liquor, by the drink, then such hours shall be fixed by such ordinance.

(2) A county or city may, however, by ordinance, allow the sale of liquor by the drink on a Sunday, Memorial Day and Thanksgiving, and may also extend until 2 o'clock A.M. the hours of the sale of liquor by the drink.

(3) Any patron present on the licensed premises after the sale of liquor has stopped as provided in subsection (1) and subsection (2) above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverages already served.

(4) Any person who consumes or intentionally permits the consumption of any alcoholic beverage upon licensed premises after the time provided for in subsection (3) shall be guilty of a misdemeanor.

(5) It shall be the duty of every person who is employed at or upon a licensed premises or who owns or manages a licensed premises and is present upon the licensed premises during the hours and at the time set forth in subsection (1) and subsection (2) of this section to lock up and keep locked up in a locked room or locked cabinet all unsealed containers of liquor during the hours and at the times set forth in subsection (1) and subsection (2) of this section, and any such person who fails to perform the duty provided herein shall be guilty of a misdemeanor.

23-928 — Sale away from licensed premises prohibited — Gambling prohibited

23-928. Sale away from licensed premises prohibited — Gambling prohibited.

(1) It shall be unlawful for any licensee to sell, give away, dispense, vend, or deliver any liquor in any fashion or by means or device, except upon the licensed premises.

(2) It shall be unlawful for any licensee granted a license under the authority of title 23 , Idaho Code, to permit, conduct, play, carry on, open or cause to be opened any gaming in or upon the licensed premises or in or upon any premises directly connected by a door, hallway, or other means of access from the licensed premises. Any licensee authorized under the authority of this title and who is also authorized by other Idaho law to conduct the lawful activities of lottery, bingo, raffles, and pari-mutuel betting on the licensed premises shall be exempt from the provisions of this subsection as long as the lawful activities are conducted in conformity with statute and rules promulgated pursuant thereto.

23-930 — Officers may examine premises

23-930. Officers may examine premises. The director or his duly authorized representative, the sheriff of any county, a constable, or other police officer, shall have the right at any time to make an examination of the premises of any licensee as to whether the laws of the state of Idaho, the rules and regulations of the director, and the ordinances of any city are being complied with and shall also have the right to inspect the cars of any railroad system licensed under this act.

23-931 — Advertising prohibited

23-931. Advertising prohibited. It shall be unlawful for any licensee to adopt or use any name, sign or advertisement outside of the licensed premises advertising the handling or sale of liquor.

23-932 — Director to make regulations — Furnish forms and records

23-932. Director to make regulations — Furnish forms and records. For the purpose of the administration of this act the director shall make, promulgate and publish such rules and regulations as the said director may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no

defense. Without limiting the generality of the foregoing provisions, the said director shall be empowered and it is made his duty to prescribe forms to be used in the administration of this act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores, prescribing notices required by this act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business to licensees.

23-933 — Suspension, revocation, and refusal to renew licenses

23-933. Suspension, revocation, and refusal to renew licenses.

(1) The director may suspend, revoke, or refuse to renew a license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Procedures for the suspension, revocation, or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67 , Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars ($5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of beer or wine shall automatically result in the suspension of any license for the sale of liquor held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

23-933A — Licenses — Suspension or revocation for violation of obscenity laws

23-933A. Licenses — Suspension or revocation for violation of obscenity laws. In the event of a conviction for a violation of chapter 41, title 18 , Idaho Code, relating to obscenity, by any:

(1) licensee,

(2) agent of licensee or

(3) employee or licensee if such licensee knew or should have known in the exercise of reasonable diligence that said employee was violating the provisions of chapter 41, title 18 , Idaho Code, and if the violation committed by any of the above occurred on, or in connection with, premises licensed under this act by such licensee, the director shall suspend the license of such licensee for a period of six (6) months. If such licensee, or his agent or employee, has previously been convicted of a violation of chapter 41, title 18 , Idaho Code, relating to obscenity, which violation occurred on, or in connection with, the premises licensed under this act by such licensee, the director shall revoke the license of such licensee.

23-933B — Procedure for other licensing authorities

23-933B. Procedure for other licensing authorities. The licensing authority of any county or incorporated municipality shall have and exercise the same powers to revoke, suspend, or to refuse grant of renewal of a retailer's license issued or issuable by it, as are granted to the director in this act. The determination of any such licensing authority to revoke, suspend, or to refuse grant of renewal of any retailer's license, shall be upon the same grounds referred to in section 23-933 , Idaho Code, and may also be upon the grounds that the licensee has violated an ordinance validly enacted by it

and regulating, governing or prohibiting the sale, manufacture, transportation or possession of beer or intoxicating liquor and notice thereof shall be given, and proceedings to contest said determination allowed, as provided for in this act with respect to state licenses issued by the director. The order to show cause shall be addressed to the board of county commissioners of the county or to the city council of the incorporated municipality, requiring the commissioners or councilmen, or such representative as they may designate, to appear in response thereto. Service of the order to show cause and petition shall be ordered to be made upon the chairman of the board of county commissioners or mayor or city manager of the municipality, as the case may be.

23-934 — Unlicensed rooms unlawful — Exception

23-934. Unlicensed rooms unlawful — Exception. It shall be unlawful for any person to keep or maintain any rooms or premises in which liquor is received or kept, whether owned by such person or by another, or to which liquor is brought, for consumption on the premises by members of the public or of any club, incorporated or unincorporated, or a corporation or association, unless such person and the premises are licensed under this act, except as provided under a liquor catering permit.

23-934A — Alcohol beverage catering permit — Application

23-934A. Alcohol beverage catering permit — Application. An alcohol beverage catering permit is a permit issued pursuant to this section that authorizes the permittee to serve and sell liquor by the drink, beer and wine, or beer, or wine, at a festival or convention, for a time period not to exceed five (5) consecutive days, with an option to request one (1) permit extension on the same terms and conditions as the original permit, which extension may be issued or denied at the sole and absolute discretion of the original issuing entity, or at a party for a time period not to exceed two (2) consecutive days. An alcohol beverage catering permit shall be limited to authorization to sell liquor or beer or wine, or any combination thereof, based upon the type of license the applicant possesses. Applications for such permit shall be made to the city within which the liquor, beer or wine is to be served, or if not within a city then to the county, on such form as prescribed by the city or county which shall contain at a minimum, but not limited to, the following information:

(1) The name and address of the applicant and the number of his state liquor, beer or wine license.

(2) The dates and hours during which the original permit is to be effective, not to exceed five (5) consecutive days.

(3) The names of the organizations, groups, or persons sponsoring the event.

(4) The address at which the liquor, beer or wine is to be served, and if a public building, the rooms in which the liquor, beer or wine is to be served. The application shall be verified by the applicant and filed with the appropriate governing body or its designee. A filing fee in the amount of twenty dollars ($20.00) for each day the permit is to be effective shall be paid to the treasury of the governing body which shall not be refunded in any event. Any alcohol beverage catering permit shall be valid only within the issuing jurisdiction. No alcohol beverage catering permit issued pursuant to this section shall be used on a licensed premise. An alcohol beverage catering permit issued pursuant to this section shall only be exercised by the licensee on record.

23-934B — Filing of application — Approval

23-934B. Filing of application — Approval. Upon the filing of an application for an alcohol beverage catering permit, the city council or its designee, or county commissioners or their designee receiving the application shall, upon the advice and recommendation of the chief of police and chief of fire or sheriff, approve or disapprove the application and indicate the determination on the face of the application by endorsement signed by the clerk of the city or county. The chief of police and chief of fire are, or the sheriff is, authorized to endorse an application for an alcohol beverage catering permit with sufficient conditions to ensure public safety. Copies of the application with signed endorsements thereon shall be mailed, delivered by electronic mail or delivered immediately to the chief of police or sheriff, the director and the applicant, and a signed copy retained by the clerk. An application approved in this manner shall constitute an alcohol beverage catering permit.

23-934C — Regulatory and penalty provisions applicable

23-934C. Regulatory and penalty provisions applicable. All of the regulatory and penal provisions of title 23 , Idaho Code, shall apply to the exercise of alcohol beverage catering permits, including the penalties for violations thereof, except such provisions declared to be inapplicable to alcohol beverage catering permits by rules prescribed by the director of the Idaho state police; provided, however, the director shall have no power to declare inapplicable any of the provisions of section 23-927 , Idaho Code.

23-935 — Violation — Misdemeanors

23-935. Violation — Misdemeanors. A violation of any of the provisions of this act by any agent, employee, servant, or other person in any way acting in behalf of the licensee shall be presumed to be a violation by the licensee. Any person violating any of the provisions of this act, except where a specific penalty is provided, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than the sum of one hundred dollars ($100) nor more than the sum of three hundred dollars ($300) or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction against any licensee shall be entered shall forthwith certify a copy thereof to the director and the director shall thereupon give intended notice of revocation of any license to such convicted person.

23-936 — Duty of public officers

23-936. Duty of public officers. It is hereby made the duty of the prosecuting attorneys, sheriffs, and all constables and peace officers of the counties or municipalities knowing of any violation of this act to make complaint before the proper tribunal and perform the duties of their offices with respect to the prosecution and conviction of such offenders. Any such officer knowingly refusing to inform against or prosecute any offender under the provisions of this act shall be subject to action against him as provided in chapter 41, title 19 , Idaho Code.

23-937 — Violation a moral nuisance

23-937. Violation a moral nuisance. Any violation of the provisions of this act or any rule or regulation of the director promulgated hereunder shall constitute a moral nuisance under the provisions of section 52-204 , Idaho Code.

23-938 — Selling liquor without license — Penalty

23-938. Selling liquor without license — Penalty. Any person who sells or keeps for sale any liquor without a license as provided in this act shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000), or be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, or both such fine and imprisonment.

23-939 — Separability

23-939. Separability. If any clause, sentence, paragraph, section, or any part of this act, shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this act.

23-940 — alcohol beverage control fund

23-940. alcohol beverage control fund.

(1) There is hereby created in the state treasury the alcohol beverage control fund. All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter, as well as any collections from the beer excise tax as provided in section 23-1008 , Idaho Code, shall be paid over to the state treasurer for deposit in the alcohol beverage control fund. Expenditures of moneys in the fund shall be subject to legislative appropriation for the use of the Idaho state police alcohol beverage control bureau in carrying out the provisions of title 23 , Idaho Code, and the rules promulgated by the director thereunder. At the beginning of each fiscal year, those moneys in the alcohol beverage control fund that exceed two hundred percent (200%) of that fiscal year appropriation, as certified by the state treasurer, shall be transferred to the general fund.

(2) All other moneys collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the general fund.

23-941 — Declaration of public policy

23-941. Declaration of public policy. It is hereby declared that the intent of this act is to restrict persons under the ages herein specified from entering, remaining in or loitering in or about certain places, as herein defined, which are operated and commonly known as taverns, barrooms, taprooms and cocktail lounges and which do not come within the definition of restaurant as herein contained and are not otherwise expressly exempted from the restrictions herein contained.

23-942 — Definitions

23-942. Definitions. The following definitions shall apply in the interpretation of the enforcement of this act:

(a) "Licensee" shall mean any person licensed to sell liquor by the drink at retail pursuant to the provisions of chapter 9, title 23 , Idaho Code, and any person licensed to sell beer for consumption on the premises where sold pursuant to the provisions of chapter 10, title 23 , Idaho Code, or county or municipal ordinance.

(b) "Place," as used in this act, means any room of any premises licensed for the sale of liquor by the drink at retail wherein there is a bar and liquor, bar supplies and equipment are kept and where beverages containing alcoholic liquor are prepared or mixed and served for consumption therein, and any room of any premises licensed for the sale of beer for consumption on the premises wherein there is a bar and beer, bar supplies and equipment are kept and where beer is drawn or poured and served for consumption therein.

(c) "Restaurant," as used in this act, means any restaurant, cafe, hotel dining room, coffee shop, cafeteria, railroad dining car or other eating establishment having kitchen and cooking facilities for the preparation of food and where hot meals are regularly served to the public.

23-943 — Persons under specified ages forbidden to enter, remain in or loiter at certain licensed places

23-943. Persons under specified ages forbidden to enter, remain in or loiter at certain licensed places. No person under the age of twenty-one (21) years shall enter, remain in or loiter in or about any place, as herein defined, licensed for the sale of liquor by the drink at retail, or sale of beer for consumption on the premises; nor shall any licensee of either such place, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter in or about such place. Provided, however, it is lawful for persons who are musicians and singers eighteen (18) years of age or older, to enter and to remain in any place as defined in section 23-942 , Idaho Code, but only during and in the course of their employment as musicians and singers. Provided further, that it is lawful for persons who are nineteen (19) years of age or older to sell, serve, possess or dispense liquor, beer or wine in the course of their employment in any place as defined in section 23-942 , Idaho Code, or in any other place where liquor, beer or wine are lawfully present, so long as such place is the place of employment for such person under twenty-one (21) years of age. However the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages.

23-943A — Identification

23-943A. Identification. It shall be a misdemeanor for any person to refuse to present identification indicating age, when requested by a peace officer of the state of Idaho when: (a) he or she shall possess, purchase, attempt to purchase or consume alcoholic liquor, as defined by section 23-105 , Idaho Code; or (b) he or she shall possess, purchase, attempt to purchase or consume beer as defined by section 23-1001 , Idaho Code; or (c) he or she is on a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises.

23-944 — Exceptions from restriction on entering or remaining

23-944. Exceptions from restriction on entering or remaining. It shall not be unlawful for, nor shall section 23-943 , Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being:

(1) Upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcoholic beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein;

(2) In any building, a part or portion of which is used as a place, as herein defined, provided such place is separated or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the ages specified with respect thereto in section 23-943 , Idaho Code, from entering therein;

(3) In any baseball park, sports arena, convention center, multipurpose arena, plaza, theater that is presenting live performances, or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed for the sale of liquor by the drink, wine or beer for consumption on the premises or that such products are dispensed and served and consumed therein; provided, that the person under the age of twenty-one (21) years is attending a lawful activity, show, exhibition, performance or event on the premises or is required to be present as a condition of his employment. It is lawful for persons under the age of twenty-one (21) years to enter and remain in a baseball park, sports arena, convention center, multipurpose arena, plaza, theater that is presenting live performances, or fairgrounds as long as the activity, show, exhibition, performance or event is lawful and the person does not violate section 23-949 , Idaho Code;

(4) Upon the premises of any licensed brewery or winery notwithstanding that such premises or any portion thereof may also be licensed for the sale of beer or wine for consumption on the premises or that beer or wine is dispensed and served and consumed therein;

(5) Upon the licensed premises of a wine retailer, wholly owned and operated by a licensed winery that retails exclusively the products of that winery;

(6) At a location, other than a liquor, beer, or wine licensed premises, authorized to serve alcoholic beverages under a valid alcohol beverage catering permit;

(7) In any movie theater that is allowed to sell beer or wine for consumption on the premises pursuant to a valid license and which movie theater had a license that was valid and not suspended or revoked on July 1, 2025, and in any other theater or movie theater that is located in a building listed on the national register of historic places. No films, still pictures, electronic reproductions or other visual reproductions that are in violation of chapter 41, title 18 , Idaho Code (indecency and obscenity), or are in violation of federal law regarding pornography, indecency or obscenity shall be shown or displayed on the premises. As used in this subsection, "movie theater" means a motion picture theater that is being utilized solely for exhibition of a motion picture; or

(8) Upon the licensed premises of a distillery, as described in section 23-903 (14), Idaho Code, that sells liquor exclusively from the brands owned by the distillery.

23-945 — Posting signs as to restriction

23-945. Posting signs as to restriction. Every licensee herein referred to shall keep a sign conspicuously posted over or near each entrance to any place from which persons under twenty-one (21) years are herein restricted giving public notice of such fact. The wording and size of such signs shall be in accordance with such regulations as the director may prescribe.

23-946 — Statement made by licensees of premises operated as restaurants — Indorsement upon license

23-946. Statement made by licensees of premises operated as restaurants — Indorsement upon license.

(a) Every applicant for a state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises claiming that the premises for which such license is sought constitute and are operated as a restaurant, as herein defined, shall, on each application for state license and on each application for renewal of license, state that such premises constitute and are operated as such restaurant. Upon issuance of state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises, for premises constituting and operated as a restaurant, the licensee of which has made the proper statement on the application, the director shall indorse on the face of the license the fact that it has been issued to a restaurant as herein defined. Unless such statement shall have been filed with the director and his said indorsement shall appear on the face of the license, the restrictions contained in section 23-943 , Idaho Code, shall apply, notwithstanding that such premises may in fact constitute and be operated as a restaurant, and the posting of signs as provided for in section 23-945 , Idaho Code, shall be required. The filing of any false statement on the application as herein required shall be grounds for suspension or revocation of license. If premises, licensed as a restaurant under this act, subsequently ceases to meet the qualifications of a restaurant, as defined in section 23-942 , Idaho Code, the restrictions contained in section 23-943 , Idaho Code, shall apply and the posting of signs as provided for in section 23-945 , Idaho Code, shall be required. In such event the licensee shall advise the director, by mail, that his premises no longer constitute a restaurant, so that the license may be modified accordingly.

(b) The powers of the director to make, promulgate and publish rules and regulations as set forth in section 23-932 , Idaho Code, shall apply to sections 23-941 to 23-946 , Idaho Code.

23-947 — Violations of act a misdemeanor

23-947. Violations of act a misdemeanor. The violation of any of the provisions of this act shall constitute a misdemeanor.

23-948 — Waterfront resorts — Licensing even if outside corporate limits of city

23-948. Waterfront resorts — Licensing even if outside corporate limits of city.

(a) Nothing contained in section 23-903 , Idaho Code, shall prohibit the issuance of a license to the owner, operator or lessee of a waterfront resort, even if situated outside the incorporated limits of a city. The provisions of section 23-910 , Idaho Code, shall apply to licenses issued under the provisions of this section. For the purpose of this section, a waterfront resort shall comprise real property with not less than two hundred (200) feet of lake frontage upon a lake or

reservoir as defined by the army corps of engineers of not less than one hundred sixty (160) acres, or river frontage upon a river with at least an average six (6) months' flow of eleven thousand (11,000) cubic feet per second, and shall be open to the public, where people assemble for the purpose of vacationing, boating or fishing, and each waterfront resort must have suitable docks or permanent improved boat-launching facilities not less than sixteen (16) feet in width on property owned or leased by the resort operator or on property contiguous thereto owned by this state; the county; city, if within a city; or the federal government open to the public for recreational uses for the purpose of caring for vacationers, or other recreational users and either of the following:

(1) Hotel or motel accommodations for not less than fifty (50) persons, including a full-service restaurant that serves regularly at least two (2) meals per day to the public during a continuous period of at least four (4) months per year; or

(2) A building of not less than three thousand (3,000) square feet of public use floor space, including a full-service restaurant that serves regularly at least two (2) meals per day to the public during a continuous period of at least four (4) months per year and paved or gravelled parking for fifty (50) automobiles on the operator's owned or leased property and any contiguous property upon which are the docks or boat-launching facilities described in this subsection.

(b) For purposes of satisfying the requirements of subsection (a) of this section, an otherwise qualifying applicant shall not be deemed ineligible for a waterfront resort license because a public right-of-way runs directly between, and contiguous to, the real property upon which the restaurant is located and the real property containing the required water frontage.

(c) The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code, unless said resort is located within the corporate limits of a city or village, in which case the license fee shall be the same as for other licensees within such corporate limits.

(d) The provisions of this section shall not be construed to interfere with the privileges of the holder of a waterfront resort license issued under this section prior to the effective date of this section.

(e) Licenses issued pursuant to this section shall remain valid and may be transferred according to the provisions of this chapter even if the lake, reservoir or river on which the waterfront resort is situated ceases to meet or, subsequent to first issuance or any renewal thereof, is found not to have met the applicable waterflow or lake acreage requirements, but otherwise met and meets upon issuance or renewal all other applicable requirements provided in subsection (a) of this section.

23-949 — Persons not allowed to sell, serve or dispense beer, wine or other alcoholic liquor

23-949. Persons not allowed to sell, serve or dispense beer, wine or other alcoholic liquor. It is unlawful for any person under the age of twenty-one (21) years to sell, serve or dispense beer, wine or other alcoholic liquor; provided, however, that any person who is nineteen (19) years of age or older may sell, serve and dispense liquor, beer or wine in the course of his employment in any place as defined in section 23-942 , Idaho Code, or other place where liquor, beer or wine is lawfully present so long as such place is the place of employment for such person under twenty-one (21) years of age. For purposes of this section, a person who sells, serves or dispenses liquor, beer or wine in compliance with the provisions of this section shall not be deemed to "possess" alcohol in violation of section 23-604 , Idaho Code. Any person violating the provisions of this section shall be guilty and punished in accordance with section 18-1502 , Idaho Code.

23-950 — Restriction against transfer of license

23-950. Restriction against transfer of license.

(1) No license issued under the provisions of this chapter shall be renewed, transferred, assigned, leased or sold if:

(a) The state tax commission has notified the director and the licensee in writing that any tax imposed by chapters 30 and 36, title 63 , Idaho Code, interest, penalty, and additional amount, which has accrued as a result of the operation of the licensed premises has been assessed as that term is defined in section 63-3045A , Idaho Code, against the licensee or any person operating the licensed premises with the permission of the licensee; or

(b) The department of labor has notified the director and the licensee in writing that a lien has been filed against the licensee or any person operating the licensed premises with the permission of the licensee, as a result of the operation of the licensed premises securing amounts due pursuant to chapter 13, title 72 , Idaho Code.

(2) At such time as the state tax commission or the department of labor has notified the director and licensee as herein provided, the license issued for the premises the operation of which has resulted in the accrual of the tax for which the

warrant or lien is outstanding shall be subject to levy and distraint pursuant to chapter 30, title 63 , Idaho Code, or seizure pursuant to section 72-1360A , Idaho Code.

23-951 — Distilled spirits fuels

23-951. Distilled spirits fuels.

(1) Any person, partnership, association or corporation registered to produce alcohol for use in motor fuels and in possession of a federal operating permit pursuant to title 27 , code of federal regulations, part 201.131 – 201.138 or part 201.64, 201.65 shall not be deemed to be making alcoholic liquor within the meaning of section 23-105 , Idaho Code, provided:

(a) Such person, partnership, association or corporation prior to commencing operation furnishes the Idaho state police with a true copy of the operating permit application described in title 27 , code of federal regulations, part 201.137 or 201.65 and a true copy of the operating permit or other authorizing document;

(b) Such person, partnership, association or corporation faithfully complies with all security and supervision requirements of the federal government; and

(c) Alcohol possessed or produced under the federal operating permit is not used, sold or made available for human consumption.

(2) The Idaho state police shall maintain a list of persons, partnerships, associations or corporations in the state of Idaho who hold federal operating permits as described in subsection (1) of this section.

23-952 — Cross-country skiing facility — Licensing even if outside corporate limits of city

23-952. Cross-country skiing facility — Licensing even if outside corporate limits of city. Nothing contained in law shall prohibit the issuance of a license to the owner, operator or lessee of an actual cross-country skiing facility if situated five (5) or more miles outside the corporate limits of a city. The provisions of section 23-910 , Idaho Code, shall be applicable to licenses issued pursuant to this section. For the purposes of this section, a cross-country skiing facility shall comprise real property, open to the public, with not less than fifteen (15) miles of groomed cross-country skiing trails, and overnight accommodations for not less than twenty (20) persons. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. Not more than one (1) licensed premises shall be permitted on any cross-country skiing facility or within the area comprising the facility.

23-953 — Racing facilities — Licensing

23-953. Racing facilities — Licensing. Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a racing facility, even if situated outside the incorporated limits of a city. A "racing facility" means an actual, bona fide racing facility located on not less than twenty (20) contiguous acres with permanently erected seating of not less than one thousand (1,000) capacity, and which has a license to conduct pari-mutuel racing. The provisions of section 23-910 , Idaho Code, shall apply to licenses issued under the provisions of this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. Licenses issued under the provisions of this section are not transferable.

23-954 — Theme parks — Licensing

23-954. Theme parks — Licensing. Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a theme park, even if situated outside the incorporated limits of a city. A "theme park" means a facility located on not less than forty (40) contiguous acres, and permanently constructed for the purpose of conducting, presenting or providing activities and services normally related to family oriented entertainment and recreational programs, which is open to the public and which provides meeting facilities. The provisions of section 23-910 , Idaho Code, shall apply to licenses issued under the provisions of this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code.

23-955 — Split ownership facility — Licensing

23-955. Split ownership facility — Licensing. Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a premises that has been, because of a split in ownership of the original premises, separated from a ski resort facility or golf course already licensed under the provisions of section 23-903 , Idaho Code. The provisions of section 23-910 , Idaho Code, shall be applicable to licenses issued pursuant to this section. The fees for

licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code. Licenses issued under the provisions of this section are not transferable.

23-956 — Continuation of golf course liquor license following change of land use

23-956. Continuation of golf course liquor license following change of land use. Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator, or lessee of a premises previously licensed as a golf course under the provisions of section 23-903 , Idaho Code, following termination of the golf course use and conversion of the premises to another use or uses, provided that the golf course was licensed as a golf course under the provisions of section 23-903 , Idaho Code, for a minimum of twenty (20) years prior to such termination. The provisions of section 23-910 , Idaho Code, shall be applicable to licenses issued pursuant to this section. The fees for licenses granted under the provisions of this section shall be the same as those prescribed for golf courses as set forth in section 23-904 , Idaho Code, unless the premises is located within the incorporated limits of any city, in which case the fee shall be the same as that prescribed for a license in a city of that size as set forth in section 23-904 , Idaho Code. Licenses issued under the provisions of this section are not transferable away from the premises. Upon termination of the golf course use, no part of the premises shall be eligible for the issuance of an additional license pursuant to section 23-955 , Idaho Code, due to a split in ownership which occurs after such termination. The eligibility to obtain a license pursuant to this section following termination of the golf course use shall, in the event of a later split in ownership of the premises, be allocated to one (1) of the parcels resulting from such split, either by contract between the parties to the split or by grant or reservation in the deed of conveyance. In the event the contract between the parties or the deed of conveyance fails to specify which parcel retains eligibility under this section, eligibility shall be deemed to be retained by the parcel upon which is, or was, located the greater share of physical improvements at or within which alcohol was served prior to the split in ownership. Upon any further split of the parcel retaining eligibility to obtain a license pursuant to this section, the same restrictions shall apply to the new split in ownership and any future splits of the parcel retaining such eligibility, such that there shall never be more than one (1) license issued pursuant to this section for the land constituting the original golf course premises. Nothing in this section shall prohibit the issuance of a license to the owner, operator or lessee of any split-off parcel to the extent such parcel qualifies for a license under any other provision of this chapter.

23-957 — Year-round liquor license

23-957. Year-round liquor license.

(1) Nothing in this chapter shall prohibit the issuance of not more than twelve (12) licenses to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership, boundaries, or leasehold premises of a year-round resort.

(2) Nothing contained in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a golf course, ski resort, cross-country skiing facility or waterfront resort, as defined in sections 23-903 , 23-903a and 23-948 , Idaho Code, located within the ownership, boundaries, or leasehold premises of a year-round resort, provided that such license shall count against the maximum number of licenses allowed by subsection (1) of this section.

(3) No license issued to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership, boundaries, or leasehold premises of a year-round resort shall be transferable to another location or facility located outside the ownership, boundaries, or leasehold premises of the year-round resort.

(4) The fees for licenses granted to the owner, operator or lessee of beverage, lodging or dining facilities located and operated within the ownership, boundaries, or leasehold premises of a year-round resort shall be the same as those prescribed for year-round resorts in section 23-904 (10), Idaho Code.

(5) "Year-round resort" means a resort open to the public year-round that shall have all of the following within the ownership, boundaries, or leasehold premises of the resort:

(a) Cross-country skiing on not less than thirty (30) kilometers of groomed cross-country skiing trails;

(b) Alpine skiing on real property of not less than eight hundred fifty (850) acres, operating two (2) or more chairlifts with a vertical lift of two thousand eight hundred (2,800) feet or more, and having operating snowmaking equipment providing coverage to at least seventy-five (75) acres of skiing;

(c) A golf course having:

(i) No less than eighteen (18) holes with greens, fairways and tees laid out in the usual and regular manner of a golf course; (ii) A total distance of seven thousand (7,000) yards as measured by totaling the tee-to-green distance of all

holes; and (iii) The course planted in grass;

(d) Mountain bike activities that include at least twelve (12) miles of single-track trails, chairlift-served access to at least two thousand eight hundred (2,800) feet of vertical descent and a full-service bike rental and repair facility; and

(e) At least seventy (70) private residences and accommodations available to provide overnight lodging and dining facilities serving at least two (2) meals per day for at least five hundred (500) persons located within the ownership, boundaries, or leasehold premises of the resort.

CHAPTER 10

23-1001 — Definitions

23-1001. Definitions. As used in this chapter:

(a) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) "Brewer" means a person licensed to manufacture beer inside or outside of the state of Idaho.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho who sells beer to wholesalers located within the state of Idaho.

(d) "Contractee brewer" means a brewer producing fewer than thirty thousand (30,000) barrels of beer in aggregate annually, including any beer manufactured outside the state of Idaho, that enters into a contractual relationship with another brewer to produce beer on the contractee's behalf.

(e) "Contractor brewer" means a brewer producing fewer than thirty thousand (30,000) barrels of beer in aggregate annually, including any beer manufactured outside the state of Idaho, that enters into a contractual relationship with a contractee brewer to produce beer for the contractee brewer on the contractor brewer's licensed premises.

(f) "Dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(g) "Director" means the director of the Idaho state police.

(h) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(i) "Person" includes any individual, firm, copartnership, association, corporation or any group or combination acting as a unit, and the plural as well as the singular number unless the intent to give a more limited meaning is disclosed by the context.

(j) "Premises" means the building and contiguous property owned, or leased or used under government permit, by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of beer at retail is authorized under the provisions of law.

(k) "Retailer" means a person licensed to sell beer to consumers at premises described in the license.

(l) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(m) "Wholesaler" means any person licensed to sell beer to retailers, wholesalers, permittees or consumers and to distribute beer from warehouse premises physically located within the state of Idaho described in the license.

(n) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

23-1002 — Alcoholic content

23-1002. Alcoholic content. Beer containing not more than sixteen percent (16%) of alcohol by volume may be manufactured, imported, and/or sold and distributed in and into this state or possessed therein in the manner and under the conditions prescribed in this act and not otherwise.

23-1003 — Brewers', dealers' and wholesalers' licenses

23-1003. Brewers', dealers' and wholesalers' licenses.

(a) Before any brewer shall manufacture or any dealer or wholesaler import or sell beer within the state of Idaho, such brewer shall apply to the director for a license. The application form shall be prescribed and furnished by the director and require that the applicant show that such brewer possesses all the qualifications and none of the disqualifications of a licensee. To determine qualification for a license, the director shall cause an investigation that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check with the application. The application shall also be accompanied by the required license fee; provided, that where the applicant is or will be within more than one (1) of the foregoing classifications, the applicant shall apply for each classification but shall pay only one (1) license fee, which shall be for the classification requiring the highest fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for the license, the director shall issue a license for each classification applied for, subject to the restrictions and upon the conditions in this act specified, which license or licenses shall be at all times prominently displayed in the place of business of the licensee.

(b) Each wholesaler shall, in addition to the application, file with the director a notice in writing signed by the dealer or brewer and the wholesaler stating the geographic territory within which the wholesaler will distribute beer to retailers. The territory will be agreed upon between the dealer or brewer and the wholesaler and may not be changed or modified without the consent of both the dealer or brewer and the wholesaler. Provided however, nothing in this section shall be interpreted to prohibit a brewer or dealer from permitting more than one (1) distributor for the same geographic territory.

(c) In the event that a wholesaler sells beer to a retailer who is located outside the geographical territory designated by that wholesaler on the notice provided for in subsection (b) of this section, the dealer or wholesaler who has designated the geographical territory in which the sale occurred may apply to a district court of this state for the issuance of an injunction enjoining sales of beer by the wholesaler outside of its designated geographical territory. The procedure for issuance of an injunction pursuant to this act shall be subject to the Idaho rules of civil procedure. Upon proof to the court that a wholesaler has made a sale of beer outside of its designated geographical territory, the court shall issue an injunction directed to the wholesaler prohibiting sales of beer outside of its designated geographical territory.

(d) Any licensed brewer that produces fewer than thirty thousand (30,000) barrels of beer in the aggregate annually, including any beer produced outside the state of Idaho, may be issued a brewer's retail license. Upon payment of a retailer's annual license fee, and subject to the fees in sections 23-1015 and 23-1016 , Idaho Code, a brewer may, at its licensed main production brewery and at no more than two (2) remote retail locations, sell at retail the products of any brewery by the individual bottle, can, or glass. Any brewer selling beer at retail or selling products of its brewery to a retailer must pay the taxes required in section 23-1008 , Idaho Code, on the products of its brewery, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at its two (2) remote retail locations. Upon annual approval by the director, a brewer licensed pursuant to this subsection shall not forfeit its right to sell the products of any brewery by the individual bottle, can, or glass at its licensed main production brewery or at either of its two (2) remote retail locations should the brewer produce more than thirty thousand (30,000) barrels of beer, provided such brewer:

(1) Has continuously brewed beer in and continuously maintained a physical presence in the state of Idaho for no less than five (5) years;

(2) Has not violated any of the provisions of this chapter resulting in a revocation or suspension of a license for multiple days during any point of the brewery's production operations; and

(3) Has surrendered any wholesale license.

(e) A brewer that produces fewer than thirty thousand (30,000) barrels of beer in the aggregate annually, including any beer produced outside the state of Idaho, may be licensed as a wholesaler for the sale of beer produced by such brewery. Such brewer shall maintain a warehouse physically located within the state of Idaho, distribute its beer using employees of the brewery with equipment owned or controlled by the brewery, and comply with and be subject to all other regulations or provisions of law that apply to a wholesaler's license, except as the laws may restrict sales at the licensed brewery or one (1) other remote retail location in accordance with the provisions of subsection (d) of this section. The holder of a brewer's retail license shall not be disqualified from holding a retail wine license or wine by the drink license for the sale of wine at the brewery's premises on the grounds that the licensee is also licensed as a wholesaler.

23-1004 — Dealers' license fee

23-1004. Dealers' license fee. Every dealer for whom no license fee is elsewhere provided in this act shall, except as provided in section 23-1003 , pay to the state of Idaho an annual license fee of one hundred dollars ($100), and a like amount for each separate warehouse used for the purpose of, or in connection with, the importing of beer into this state.

23-1005 — Qualifications of licensees

23-1005. Qualifications of licensees. No license shall issue to an applicant for a dealer's or wholesaler's license unless the applicant is authorized to do business within the state of Idaho; nor shall such license be issued to an applicant whose license, or the license of any partner, has been revoked within two (2) years; nor to an applicant who, or if a partnership any partner of whom, has been convicted of any violation of any law of Idaho or of the United States regulating, governing, or prohibiting the sale of alcoholic beverages or intoxicating liquor. Any such license issued shall be revoked if the licensee ceases to have the qualifications, or acquires the disqualifications, in this section provided.

23-1005A — Transfer of license — Fee — Application for approval

23-1005A. Transfer of license — Fee — Application for approval.

(a) No brewer, dealer or wholesaler of beer license issued pursuant to section 23-1003 , Idaho Code, or any beer retailer license issued pursuant to section 23-1010 , Idaho Code, may be transferred to another person, including an executor, administrator, or trustee in bankruptcy of the estate of the licensee, unless the transferee shall first have obtained the approval of the director to such transfer upon application containing substantially the same information required of an applicant for a brewer's, dealer's, wholesaler's or retailer's beer license, as the case may be. If the transferee possesses all the qualifications and none of the disqualifications for such license, the director shall approve the transfer by issuing a license to the transferee. The fee for each transfer of a brewer's, dealer's, wholesaler's or retailer's beer license shall be twenty dollars ($20.00), which fee shall accompany the application for transfer.

(b) Application for a transfer of any beer license from one location to another shall be made to the director on forms prescribed and furnished by the director. The director shall approve such transfer upon submission of the application and receipt by the director of a transfer fee of twenty dollars ($20.00).

(c) The director, in his discretion, may deny the transfer of a license during the pendancy of any proceedings for suspension or revocation instituted pursuant to the provisions of this chapter.

23-1006 — Records and returns of licensees — Investigations and examinations

23-1006. Records and returns of licensees — Investigations and examinations. Every licensed dealer, brewer and wholesaler shall have, and notify the director of, a place of business within the state of Idaho where such licensee will and shall keep a record of his or its imports into, and sales of beer within, the state, including the date, quantity, from whom purchased for import, the carrier or other person or means by whom or which transported for import, and the name and address of the vendee, and shall so keep such record of each such sale or import for a period of four (4) years thereafter. Such licensee shall, on or before the 15th day of each month, make a return to the director of the amount of beer sold in, and imported by him into, the state of Idaho for the preceding month, which shall be upon forms furnished by the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with, or violating, this act and whether or not all taxes and license fees provided for by this act are being fully paid. The director shall have the right at any time to make an examination of each dealer's, brewer's and wholesaler's books, records and premises, make an inventory and otherwise check the accuracy of such returns, and investigate for any violation of this act, and file, and retain in his office for not less than two (2) years, a report thereof. An application for, and acceptance of a license by, a dealer, brewer, wholesaler or retailer shall constitute consent to, and be authority for, entry by the director, or his authorized agents, upon any premises related to the licensee's business, or wherein are, or should be, kept, any of the licensee's books, records, supplies or other property related to said business, and to make the inventory, check and investigations aforesaid with relation to said licensee or any other licensee.

23-1007 — Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs

23-1007. Sales by dealers and wholesalers — Prohibited unless obtained from licensees — Consumption on premises prohibited — Minimum sale on licensed premises of unbroken packages or kegs. Except as provided in section 23-1007A , Idaho Code, it shall be unlawful for any dealer or wholesaler to sell for use within the state of Idaho any unbroken packages or kegs of beer produced, manufactured, imported or bought by such dealer except to licensed dealers,

wholesalers, retailers to whom a license has been issued by the director, or to employees of the wholesaler or dealer; nor shall any dealer or wholesaler allow for a consideration such beer to be consumed upon the premises of such dealer or wholesaler; provided, however, that any dealer or wholesaler shall be allowed to make sales of beer in kegs of not less than five (5) gallons to a consumer at his licensed premises. Licensed brewers may sell at retail only as provided in section 23-1003 (d), Idaho Code.

23-1007A — Beer sold or donated for benevolent, charitable or public purposes — Permit required

23-1007A. Beer sold or donated for benevolent, charitable or public purposes — Permit required.

(1) Notwithstanding the provisions of section 23-1007 , Idaho Code, to the contrary, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of beer or kegs of beer to a person which has not been issued any license for the sale of alcoholic beverages in this state, for benevolent, charitable or public purposes if a permit has been issued to the person or nonprofit entity as provided in subsection (2) of this section.

(2) Upon application to the director of the Idaho state police, the director may issue a permit authorizing the sale or dispensing of beer by a person if the director is satisfied that the proceeds, after deducting reasonable expenses incurred, will be donated for a benevolent, charitable or public purpose. The director shall prescribe the form of the application which may require:

(a) Disclosure of names of sponsors;

(b) Quantities and types of beer products to be used at the event;

(c) Names of the dealer or wholesaler from whom the beer is to be received;

(d) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense beer on behalf of the permittee;

(e) Dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days;

(f) That the applicant submit a report to the director subsequent to the benevolent, charitable or public purpose event showing the disposition of funds from the event; and

(g) Such other information directly related to the event and the applicant that the director may require. The director shall collect a twenty dollar ($20.00) fee for each permit issued.

(3) Should the director determine that an applicant, permittee or its representative is violating or has in the past violated any law pertaining to the dispensing or sale of beer by a licensed retailer relating to hours of sale, relating to restrictions concerning age provided in section 23-1013 , Idaho Code, or has failed in the past to submit such information as may have been requested by the director, such permit may be summarily suspended by the director prior to hearing, or may be denied or cancelled pending a hearing.

(4) A licensed retailer may, on behalf of the permittee, receive or store beer to be used at the event and may dispense such beer to attendees of the benevolent, charitable or public purpose event for which the permit was issued.

23-1008 — Tax — Distribution — Rules — Reports

23-1008. Tax — Distribution — Rules — Reports.

(1) A tax of four dollars and sixty-five cents ($4.65) per barrel of thirty-one (31) gallons, and a like rate for any other quantity or fraction thereof, is hereby levied and imposed on each and every barrel of beer containing not more than five percent (5%) of alcohol by volume sold for use within the state of Idaho. A tax of thirteen dollars and ninety-five cents ($13.95) per barrel of thirty-one (31) gallons, and a like rate for any other quantity or fraction thereof, is hereby levied and imposed on each and every barrel of beer containing more than five percent (5%) of alcohol by volume. Any wholesaler who shall sell beer, upon which the tax herein imposed has not been paid, and any person who shall purchase, receive, transport, store or sell any beer upon which the tax herein imposed has not been paid shall be guilty of a misdemeanor, and any beer so purchased, received, transported, stored or possessed or sold shall be subject to seizure by the commission, any inspector or investigator of the commission, or by any sheriff, constable or other police officer, and the same may be removed and kept for evidence. Upon conviction of any person for violation of the provisions of this section, the said beer, and all barrels, kegs, cases, cartons and cans containing the same, shall be forfeited to the state of Idaho, and, in addition, the person so convicted shall be subject to the other penalties in this chapter prescribed. Beer and all barrels, kegs, cases, cartons or cans so forfeited to the state of Idaho shall be sold by the commission at public auction to any brewer, wholesaler, or retailer licensed under the provisions of this chapter making the highest bid. Such sale shall be

held at such place and time as may be designated by the commission after reasonable notice thereof given in such manner and for such time as the commission may by rule prescribe. From the purchase price received upon such sale, the commission shall first deduct an amount sufficient to pay the tax due on such beer and to pay all costs incurred in connection with such sale. The commission shall deposit the balance remaining with the state treasurer, who shall place the same in the general fund of the state of Idaho, and it shall become a part thereof.

(2) The revenues received from the taxes, interest, penalties, or deficiency payments imposed by this section shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by law to be paid by the state tax commission shall be paid through the state refund account and those moneys are continuously appropriated.

(b) For revenue deriving from beer containing not more than five percent (5%) of alcohol by volume, the balance remaining after distributing the amount in paragraph (a) of this subsection shall be distributed as follows:

(i) Twenty percent (20%) shall be distributed to the substance abuse treatment fund, which is created in section 23-408 , Idaho Code; (ii) Thirty-three percent (33%) shall be distributed to the Idaho state police, of which no less than sixty percent (60%) shall be dedicated to the Idaho law enforcement fund for use in the project choice program, as established in section 49-454 , Idaho Code, and no more than forty percent (40%) to the alcohol beverage control fund; and (iii) The remainder shall be distributed to the general fund.

(c) For revenue deriving from beer containing more than five percent (5%) of alcohol by volume, the balance remaining after distributing the amount in paragraph (a) of this subsection shall be distributed as follows:

(i) Twelve percent (12%) shall be distributed to the substance abuse treatment fund created in section 23-408 , Idaho Code; (ii) Five percent (5%) shall be distributed to the Idaho hop grower's commission fund; and (iii) The remainder shall be distributed to the general fund.

(3) The commission is empowered to prescribe rules:

(a) For reports by carriers for hire and also all other carriers owned and/or employed, directly or indirectly, by out-of-state brewers, dealers or other persons, of all deliveries of beer in and into the state of Idaho, stating especially the origin and destination of the beer, the quantity thereof, and also the names and addresses, respectively, of the consignors and consignees.

(b) For reports by out-of-state brewers and manufacturers of beer, of all shipments by them of beer into the state of Idaho, stating especially the matters mentioned in paragraph (a) of this subsection.

23-1009 — Retailers' local licenses

23-1009. Retailers' local licenses. No retailer shall sell beer within this state, until he or it shall be licensed therefor by a municipality, if the business is to be conducted therein, and by the county wherein said business is to be conducted, and by the director. Applications for retailer's licenses shall be made under oath first to the director of the Idaho state police, and if the license be issued, to the county and then to the municipality, upon forms to be supplied by each, which forms shall require that the applicant show that the applicant possesses all of the qualifications and none of the disqualifications of a retailer licensee under this act, and, as to the municipal license, under any ordinance thereof. Each application shall be accompanied with the required license fee. If the applications conform hereto the director, county and municipality respectively, shall each issue a retailer's license to the applicant, subject to the restrictions and upon the conditions in this act specified, and, as to the municipal license, in the ordinance aforesaid. Said licenses shall at all times be prominently displayed in the place of business of the licensee, and shall be issued only for the particular premises described therein, but the municipality, county and director may permit a transfer to other particularly described premises. No license transferred by process of law or otherwise shall authorize the transferee, including any executor, administrator or trustee in bankruptcy of the estate of the licensee, to retail beer thereunder until the transferee shall have filed under oath applications therefor containing substantially the same information required of an applicant for a license, and if the transferee possesses the qualifications and none of the disqualifications for a license as herein provided, the director, county and municipality shall approve such transfer and issue a license so to show. The transferee shall accompany the state application for transfer with, and shall pay, the fee as set out in section 23-1005A , Idaho Code. Such transferee shall accompany each such county and municipality application for transfer with, and shall pay, the sum of five dollars ($5.00).

23-1010 — License to sell beer at retail — Application procedure and form — Showing of eligibility for license and disqualifications

23-1010. License to sell beer at retail — Application procedure and form — Showing of eligibility for license and disqualifications.

(1) Every person who shall apply for a state license to sell beer at retail shall tender the license fee to, and file written application for license with, the director. The application shall be on a form prescribed by the director that shall require such information concerning the applicant, the premises for which license is sought and the business to be conducted thereon by the applicant as the director may deem necessary or advisable, and which shall enable the director to determine that the applicant is eligible and has none of the disqualifications for license, as provided for in this section. If the applicant is applying for a license solely for a theater that is presenting live performances as those terms are defined in section 23-1001 , Idaho Code, or a movie theater, as defined in section 23-944 , Idaho Code, and that is located in a building listed on the national register of historic places, the application shall so state. Such information shall include the following:

(a) The name and place of residence of the applicant and length of his residence within the state of Idaho and, if the applicant is a partnership, the names, places of residence and lengths of residence within the state of Idaho of each partner and, if the applicant is a corporation or association, the date and place of incorporation or organization, the location of its principal place of business in Idaho and the names and places of residence of its officers, directors or members of its governing board and of the person who manages or will manage the business of selling beer at retail;

(b) The particular place for which the license is desired, designating the same by a street and number, if practicable, or by such other apt description as definitely locates such place, and the name of the owner of the premises for which license is sought;

(2) The application shall affirmatively show:

(a) That the applicant is the bona fide owner of the business that will be engaged in the sale of beer at retail and with respect to which license is sought;

(b) That the condition of the place or building wherein it is proposed to sell beer at retail conforms to all laws and rules of the state of Idaho and to the ordinances of the county and municipality applicable thereto relating to public health and safety and to the zoning ordinances of the municipality applicable thereto;

(c) That there is no stamp or permit outstanding and in force that has been issued to any person by the United States government for the premises for which license to sell beer at retail is sought, which stamp or permit denotes payment of any special tax imposed by the United States government on a retail dealer in liquor or wines, unless said premises are premises for which a retail license for sale of liquor by the drink, issued under the provisions of chapter 9, title 23 , Idaho Code, is in force and effect;

(d) That the individual applicant, or each partner of a partnership applicant, or a corporation applicant or an association applicant is qualified to do business within the state of Idaho;

(e) That the applicant, if an individual, is not less than nineteen (19) years of age;

(f) That, within three (3) years immediately preceding the date of filing the application, the applicant has not been convicted of the violation of any law of the state of Idaho, any other state, or of the United States regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquors, or, within said time, suffered the forfeiture of a bond for failure to appear in answer to charges of any such violation;

(g) That, within five (5) years immediately preceding the date of filing the application, the applicant has not been convicted of any felony or paid any fine or completed any sentence of confinement therefor within said time;

(h) That, within three (3) years next preceding the date of filing said application, the applicant has not had any license provided for herein, or any license or permit issued to the applicant pursuant to the law of this state, or any other state, or of the United States to sell, manufacture, transport or possess alcoholic beverages or intoxicating liquors, revoked.

(3) To determine qualification for a license, the director shall also cause an investigation that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

(4) The affirmative showing required with respect to an applicant under paragraphs (e), (f), (g) and (h) of subsection (2) of this section shall also be required to be made with respect to each partner of a partnership applicant and to each incumbent officer, director or member of the governing board of a corporation or association applicant.

(5) The application must be subscribed and sworn to by the individual applicant, or by a partner of a partnership applicant, or by an officer or manager of a corporation or association applicant, before a notary public or other person authorized by law to administer oaths.

(6) If an applicant shall be unable to make any affirmative showing required in this section or if an application shall contain a false material statement, knowingly made, the same shall constitute a disqualification for license and license shall be refused. If license is received on any application containing a false material statement, knowingly made, such license shall be revoked. If at any time during the period for which license is issued, a licensee becomes unable to make the affirmative showings required by this section, license shall be revoked, or, if disqualification can be removed, the license shall be suspended until the same shall be removed. The procedure to be followed upon refusal, revocation or suspension of license as herein provided for shall be in accordance with the procedure set forth in this act.

(7) All licenses shall expire at 1:00 a.m. on the first day of the renewal month, which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until the renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee shall not be permitted to sell beer at retail during the thirty-one (31) day extended time period unless and until the license is renewed.

23-1011 — Issuance of licenses

23-1011. Issuance of licenses. Notwithstanding any other provision of chapter 10, title 23 , Idaho Code, all applications for retail sale of beer licenses, renewals, or transfers thereof, shall be first presented to the director of the Idaho state police for approval and issuance of the state license required by state law. If the license, renewal or transfer thereof is approved by the director, then such license, renewal or transfer thereof may be issued by the city or county, or both, as the case may be. Approval of such license, renewal or transfer thereof may be by endorsement upon the state license or by the issuance of an additional license, at the option of the city or county.

23-1011A — Officers may examine premises

23-1011A. Officers may examine premises. The director or his duly authorized representative, the sheriff of any county, or any other police officer, shall have the right at any time to make an examination of the premises of any licensee as to whether the laws of the state of Idaho, the rules and regulations of the director, and the ordinances of any city or county are being complied with.

23-1011B — Bars or taverns not allowed near churches or schools — Exceptions

23-1011B. Bars or taverns not allowed near churches or schools — Exceptions. No license shall be issued for any place where beer is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, that is within three hundred (300) feet of any public school, church, or any other place of worship measured in a straight line to the nearest entrance to the licensed premises, except with the approval of the governing body of the municipality; provided that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing came therein.

23-1012 — Hours of sale

23-1012. Hours of sale.

(1) It shall be unlawful and a misdemeanor for any person in any place licensed to sell beer or where beer is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, to sell, dispense or give away beer between the hours of one (1) o'clock A.M. and six (6) o'clock A.M.

(2) Any patron present on the licensed premises after the sale of beer has stopped as provided in subsections (1) and (4) herein shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverage already served.

(3) Any person who consumes or intentionally permits the consumption of any alcoholic beverage upon the licensed premises after the time provided for in subsection (2) shall be guilty of a misdemeanor.

(4) A county or city may, however, extend, until two (2) o'clock A.M., the hours of the sale of beer.

23-1013 — Restrictions concerning age

23-1013. Restrictions concerning age. Any person who is nineteen (19) years of age or older may sell, serve, possess or dispense beer in the course of his employment, otherwise it shall be unlawful for any person to sell, serve or dispense beer to or by any person under twenty-one (21) years of age, proof of which, shall be a validly issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military identification card bearing a photograph and date of birth, or a valid passport.

23-1014 — License fees

23-1014. License fees. Every person licensed under the provisions of this chapter shall pay to the state of Idaho an annual license fee according to the following schedule:

(1) Brewer annually producing

(a) Under 10,000 gallons

(b) 10,000 to 100,000 gallons

(c) 100,000 to 930,000 gallons

(d) 930,000 gallons or more A like amount shall be paid for each separate brewery operated by the licensee.

(2) Wholesaler

(a) For each separate warehouse used for the purpose of wholesaling or dispensing beer

(3) Dealer

(4) Retailer

(a) For each store from which beer is retailed

(b) For each store from which a licensed retailer sells keg beer for consumption off premises Nothing in this chapter shall be so construed to prohibit municipalities or counties from licensing and regulating places of business where beer is sold to the consumer.

23-1015 — County retailers' license, when required, procedure

23-1015. County retailers' license, when required, procedure.

(1) It shall be unlawful for any retailer to sell beer without first procuring a retailer's license from the county, said license to be issued on such conditions and terms as may be required by the board of county commissioners in the county wherein such place of sale of beer is located; provided, that no county shall exact a license fee from any dealer except as follows:

(a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) of this section relating to draught beer and bottled or canned beer, or draught beer only; and where such bottled or canned beer is consumed on the premises where sold the license fee shall be seventy-five per cent (75%) of the fee exacted under said subsection (b) hereof.

(b) Where such retailer sells draught beer and bottled or canned beer, or draught beer only, not in excess of one hundred dollars ($100), a year.

(2) The board of county commissioners shall establish a procedure for processing applications for licenses, transfers or renewals thereof in a timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the board of county commissioners for a decision. The board of county commissioners shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each board of county commissioners shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a board of county commissioners denies an application, the board shall specify in writing:

(a) The statutes, ordinances and standards used in evaluating the application;

(b) The reasons for denial; and

(c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the board of county commissioners pursuant to this section may, within twenty-eight (28) days, after all remedies have been exhausted under county ordinances or procedures, seek judicial review under the procedures provided in chapter 52, title 67 , Idaho Code, and for such purposes a county shall be construed to mean an agency.

(4) In all cases where the board of county commissioners is considering applications for licenses, transfers or renewals thereof, a transcribable verbatim record of the proceedings shall be made. If the application for a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall be kept for a period of not less than six (6) months after a final decision on the matter. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The board of county commissioners shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

23-1016 — Municipal license also required — Procedure

23-1016. Municipal license also required — Procedure.

(1) It shall be competent and lawful for an incorporated municipality within the county wherein said county license to sell beer is granted by the county, by proper ordinance and regulation, to prohibit the sale of beer within the incorporated limits of such incorporated municipality until a retailer's license is first obtained from such incorporated municipality. Provided, however, that no incorporated municipality shall issue a license to any retailer until such retailer shall have first obtained a county license from the board of county commissioners, and that a revocation of the license granted by the board of county commissioners shall work a revocation of license granted by such incorporated municipality. Provided, further, that no municipality, whether operating under a special charter or otherwise, shall exact a license fee from any retailer except as follows:

(a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) of this section.

(b) Where such retailer sells for consumption on the premises, draught beer and bottled or canned beer or draught beer only, not in excess of two hundred dollars ($200) a year.

(2) The city council shall establish by ordinance a procedure for processing applications for licenses, transfers or renewals thereof in a timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the city council for a decision. The city council shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each city council shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a city council denies an application, the council shall specify in writing:

(a) The statutes, ordinances and standards used in evaluating the application;

(b) The reasons for denial; and

(c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) Nothing in this section shall be construed as prohibiting the delegation of the processing of an application and the granting or denying thereof, as provided in subsection (2) of this section, to a municipality's city clerk. If the licensing power is delegated, an applicant denied a license, transfer, or renewal thereof may appeal the city clerk's decision to the city council, within the time and in the manner as the city council may provide by ordinance.

(4) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the city council pursuant to this section may, within twenty-eight (28) days, after all remedies have been exhausted under city ordinances and procedures, seek judicial review under the procedures provided in chapter 52, title 67 , Idaho Code, and for such purposes a city shall be construed to mean an agency.

(5) In all cases where the city council is considering an application for or hearing an appeal from a denial of a license, transfer or renewal thereof, a transcribable verbatim record of the proceedings shall be made. If the application for or appeal from a denial of a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall

be kept for a period of not less than six (6) months after a final decision on the matter. For the purpose of this section, the date of final decision shall be the date upon which the written decision of the city council is transmitted. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The city council shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

23-1017 — Intention of preceding section

23-1017. Intention of preceding section. It is hereby declared to be the intention of section 23-1016 that both counties and incorporated municipalities may levy and collect a license for the retail sale of beer as herein provided, and the granting of power to license retailer of beer in an incorporated municipality shall not be held as in any way conflicting with the provisions of this act relating to the granting of retailer's license by the county.

23-1018 — Sale of keg beer — Penalties

23-1018. Sale of keg beer — Penalties.

(1) Retail and wholesale licensees selling keg beer for consumption off licensed premises shall place an identification tag onto all kegs of beer at the time of sale and require the signing of a receipt therefor by the purchaser in order to allow kegs to be traced if the contents are used in violation of this act. The keg identification shall be in the form of a numbered label prescribed and supplied by the director of the Idaho state police, which identifies the seller and which is removable or obliterated when the keg is processed for refilling. The receipt shall be on a form prescribed and supplied by the director of the Idaho state police and shall include the name and address of the purchaser and such other information as may be required by the director of the Idaho state police.

(2) Any licensee selling keg beer for off-premises consumption who fails to require the signing of a receipt at the time of sale and fails to place a numbered identification label onto the keg shall be subject to having his license suspended as set forth in section 23-1038 , Idaho Code.

(3) Possession of a keg containing beer which is not identified as required by subsection (1) of this section is a misdemeanor.

(4) Any purchaser of keg beer who knowingly provides false information on the receipt required by subsection (1) of this section shall be guilty of a misdemeanor.

(5) As used in this section, "keg" means any brewery-sealed, individual container of beer having a liquid capacity of five (5) gallons or more.

23-1019 — Beer sample tasting requirements and limitations for events on retail beer licensed premises

23-1019. Beer sample tasting requirements and limitations for events on retail beer licensed premises.

(1) Breweries, wholesalers and distributors may conduct or assist a retail beer licensee at a beer sample tasting on premises not licensed for the sale of beer by the individual glass or opened bottle for consumption on the premises or on the premises of the holder of a beer by the drink license for the purpose of promoting their beer products to the public. The holder of a retail beer license or a beer by the drink license may also conduct beer sample tasting events, with or without the assistance of a brewery, wholesaler or distributor in accordance with this section.

(2) A retail beer licensee shall not be required to hold a beer by the drink license for the purpose of conducting or permitting beer sample tasting events on the premises in accordance with this section unless a charge or other consideration is required of the customer by the retailer in exchange for such beer sample.

(3) Sample tasting events permitted pursuant to this section shall be conducted subject to all of the following requirements:

(a) Sample sizes. The size of each sample of beer shall not exceed one and one-half (1.5) ounces.

(b) Identified tasting area. The retail beer licensee who conducts tastings or who allows a brewer, wholesaler, distributor or retailer to conduct tastings on the retail beer premises shall identify a specific tasting area or areas. Such area or areas shall be of a size and design such that the retail beer licensee and the persons conducting the tasting can observe and control persons in the area to ensure that no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer shall keep on file at the premises a floor plan identifying the tasting area or areas. If a retailer does not have an identified tasting area or areas, the director may require prior approval of an area or areas before the retailer conducts any more tastings or

allows any more tastings to be conducted by the brewer, distributor or retailer on the premises.

(c) Number of in-store tastings. Although there is no limit on the number of tastings a retailer may conduct without the assistance of a brewer, wholesaler or distributor, the retailer shall not permit a brewer or distributor to conduct, or assist in conducting, tastings on the premises of the same licensee more than eight (8) times per calendar year.

(d) Brewer, wholesaler or distributor conducted tastings. A brewer, wholesaler or distributor may hold tastings on consecutive days on one (1) retail premises, provided the tastings shall not exceed two (2) consecutive days. Tastings shall be conducted at least four (4) weeks apart. If a brewer, wholesaler or distributor holds tastings on two (2) consecutive days, they shall not hold another tasting on those retail premises for at least four (4) weeks.

(e) Server requirements. Persons serving or pouring beer at beer tastings on premises for which a beer by the drink license has not been issued must be at least twenty-one (21) years of age.

(4) Brewer, wholesaler or distributor conducted sample tastings. A brewer, wholesaler or distributor may conduct beer sample tastings on premises licensed for the sale of beer for products produced or sold by the brewer, wholesaler or distributor. The brewer or distributor conducting the beer sample tasting shall, in addition to compliance with other requirements of this section, comply with all of the following requirements:

(a) Provide the product to be tasted and remove any remaining product at the end of the tasting.

(b) Provide or pay for a person to serve the beer. The server must be an employee or agent of the brewer or distributor and shall not be an employee or agent of a retailer. The brewer or distributor shall not compensate any employee or agent of the retail licensee to participate in the tasting.

(c) The brewer or distributor shall keep a record of each tasting it conducts, including the date and location of each event and the products served.

(5) Retailer conducted beer sample tastings. Retail beer licensees and beer by the drink licensees may conduct beer sample tastings on their licensed premises and may:

(a) Accept assistance from a brewer, wholesaler or distributor if:

(i) The only assistance provided is an employee to provide information or education relating to the product being sampled; (ii) The retailer pays for the beer; and (iii) The retailer is responsible for any advertising.

(b) Conduct an unlimited number of beer sample tastings on the premises if there is no brewer or distributor providing assistance for the event. The retailer may advertise such events.

(6) Notwithstanding any other provision of law, participation by a brewer, wholesaler or distributor in a beer sample tasting event, if expressly authorized by this section, shall not constitute prohibited conduct or unlawful aid to a retailer.

23-1020 — Penalty

23-1020. Penalty. Any person who violates any of the provisions of this act shall be guilty of a misdemeanor.

23-1022 — Separability

23-1022. Separability. If any portion of this act shall be declared unconstitutional it shall not invalidate the other provisions thereof.

23-1023 — Beer — Authorization to deliver

23-1023. Beer — Authorization to deliver. The prohibition upon possession of beer by any person under twenty-one (21) years of age does not apply to possession by a person under the age of twenty-one (21) years making a delivery of beer in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent.

23-1024 — False representation as being twenty-one or more years of age a misdemeanor

23-1024. False representation as being twenty-one or more years of age a misdemeanor. Any person under the age of twenty-one (21) years who shall by any means represent to any person licensed to sell beer at retail or wholesale, or to any agent or employee of such retail or wholesale licensee, that he or she is twenty-one (21) or more years of age for the purpose of entering licensed premises or inducing such retail or wholesale licensee, his agent or employee, to sell, serve or dispense beer to him or her shall be guilty of a misdemeanor. Any person who shall by any means represent to any such retail or wholesale licensee, his agent or employee, that any other person is twenty-one (21) or more years of age,

when in fact such other person is under the age of twenty-one (21) years, for the purpose of entering licensed premises or inducing such retail or wholesale licensee, his agent or employee, to sell, serve or dispense beer to such other person, shall be guilty of a misdemeanor.

23-1025 — license and transfer fees — alcohol beverage control fund

23-1025. license and transfer fees — alcohol beverage control fund. All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the alcohol beverage control fund created in section 23-940 , Idaho Code. All other moneys collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the general fund.

23-1027 — Certificate of approval required of manufacturer

23-1027. Certificate of approval required of manufacturer. It shall be unlawful for any person licensed under the provisions of this act, to purchase, import, transport or cause to be transported into or within the state of Idaho any beer for resale therein, unless prior thereto a certificate of approval shall have been issued by the director to the manufacturer of such beer. The certificate of approval herein required shall be issued to a manufacturer of beer upon application therefor provided the manufacturer shall have first agreed in writing with the director as follows:

(a) to furnish to the director, on or before the 15th day of each month, a written report under oath on a form to be prescribed by the director showing the quantity of beer sold, delivered or shipped to each wholesaler or dealer of beer licensed in this state for resale in this state; and

(b) that such manufacturer and every person employed by it or acting as its agents (other than wholesalers and dealers licensed in this state) will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to beer and all rules and regulations adopted by the director pursuant to such laws. If, after obtaining such certificate, any such manufacturer shall fail to submit such report, or, if it, or any such person employed by it or acting as its agent, shall violate the terms of such agreement, the director may determine to revoke or suspend such certificate by reason thereof. The procedure for giving notice of such determination and for proceedings to contest determination as provided for in sections 23-1037 through 23-1045 , Idaho Code, shall govern insofar as they may be applicable. The district court of Ada County shall have jurisdiction of any such proceedings to contest the director's determination.

23-1028 — Warehouse and records of wholesalers and dealers

23-1028. Warehouse and records of wholesalers and dealers. Each licensed wholesaler and dealer shall sell and distribute beer in this state only from stocks of beer that have been unloaded, stored, and maintained for no less than twenty-four (24) hours in a warehouse or warehouses owned or used by such wholesaler or dealer physically located within the state of Idaho in the conduct of his business as such. All records which a wholesaler or dealer is by law or rule required to maintain, shall be kept at his warehouse within the state of Idaho, or, if such wholesaler or dealer shall have more than one (1) warehouse, then in the warehouse of such wholesaler or dealer which he shall designate as his principal warehouse within the state. Nothing in this section shall be deemed to affect the existing rights of any person who, on and prior to January 1, 1996, was licensed as a wholesaler by the state of Idaho.

23-1029 — Posting of prices

23-1029. Posting of prices. Each licensed wholesaler, brewer and dealer engaged in selling beer for resale within this state, shall file with the director a written schedule of prices to be charged by him for beer sold within this state for resale therein, which schedule of prices shall be uniform for the same class of buyers in the same trade area within this state, and shall set forth;

(a) all brands and types of products offered for sale;

(b) the delivered sale price thereof in the several trade areas of the state to the various classes of buyers; and

(c) any allowance granted for returned containers. Such schedule of prices so filed may be changed or modified from time to time by filing with the director a new schedule of prices, not less than ten (10) days prior to the last day of the filing calendar month, becoming effective on the first day of the succeeding calendar month. Such schedule of prices so filed shall not be withdrawn within ten (10) days of its effective date. An amendment of the prior filing shall show the posting changes of the particular brand and product affected. The amendment shall be in the form of a statement to the director detailing the reasons for the amendment. The amendment submitted to the director shall be prima facie evidence of its correctness; and failure of the director to act upon denial of the amendment within ten (10) days shall constitute its

adoption. Upon becoming effective the schedule shall remain in effect as follows:

(i) an increase in prices, for a minimum period of thirty (30) days; (ii) a reduction in prices, for a minimum period of six (6) months. All price schedules, so filed, shall be subject to public inspection and shall not be considered confidential. Upon the filing of the original schedule of prices, and after the effective date of any schedule of prices amendatory thereto, all prices therein stated shall be strictly adhered to, and any departure or variation therefrom shall constitute the giving of aid or assistance prohibited by the provisions of section 23-1033 , Idaho Code.

23-1030 — Size of containers

23-1030. Size of containers. No dealer or wholesaler shall purchase, receive or resell any beer except in the original container as prepared for the market by the brewer at the place of manufacture.

23-1031 — Extension of credit

23-1031. Extension of credit.

(1) No sale or delivery of beer shall be made to any licensed retailer, except for cash paid at the time of or prior to delivery thereof, or except as provided by electronic funds transfer in accordance with subsection (3) of this section, and in no event shall any brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale extend any credit on account of such beer to a licensed retailer, nor shall any licensed retailer accept or receive delivery of such beer except when payment therefor is made in cash at the time of or prior to delivery thereof, or by electronic funds transfer in accordance with subsection (3) of this section.

(2) The acceptance of a first party check from a licensed retailer by a brewer, wholesaler or dealer licensed in the state and engaged in the sale of beer for resale, or the use of a debit card by a licensed retailer, shall not be deemed an extension or acceptance of credit pursuant to this section.

(3) The acceptance and use of an electronic funds transfer shall not be deemed an extension or acceptance of credit pursuant to this section, provided such transfer is initiated and completed promptly and in no event completed later than five (5) business days following delivery of such beer. Any attempt by a licensed retailer to delay payment of an electronic funds transfer pursuant to this section for any period of time beyond the time set forth in this subsection, shall be deemed an acceptance of credit by the licensed retailer.

(4) Any extension or acceptance of credit in violation hereof shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1033 , Idaho Code.

23-1032 — FINANCIAL INTEREST IN DEALER OR WHOLESALER PROHIBITED

23-1032. FINANCIAL INTEREST IN DEALER OR WHOLESALER PROHIBITED.

(1) It shall be unlawful for any brewer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee to have any financial interest in any licensed wholesaler's or dealer's business, or to own or control any real property upon which a licensed dealer or wholesaler conducts business, except:

(a) For a brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually and is duly licensed as a wholesaler as provided in section 23-1003 (e), Idaho Code;

(b) If a licensed dealer or wholesaler has been granted distribution rights by a brewer for a brand in a designated territory and is unable to service the designated sales territory for reasons that are not the result of an action by the brewer, or in the event of a termination, cancellation, discontinuance or failure to renew a distribution agreement between a brewer and a licensed dealer or wholesaler for reasons set forth in section 23-1105 , Idaho Code, such as insolvency, loss of licensure or fraud and in accordance with the provisions of chapter 11, title 23 , Idaho Code, a brewer shall be allowed to appoint a temporary licensed dealer or wholesaler to service the brewer's brands in the designated sales territory and, for a period not to exceed five (5) years, to have any financial interest in the temporary licensed dealer or wholesaler; or

(c) If a licensed dealer or wholesaler is voluntarily selling its distribution rights, a brewer whose brand distribution rights are being transferred may have any financial interest in the purchasing distributor for a period not to exceed five (5) years to assist in financing the purchase.

(2) It shall be unlawful for any licensed wholesaler or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee to have any financial interest in a licensed brewer's business, or to own or control any real property upon which a licensed brewer conducts business. This section shall not apply to a noncontrolling de minimis interest in stock held in a publicly traded company including mutual funds.

23-1033 — Financial interest in or aid to retailers prohibited — Certain aid permitted

23-1033. Financial interest in or aid to retailers prohibited — Certain aid permitted.

(1) Except as provided in section 23-1003 (d), Idaho Code, it shall be unlawful for any brewer, dealer, wholesaler, or the holder of any certificate of approval, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

(a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except such property as shall have been so owned or controlled continuously for more than one (1) year prior to July 1, 1975; provided however, that a brewer licensed pursuant to section 23-1003 (d), Idaho Code, may be permitted to have a financial interest in one (1) additional brewery licensed pursuant to section 23-1003 (d), Idaho Code; or

(b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of beer; or

(c) To aid or assist any licensed retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, services, or other thing of value to the retailer which may be used in conducting the retailer's retail beer business, except as expressly permitted by this chapter; or

(d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or

(e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.

(2) A brewer, dealer, or wholesaler as an incident to merchandising in the ordinary course of business, and if available to all licensed retailers without discrimination, may sell to a retailer equipment, supplies, or clothing which may be used in conducting the retailer's retail business. A brewer, dealer or wholesaler may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other brewers, dealers or wholesalers. In no event shall the sales price be less than the reasonable value of such equipment or supplies.

(3) Notwithstanding the provisions of subsection (2) of this section, a brewer, dealer, or wholesaler, as an incident to merchandising in the ordinary course of business, and if available to all retailers within the brewer, dealer or wholesaler's service area, without discrimination, may lend, give, furnish or sell to a retailer, the following items:

(a) Necessary accessory equipment, such as shaft blowers, tapping devices, valves, beer hoses, washers, couplings, clamps, air hoses, vents, faucets, CO 2 gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO 2 gas or ice when the same is furnished at the current retail price and as a bona fide sale in the regular course of business;

(b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The brewer, dealer or wholesaler shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;

(c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;

(d) Items such as sports schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for beer prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;

(e) Temporary signs or banners displaying a brewer's, dealer's or wholesaler's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.

(4) A distributor may perform services incident to or in connection with the following:

(a) The stocking, rotation and restocking of beer sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, salesroom shelves or refrigerating units, including the marking or remarking of containers of such beer to indicate the selling price as established by the retailer and to the arranging, rearranging, or relocating of advertising displays referred to in this section. For the purposes of this paragraph, a wholesaler may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all

beer upon the shelves of the retailer. Labor performed or schematics prepared by the wholesaler relating to conduct authorized pursuant to this paragraph shall not constitute prohibited conduct or unlawful aid to a retailer; (b)(i) The inspection of a licensed retailer's draught equipment to insure sanitation and quality control; (ii) The instruction of licensed retailers in the proper use, maintenance and care of draught equipment, glasses and products used in the sale and dispensing of beer and the preparation and distribution of written information or instructions to licensed retailers with respect thereto; (iii) The tapping of kegs; (iv) A wholesaler may perform such services as may be required to maintain sanitation or quality control and which are incident to the repair and cleaning of a retailer's draught beer equipment and may furnish or sell the necessary equipment and repair parts and cleaning supplies required in the performance of such services.

(5) A wholesaler may assist a retailer by temporarily providing storage of the retailer's beer for a period not in excess of seven (7) days in the event that such storage is necessary to maintain the quality of such beer during a temporary loss or failure of the retailer's refrigeration equipment.

(6) A brewery, dealer or wholesaler may furnish or give to a retailer authorized to sell beer for consumption on the licensed premises, for sampling purposes only, a container of beer containing not more than sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE — FOR SAMPLING PURPOSES ONLY."

(7) The word "ale" or "malt liquor" may be substituted for "beer" on any sign used in connection with any advertising herein permitted, provided reference shall be to ale or malt liquor which has an alcoholic content not greater than the limitation prescribed in section 23-1002 , Idaho Code.

(8) Every violation of the provisions of this section by a dealer, brewer or wholesaler, in which a licensed retailer shall have actively participated shall constitute a violation on the part of such licensed retailer.

23-1033A — Prohibition of certain trade practices between brewers or dealers and wholesalers

23-1033A. Prohibition of certain trade practices between brewers or dealers and wholesalers.

(1) It shall be unlawful for any brewer or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

(a) To require that any wholesaler purchase any such beer or other distributed products from such person to the exclusion in whole or in part of beer or other products made or imported by other dealers or brewers;

(b) To discriminate in price, allowance, rebate, refund, commission, discount, or service between the wholesalers purchasing beer or other products from such brewer or dealer;

(c) To threaten any wholesaler with any discrimination prohibited under subsection (1)(b) of this section, with the purpose or effect of changing or maintaining resale prices of the wholesaler;

(d) To impose conditions or restrictions on a wholesaler not generally imposed on other wholesalers of such brewer.

(2) Nothing in this section shall be deemed to prohibit brewers or dealers from selecting their own customers in bona fide transactions not in restraint of trade, nor to prohibit a brewer, or any affiliate or subsidiary of such brewer, duly licensed as a wholesaler from selling and distributing beer or other products manufactured by such brewer at wholesale to the exclusion of beer or other products manufactured by any other brewers. The terms "wholesaler" and "wholesalers" as used in this section shall mean a wholesaler or wholesalers licensed and engaged as such in the sale and distribution of beer in the state of Idaho.

23-1034 — Sanitation rules for retailers

23-1034. Sanitation rules for retailers. Licensed retailers authorized to sell beer for consumption upon such licensee's premises, shall keep their premises and all coils, cups, mugs, steins, glasses, and other utensils used in connection with the sale and dispensing of beer in a sanitary condition at all times, and shall comply with all rules issued by the department of health and welfare in the state of Idaho and applicable to the operation of the business of such licensed retailer.

23-1035 — Retailer's signs

23-1035. Retailer's signs. Signs indicating that beer is sold or dispensed on any particular premises shall be displayed only on the exterior portion of the building where the licensed retailer shall carry on his business of selling beer at retail or on property on which any such building is situated and which is owned or possessed by such retailer as a part of his

business premises. No more than two (2) single-faced signs or one (1) double-faced sign indicating that beer is sold or dispensed on the premises shall be displayed on such building or property. No dimension of any such sign shall exceed sixty (60) inches and the area of each face of a double-faced and of each single-faced sign shall not exceed fifteen hundred (1,500) square inches measured in such manner as the director may by regulation prescribe. No such sign shall display or make reference to the name of any brewer or the trade name, trademark or label of any brand of beer.

23-1036 — Tap markers

23-1036. Tap markers. Every faucet, spigot or other dispensing apparatus used on the premises of a licensed retailer for dispensing draught beer shall conspicuously indicate thereon the brand or trade name of the beer or the trademark of the manufacturer of the beer drawn therefrom.

23-1037 — Determination to revoke, suspend or refuse renewal of license by director — Monetary penalty

23-1037. Determination to revoke, suspend or refuse renewal of license by director — Monetary penalty.

(1) In the event of a conviction of any brewer manufacturing beer in this state or of any wholesaler or retailer licensed under the provisions of this chapter, of any law of the state of Idaho, or of the United States, regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquor, or if the director shall determine that any such licensee has violated any of the provisions of this chapter or any regulation of the director promulgated under the authority of this chapter, the director may, in his discretion, and in addition to any other penalty imposed, determine to revoke the license of any such licensee, to suspend the same for a period not in excess of six (6) months, or to refuse to grant a renewal of such license after the date of its expiration.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars ($5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of liquor or wine shall automatically result in the suspension of any license for the sale of beer held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted, during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

23-1037A — Licenses — Suspension or revocation for violation of obscenity laws

23-1037A. Licenses — Suspension or revocation for violation of obscenity laws. In the event of a conviction for a violation of chapter 41, title 18 , Idaho Code, relating to obscenity, by any:

(1) licensee,

(2) agent of licensee or

(3) employee of licensee if such licensee knew or should have known in the exercise of reasonable diligence that said employee was violating the provisions of chapter 41, title 18 , Idaho Code, and if the violation committed by any of the above occurred on, or in connection with, premises licensed under this act by such licensee, the director shall suspend the license of such licensee for a period of six (6) months. If such licensee, or his agent or employee, has previously been convicted of a violation of chapter 41, title 18 , Idaho Code, relating to obscenity, which violation occurred on, or in connection with, the premises licensed under this act by such licensee, the director shall revoke the license of such licensee.

23-1038 — Suspension, revocation, and refusal to renew licenses

23-1038. Suspension, revocation, and refusal to renew licenses. When the director shall make a determination to revoke, to suspend, or to refuse grant of renewal of license issued pursuant to the terms of this act for any violation of or failure to

comply with the provisions of this act or rules promulgated by the director or the state tax commission pursuant to the terms and conditions of this act, procedures for the suspension, revocation or refusal to grant or renew licenses issued under this act shall be in accordance with the provisions of chapter 52, title 67 , Idaho Code. Any hearing alleging a violation of chapter 9 or 10, title 23 , Idaho Code, shall be conducted in the county where the alleged violation occurred.

23-1042 — Procedure for other licensing authorities

23-1042. Procedure for other licensing authorities. The licensing authority of any county or incorporated municipality shall have and exercise the same powers to revoke, suspend, or to refuse grant of renewal of a retailer's license issued or issuable by it, as are granted to the director in this act. The determination of any such licensing authority to revoke, suspend, or to refuse grant of renewal of any retailer's license, shall be upon the same grounds referred to in section 23-1037 , Idaho Code, and may also be upon the grounds that the licensee has violated an ordinance validly enacted by it and regulating, governing or prohibiting the sale, manufacture, transportation or possession of alcoholic beverages or intoxicating liquor, and notice thereof shall be given, and proceedings to contest said determination allowed, as provided for in this act with respect to state licenses issued by the director. The order to show cause shall be addressed to the county commissioners of the county or to the city council of the incorporated municipality, requiring the commissioners or councilmen, or such representative as they may designate, to appear in response thereto. Service of the order to show cause and petition shall be ordered to be made upon the chairman of the board of county commissioners or mayor or city manager of the municipality, as the case may be.

23-1043 — Notice of revocation or suspension to other licensing authorities

23-1043. Notice of revocation or suspension to other licensing authorities. When revocation or suspension of any licensed retailer's license shall become effective by reason of the determination made by any licensing authority as in this act provided for, or by reason of the judgment of any district court on proceedings to contest any such determination, the licensing authority which made such determination shall forthwith give notice thereof in writing to the other licensing authorities from whom license was obtained by the licensee involved.

23-1044 — Procedure on refusal to grant license

23-1044. Procedure on refusal to grant license. Upon a determination by the director or by the licensing authority of any county or municipality to refuse issuance of a license to an applicant upon original application, the same procedure herein provided for in cases involving refusal to grant renewal of license for notice and for proceedings to contest determination shall govern insofar as the same are applicable, except that issuance of temporary license shall not be required pending proceedings to contest determination.

23-1045 — Appeals

23-1045. Appeals. An appeal from the judgment of any district court on proceedings to contest a determination may be taken by either party to such proceedings to the Supreme Court of this state, in the same manner as in other civil actions. If the judgment of the district court shall affirm the determination of any licensing authority revoking or suspending license or refusing grant of renewal of license, further stay of the effective date of revocation or suspension or further continuance of temporary license pending appeal may be allowed if, in the discretion of the court and upon application therefor, order for such further stay or continuance shall be entered by the court.

23-1046 — Separability

23-1046. Separability. If any portion of this act shall be declared unconstitutional, it shall not invalidate the other provisions thereof.

23-1047 — payment of taxes on beer

23-1047. payment of taxes on beer. Each person liable for payment of taxes on beer, as provided for in section 23-1048 , Idaho Code, shall, on or before the 15th day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of beer for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sales shall be paid by the person liable therefor at the time such report is filed.

23-1048 — Liability for payment of taxes on beer

23-1048. Liability for payment of taxes on beer.

(1) Every sale of beer to a retailer licensed in this state or to a consumer in this state shall constitute a sale of beer for resale or consumption in this state and such wholesaler shall be liable for the payment of taxes thereon. Sales of beer by such wholesaler for the purpose of and resulting in export of such beer from this state for resale outside this state shall be exempt from the taxes on beer imposed by this state.

(2) Every sale of beer by a wholesaler licensed in this state shall constitute a sale of beer for resale or consumption in this state, whether said sale is made within or without this state, and such wholesaler shall be liable for the payment of taxes thereon, except as provided in subsection (1) hereof.

23-1049 — Security for tax

23-1049. Security for tax. The state tax commission, whenever it deems it necessary to insure compliance with this act, may require any person subject to this act to place with it such security as it may determine. The amount of the necessary security shall be fixed by the state tax commission but, except as provided hereafter, shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this act. In the case of persons habitually delinquent in their obligations under this act, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this act. The amount of the security may be increased or decreased by the state tax commission at any time, subject to the limitations set forth herein. The state tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale. Such notice may be given personally or by mail addressed to the person at the address furnished to the state tax commission and as it appears in the records of the state tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

23-1050A — Collection and enforcement

23-1050A. Collection and enforcement. The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3042 through 63-3065A , inclusive, and sections 63-3068 and 63-3075 , Idaho Code, shall apply and be available to the state tax commission for enforcement and collection of the tax imposed by this chapter, and said sections shall, for this purpose, be considered part of this act. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

23-1051 — Regulations

23-1051. Regulations. The state tax commission shall be, and it is hereby, authorized to adopt and promulgate such rules and regulations as may be necessary to assure payment of taxes on beer, including, but not limited to, rules and regulations; prescribing the form and content of monthly reports required; requiring the persons liable for payment of taxes on beer to show on such monthly reports information concerning their inventories, purchases, sales and shipments of beer; requiring monthly informational reports from dealers and wholesalers licensed in this state concerning their inventories, purchases, sales and shipments of beer; requiring reports from carriers, both public and private, concerning deliveries of beer made in this state by such carriers and shipments of beer made by such carriers out of this state; requiring persons liable for payment of taxes imposed on beer and dealers and wholesalers licensed in this state to maintain complete and accurate books, records and accounts on transactions involving beer; and establishing grounds upon which delay in filing reports or paying taxes imposed on beer may be considered justifiable and without fault on the part of the person liable therefor.

23-1052 — License revocation or suspension for failure to pay or report tax

23-1052. License revocation or suspension for failure to pay or report tax. Failure to make any report or to pay any taxes at the times required shall be grounds for the director to suspend or revoke the license or certificate of approval held by the person so defaulting in the manner provided by law.

23-1053 — Audits of records of licensee

23-1053. Audits of records of licensee. For the purpose of ascertaining compliance with the provisions of section 23-1047 the state tax commission may, as often as it deems advisable, examine the accounts, records, documents and transactions, pertaining to or affecting the beer business of any person holding a license or certificate or approval issued by this state under the provisions of this act. When examination involving any brewer or foreign distributor holding a

certificate of approval issued by this state shall require an examiner to travel outside this state, the actual and necessary expenses of travel and subsistence necessarily incurred on account of the examination shall be paid by the holder of such certificate of approval upon presentation of an itemized statement certified by the examiner and approved by the state tax commission.

23-1054 — Refund of taxes

23-1054. Refund of taxes.

(1) If the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The tax commission is authorized and the state board of tax appeals is authorized to order the tax commission in proper cases to credit or refund such amounts whether or not such payments have been made under protest and certify such refund to the state board of examiners.

(2) No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration date of that period a claim therefor is filed by the taxpayer. The three (3) year periods allowed by this section for making refunds or credit claims shall not apply in cases where the tax commission asserts a deficiency of tax imposed by this chapter and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to those deficiencies must do so within the time limits elsewhere prescribed by law.

23-1055 — Unlawful sale, purchases and acts

23-1055. Unlawful sale, purchases and acts. It shall be unlawful: (a) for any brewer manufacturing beer outside this state or for any foreign distributor to sell beer for resale or consumption in this state except to dealers and wholesalers licensed in this state; (b) for any dealer or wholesaler licensed in this state to purchase beer manufactured outside this state except from brewers or foreign distributors holding certificates of approval issued by this state and from other dealers or wholesalers licensed in this state; (c) for any person to sell beer for resale or consumption in this state or to transfer or import beer into this state for the purpose of selling such beer for resale or consumption in this state, unless such person shall hold a license or certificate of approval issued by this state pursuant to which any such sale, transportation or importation shall be authorized; (d) for any retailer licensed in this state to purchase beer for resale except from a dealer or wholesaler licensed in this state. Any beer sold, transported or imported in violation of the provisions of this section shall be subject to seizure, forfeiture and sale in the same manner as provided for in section 23-1008 , as amended.

23-1056 — Use of alternative method — Time when authorized

23-1056. Use of alternative method — Time when authorized. Use of said alternative method of payment of taxes imposed on beer as provided for in sections 23-1047 through 23-1055 , shall not be authorized until the state tax commission shall adopt and promulgate a regulation permitting use of such method. On and after the effective date of any such regulation use of such alternative method shall be exclusive, provided, however, tax stamps theretofore purchased by any person liable for payment of taxes on beer and on hand may be used by such person and a credit shall be allowed to him against taxes payable with monthly reports subsequently filed in such manner as the state tax commission may prescribe, or said stamp may be submitted for redemption and refund thereon. Upon thirty (30) days written notice mailed to each brewer and dealer licensed in this state and to each brewer and foreign distributor holding a certificate of approval issued by this state the state tax commission may at any time rescind any such regulation and from and after the effective date of rescission only the method for payment of taxes on beer by use of tax stamps as provided for in section 23-1008 , as amended, shall be used.

23-1057 — contract brewing

23-1057. contract brewing.

(1) A contractee brewer may enter into a contractual relationship with a contractor brewer to contractually produce beer for the contractee brewer to the extent allowed by federal law.

(2) Both the contractee brewer and the contractor brewer shall be separately licensed and separately owned. Beer brewed for a contractee brewer shall count toward the contractee brewer’s annual barrels produced, and such beer shall not count toward the contractor brewer’s annual barrels produced. Each brewer shall be separately and distinctly responsible for compliance with the provisions of this chapter.

CHAPTER 11

23-1101 — Declaration of policy

23-1101. Declaration of policy. It is hereby declared to be the policy of the legislature of the state of Idaho to regulate and control the importation, sale and distribution of beer within the state of Idaho, in the exercise of its powers under the twenty-first amendment to the constitution of the United States of America, and pursuant to section 26, article III, of the constitution of the state of Idaho. In furtherance of that policy, the restrictions and regulations contained in this chapter are enacted to promote equality and fair dealing in the business relationship between Idaho distributors of beer and the suppliers of such product and to assure the establishment and maintenance of an orderly system for the distribution of such products in accordance with the laws of this state regulating the sale and distribution of such products to the public.

23-1102 — Definitions

23-1102. Definitions. Whenever used in this chapter, the following words or phrases, or the plural thereof, unless the context clearly requires otherwise, shall have the meaning ascribed to them in this section:

(1) "Agreement" means any agreement between a distributor and a supplier, whether oral or written, whereby a distributor is granted the right to purchase a brand, or brands, of beer sold by a supplier and to resell such products within the state of Idaho.

(2) "Amend," "amendment," or "modify," means any alteration or change in the agreement, which causes a material change in the distributor's business or relationship with the supplier, and which alteration or change does not apply to all distributors in the state of Idaho who distribute supplier's products.

(3) "Ancillary business" means a business owned by a distributor, by a substantial stockholder of a distributor, or by a substantial partner of a distributor, the primary business of which is directly related to the transporting, storing or marketing of the supplier's products.

(4) "Designated member" means:

(a) The spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a distributor;

(b) Any person who inherits an ownership interest in a distributor;

(c) The appointed and qualified personal representative or the testamentary trustee of a deceased individual owning an interest in a distributor;

(d) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an interest in a distributor; or

(e) A person who has succeeded to the deceased individual's ownership interest in the distributor pursuant to a written contract or instrument which has been previously approved, in writing, by a supplier.

(5) "Distributor" means a business entity, whether sole proprietorship, partnership, corporation, association, syndicate, or any other combination of persons, licensed by the state of Idaho to sell beer to retailers. The term "distributor" shall not include a brewery, brewery branch or subsidiary thereof, which is licensed by the state of Idaho and which license authorizes sales of beer to be made directly to a retailer, whether or not licensed as a distributor by the state of Idaho.

(6) "Good faith" means honesty in fact in the conduct or transaction involved and the observance of reasonable commercial standards of fair dealing in the trade, as such term and standards are defined in, and interpreted pursuant to, the uniform commercial code, title 28 , Idaho Code.

(7) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals or corporations.

(8) "Reasonable standards and/or qualifications" mean those criteria established and consistently applied by a supplier to distributors within the state of Idaho and similarly situated distributors in adjoining states who:

(a) Have entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the distributor's business; or

(b) Have changed managers or successor managers during a period of twenty-four (24) months prior to the proposed change in manager or successor manager of the distributor.

(9) "Retaliatory action" includes the refusal to continue an agreement, or a material part thereof, or a material reduction in the quality of service or quantity of products available to a distributor under an agreement, which refusal or reduction is not made in good faith.

(10) "Similarly situated distributors in adjoining states" mean distributors in adjoining states having an agreement with the supplier who have reasonably comparable business, area and market characteristics to an Idaho distributor of supplier's products, which business, area and market characteristics may include, but are not limited to, the following: gross sales' volume concerning supplier's products, facilities, number of employees, business capitalization, market areas, considering the population and the demographics thereof, and the square miles of area served.

(11) "Substantial stockholder" or "substantial partner" means a person who owns an interest of ten percent (10%) or more of a distributor.

(12) "Supplier" means any person, either within or outside the state of Idaho, who enters into an agreement with a distributor for the sale of beer to such distributor with the intent that such products will be resold by the distributor to retailers within the state of Idaho. The term "supplier" shall also be deemed to include the successor in interest to a supplier's business generally, or with reference to a specific brand or brands, of beer. The term "supplier" shall not include any person who produces fewer than thirty thousand (30,000) barrels of beer annually and who is licensed by the state of Idaho for such purpose.

(13) "Transfer of distributor's business" or similar phrase, means the voluntary sale, assignment or other transfer of all or control of the business, or all or substantially all of the assets of the distributor, or all or control of the capital stock of the distributor, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the distributor.

23-1103 — Prohibited acts

23-1103. Prohibited acts. The following are prohibited under the provisions of this chapter:

(1) A distributor shall not:

(a) Transfer the distributor's business without giving the supplier written notice of the proposed transfer of the business as required under the provisions of this chapter.

(b) Transfer the distributor's business without receiving the supplier's written approval for the proposed transfer, where required by an agreement and consistent with the provisions of this chapter.

(c) Distribute, sell or deliver beer to a retailer whose premises are situated outside the geographic territory agreed upon by the distributor and the supplier, as the area in which the distributor will sell beer purchased from the supplier, without the consent of the supplier and the distributor who has been assigned such territory by the supplier.

(2) A supplier shall not, directly or indirectly, or through an affiliate or subsidiary:

(a) Require any distributor to do any illegal act or to violate any law or regulation either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and the distributor, or by any other means.

(b) Require any distributor to accept delivery of any beer or other commodity which has not been ordered by the distributor or, if ordered, has been canceled by the distributor in accordance with reasonable cancellation procedures of the supplier. Provided however, a supplier may impose reasonable inventory requirements upon a distributor if the requirements are made in good faith and are generally applied to other distributors in Idaho and similarly situated distributors in adjoining states having an agreement with the supplier.

(c) Withhold delivery of beer ordered by a distributor or change a distributor's allocation of a brand or brands by the supplier if the withholding or change is not made in good faith.

(d) Engage in any conduct that requires a distributor to fix or maintain the resale prices at which the distributor sells products received from the supplier.

(e) Require a distributor to purchase one (1) or more brands of beer or other products in order for the distributor to purchase another brand or brands of beer. Provided however, that if a distributor has agreed to distribute a brand or brands of beer before the effective date of this chapter, the distributor shall continue to distribute the brand or brands of beer in conformance with the provisions of this chapter.

(f) Require a distributor to assent to any unreasonable requirement, condition, understanding or term of an agreement which limits the distributor's right to sell a brand or brands of beer or other products of any other supplier.

(g) Require a distributor to submit financial reports or other specific financial or sales information regarding products sold by the distributor, other than those of the supplier, as a condition of renewal or continuation of an agreement.

(h) Require a distributor to terminate the designation of an individual as a manager or successor manager of a distributor, or refuse to approve the designation of an individual as manager or successor manager, unless the manager or successor manager fails to meet reasonable standards or qualifications for such position which standards or qualifications are nondiscriminatory and are applied uniformly to all distributors similarly situated. In any legal action, or other dispute resolution proceedings, challenging such termination or designation, the distributor shall have the burden of proving that the termination of the manager or successor manager was required by the supplier or that the supplier refused to approve the designation of an individual as manager or successor manager. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that such person fails to meet nondiscriminatory and reasonable standards and qualifications.

(i) Take any retaliatory action against a distributor who, with just cause, files a complaint with any regulatory body or in any court of law regarding an alleged violation of federal, state or local law or of any administrative rule by the supplier.

23-1104 — Notice of transfer by distributor — Consent by supplier

23-1104. Notice of transfer by distributor — Consent by supplier.

(1) A distributor who proposes to transfer the distributor's business shall give the supplier written notice of the distributor's proposed transfer of the distributor's business not less than thirty (30) days prior to the date specified in the notice for completion of the transfer, except in cases of transfer to a designated member, in which case the transferee shall give the supplier written notice of the transfer within a reasonable time after the transfer is completed.

(2) A supplier's written consent shall be required for a transfer of the distributor's business to a person other than a designated member. Provided however, written consent from a supplier shall be required for a transfer of the distributor's business to a designated member if any of the following conditions apply:

(a) The transferee or any owner of the transferee has been convicted of a felony under the laws of any state or of the federal government which would adversely affect the good will or interests of the supplier.

(b) The transferee or any owner of the transferee has had a license for the sale of beer, wine or any alcoholic beverage suspended or revoked by the regulatory agency of the federal government or of any state and such suspension or revocation interrupted service by the transferee or by the owner of the transferee for a period of more than thirty (30) days.

(c) The transferee or any owner of the transferee is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the transferee's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the transferee.

(d) The transferee or any owner of the transferee has had any previous agreement with the supplier involuntarily terminated, canceled, discontinued or not renewed by the supplier for good cause.

(3) If the transferee is a designated member, a supplier shall not interfere with, prevent, or unreasonably delay the transfer of the distributor's business. An unreasonable delay is one that exceeds thirty (30) days after the service of the notice required by subsection (1) of this section and the receipt of all material information reasonably requested from which the supplier can determine whether the transfer to the designated member may require the supplier's consent. If consent is required, a supplier may not withhold consent or unreasonably interfere with the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory.

(4) If the transferee is not a designated member, a supplier may not withhold consent or unreasonably interfere with or delay the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory. An unreasonable delay is one that exceeds thirty (30) days after the receipt of all material information reasonably requested to enable the supplier to determine whether the transferee meets reasonable standards and qualifications.

(5) In any legal action, or other dispute resolution proceeding, between a distributor and supplier relating to the supplier's refusal to consent to the transfer of the distributor's business to a transferee, the distributor shall have the burden of

proving that the supplier withheld consent, interfered with or delayed the proposed transfer of the distributor's business. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that the proposed transferee does not meet such reasonable standards and qualifications.

23-1105 — Supplier's right to amend, cancel or fail to renew immediately upon written notice — Grounds

23-1105. Supplier's right to amend, cancel or fail to renew immediately upon written notice — Grounds. A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a distributor immediately upon written notice given by the supplier as provided in section 23-1108 , Idaho Code, only if any of the following occur:

(1) Revocation or suspension of a governmental permit or license held by the distributor whereby the distributor cannot service the distributor's sales territory for a period of more than thirty (30) days.

(2) The distributor is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the distributor's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the distributor.

(3) A stockholder or a partner of the distributor who holds or owns ten percent (10%) or more of the stock or value of the distributor has been convicted of a felony under the laws of the United States or the laws of any state which conviction would adversely affect the good will or interests of the distributor or supplier. Provided however, that if another stockholder or other stockholders, or partner or partners, or a designated member or members, or other person, notifies the supplier in writing prior to the conviction of an intent to purchase the partnership interest or the stock of the offending stockholder or partner and then purchases the interest or stock within thirty (30) days after a final conviction or within thirty (30) days after the supplier has consented to the transfer, whichever event occurs last, the supplier shall not amend, modify, terminate, cancel, discontinue or fail to renew such agreement. Any purchase of an interest or stock pursuant to the provisions of this subsection shall comply with the requirements and conditions of supplier consent contained in the provisions of section 23-1104 , Idaho Code.

(4) An assignment of the distributor's agreement with the supplier, or a transfer of the distributor's business, other than to a designated member, has been made without written notice as provided under the provisions of this chapter.

(5) Fraud by the distributor in his dealings with the supplier or with reference to supplier's products.

(6) The distributor has failed to pay for products ordered and delivered in accordance with established terms with a supplier and fails to make full payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(7) A transfer of the distributor's business is made despite timely and proper notice of disapproval by the supplier.

(8) The distributor has sold or delivered beer to a retailer whose premises are outside of the territory assigned to the distributor by the supplier in the agreement.

23-1106 — Supplier's right to discontinue distribution of brand

23-1106. Supplier's right to discontinue distribution of brand.

(1) A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement, with reference to a brand sold by a supplier, not less than thirty (30) days after written notice is given by the supplier as provided in section 23-1108 , Idaho Code, if the supplier discontinues production or discontinues distribution in this state of a brand of beer sold by the supplier to the distributor.

(2) Nothing in this section shall prohibit a supplier from conducting test marketing of a product which is not currently being sold in this state, provided that the supplier has notified the director, Idaho state police, in writing, of its plans to conduct test marketing, which notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the product, the name or names of the product being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

(3) If a supplier causes the discontinuance of distribution in this state of a brand of beer, except a brand that is being test marketed pursuant to subsection (2) of this section, then that brand cannot be reintroduced or sold to distributors within this state by any supplier for a period of six (6) months after providing the written notice required in the provisions of this section. A supplier who is test marketing a brand or brands in this state, in compliance with subsection (2) of this section, shall not be subject to the six (6) month reintroduction limitation set forth in the provisions of this subsection.

(4) Whenever a supplier discontinues distribution in this state of a brand of beer, the supplier shall be required, at the distributor's request, to purchase from the distributor any unsold inventory of that brand.

23-1107 — Supplier requirements upon amendment, cancellation or refusal to renew an agreement

23-1107. Supplier requirements upon amendment, cancellation or refusal to renew an agreement. Except as provided in sections 23-1105 and 23-1106 , Idaho Code, a supplier may not amend, modify, terminate, cancel, discontinue, or refuse to renew an agreement with a distributor, or cause a distributor to resign from an agreement, unless the supplier has complied with the following requirements:

(1) The supplier shall give written notice to the distributor, as provided in section 23-1108 , Idaho Code.

(2) The supplier acts in good faith. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it acted in good faith.

(3) The supplier has good cause. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it has good cause. Good cause exists when all of the following have occurred:

(a) The distributor has failed to comply substantially with essential and reasonable requirements imposed upon him by the agreement, if such requirements are not discriminatory, either by their terms or in the method of their enforcement, as compared with requirements imposed on other distributors in Idaho or similarly situated distributors in adjoining states and if such requirements are not in violation of any law or regulation.

(b) The supplier first acquired knowledge of the failure described in subsection (3)(a) of this section not more than twenty-four (24) months before the date notification was given pursuant to the provisions of section 23-1108 , Idaho Code.

(c) The supplier has given written notice to the distributor, stating specifically the manner in which the distributor has failed to comply with the agreement.

(d) The distributor was given adequate opportunity to use good faith efforts to correct the failure to comply with the agreement. Adequate opportunity shall be thirty (30) days after receipt of the supplier's notice to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days after the submission of a plan of corrective action to correct the failure in accordance with the plan.

23-1108 — Notice requirements

23-1108. Notice requirements. Notice by a supplier of any proposed amendment, modification, termination, cancellation, discontinuance or refusal to renew an agreement with the distributor shall be written, shall be provided to the distributor in the manner provided in the agreement, if written, or if the agreement is oral, by certified mail, and the notice shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, discontinue or refuse to renew the agreement.

(2) A statement of the reason(s) for the amendment, modification, termination, cancellation, discontinuance or nonrenewal.

(3) The date on which the amendment, modification, termination, cancellation, discontinuance or nonrenewal will take effect.

23-1109 — Transferee of distributor's business bound by agreements in effect at time of transfer — Supplier's successor bound by agreements in effect at time of succession to supplier's interest

23-1109. Transferee of distributor's business bound by agreements in effect at time of transfer — Supplier's successor bound by agreements in effect at time of succession to supplier's interest.

(1) A transferee of a distributor's business that continues to operate the business shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(2) A successor to a supplier's interest in a particular brand or brands of beer, whether acquired by purchasing of the brand name or all or substantially all of the stock or assets of the supplier of that brand or brands, or who has been granted the marketing rights to a particular brand or brands of beer shall be bound by all terms and conditions of each agreement with distributors with respect to that brand or brands in effect on the date of the succession to such interest as a condition of such successor in interest continuing to sell that brand or brands to distributors for resale within this state.

23-1110 — Compensation to distributor upon termination, cancellation or nonrenewal of agreement

23-1110. Compensation to distributor upon termination, cancellation or nonrenewal of agreement.

(1) In the event that an agreement is terminated, canceled or not renewed by a supplier, the distributor shall be entitled to reasonable compensation for the laid-in cost to the distributor of the inventory of the supplier's products, including any taxes paid on the inventory by the distributor, together with a reasonable charge for handling of the products.

(2) In the event that an agreement is terminated, canceled or not renewed by a supplier in bad faith or for other than good cause, the distributor shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses, relating to the transporting, storing or marketing of supplier's products; and

(b) The good will of the business.

(3) The total compensation to be paid by the supplier shall be reduced by any sum received by the distributor from sale of assets of the business used in the distribution of the supplier's products as well as by whatever value such assets may have to the distributor that are unrelated to the supplier's products.

(4) As used in subsection (2)(a) of this section, fair market value means the highest dollar amount at which a seller would be willing to sell and a buyer would be willing to buy when each possesses all information relevant to the transaction.

23-1111 — Arbitration

23-1111. Arbitration. Any dispute arising under the provisions of this chapter may be settled by such dispute resolution procedures, including arbitration, as may be provided by a written agreement between the parties. In the absence of a written agreement providing for dispute resolution procedures, any dispute arising under the provisions of this chapter may be settled by arbitration, if every party involved in the dispute agrees to arbitrate. Arbitration shall be conducted in accordance with the uniform arbitration act of the state of Idaho, chapter 9, title 7 , Idaho Code.

23-1112 — Judicial remedies of parties

23-1112. Judicial remedies of parties.

(1) If a supplier engages in conduct prohibited under the provisions of this chapter, a distributor with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages, court costs, and, in the court's discretion, attorney's fees, reasonably incurred as the result of the prohibited conduct. If a distributor engages in conduct prohibited under the provisions of this chapter, a supplier with which the distributor has an agreement may maintain a civil action against the distributor to recover actual damages, court costs and, in the court's discretion, attorney's fees reasonably incurred as a result of the prohibited conduct. Actual damages shall include damages to any ancillary business incurred as a result of the prohibited conduct.

(2) A supplier or distributor may bring an action for declaratory judgment for determination of any controversy arising pursuant to the provisions of this chapter.

(3) Upon proper application to the court, a supplier or distributor may obtain injunctive relief against any violation of the provisions of this chapter.

(4) The remedies provided in this section shall not abolish any other cause of action or remedy available to the supplier or the distributor.

(5) Nothing contained in this chapter shall give rise to a claim against the supplier or distributor by any proposed transferee of the distributor's business.

23-1113 — Waiver of benefits of chapter

23-1113. Waiver of benefits of chapter. No agreement shall require a supplier or distributor to waive any rights granted pursuant to any provision of this chapter and the provisions of any agreement which would have such an effect shall be null and void. However, if a good faith dispute arises between the parties as to the meaning of any rights or obligations created in the provisions of this chapter, or the performance by a party of its obligations, the parties may enter into a written voluntary settlement of the dispute.

CHAPTER 13

23-1301 — Short title

23-1301. Short title. This act shall be known and designated as the "County Option Kitchen and Table Wine Act."

23-1302 — Purpose and construction of act

23-1302. Purpose and construction of act. The purpose of this act is to regulate the importation, distribution and sale, both at wholesale and retail, of wines while reserving to each county of this state the right to prohibit the distribution or sale of wine within its borders. This act shall not be construed to affect laws regulating the retail sale of alcoholic beverages, nor shall it be construed to in any way enlarge the class of persons who may lawfully buy, possess or consume any variety of wine whatever its alcoholic content.

23-1303 — Definitions

23-1303. Definitions.

(1) The following terms as used in this chapter are hereby defined as follows:

(a) "Bonded wine warehouse" means a licensed warehouse within the state of Idaho that is solely authorized to store and handle wine.

(b) "Bonded wine warehouse license" means a license that authorizes a bonded wine warehouse to solely store and handle wine. Handling of wine as provided for in this chapter includes the loading, unloading, and delivery of wine from a vintner or winery to a bonded wine warehouse, from a bonded wine warehouse to a vintner or winery, from a bonded wine warehouse to another bonded wine warehouse, or from a bonded wine warehouse to a distributor. A bonded wine warehouse license does not authorize the distribution or sale of wine.

(c) "Dessert wine" means only those wines that contain more than sixteen percent (16%) alcohol by volume, but do not exceed twenty-four percent (24%) alcohol by volume, are grape-based, and are fortified through the addition of wine-based spirits or brandy made from grapes. Dessert wine as defined herein shall not be deemed to be a spirit-based beverage for the purposes of paragraph (i) of this subsection. Dessert wine as defined in this section shall not include aromatized wines such as vermouth, quinquina, and americano.

(d) "Director" means the director of the Idaho state police.

(e) "Distributor" means a person to whom a wine distributor's license has been issued.

(f) "Domestic produced product" means wine at least seventy-five percent (75%) of which by volume is derived from fruit or agricultural products grown in Idaho.

(g) "Importer" means a person to whom a wine importer's license has been issued.

(h) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(i) "Low proof spirit beverages" means any alcoholic beverage containing not more than fourteen percent (14%) alcohol by volume obtained by distillation mixed with drinkable water, fruit juices and/or other ingredients in solution. These products shall be considered and taxed as wine. Spirit-based beverages exceeding fourteen percent (14%) alcohol by volume shall be considered as liquor and sold only through the division system.

(j) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(k) "Retailer" means a person to whom a retail wine license has been issued.

(l) "Retail wine license" means a license issued by the director authorizing a person to sell table wine and/or dessert wine at retail for consumption off the licensed premises.

(m) "Table wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(n) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(o) "Vintner" means a person who manufactures, bottles, or sells table wine or dessert wine to importers for resale within this state other than a licensed "winery" as herein defined.

(p) "Wine" includes table wine and dessert wine, unless the context requires otherwise.

(q) "Wine by the drink license" means a license to sell table wine or dessert wine by the individual glass or opened bottle at retail, for consumption on the premises only.

(r) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute table wine or dessert wine to retailers within the state of Idaho.

(s) "Wine importer's license" means a license issued by the director to a person authorizing such person to import table wine or dessert wine into the state of Idaho and to sell and distribute such wines to a distributor.

(t) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale. Two (2) or more wineries may use the same premises and the same equipment to manufacture their respective wines, to the extent permitted by federal law.

(u) "Winery license" means a license issued by the director authorizing a person to maintain a winery.

(2) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and accepted meanings.

23-1304 — County option — Resolution of county commissioners — Order for election — Form of ballot — Effect of election or resolution

23-1304. County option — Resolution of county commissioners — Order for election — Form of ballot — Effect of election or resolution. There is hereby granted to the board of county commissioners of each of the several counties of this state the right and authority to permit the sale of table wine and/or dessert wine, as defined in this chapter, within the borders of the several counties of this state, which may be exercised in the following manner:

(a) the board of county commissioners of each county of this state may, by resolution regularly adopted, provided that retail sale of table wine and/or dessert wine, as defined in this chapter, shall be permitted within the county, and upon a certification of such resolution to the director, a retail wine license shall thereafter be issued for premises within such county so long as such resolution remains in effect; or

(b) the board of county commissioners of each of the several counties of this state may submit the question of permitting the sale of table wine and/or dessert wine at retail within the boundaries of the county to the electors of the county. The board of county commissioners may make an order calling an election to be held, subject to the provisions of section 34-106 , Idaho Code, within said county in the manner provided by law for holding elections for county officers. All laws of the state of Idaho relating to the holding of elections for county officers shall apply to the holdings of the election provided for in this section, except where specifically modified herein. Such election may also be called upon written petition of registered electors equal in number to twenty percent (20%) of the registered, qualified electors of the county for the last general election under the following conditions:

(a) The petition for such an election shall be in substantially the following form: RETAIL WINE SALE PETITION To the Honorable County Commissioners of the County of …., State of Idaho: We, the undersigned citizens and registered, qualified electors of the County of …., respectfully demand that the Board of County Commissioners submit the question of permitting the sale of table wine (and/or dessert wine) at retail within the boundaries of the County of …. to the electors of the county in the manner provided in section 23-1304 , Idaho Code. We, each for himself, say: I am a registered elector of the County of …. and my residence, post office address, county, election precinct and the date I signed this petition are correctly written after my name. Name Residence Post Office County Election Precinct Date (If in a city, street and number) (Here follow twenty numbered lines for signatures)

(b) Before or at the time of beginning to circulate any petition for an election to determine sale of wine at retail, the person or persons, organization or organizations, under whose authority the petition is to be circulated, shall send or deliver to the county clerk a copy of such petition duly signed by at least twenty (20) electors eligible to sign such petition. The county clerk shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and sheets for signatures shall be printed on a good quality bond or ledger paper, on pages eight and one-half (8 1/2) inches in width by thirteen (13) inches in length, with a margin of one and three-fourths (1 3/4) inches at the top for binding, and the sheets for signatures shall have numbered lines thereon from one (1) to twenty (20) for signatures. The petition shall be prepared in sections, with each section numbered consecutively. Each section of a petition must have a printed copy of the petition as the first page, and each section shall have attached to it not more than ten (10) sheets for signatures.

(c) The county clerk shall indicate in writing on the petition that he has approved it as to form and the date of such approval. Upon approval as to form, the county clerk shall inform the person or persons, organization or organizations, under whose authority the petition is to be circulated, in writing, that the petition must be perfected with the required number of signatures within one hundred eighty (180) days following the date of approval as to form. Any petition that has not been perfected with the required number of certified signatures within the one hundred eighty (180) days allowed shall be declared null and void ab initio in its entirety, except for the extension allowed for in subsection (g) of this section.

(d) Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof: State of Idaho County of …. I, …., swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition. Subscribed and sworn to before me this …. day of …., 2…. (Notary Seal)

(e) All petitions with attached signature sheets shall be presented to the county clerk on the same day and a cursory examination of the petitions shall be made by him. The cursory examination shall be made to determine whether the petitions apparently contain the necessary number of signatures. If the total number of signatures on the petitions is not sufficient to satisfy the number required by this law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered. If the cursory examination of the signature sheets reveals:

(1) erasures on any signature;

(2) illegible or unidentifiable signatures; or

(3) signatures not properly identified by all the information required on the sheet, the county clerk shall summarily reject such signature and such signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the county clerk or his deputy. If the total number of signatures not rejected is not sufficient to satisfy the number required by law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered.

(f) All petitions presented to the county clerk found to apparently contain the necessary number of signatures, after the cursory examination provided for in subsection (e) of this section, shall be filed with the county clerk and become public records of the county not to be returned. The county clerk shall examine each signature purported to be that of a registered elector and compare each such signature with the registration documents available to him. The county clerk shall summarily reject all signatures which are not the signatures of registered electors; and such rejected signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the clerk or his deputy. The county clerk may take not to exceed twenty (20) days after filing of the petition to complete his examination. The county clerk shall certify each signature found to comply with all of the requirements of this act by an appropriate mark following each signature. The county clerk shall total the number of certified signatures and certify the number thereof to the board of county commissioners.

(g) In the event that a petition filed with the county clerk does not contain the required number of certified signatures, the county clerk shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the clerk shall declare the petition null and void ab initio in its entirety.

(h) In the event the county clerk shall certify to the board of county commissioners that a petition contains the required number of signatures of registered, qualified electors, said governing body shall forthwith make an order calling an election to be held, subject to the provisions of section 34-106 , Idaho Code, within said county in the manner provided by law for holding elections for county officers. In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. The county recorder must furnish the ballots to be used in such election, which ballots must contain the following words: "Sale of table wine at retail, Yes," "Sale of table wine at retail, No." and, if applicable: "Sale of dessert wine at retail, Yes," "Sale of dessert wine at retail, No." and the elector in order to vote must mark an "X" opposite one (1) of the questions in the space provided therefor. Upon a canvass of the votes cast, the county recorder shall certify the result thereof to the director. If a majority of the votes cast are affirmative on the issue or issues presented, licenses shall be issued in said county as in this chapter provided. If a majority of the votes cast are

in the negative on the issue or issues presented, then no license shall be issued in said county unless thereafter authorized by a subsequent election in said county which may be called in the manner provided for herein. No resolution or election prohibiting the sale of table wine and/or dessert wine within the boundaries of any county of this state shall have an effective date prior to the end of the then current calendar year if at the time of the adoption thereof there shall be any outstanding valid retail wine licenses in good standing for premises within such county. The signer of any petition under this chapter may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed. The signer of any such petition may have his name removed from the petition at any time after the petition has been filed, but prior to the time when an election has been ordered, by presenting or submitting to the county clerk a signed, acknowledged statement that the signer desires to have his name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of, the petition. A person is guilty of a felony punishable by imprisonment in the state penitentiary, not to exceed two (2) years, who:

(a) Signs any name other than his own to any petition.

(b) Knowingly signs his name more than once on the same petition.

(c) Willfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition.

(d) Circulates or causes to circulate any petition, knowing the same to contain false, forged or fictitious names.

(e) Makes any false affidavit concerning any petition or the signatures appended thereto.

(f) Knowingly makes any false return, certification or affidavit concerning any petition or the signatures appended thereto.

(g) Threatens any person with punitive or retaliatory action for the purpose of obtaining signatures or hindering or delaying the obtaining of signatures upon a petition.

23-1305 — Restrictions — Authority of division preserved

23-1305. Restrictions — Authority of division preserved.

(a) Wine, as defined in this act, may be manufactured, imported into this state, possessed, distributed and sold in this state in the manner and under the conditions prescribed in this act and not otherwise.

(b) Nothing contained in this act shall prohibit the division from selling wine pursuant to the Idaho liquor act in any outlet of the division.

23-1306 — Licenses required — Application — Issuance or refusal

23-1306. Licenses required — Application — Issuance or refusal.

(1) Before any person shall manufacture, import into this state, bottle or broker for resale within this state, possess for resale, store and handle wine as a bonded wine warehouse, or distribute or sell wine within the state of Idaho, he shall apply to the director for a license. The application form shall be prescribed and furnished by the director and require that the applicant therein show that he possesses all of the qualifications and none of the disqualifications of a licensee. A person may apply for and receive a license as both a distributor and importer, if otherwise qualified therefor, and shall pay the license fee required pursuant to this chapter for each license. A winery licensed under this chapter shall also be considered as holding, for the purposes of selling a product processed and bottled by or for that winery, a current retail wine license and wine by the drink license for the licensed premises and for use at functions and events identified in section 23-1338 , Idaho Code, and a current wine distributor's and importer's license, without further application or fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for such license, he shall issue a license for each classification applied for, subject to the restrictions of and upon the conditions specified in this chapter. The license or licenses issued shall be at all times prominently displayed in the place of business of the licensee. If the director determines that the applicant is not properly qualified, he shall refuse to issue a license and shall forthwith so notify the applicant and shall return to the applicant with such notification, three-fourths (3/4) of the license fee remitted with the application. A separate retail wine by the drink license, and wine distributor's license shall be required for each premises. Provided, however, nothing herein shall prohibit a distributor or retailer or wine by the drink licensee from possessing licenses for more than one (1) premises.

(2) A bonded wine warehouse licensed under this chapter shall solely be authorized to store and handle wine produced by vintners and wineries. A license applicant shall hold a federal permit for a bonded wine cellar and may be required to post a continuing wine tax bond of such an amount and in such a form as may be required prior to the issuance of a bonded wine warehouse license. All wine shipped to and from a bonded wine warehouse shall remain under bond and no tax imposed shall be due, unless the wine is removed from bond and delivered to a licensed distributor.

23-1307 — Qualifications for retail wine license, wine by the drink license, bonded wine warehouse license, and distributor's license

23-1307. Qualifications for retail wine license, wine by the drink license, bonded wine warehouse license, and distributor's license.

(1) No retail wine license, wine by the drink license, bonded wine warehouse license, or wine distributor's license shall be issued to an applicant who at the time of making the application:

(a) If a corporation, has not qualified as required by law to do business in the state of Idaho;

(b) Has had a wine distributor's license, retail wine license, wine by the drink license, bonded wine warehouse license, or wine importer's license revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application;

(e) If an individual or partnership, either the individual or at least one (1) of the partners of a partnership is not nineteen (19) years of age or older.

(2) Licensed wineries shall not be required to possess a retail beer license to sell wine on the winery's original licensed premises or at locations other than the winery's original licensed premises.

(3) To determine qualification for a license, the director shall also cause an investigation that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

23-1307A — Wine by the drink establishment not allowed near churches or schools — Exceptions

23-1307A. Wine by the drink establishment not allowed near churches or schools — Exceptions. No wine by the drink license shall be issued for any place, where wine is sold or dispensed to be consumed on the premises, whether conducted for pleasure or profit, that is within three hundred (300) feet of any public school, church, or any other place of worship measured in a straight line to the nearest entrance to the licensed premises, except (that) with the approval of the governing body of the municipality; provided that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area, but subsequent to licensing came therein.

23-1308 — Qualifications for importer's license

23-1308. Qualifications for importer's license. No wine importer's license shall be issued to an applicant who at the time of making the application:

(a) Has not executed an agreement in writing with the director that such importer and every person employed by it or acting as its agents other than distributors and retailers, will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to the importation, sale and distribution of wine and all rules and regulations adopted by the director pursuant to this act;

(b) Has had a wine distributor's license, retail wine license, wine by the drink license or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application.

23-1308A — Qualifications for winery license

23-1308A. Qualifications for winery license.

(1) No winery license shall be issued to an applicant who at the time of making the application:

(a) Has not executed an agreement in writing with the director that such winery and every person employed by it or acting as its agents other than distributors and retailers, will faithfully comply with and observe all the provisions of the laws of the state of Idaho relating to the manufacturing, sale and distribution of wine and all rules adopted by the director pursuant to this act;

(b) Has had a winery license, a wine distributor's license, retail wine license, wine by the drink license or wine importer's license, revoked by the director within three (3) years from the date of making such application;

(c) Has been convicted of a violation of the laws of this state or of the United States governing the sale of alcoholic beverages, wine, or beer, within three (3) years from the date of making such application;

(d) Has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of making such application.

(2) To determine qualification for a license, the director shall cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

23-1309 — Restrictions on importation and distribution

23-1309. Restrictions on importation and distribution. No importer shall import wine into the state of Idaho for resale within the state to a destination other than the warehouse of a distributor within the state of Idaho. No distributor shall sell or distribute wine in this state except from stocks of wine which have been unloaded, stored and maintained in a warehouse or warehouses located within the state of Idaho and owned or used by such distributor in the conduct of his business as such. All records which a distributor is by law or rule required to maintain, shall be kept at his warehouse, or if such distributor shall have more than one (1) warehouse, then in the warehouse of such distributor which he shall designate as his principal warehouse within the state. Nothing in this section shall be deemed to affect the existing rights of any person who, on and prior to January 1, 1996, was licensed as a distributor by the state of Idaho.

23-1309A — Shipment and receipt of wine authorized — Labeling requirement

23-1309A. Shipment and receipt of wine authorized — Labeling requirement.

(1) Notwithstanding any other provision of law, rule or regulation to the contrary, any holder of a winery license under section 23-1306 , Idaho Code, or any person holding a license to manufacture wine in another state who obtains a wine direct shipper permit pursuant to this section may sell and ship up to twenty-four (24) nine-liter cases of wine annually directly to a resident of Idaho, who is at least twenty-one (21) years of age, for the resident's personal use and not for resale.

(2) Before sending any shipment to a resident of Idaho, the wine direct shipper permit holder must:

(a) File an application with the director;

(b) Pay a fifty dollar ($50.00) annual registration fee if the winery is not currently licensed by the director;

(c) Provide the director its Idaho winery license number or a true copy of its current alcoholic beverage license issued by another state;

(d) Obtain from the director a wine direct shipper permit;

(e) Register with the state tax commission for the payment of sales and use taxes and excise taxes on wine sold to residents of Idaho under the wine direct shipper permit.

(3) A wine direct shipper permit authorizes the permit holder to do all of the following:

(a) Sell and ship not more than twenty-four (24) nine-liter cases of wine annually to any person twenty-one (21) years of age or older for his or her personal use and not for resale;

(b) Ship wine directly to a resident in this state only in compliance with subsections (8) and (9) of this section;

(c) Report to the director, no later than January 31 of each year, the total amount of wine shipped during the preceding calendar year under the wine direct shipper permit;

(d) If the permit holder is located outside this state, pay to the state tax commission all sales and use taxes, and excise taxes on sales to residents of Idaho under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state;

(e) Permit the director and the state tax commission to perform an audit of the wine direct shipper permit holder's records upon request;

(f) Be deemed to have consented to the jurisdiction of the alcohol beverage control division of the Idaho state police, or any other state agency and the Idaho courts concerning enforcement of this section and any related laws, rules or regulations.

(4) A wine direct shipper permit holder located outside the state may annually renew its permit with the director by paying a twenty-five dollar ($25.00) renewal fee and providing the director a true copy of its current alcoholic beverage license issued in another state. A wine direct shipper permit holder located in Idaho shall renew its wine direct shipper permit in conjunction with its license to manufacture wine. All registration fees and renewal fees shall be shared equally by the state police and the state tax commission.

(5) The director may enforce the requirements of this section by administrative proceedings or suspend or revoke a wine direct shipper permit, and the director may accept payment of an offer in compromise in lieu of suspension, such payments to be determined by rule promulgated by the director.

(6) Sales and shipments of wine directly to consumers in Idaho from wine manufacturers in Idaho or in another state who do not possess a current wine direct shipper permit are prohibited. Any person who knowingly makes such a shipment is guilty of a misdemeanor.

(7) A licensee who holds a license for the retail sale of wine for consumption off the licensed premises may ship not more than two (2) cases of wine, containing not more than nine (9) liters per case, per shipment, for personal use and not for resale, directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state tax, fees or charges. The sale shall be considered to have occurred in this state.

(8) The shipping container of any wine shipped under this section must be clearly labeled to indicate that the container contains alcoholic beverages and cannot be delivered to a person who is not at least twenty-one (21) years of age.

(9) For wine shipped under this section to an Idaho resident, the delivery person shall:

(a) Have the person who receives the wine shipment sign for it; and

(b) Not make deliveries to anyone who is under twenty-one (21) years of age or to anyone who is visibly intoxicated; and

(c) Keep the signature record for one (1) year.

(10) Sales authorized under this section are sales made by a retailer who is not authorized to sell at wholesale or sales by a winery of wine produced or bottled by the winery.

(11) The director and the state tax commission may promulgate rules to effectuate the purposes of this section and are authorized to exchange necessary information to implement the provisions of this section.

23-1310 — Storage or purchase by distributor — From whom purchased

23-1310. Storage or purchase by distributor — From whom purchased. No distributor may store or purchase wine for purposes of storage or resale unless said wine has been received from persons holding a valid wine importer's license, a valid wine distributor's license, a valid winery license, or a valid bonded wine warehouse license.

23-1311 — Sales by distributors — Restrictions

23-1311. Sales by distributors — Restrictions. No distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, except to the holder of a valid retail wine license or wine by the drink license, or valid wine distributor's license or to the division. Provided however, any distributor may sell any wine produced, manufactured, imported, or bought by such distributor, for use within this state, to a bona fide employee of such distributor. No distributor shall permit, for a consideration, wine to be consumed upon the premises of the distributor.

23-1312 — By the drink liquor retailers may purchase from distributors

23-1312. By the drink liquor retailers may purchase from distributors. Any law to the contrary notwithstanding, including but not limited to section 23-914 , Idaho Code, the holder of a license for the retail sale of liquor by the drink as defined in

chapter 9, title 23 , Idaho Code, is hereby authorized to purchase wine from persons holding valid wine distributor's licenses.

23-1313 — Purchases by retailers

23-1313. Purchases by retailers. No retailer shall purchase or receive wine for resale except from a distributor. Provided, however, that a retailer wholly owned and operated by a licensed winery, which retails exclusively the product of that winery, may receive wine for resale from that winery.

23-1314 — Records and inspection of wineries, importers, bonded wine warehouses, and distributors

23-1314. Records and inspection of wineries, importers, bonded wine warehouses, and distributors.

(1) Every winery, distributor, bonded wine warehouse, and importer shall have, and notify the director of, a place of business within the state of Idaho.

(2) Each winery, distributor and importer shall keep at its place of business a record of its imports into, and sales of wine within, the state of Idaho. The import record shall include the date and quantity of import and the identity of the import seller and the import carrier or transporter. The sale record shall consist of a copy of the monthly report to the state tax commission required pursuant to section 23-1322 , Idaho Code. Each winery, distributor and importer shall keep the record of each sale or import for a period of four (4) years thereafter and shall, on or before the fifteenth day of each month, file the report with the director. The director may require such additional information to be included in such returns as shall assist him in determining whether or not such licensee is complying with this act and whether or not all taxes and fees provided for by this act are being fully paid.

(3) Each bonded wine warehouse shall keep at its place of business a record of its storage and handling of wine. The record shall include the date and quantity of wine stored and handled for each vintner and winery, and the identity of the carrier or transporter handling and storing the wine.

(4) The director shall have the right at any time to make an examination of each winery's, distributor's, bonded wine warehouse's, and importer's books, records and premises, and such other matters as may assist him in verifying the accuracy of such reports.

23-1315 — License fees — County retail license fees — County license required for retailers

23-1315. License fees — County retail license fees — County license required for retailers.

(a) Each importer shall pay to the state of Idaho an annual license fee of three hundred dollars ($300).

(b) Each distributor shall pay to the state of Idaho an annual license fee of three hundred dollars ($300) for each separate warehouse used for the purpose of or in connection with the sale or distribution of wine within this state.

(c) Each winery shall pay to the state an annual license fee of three hundred dollars ($300).

(d) Each retailer and wine by the drink licensee shall pay to the state of Idaho an annual license fee of one hundred dollars ($100) for each premises for which a license is issued for the sale of wine.

(e) In addition to the fee required by subsection (d) of this section, each retailer and wine by the drink licensee shall pay an annual license fee of not to exceed one hundred dollars ($100) to the county in which the licensed premises are located. If the licensed premises are located within the incorporated limits of a city, the licensee shall pay an annual license fee of not to exceed two hundred dollars ($200) to such city. Each city and county within this state are hereby authorized and empowered to determine the license fees to be paid by each retailer and wine by the drink licensee licensed pursuant to the terms and conditions of this act. No wine license issued by the director shall authorize the sale of wine at retail unless such person possesses a county and city license as may be required by the governing board thereof.

(f) Each bonded wine warehouse shall pay to the state of Idaho an annual license fee of three hundred dollars ($300) for each separate warehouse used for the sole purpose of the storage and handling of wine within the state of Idaho.

23-1316 — Expiration and renewal of licenses

23-1316. Expiration and renewal of licenses. All licenses issued pursuant to the provisions of this chapter shall expire at 1:00 o'clock a.m. on the first day of the renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary

license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee, however, shall not be permitted to engage in any activity authorized by the license during the thirty-one (31) day extended time period unless and until the license is renewed. Renewal of such licenses shall be on forms prescribed and furnished by the issuing authority. The renewal form shall be submitted, together with the required license fees, and an affidavit verifying that the information contained in the original application is unchanged, or if there are material changes, indicating such changes.

23-1317 — Transfer of licenses — Fee — Application for approval

23-1317. Transfer of licenses — Fee — Application for approval.

(a) No winery license, wine distributor's license, wine by the drink license, bonded wine warehouse license, or retail wine license may be transferred to another person, including an executor, administrator, or trustee in bankruptcy of the estate of the licensee, unless the transferee shall first have obtained the approval of the director to such transfer upon application containing the substantially same information required of an applicant for a winery license, wine distributor's license, bonded wine warehouse license, or retail wine license, as the case may be. If the transferee possesses all of the qualifications and none of the disqualifications for such license, the director shall approve the transfer by issuing a license to the transferee. The fee for each transfer of a winery license, wine distributor's license, wine by the drink license, bonded wine warehouse license, or a retail wine license shall be twenty dollars ($20.00), which fee shall accompany the application for transfer.

(b) Application to transfer a winery license, wine distributor's license, wine by the drink license, bonded wine warehouse license, or retail wine license from one location to another shall be made to the director on forms prescribed and furnished by the director. The director shall approve any such transfer upon submission of the application and receipt by the director of a transfer fee of twenty dollars ($20.00).

(c) The director, in his discretion, may deny the transfer of a license during the pendency of any proceedings for suspension or revocation instituted pursuant to the provisions of this chapter.

23-1318 — County and city regulatory ordinances authorized

23-1318. County and city regulatory ordinances authorized. The governing board of any county or city within this state is hereby authorized and empowered to adopt such ordinances and resolutions as may be deemed necessary by the governing board of said county or city in the interests of public health and welfare or for the orderly, moral and responsible conduct of the business of selling and distributing wine within the boundaries of such city or county, including but not limited to hours, days, places and conditions of sale and advertising practices.

23-1319 — Excise tax — Sales included — Refund for export sales — Refund for breakage or spoilage — Distribution of revenue

23-1319. Excise tax — Sales included — Refund for export sales — Refund for breakage or spoilage — Distribution of revenue. Upon all wines sold by a distributor or winery to a retailer or consumer and upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A , Idaho Code, for use within the state of Idaho pursuant to this chapter, there is hereby imposed an excise tax of forty-five cents (45¢) per gallon. Sales of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from the taxes on wine imposed by this chapter.

(a) Every sale of wine by a distributor to a retailer shall constitute a sale of wine for resale or consumption in this state, whether the sale is made within or without this state, and the distributor shall be liable for the payment of taxes. In every sale of wine by a winery through any of its licensed retail outlets, the winery shall be liable for payment of taxes imposed by this section.

(b) When wine has been destroyed by breakage or has spoiled or otherwise become unfit for beverage purposes prior to payment of taxes on it, the distributor, upon satisfactory proof of destruction or spoilage, shall be entitled to deduct from existing inventories, subject to tax, the amount of wine so destroyed or spoiled.

(c) If the state tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records, and the excess

amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators, or executors. The commission is authorized and the state board of tax appeals is authorized to order the commission in proper cases to credit or refund such amounts whether or not the payments have been made under protest and certify the refund to the state board of examiners.

(d) No credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration of that period a claim is filed by the taxpayer. The three (3) year period allowed by this subsection for making refunds or credit claims shall not apply in cases where the state tax commission asserts a deficiency of tax imposed by law, and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to deficiencies must do so within the time limits elsewhere prescribed by law.

(e) All revenue received pursuant to this chapter shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims as authorized in subsection (c) of this section and those moneys are continuously appropriated.

(2) The balance remaining after distributing the amount in paragraph (1) of this subsection shall be distributed as follows:

(i) Twelve percent (12%) shall be distributed to the substance abuse treatment fund, which is created in section 23-408 , Idaho Code; (ii) Five percent (5%), based on the sale of out-of-state wine, shall be distributed to the Idaho grape growers and wine producers account; (iii) Up to eighty-eight percent (88%), based on the sale of Idaho wine, shall be distributed to the Idaho grape growers and wine producers account as follows: 1. In fiscal year 2022, twenty-six percent (26%) based on the sale of Idaho wine; 2. In fiscal year 2023, sixty-two percent (62%) based on the sale of Idaho wine; and 3. In fiscal year 2024 and thereafter, eighty-eight percent (88%) based on the sale of Idaho wine. (iv) The remainder shall be distributed to the general fund.

(f) Any person who is not a distributor or winery but who makes, whether as principal, agent, or broker, any sales of wine not otherwise taxed under this section and not exempt from such tax shall be liable for payment of taxes imposed by this section. This subsection shall not impose tax on wine sold pursuant to section 23-1336 , Idaho Code.

23-1320 — Security for tax

23-1320. Security for tax. The state tax commission, whenever it deems it necessary to insure compliance with this act, may require any person subject to this act to place with it such security as it may determine. The amount of the necessary security shall be fixed by the state tax commission but, except as provided hereafter, shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this act. In the case of persons habitually delinquent in their obligations under this act, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this act. The amount of the security may be increased or decreased by the state tax commission at any time, subject to the limitations set forth herein. The state tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale. Such notice may be given personally or by mail addressed to the person at the address furnished to the state tax commission and as it appears in the records of the state tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

23-1322 — Monthly reports of sales — Payment of excise tax with report

23-1322. Monthly reports of sales — Payment of excise tax with report. Each person liable for the payment of taxes on wine as provided for in section 23-1319 , Idaho Code, shall, on or before the fifteenth day of each month, or for such other period as the state tax commission may prescribe by rule, file a written report with the state tax commission showing all sales of wine for resale or consumption in this state made by such person during the calendar month or other period immediately preceding. Taxes payable with respect to such sale shall be paid by the person liable therefor at the time such report is filed.

23-1322A — Collection and enforcement

23-1322A. Collection and enforcement. The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3042 through 63-3065A , inclusive, and sections 63-3068 and 63-3075 , Idaho Code, shall apply and be

available to the state tax commission for enforcement and collection of the tax imposed by this chapter, and said sections shall, for this purpose, be considered part of this act. Any reference to taxable year in the income tax act shall, for the purposes of this act, be considered a taxable period.

23-1323 — Rules and regulations concerning excise tax — Power of tax commission

23-1323. Rules and regulations concerning excise tax — Power of tax commission. The state tax commission shall be, and it is hereby authorized to adopt and promulgate such rules and regulations as it may be necessary to assure payment of taxes on wine, including but not limited to, rules and regulations prescribing the form and content of monthly reports required; requiring the persons liable for payment of taxes on wine to show on such monthly reports information concerning their inventories, purchases, sales and shipments of wine, requiring monthly informational reports from distributors concerning their inventories, purchases, sales and shipments of wine; requiring reports from carriers, both public and private, concerning deliveries of wine made in this state by such carriers, and shipments of wine made by such carriers out of this state; requiring distributors and persons liable for payment of taxes on wine to maintain complete and accurate books, records and accounts on transactions involving wine; and establishing grounds upon which delay in filing reports and paying taxes imposed upon wine may be considered justifiable and without fault on the part of the person liable therefor.

23-1324 — license and transfer fees — alcohol beverage control fund

23-1324. license and transfer fees — alcohol beverage control fund. All moneys from license and transfer fees that are collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the alcohol beverage control fund created in section 23-940 , Idaho Code. All other moneys collected by the director pursuant to the provisions of this chapter shall be paid over to the state treasurer for deposit in the general fund.

23-1325 — Financial interest in or aid to retailers prohibited — Certain aid permitted

23-1325. Financial interest in or aid to retailers prohibited — Certain aid permitted.

(1) It shall be unlawful for any importer, distributor, vintner or winery, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

(a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except that this subsection (1)(a) shall not apply to any winery, as defined in section 23-1303 , Idaho Code, or to property that has been owned or controlled continuously for more than one (1) year prior to July 1, 1975; or

(b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of wine; or

(c) To aid or assist any retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, wine menus or wine lists, services, or other thing of value which may be used in conducting the retailer's retail wine business, except as expressly permitted by this chapter; or

(d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or

(e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.

(2) An importer, distributor, vintner or winery as an incident to merchandising in the ordinary course of business, and if available to all licensed retailers without discrimination, may sell to a retailer equipment, supplies or clothing which may be used in conducting the retailer's retail wine business. A winery, vintner, importer or distributor may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other wineries, vintners, importers or distributors. In no event shall the sales price of such equipment or supplies be less than the reasonable value of such equipment or supplies.

(3) Notwithstanding the provisions of subsection (2) of this section, a vintner, winery, importer or distributor, as an incident to merchandising in the ordinary course of business, and if available to all retailers without discrimination, may lend, give, furnish or sell to a retailer, the following items:

(a) Those services, equipment, brochures and recipes authorized under the provisions of sections 23-1325A and 23-1325B , Idaho Code;

(b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The importer, distributor, vintner or winery shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;

(c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;

(d) Items such as sport schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for wine prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;

(e) Temporary signs or banners displaying a vintner's, winery's or distributor's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.

(4) A distributor may perform services incident to or in connection with the stocking, rotation and restocking of wine sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, salesroom shelves or refrigerating units, including the marking or remarking of containers of such wine to indicate the selling price as established by the retailer and to the arranging, rearranging, or relocating of advertising displays referred to in this section. A distributor may, with the permission of the retailer and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all wine upon shelves of the retailer. Labor performed or schematics prepared by the distributor relating to conduct authorized pursuant to the provisions of this subsection (4) shall not constitute prohibited conduct.

(5) An importer, distributor, vintner or winery may furnish or give to a retailer authorized to sell wine for consumption on the licensed premises, for sampling purposes only, a container of wine, containing not more than sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE–FOR SAMPLING PURPOSES ONLY."

(6) A licensed winery may aid or assist a licensed retail wine outlet which retails exclusively the wine product of that winery and which outlet is wholly owned and operated by that winery. Two (2) or more wineries may use the same location for their respective retail wine outlets provided each outlet holds a separate retail wine license or wine by the drink license.

(7) Every violation of the provisions of this section by an importer, distributor, vintner or winery in which a licensed retailer shall have actively participated shall constitute a violation on the part of such licensed retailer.

23-1325A — Services permitted incident to stocking, rotation and restocking of wine

23-1325A. Services permitted incident to stocking, rotation and restocking of wine. For the purposes of section 23-1325 (4), Idaho Code, a distributor may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all wine upon the shelves of the retailer. Labor performed or schematics prepared by the distributor relating to conduct authorized pursuant to the provisions of this section shall not constitute prohibited conduct or unlawful aid to a retailer.

23-1325B — Services permitted incident to wine dispensing systems — Certain advertising materials permitted

23-1325B. Services permitted incident to wine dispensing systems — Certain advertising materials permitted.

(1) To the extent permitted by federal law and regulations adopted pursuant thereto, a distributor may furnish, install and perform repair services on wine dispensing systems on the premises of a retailer. The distributor shall collect from the retailer the reasonable value thereof, which value shall not be less than the cost of such system or service to the distributor. Dispensing systems may include, but shall not be limited to, tapping devices, spigots, valves, hose, washers, couplings, clamps, air hose, vents, faucets and pumping devices and CO 2 regulators. A distributor may perform cleaning and sanitary services relating to the dispensing system without charge.

(2) Notwithstanding the provisions of section 23-1325 , Idaho Code, a distributor may furnish to the retailer, without charge, recipes and brochures explaining wine and other products.

(3) Labor performed or equipment, brochures or recipes furnished pursuant to the provisions of this section shall not constitute prohibited conduct or unlawful aid to a retailer.

23-1325C — Wine sample tasting requirements and limitations for events on retail wine license premises

23-1325C. Wine sample tasting requirements and limitations for events on retail wine license premises.

(1) Vintners, wineries and distributors may conduct or assist a retail wine licensee at a wine sample tasting on premises not licensed for the sale of wine by the individual glass or opened bottle for consumption on the premises or on the premises of the holder of a wine by the drink license for the purpose of promoting their wine products to the public. The holder of a retail wine license or a wine by the drink license may also conduct wine sample tasting events, with or without the assistance of a vintner, winery or distributor in accordance with this section.

(2) A retail wine licensee shall not be required to hold a wine by the drink license for the purpose of conducting or permitting wine sample tasting events on the premises in accordance with this section unless a charge or other consideration is required of the customer by the retailer in exchange for such wine sample.

(3) Sample tasting events permitted pursuant to this section shall be conducted subject to all of the following requirements:

(a) Sample sizes. The size of each sample of wine shall not exceed one and one-half (1 1/2) ounces.

(b) Identified tasting area. The retail wine licensee who conducts tastings or who allows a vintner, winery or distributor to conduct tastings on the retail wine premises shall identify a specific tasting area or areas. Such area or areas shall be of a size and design such that the retail wine licensee and the persons conducting the tasting can observe and control persons in the area to ensure that no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer shall keep on file at the premises a floor plan identifying the tasting area or areas. If a retailer does not have an identified tasting area or areas, the director may require prior approval of an area or areas before the retailer conducts any more tastings or allows any more tastings to be conducted by the vintner, winery or distributor on the premises.

(c) Number of in-store tastings. Although there is no limit on the number of tastings a retailer may conduct without the assistance of a vintner, winery or distributor, the retailer shall not permit a vintner, winery or distributor to conduct, or assist in conducting, tastings on the premises of the same licensee more than eight (8) times per calendar year.

(d) Vintner, winery or distributor conducted tastings. A vintner, winery or distributor may hold tastings on consecutive days on one (1) retail premises, provided the tastings shall not exceed two (2) consecutive days. Tastings shall be conducted at least four (4) weeks apart. If a vintner, winery or distributor holds tastings on two (2) consecutive days, they shall not hold another tasting on those retail premises for at least four (4) weeks.

(e) Server requirements. Persons serving or pouring wine at wine tastings on premises for which a wine by the drink license has not been issued must be at least twenty-one (21) years of age.

(4) Vintner, winery or distributor conducted sample tastings. A vintner, winery or distributor may conduct wine sample tastings on premises licensed for the sale of wine for products produced or sold by the vintner, winery or distributor. The vintner, winery or distributor conducting the wine sample tasting shall, in addition to compliance with other requirements of this section, comply with all of the following requirements:

(a) Provide the product to be tasted, and remove any remaining product at the end of the tasting.

(b) Provide or pay for a person to serve the wine. The server must be an employee or agent of the vintner, winery or distributor and shall not be an employee or agent of a retailer. The vintner, winery or distributor shall not compensate any employee or agent of the retail licensee to participate in the tasting.

(c) The vintner, winery or distributor shall keep a record of each tasting it conducts, including the date and location of each event and the products served.

(5) Retailer conducted wine sample tastings. Retail wine licensees and wine by the drink licensees may conduct wine sample tastings on their licensed premises and may:

(a) Accept assistance from a vintner, winery or distributor if:

(i) The only assistance provided is an employee to provide information or education relating to the product being sampled; (ii) The retailer pays for the wine; and (iii) The retailer is responsible for any advertising.

(b) Conduct an unlimited number of wine sample tastings on the premises if there is no vintner, winery or distributor providing assistance for the event. The retailer may advertise such events.

(6) Notwithstanding any other provision of law, participation by a vintner, winery or distributor in a wine sample tasting event, if expressly authorized by this section, shall not constitute prohibited conduct or unlawful aid to a retailer.

23-1326 — Credit sales to retailers prohibited

23-1326. Credit sales to retailers prohibited.

(1) No sale or delivery of wine shall be made to any retailer, except for cash paid at the time of or prior to delivery thereof, or except as provided by electronic funds transfer in accordance with subsection (3) of this section, and in no event shall any distributor extend any credit on account of such wine to a retailer, nor shall any retailer accept or receive delivery of such wine except when payment therefor is made in cash at the time of or prior to delivery thereof, or by electronic funds transfer in accordance with subsection (3) of this section.

(2) The acceptance of a first party check from a retailer by a distributor, or the use of a debit card by a licensed retailer, shall not be deemed an extension of or acceptance of credit pursuant to this section.

(3) The acceptance and use of an electronic funds transfer shall not be deemed an extension or acceptance of credit pursuant to this section, provided such transfer is initiated and completed promptly and in no event completed later than five (5) business days following delivery of such wine. Any attempt by a licensed retailer to delay payment of an electronic funds transfer pursuant to this section for any period of time beyond the time set forth in this subsection, shall be deemed an acceptance of credit by the licensed retailer.

(4) Any extension or acceptance of credit in violation of the provisions of this section shall constitute the giving and receiving of aid or assistance to or by a licensed retailer prohibited by the provisions of section 23-1325 , Idaho Code.

23-1327 — Sale of wine in original container and size of containers

23-1327. Sale of wine in original container and size of containers. No distributor shall purchase, receive, or sell any wine except in the original container as prepared for the market by the importer or manufacturer. No importer or distributor shall, without permission of the director, adopt or use any container for wine that will contain in excess of fifteen (15) gallons of wine.

23-1328 — Retailer's name on labels prohibited — Discrimination among retailers prohibited

23-1328. Retailer's name on labels prohibited — Discrimination among retailers prohibited. No label on a wine container shall be used or placed thereon which indicates that a retailer is the producer or the bottler thereof or which contains the name of a retailer in any manner, except in the case of wineries licensed under this chapter, in which case such winery may sell a product processed and bottled by or for that winery upon satisfaction of all terms and conditions of this chapter relating to licensure for retail sale of wine. No distributor shall restrict the sale of wine for which the distributor has filed a price schedule in accordance with the provisions of this act to one retailer or to retail premises under common ownership or associated together in, by, or through a buying organization or agency which represents a common identity to the public; nor shall such distributor refuse to sell or distribute wine to a retailer on terms and conditions different from those terms and conditions upon which said distributor sells or distributes wine to other retailers.

23-1328A — Prohibition of certain trade practices between vintners, wineries, importers or dealers and distributors

23-1328A. Prohibition of certain trade practices between vintners, wineries, importers or dealers and distributors.

(1) It shall be unlawful for any vintners, winery, importer or dealer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

(a) To require, by agreement or otherwise, that any distributors engaged in the sale or distribution of wine in the state of Idaho purchase any such wine or other distributed products from such person to the exclusion in whole or in part of wine or other products made or imported by other vintners, wineries, importers or dealers;

(b) To induce, by any means, any distributor engaged in the sale or distribution of wine to purchase from or distribute the wine or other products of any vintner, winery, importer or dealer to the exclusion of the wine or products of other vintners, wineries, importers or dealers by any means, including, but not limited to the vintner's, winery's, importer's or dealer's acquisition of any interest in the distributor's license, or by acquiring any interest in the real or personal property owned, occupied, or used by the distributor;

(c) To discriminate in price, allowance, rebate, refund, commission, discount, or service between a distributor purchasing wine or a distributor purchasing other products;

(d) To threaten any distributor with any discrimination prohibited under subsection (1) (c) of this section, with the purpose or effect of changing or maintaining resale prices of the vintner, winery, importer or dealer;

(e) To impose conditions or restrictions on a distributor not generally imposed on other distributors; or

(f) To cause a termination, cancellation, nonrenewal or substantial change in competitive circumstances in the relationship with the distributor without providing at least ninety (90) days' written notice of the termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the distributor has ninety (90) days from the date of receipt by said distributor of the vintner's, winery's, importer's or dealer's notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety (90) days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due for the purchase of product, the distributor shall be entitled to written notice of such default, and shall have twenty (20) days in which to remedy such default from the date of delivery or posting of such notice.

(2) Nothing in this section shall be deemed to prohibit vintners, wineries, importers or dealers from selecting their own customers in bona fide transactions not in restraint of trade.

23-1329 — Schedules of prices — Filing by importers and distributors — Modification or withdrawal

23-1329. Schedules of prices — Filing by importers and distributors — Modification or withdrawal. Each importer and distributor shall file with the director a written schedule of prices to be charged by such person for wine imported into or sold within this state for resale therein. Such schedule of prices shall be uniform for buyers in the same trade area within this state, and shall set forth the following:

(a) All brands and types of products offered for sale;

(b) The delivered sale price thereof in the several trade areas of the state; and

(c) Any allowance granted for returned containers. Such schedule of prices so filed may be changed or modified from time to time by filing with the director a new schedule of prices, not less than ten (10) days prior to the last day of the filing calendar month, becoming effective on the first day of the succeeding calendar month. Upon the filing of said new prices, the director shall give notice thereof to all importers and distributors. Such schedule of prices so filed may not be withdrawn prior to its effective date, and upon becoming effective shall remain in effect as follows:

(i) an increase in prices, for a minimum period of thirty (30) days; (ii) a reduction in prices for a minimum period of six (6) months. Upon the filing of the original schedule of prices, and after the effective date of any schedule of prices amendatory thereto, all prices therein stated shall be strictly adhered to. Amendatory schedules shall recite the information required in the above subsections (a), (b) and (c).

23-1330 — Rules and regulations by director

23-1330. Rules and regulations by director. For the purpose of the administration of this act, the director shall make, promulgate, and publish such rules and regulations as the director may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. All rules and regulations adopted pursuant to the terms of this act shall be adopted in accordance with the subject to the provisions of chapter 52, title 67 , Idaho Code.

23-1331 — Suspension, revocation, and refusal to renew licenses and permits — Monetary penalty

23-1331. Suspension, revocation, and refusal to renew licenses and permits — Monetary penalty.

(1) The director may suspend, revoke, or refuse to renew a retail wine license, wine by the drink license, wine distributor's license, wine importer's license, winery license, bonded wine warehouse license, wine direct shipper's permit or vintner's license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director or the state tax commission pursuant to the terms and conditions of this chapter. Manufacturing or bottling functions of a winery shall not be subject to suspension, revocation or nonrenewal of a license, except for violations of law directly related to the manufacturing or bottling activities of the winery. Procedures for the suspension, revocation or refusal to grant or renew licenses issued under this chapter shall be in accordance with the provisions of chapter 52, title 67 , Idaho Code.

(2) When the director determines to suspend such license, the affected licensee may petition the director prior to the effective date of the suspension requesting that a monetary payment be allowed in lieu of the license suspension. If the director determines such payment to be consistent with the purpose of the laws of the state of Idaho and is in the public interest, he shall establish a monetary payment in an amount not to exceed five thousand dollars ($5,000). The licensee may reject the payment amount determined by the director, and instead be subject to the suspension provisions of subsection (1) of this section. Upon payment of the amount established, the director shall cancel the suspension period. The director shall cause any payment to be paid to the treasurer of the state of Idaho for credit to the state's general account in the state operating fund.

(3) The suspension of a license for the sale of liquor or beer shall automatically result in the suspension of any license for the sale of wine held by the same licensee and issued for the same premises or location. Such additional suspension shall be equal in length to and run concurrently with the period of the original suspension.

(4) When a proceeding to revoke or suspend a license has been or is about to be instituted during the time a renewal application of such license is pending before the director, the director shall renew the license notwithstanding the pending proceedings, but such renewed license may be revoked or suspended without hearing if and when the previous license is, for any reason, revoked or suspended.

23-1332 — Sale by by-the-drink liquor licensees

23-1332. Sale by by-the-drink liquor licensees. Retailers holding valid licenses for the retail sale of liquor by the drink pursuant to chapter 9, title 23 , Idaho Code, may sell wine for consumption on or off the licensed premises. Persons holding a valid wine by the drink license may sell wine for consumption on the premises only. Retailers who do not possess a valid license for the retail sale of liquor by the drink, or retailers who do not have a valid wine by the drink license, shall not permit consumption of wine on the licensed premises and may sell the wine only in its original unbroken container. Provided however, that wineries whose business does not include the sale of wine by the drink may provide free single-serving samples of two (2) ounces or less to customers for the purpose of sales promotion upon the winery premises or upon the premises of a retail wine outlet which retails exclusively the wine product of that winery and which is wholly owned and operated thereby. Wine sold for consumption or dispensed on the licensed premises may be sold, consumed or dispensed only during hours that beer can be sold, consumed or dispensed pursuant to the laws of this state. Wine sold by the retailer for consumption off the premises of the retailer may be sold only during the hours that beer may be sold pursuant to the laws of this state.

23-1333 — Open or unsealed containers of wine in motor vehicles on highways prohibited

23-1333. Open or unsealed containers of wine in motor vehicles on highways prohibited. No person may, while operating or riding in or upon a motor vehicle upon a public highway of this state, have in his possession any wine in an open or unsealed container of any kind.

23-1334 — Minors — Authorization to deliver

23-1334. Minors — Authorization to deliver.

(a) The prohibitions on possession of wine by any person under the age of twenty-one (21) years do not apply to possession by a person under the age of twenty-one (21) years making a delivery in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of twenty-one (21) years is in a private residence accompanied by his parent or guardian and with such parent's or guardian's consent.

(b) Any person who shall, by any means, represent to any retailer or distributor or the agent or employee of such retailer or distributor, that any other person is twenty-one (21) years or more of age, when in fact such other person is under the age of twenty-one (21) years, for the purpose of entering licensed premises or inducing such retailer or distributor, or the agent or employee of such retailer or distributor, to sell, serve, or dispense wine to such other person shall be guilty of a misdemeanor.

23-1335 — Violations of act misdemeanors

23-1335. Violations of act misdemeanors. Any person who violates any of the provisions of this act or fails to comply with any of the terms and conditions of this act shall be guilty of a misdemeanor.

23-1336 — Wine sold or donated to persons or associations for benevolent, charitable or public purposes

23-1336. Wine sold or donated to persons or associations for benevolent, charitable or public purposes. In the event that wine has been sold or donated to a person or association which desires to dispense or sell such wine and to donate the proceeds from the sale or dispensing thereof for benevolent, charitable or public purposes, the director may issue a permit authorizing such sale or dispensing of wine by such person or association if the director is satisfied that said proceeds, after deducting reasonable expenses incurred in conjunction with the sale or dispensing thereof, will be donated for such benevolent, charitable or public purpose. The director shall prescribe the form of the application for such permit, which application may require disclosure of names of sponsors; donors, quantities and types of wine products donated; the retailer, if any, designated by such person or association to receive, store or dispense donated wine; the dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days; and such other information as the director may require. The director shall collect a twenty dollar ($20.00) fee for the event for which the permit is to be effective. The director may require that the applicant submit a report to the director after the benevolent, charitable or public purpose event showing the disposition of funds from the event. Should the director determine that the applicant or its representatives is violating, or has in the past violated, any law pertaining to the dispensing or sale of wine by a licensed retailer relating to hours of sale, or relating to dispensing wine to underaged persons, or has failed in the past to submit such information as may have been requested by the director, such permit may be summarily suspended by the director, prior to hearing, or may be denied pending a hearing. A licensed retailer may, on behalf of the permittee, receive or store wine to be used at the event, and may dispense such wine to attendees of the benevolent, charitable or public purpose event for which the permit has been issued.

23-1337 — Alcohol beverage catering permit

23-1337. Alcohol beverage catering permit. Any person who is the holder of an Idaho winery license shall be eligible to obtain an alcohol beverage catering permit. Two (2) or more wineries may use a winery's licensed premises to host an event under an alcohol beverage catering permit to serve and sell their respective wines at that event.

23-1338 — Wine product service and sales — Sponsored events

23-1338. Wine product service and sales — Sponsored events.

(1) Any person who is the holder of an Idaho winery license is authorized to serve or sell any wine product of that winery at events of seven (7) days' duration or less sponsored by any group, organization, person or political subdivision. Each participating winery must make its own arrangements with the sponsoring group, organization, person or political subdivision. Service and sales under the authority of this section may occur only in counties that permit the sale of wine in accordance with section 23-1304 , Idaho Code, and any service or sales under the provisions of this section must comply with all applicable limitations and requirements regarding day and hour of sale, age and condition of purchasers and all other requirements of any regulatory ordinance adopted pursuant to the authority of section 23-1318 , Idaho Code, by the city or county in whose jurisdiction the event is to take place.

(2) At least seven (7) days prior to the date on which the sponsored event is to commence, the winery shall notify by electronic mail the Idaho state police, alcohol beverage control bureau, and the chief of police of the incorporated city in which the sponsored event will be held, if the event is to be held in an incorporated city, or the sheriff of the county in which the sponsored event is to be held, if the event will not be held in an incorporated city, that wine will be served or sold by the winery at the sponsored event. The notice shall provide the following information:

(a) The name and address of the winery and the number of its state winery license;

(b) The dates and hours that wine will be served or sold;

(c) The name of the group, organization, person or political subdivision sponsoring the event; and

(d) The address at which the wine will be served or sold, and if a public building, the rooms in which the wine will be served or sold.

(3) Within three (3) business days after receiving the notice, the alcohol beverage control bureau shall respond to the winery. An approval by the alcohol beverage control bureau shall serve as authorization for the event, and shall be displayed during all hours that wine is served or sold at the sponsored event.

(4) Neither the winery nor any person owning an interest in the winery, nor any employee, contractor or business associate of the winery shall qualify as an event sponsor under the provisions of this section.

(5) Neither a city nor a county license or permit is required for the activities authorized pursuant to the provisions of this section.

CHAPTER 14

23-1401 — Definitions

23-1401. Definitions. As used in this chapter:

(1) "Alcoholic beverages" means such beverages as defined in section 23-105 , Idaho Code, as alcoholic liquor, including alcohol, spirits, wine or any combination thereof, and beverages defined in section 23-1001 , Idaho Code, as beer.

(2) "Legal drinking age" means the age when a person is legally allowed to purchase or consume any alcoholic beverage, as provided in section 23-615 , Idaho Code.

(3) "Hospitality cabinet" means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior portion containing alcoholic beverages is restricted by means of a locking device that requires the use of a key, magnetic card, or similar device.

(4) "Qualified facility" means a hotel, inn, or motel that is licensed to sell alcoholic beverages for on-premises consumption and that contains guest room accommodations. It shall also include condominiums owned or managed by an otherwise qualified facility.

(5) "Qualified registered guest" means each person of legal drinking age who signs the guest register of a qualified facility or takes some other equivalent action for the purpose of registering as a guest of such qualified facility.

23-1402 — Hospitality cabinet sales

23-1402. Hospitality cabinet sales. Notwithstanding any other statute, any qualified facility, which is licensed to sell any alcoholic beverage on its premises, may also sell such beverages in sealed containers in individual portions to its qualified registered guests by means of a hospitality cabinet located in the rooms of these qualified registered guests, provided all conditions of this chapter are met.

23-1403 — Hospitality cabinet contents

23-1403. Hospitality cabinet contents.

(1) The type of alcoholic beverages contained in any hospitality cabinet of any qualified facility shall be limited to those beverages licensed for sale on such premises.

(2) Alcoholic beverage container sizes shall conform as follows:

(a) Distilled spirits, "miniature" bottles of fifty (50) milliliters or less,

(b) Wine, one-half (1/2) bottles, splits or less, and

(c) Beer, twelve (12) ounces or less.

(3) The hospitality cabinet shall contain no more than thirty (30) individual portions of alcoholic beverages at any one time.

23-1404 — Hospitality cabinet

23-1404. Hospitality cabinet. A hospitality cabinet may be part of another furniture unit or device, whether refrigerated in whole or in part or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in qualified facility guest rooms. However, in that event, the portion of the hospitality cabinet or similar device in which alcoholic beverages are stored shall be a hospitality cabinet as defined in section 23-1401 , Idaho Code.

23-1405 — Access restrictions

23-1405. Access restrictions.

(1) Those portions of a hospitality cabinet containing alcoholic beverages must remain locked at all times when a guest room is unrented, except for taking inventory or restocking and replenishing the hospitality cabinet.

(2) Access to a hospitality cabinet in a particular guest room shall be provided, whether by furnishing a key, magnetic card or similar device, only to a qualified registered guest of legal drinking age, if any, registered to stay in the guest room.

(3) Before providing a key, magnetic card or similar device required to obtain access to the hospitality cabinet in a particular guest room to the qualified registered guest, the licensee shall verify that such qualified registered guest is of legal drinking age.

(4) A key, magnetic card or similar device required to obtain access to the hospitality cabinet in a particular guest room shall only be given to the qualified registered guest if requested by that registered guest and if such guest is not visibly or obviously intoxicated.

23-1406 — Storage and restocking

23-1406. Storage and restocking.

(1) All alcoholic beverages, which are used to restock and replenish a facility's hospitality cabinets, shall be kept locked in a separate, secure room or cabinet, except when the hospitality cabinets are being restocked and replenished.

(2) The hospitality cabinets can be restocked and replenished with alcoholic beverages only during those hours when liquor can be sold as provided in section 23-927 , Idaho Code.

23-1407 — County option — Resolution of county commissioners

23-1407. County option — Resolution of county commissioners. There is hereby granted to the board of county commissioners of each of the several counties of the state the right and authority to disallow the use of hospitality cabinets, as defined in this chapter, within the borders of their respective counties. This right and authority may be exercised by the board of county commissioners by resolution, regularly adopted, which provides that hospitality cabinets, as defined in this chapter, shall be disallowed within the county. The resolution shall take effect three (3) months after receipt of certification thereof by the director of the Idaho state police and notification of qualified facilities within the county. Hospitality cabinets shall remain disallowed within the county so long as the resolution remains in effect.

23-1408 — Director to promulgate rules

23-1408. Director to promulgate rules. For the purpose of the administration of this chapter, the director of the Idaho state police shall promulgate and publish such rules as the director may deem necessary for carrying out the provisions of this chapter.

23-1409 — Short title

23-1409. Short title. This act shall be known as the "Hospitality Cabinet Act of 1989."

Title 49 — Motor Vehicles

CHAPTER 1

49-101 — Definitions

49-101. Definitions. Words and phrases used in this title are defined in sections 49-102 through 49-127 , Idaho Code. Words used in the masculine gender include the feminine gender, and the singular number includes the plural, as well as the plural the singular.

49-102 — Definitions — A

49-102. Definitions — A.

(1) "Abandon" means to leave a vehicle on private property without the permission of the person having rights to the possession of the property, or on a highway or other property open to the public for the purposes of vehicular traffic or parking, or on or within the right-of-way of any highway, for twenty-four (24) hours or longer.

(2) "Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or on the property of another without the consent of the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance.

(3) "Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment.

(4) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or the vehicle moving.

(5) "Administrator" means the federal highway administrator, the chief executive of the federal highway administration, an agency within the U.S. department of transportation.

(6) "Age of a motor vehicle" means the age determined by subtracting the manufacturer's year designation of the vehicle from the year in which the designated registration fee is paid. If the vehicle has the same manufacturer's year designation as the year in which the fee is paid, or if a vehicle has a manufacturer's year designation later than the year in which the fee is paid, the vehicle shall be deemed to be one (1) year old.

(7) "Agricultural products" means the following unprocessed products:

(a) Agricultural, horticultural, floricultural and viticultural products;

(b) Fruits and vegetable products;

(c) Field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant by-products, plant waste and plant compost;

(d) Livestock, dairy animals, swine, furbearing animals, poultry, eggs, fish and other aquatic species;

(e) Other animals, animal products and animal by-products, animal waste and animal compost; and

(f) Bees, bee products and bee by-products.

(8) "Air-conditioning equipment" means mechanical vapor compression refrigeration equipment that is used to cool the driver's or passenger's compartment of any motor vehicle.

(9) "Alcohol" or "alcoholic beverage" means:

(a) Beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code;

(b) Wine of not less than one-half of a percent (0.5%) of alcohol by volume; or

(c) Distilled spirits as defined in 26 U.S.C. 5002(a)(8), of the Internal Revenue Code.

(10) "Alley" means a public way of limited use intended only to provide access to the rear or side of lots or buildings in urban districts.

(11) "All-terrain vehicle" or "ATV" means an all-terrain vehicle or ATV as defined in section 67-7101 , Idaho Code.

(12) "Amateur radio operator." (See "Radio operator, amateur," section 49-119 , Idaho Code)

(13) "Ambulance" means a motor vehicle designed and used primarily for the transportation of injured, sick, or deceased persons on stretchers, cots, beds, or other devices for carrying persons in a prone position.

(14) "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a driver's license.

(15) "Approved driver training course" means a training course from a school licensed under the provisions of chapter 54, title 54 , Idaho Code, or a driver training course approved by another United States jurisdiction, provided the course was taken while an individual was a resident of that United States jurisdiction.

(16) "Approved testing agency" means a person, firm, association, partnership or corporation approved by the director of the Idaho state police that is:

(a) In the business of testing equipment and systems;

(b) Recognized by the director as being qualified and equipped to do experimental testing; and

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry.

(17) "Armed forces" means the army, navy, marine corps, coast guard, space force, and the air force of the United States.

(18) "Authorized emergency vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(19) "Authorized officer" means any member of the Idaho state police, or any regularly employed and salaried deputy sheriff, or other county employee designated to perform the function of removing abandoned vehicles or junk vehicles by the board of county commissioners of the county in which a vehicle is located, or any regularly employed and salaried city peace officer or other city employee designated to perform the function of removing abandoned vehicles or junk vehicles by the city council, or a qualified person deputized or appointed by the proper authority as reserve deputy sheriff or city policeman, authorized within the jurisdiction in which the abandoned vehicle or junk vehicle is located.

(20) "Authorized transportation department employee" means any employee appointed by the board to perform duties relating to enforcement of vehicle laws as have been specifically defined and approved by order of the board pursuant to section 40-510 , Idaho Code.

(21) "Auto transporter" means a vehicle combination constructed for the purpose of transporting vehicles.

(22) "Autocycle" means a motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and that has a steering wheel and seating that does not require the operator to straddle or sit astride.

49-103 — Definitions — B

49-103. Definitions — B.

(1) "Bicycle" means every vehicle propelled exclusively by human power upon which any person may ride, having two (2) tandem wheels, and except scooters and similar devices.

(2) "Board" means the Idaho transportation board.

(3) "Boat transporter" means any vehicle combination designed and used specifically to transport assembled boats and boat hulls.

(4) "Boot" means a device used by a towing company or other entity to temporarily immobilize or disable a motor vehicle for purposes of enforcing parking restrictions.

(5) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, but not resale, of a new vehicle, and who is not:

(a) A representative or an agent or employee of a representative;

(b) A distributor, agent or employee of a distributor; or

(c) At any point in the transaction, the owner of the vehicle involved in the transaction.

(6) "Bus" means every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "bus" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(7) "Business district." (See "District", section 49-105 , Idaho Code)

(8) "Buy." (See "Sell", "sold", and "purchase", section 49-120 , Idaho Code)

49-104 — Definitions — C

49-104. Definitions — C.

(1) "Cancellation of driver's license" means the annulment or termination by formal action of the department of a person's driver's license because of some error or defect in the driver's license or because the licensee is no longer entitled to the driver's license. The cancellation of a driver's license is without prejudice and after compliance with requirements, the individual may apply for a new driver's license at any time after cancellation.

(2) "Caravaning" means the transportation of any motor vehicle into, out of, or within the state operating on its own wheels or in tow for the purpose of sale or offer of sale by any agent, dealer, manufacturer's representative, purchaser, or prospective purchaser, regardless of residence unless the motor vehicle is licensed by the state of Idaho, or is owned by an automobile dealer, duly licensed as a dealer by this state. It shall also be considered as the transportation of property for hire by a motor vehicle upon the highways of this state.

(3) "Certificate of liability insurance" means a certificate of liability insurance issued by an insurance company authorized to do business in this state or a certificate of liability insurance issued by the department of insurance which demonstrates current insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance or use of a motor vehicle described in the certificate in an amount not less than that required by section 49-117 (20), Idaho Code, and also demonstrates the current existence of any other coverage required by title 41 , Idaho Code, or a certificate of self-insurance issued pursuant to law for each motor vehicle to be registered. A certificate of liability insurance shall contain the information required by the department of insurance, including the name and address of the owner of the motor vehicle and a description of the motor vehicle including identification number if there is one, or a statement that all vehicles owned by a person or entity are covered by insurance, the inception date of coverage, and the name of the insurer. "Certificate of liability insurance" may also include the original contract of liability insurance or a true copy, demonstrating the current existence of the liability insurance described in this subsection.

(4) "Certification of safety compliance" means that a motor carrier certifies as part of its registration process that it has knowledge of the federal regulations and rules promulgated by the Idaho transportation department and the Idaho state police applicable to motor carriers.

(5) "Chains" means metal traction devices required pursuant to section 49-948 , Idaho Code, which consist of two (2) circular metal loops, one (1) on each side of the tire, connected by not less than nine (9) evenly spaced chains across the tire tread.

(6) "Coerce" means to compel or attempt to compel by threat or use of force.

(7) "Commercial coach." (See section 39-4301 , Idaho Code)

(8) "Commercial driver's license" means any class A, class B or class C driver's license as defined in section 49-105 , Idaho Code.

(9) "Commercial driver license information system (CDLIS)" is the information system established to serve as a clearinghouse for locating information related to the licensing and identification of motor vehicle drivers.

(10) "Commercial driver training school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services.

(11) "Commercial learner's permit" means a permit issued to an individual by a state or other jurisdiction of domicile, in accordance with the standards contained in 49 CFR 383.5, that when carried with a valid driver's license issued by the same state or jurisdiction, authorizes the individual to operate a commercial vehicle when accompanied by a holder of a valid commercial driver's license (CDL) for purposes of behind-the-wheel training.

(12) "Commercial vehicle" or "commercial motor vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(13) "Compliance review" means an on-site examination of motor carrier operations, which may be at the carrier's place of business, including driver's hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness.

(14) "Controlled substance" means any substance so classified under section 102(6) of the controlled substances act, 21 U.S.C. 802(6), and includes all substances listed on schedules I through V, of 21, CFR part 1308, as they may be revised

from time to time.

(15) "Conviction" means:

(a) The person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment. A conviction for purposes of this title shall also include an infraction judgment.

(b) For purposes of disqualification or withdrawal of commercial vehicle driving privileges only, "conviction" means an unvacated adjudication of guilt, or determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated.

(16) "Crosswalk" means:

(a) That part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable highway; and in the absence of a sidewalk on one side of the highway, that part of a highway included within the extension of the lateral lines of the existing sidewalk at right angles to the centerline.

(b) Any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

49-105 — Definitions — D

49-105. Definitions — D.

(1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used neighborhood electric vehicles, new or used motorcycles, motor-driven cycles, snow machines or motorbikes, travel trailers, truck campers, all-terrain vehicles, utility type vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool," section 49-120 , Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise," section 49-107 , Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chapters 6 and 9, title 49 , Idaho Code, where the term means the Idaho state police, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49 , Idaho Code, where the term means the director of the Idaho state police.

(6) "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in records of the department about a person to any other person, organization or entity, by any means of communication.

(7) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(8) "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(9) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(10) "Distributor representative" means any person, firm, association, corporation or trust, and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(11) "District" means:

(a) Business district. The territory contiguous to and including a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses. For purposes of establishing speed limits in accordance with the provisions of section 49-654 , Idaho Code, no state highway or any portion thereof lying within the boundaries of an urban district is subject to the limitations which otherwise apply to nonstate highways within an urban district.

(12) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(13) "Downgrade" as it pertains to commercial drivers licensing shall mean either:

(a) The driver has changed his or her medical requirement self-certification to interstate but operates exclusively in transportation or operations excepted from part 391 of the federal motor carrier safety regulations; or

(b) The driver has changed his or her medical requirement self-certification to intrastate and operates exclusively in transportation or operations as listed in section 67-2901B (2), Idaho Code; or

(c) The driver no longer has commercial motor vehicle driving privileges, but has retained privileges to drive noncommercial motor vehicles.

(14) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(15) "Driver" means every person who drives or is in actual physical control of a vehicle.

(16) "Driver’s license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49 , Idaho Code.

(17) "Driver’s license — Classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer’s gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer’s gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C or D license.

(b) Class B. This license shall be issued and valid for the operation of any single vehicle with a manufacturer’s gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds, or any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds manufacturer’s gross vehicle weight rating (GVWR). Persons holding a valid class B license may also operate vehicles requiring a class C license or a class D license.

(c) Class C. This license shall be issued and valid for the operation of any single vehicle or combination of vehicles that does not meet the definition of class A or class B, as defined in this section, but that either is designed to transport sixteen (16) or more people including the driver, or is of any size which does not meet the definition of class A or class B and is used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123 , Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agri-chemical businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients, in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(18) "Driver record" means any record that pertains to an individual's driver's license, driving permit, driving privileges, driving history, identification documents or other similar credentials issued by the department.

(19) "Driver's license endorsements" means special authorizations that are required to be displayed on a driver's license which permit the driver to operate certain types of commercial vehicles or commercial vehicles hauling certain types of cargo, or to operate a motorcycle or a school bus.

(a) "Endorsement T — Double/Triple trailer" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H — Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F.

(c) "Endorsement P — Passenger" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle designed to transport sixteen (16) or more people including the driver.

(d) "Endorsement N — Tank vehicle" means this endorsement is required on a class A, B or C license to permit the licensee to operate a tank vehicle as defined in section 49-123 , Idaho Code.

(e) "Endorsement M — Motorcycle" means this endorsement is required on a driver's license to permit the driver to operate a motorcycle or motor-driven cycle.

(f) "Endorsement S — School bus" means this endorsement is required on a class A, B or C license to permit the licensee to operate a school bus in accordance with 49 CFR part 383, to transport preprimary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(20) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(21) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer.

49-106 — Definitions — E

49-106. Definitions — E.

(1) "Electric-assisted bicycle" means a bicycle equipped with fully operable pedals and an electric motor of less than seven hundred fifty (750) watts and that meets one (1) of the following requirements:

(a) "Class 1 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and ceases when the rider stops pedaling or when the bicycle reaches the speed of twenty (20) miles per hour.

(b) "Class 2 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor that may be used exclusively to propel the bicycle and that is not capable of providing assistance when the bicycle reaches the speed of twenty (20) miles per hour.

(c) "Class 3 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and ceases when the rider stops pedaling or when the bicycle reaches the speed of twenty-eight (28) miles per hour.

(2) "Electric personal assistive mobility device" means a self-balancing two (2) nontandem wheeled device designed to transport only one (1) person, with an electric propulsion system that limits the maximum speed of the device to fifteen

(15) miles per hour or less.

(3) "Emergency vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(4) "Encumbrance." (See "Lien," section 49-113 , Idaho Code)

(5) "EPA" means the environmental protection agency of the United States.

(6) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

(7) "Established place of business" means a place occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

(8) "Excessive" or "unusual noise" means any sound made by a passenger motor vehicle or a motorcycle at any time under any condition of grade, speed, acceleration or deceleration, which exceeds ninety-two (92) decibels, or any lower decibel level that is fixed by law or rules adopted by the board of health and welfare, on the "A" scale of a general radio company no. 1551-B sound level meter, or equivalent, stationed at a distance of not less than twenty (20) feet to the side of a vehicle or motorcycle as the vehicle or motorcycle passes the soundmeter or is stationed not less than twenty (20) feet from a stationary motor or engine.

(9) "Excessive speed" means any speed of fifteen (15) miles per hour or more above the posted speed limit, and is only for purposes of determining disqualification of commercial driving privileges.

(10) "Executive head," as used in chapter 20, title 49 , Idaho Code, means the governor of the state of Idaho.

(11) "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases with which the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(12) "Extraordinary circumstances" means any situation where an emergency exists or public safety is endangered, or any situation in which a vehicle:

(a) Is blocking or impeding traffic; or

(b) Is causing a hazard; or

(c) Has the potential of impeding any emergency vehicle; or

(d) Is impeding any snow removal or other road maintenance operation; or

(e) Has been stolen but not yet reported as recovered; or

(f) Is not registered, or displays a license plate registration tag which has been expired; or

(g) Has been involved in an accident and remains on the highway; or

(h) The driver of which has been arrested.

49-107 — Definitions — F

49-107. Definitions — F.

(1) "Factory branch" means a branch office maintained by a person who manufactures or assembles vehicles for sale to distributors or to dealers, or for directing or supervising, in whole or in part, its representatives.

(2) "Factory representative" means any person and each officer and employee engaged as a representative of a manufacturer of vehicles or by a factory branch for the purpose of making or promoting a sale of their vehicles, or for supervising or contacting their dealers or prospective dealers.

(3) "Farm tractor" means every motor vehicle designed or adapted and used primarily as a farm implement power unit operated with or without other farm implements attached in any manner consistent with the structural design of that power unit.

(4) "Farm vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(5) "Federal motor vehicle safety standards (FMVSS)" means those safety standards established by the national highway traffic safety administration, under title 49 CFR part 500-599, for the safe construction and manufacturing of self-propelled

motorized vehicles for operation on public highways. Such vehicles as originally designed and manufactured shall be so certified by the manufacturer to meet the federal motor vehicle safety standards or the standards in force for a given model year or as certified by the national highway traffic safety administration.

(6) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one (1) year.

(7) "Fifth wheel trailer." (See "Trailer," section 49-121 , Idaho Code)

(8) "Financial institution" means any bank that is authorized to do business in the state of Idaho and any other financial institution that is registered with the department of finance.

(9) "Flammable liquid" means any liquid which has a flash point of 70 degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

(10) "Fleet" means one (1) or more apportionable vehicles.

(11) "Fleet registration" means an optional form of registration through the department rather than a county assessor for registration of twenty-five (25) or more commercial or farm vehicles or any combination thereof. This registration is not an option for fleets of rental vehicles. Terms and conditions are further specified in section 49-434 (5), Idaho Code.

(12) "Fold down camping trailer." (See "Trailer," section 49-121 , Idaho Code)

(13) "Foreign vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(14) "Forest products" means all products derived from trees including, but not limited to, saw logs, veneer logs, poles, cedar products, pulp logs, fence posts, wood chips and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a processing mill or cut into cordwood, stove wood or hewn ties.

(15) "Franchise" means a sales, service and parts agreement or any other contract or agreement between a dealer and a manufacturer of new vehicles or its distributor or factory branch by which the dealer is authorized to engage in the business of selling any specified make or makes of new vehicles.

(16) "Full-time salesman" means any person employed as a vehicle salesman on behalf of a dealer for thirty (30) or more hours per week, and who sells, purchases, exchanges or negotiates for the sale, purchase or exchange of five (5) or more vehicles during each year in which his license is in effect.

49-108 — Definitions — G

49-108. Definitions — G.

(1) "Good cause" means the failure of a dealer to comply with reasonable performance criteria established by a manufacturer, if the dealer was apprised by the manufacturer, in writing, of that failure; and

(a) The notification stated that notice was provided of failure of performance;

(b) The dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with the criteria; and

(c) The dealer did not demonstrate substantial progress toward compliance with the performance criteria of the manufacturer during the period.

(2) "Gross combination weight rating (GCWR)" for the purposes of chapter 4, title 49 , Idaho Code, means the value specified by the manufacturer as the maximum loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon or registered weight rating whichever is greater. Towed units shall not include implements of husbandry. For the purposes of chapter 3, title 49 , Idaho Code, "gross combined weight rating (GCWR) is as defined in 49 CFR part 383.

(3) "Gross vehicle weight rating (GVWR)" for the purposes of chapter 4, title 49 , Idaho Code, means the value specified by the manufacturer as the maximum loaded weight of a single vehicle or registered weight rating, whichever is greater. For the purposes of chapter 3, title 49 , Idaho Code, "gross vehicle weight rating (GVWR) is as defined in 49 CFR part 383.

(4) "Gross weight" means the weight of a vehicle without load plus the weight of any load on that vehicle.

(5) "Group of vehicles" is one motor vehicle operated under its own motive power with one (1) motor vehicle in tow, or one or more motor vehicles in tow in saddlemount fashion, providing that saddlemounting meets the requirements

prescribed by the United States department of transportation.

49-109 — Definitions — H

49-109. Definitions — H.

(1) "Habitual violator" means any person who has a driving record that shows a violation point count of eighteen (18) or more points in any consecutive twenty-four (24) month period; or twenty-four (24) or more points in any consecutive thirty-six (36) month period.

(2) "Hazardous material" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of material listed as a select agent or toxin under 42 CFR part 73.

(3) "Hazardous waste" means a material that is subject to the hazardous waste manifest requirements of the EPA due to the type and quantity of the material or that would be subject to these requirements absent an interim authorization to the state under title 40 , code of federal regulations or that includes in whole or in part polychlorinated biphenyls regulated by title 40 , code of federal regulations, part 761.

(4) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for vehicular travel, with jurisdiction extending to the adjacent property line, including sidewalks, shoulders, berms and rights-of-way not intended for motorized traffic. The term "street" is interchangeable with highway.

(a) Arterial. Any highway designated by the local authority as part of a major arterial system of highways within its jurisdiction.

(b) Controlled-access. Any highway or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway except at such points only or in such manner as may be determined by the public authority having jurisdiction over the highway.

(c) Through. Any highway or portion of it on which vehicular traffic is given preferential right-of-way and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on the through highway in obedience to a stop sign, yield sign, or other traffic-control device.

49-110 — Definitions — I

49-110. Definitions — I.

(1) "Identifying number" means:

(a) Motor number. That identifying number stamped on the engine of a vehicle.

(b) Vehicle identification number. The numbers and letters, if any, placed on a vehicle by the manufacturer for the purpose of identifying the vehicle.

(2) "Implements of husbandry" means every vehicle including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicators, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. "Implements of husbandry" do not include semitrailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations.

(3) "Incidentally operated" means the transport of the implement of husbandry from one (1) farm operation to another.

(4) "Individual record" means a record containing personal information about a designated person who is the subject of the record as identified in a request for information.

(5) "Infraction" means a civil public offense, not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or right to court-appointed counsel, and which is punishable by only a penalty not exceeding three hundred dollars ($300) and no imprisonment.

(6) "Instruction permits":

(a) "Class A, B or C instruction permit." (See "Commercial learner’s permit," section 49-104 , Idaho Code)

(b) "Class D driver's training instruction permit" means a temporary privilege to operate a class D motor vehicle while attending classes as an enrollee of a public or private driver's training course only; is available to a person aged fourteen and one-half (14 1/2) years and older; is issued to the instructor of the driver's training course; is issued and expires pursuant to the provisions of section 49-307 , Idaho Code; and the permittee is subject to the conditions specified in section 49-307 , Idaho Code.

(c) "Class D instruction permit" means a temporary privilege to operate a class D motor vehicle which is available to a person under the age of seventeen (17) years who has successfully completed an approved driver's training course and has satisfied the requirements of a class D supervised instruction permit, or to any person seventeen (17) years of age or older; is valid for a period of one hundred eighty (180) days or as provided in section 49-305 , Idaho Code, if applicable; privileges are limited to driving with a person who is at least eighteen (18) years of age who holds a valid class D driver's license and is actually occupying a seat beside the permittee; is issued pursuant to the provisions of section 49-305 , Idaho Code; and the permittee is subject to the conditions specified in section 49-305 , Idaho Code.

(d) "Class D supervised instruction permit" means a temporary privilege to operate a class D motor vehicle which is available to a person who is at least fourteen and one-half (14 1/2) years of age who has successfully completed an approved driver's training course. No person may apply for a class D driver's license until he has attained the age of at least fifteen (15) years and has successfully satisfied the requirements of this permit, as specified and issued pursuant to the provisions of section 49-307 , Idaho Code.

(7) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for such a school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of, persons learning to operate or drive motor vehicles.

(8) "Insurer" means any insurer, public or private, which shall include, but not be limited to, insurance companies domiciled in the state of Idaho, agents, adjuster or any other person acting on behalf of any insurance not domiciled in the state of Idaho and any self-insured entity operating under Idaho insurance laws or rules.

(9) "International registration plan" means a registration reciprocity agreement among the states of the United States and provinces of Canada providing for payment of registration and licensing fees on a proportional basis determined by the fleet miles operated in the various jurisdictions.

(10) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway shall be regarded as a separate intersection. In the event an intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of the highways shall be regarded as a separate intersection.

(c) The junction of an alley with a street or highway shall not constitute an intersection.

49-111 — Definitions — J

49-111. Definitions — J.

(1) "Judgment" means a decree which shall have become final by expiration without appeal by the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement or settlement for damages.

(2) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

49-113 — Definitions — L

49-113. Definitions — L.

(1) "Laned highway" means a highway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(2) "Lane of travel." (See "Traffic lane", section 49-121 , Idaho Code)

(3) "Legal owner" means any person notated as "lienholder" of a vehicle, the notation appearing on the title records of the department and on the respective certificate of title.

(4) "License" or "license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

(a) Any temporary license or instruction permit;

(b) Any nonresident's operating privilege;

(c) Any special permit issued by the department.

(5) "Licensing authority" as used in chapter 20 of this title with reference to Idaho, means the department.

(6) "Lien" or "encumbrance" means every security interest in any vehicle other than security interests in vehicles held in inventory for sale.

(7) "Lienholder" means a person holding a security interest in a vehicle.

(8) "Light weight" or "unladen weight" means the scale weight of a vehicle equipped for operation, but without any cargo on it.

(9) "Limit line" or "stop line" means a solid white line extending across a highway indicating the point behind which vehicles are required to stop, which must conform to the manual and specifications adopted by the board pursuant to section 49-201 , Idaho Code.

(10) "Local authorities" means every county, highway district, municipal and other local board or body having authority to enact regulations, resolution and/or ordinances relating to traffic on the highways, public rights-of-way and streets under their jurisdiction under the constitution and laws of this state.

49-114 — Definitions — M

49-114. Definitions — M.

(1) "Major component part" for vehicles means a rear or rear clip, frame or subframe, body or center, passenger area, cab, front or front end assembly or front clip or nose section or roof of passenger compartment. "Major component part" for vessels means a hull, bow, gunnel, stern or transom, or permanently attached propulsion unit.

(2) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste or material identification code and destination of hazardous material or hazardous waste during any transportation within, through, or to any destination in this state.

(3) "Manufactured home." (See section 39-4105 , Idaho Code)

(4) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered at an established place of business in this state. The term, for purposes of sections 49-1613 through 49-1615 , 49-1617 , 49-1622 and 49-1623 , Idaho Code, shall include a distributor and other factory representatives.

(5) "Manufacturer's year designation" means the model year designated by the vehicle manufacturer, and not the year in which the vehicle is, in fact, manufactured.

(6) "Maximum gross weight" means the scale weight of a vehicle, equipped for operation, to which shall be added the maximum load to be carried as declared by the owner in making application for registration. When a vehicle against which a registration fee is assessed is a combination of vehicles, the term "maximum gross weight" means the combined maximum gross weights of all vehicles in the combination.

(7) "Metal tire." (See "Tires," section 49-121 , Idaho Code)

(8) "Mileage" means actual distance that a vehicle has traveled.

(9) "Moped" means a limited-speed motor-driven cycle having wheels less than twenty (20) inches in diameter and:

(a) Motorized propulsion that is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ground, whether two (2) or three (3) wheels are in contact with the ground during operation. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged; or

(b) Two (2) wheels or three (3) wheels with no pedals, which is powered solely by electrical energy, has an automatic transmission, a motor which produces less than two (2) gross brake horsepower, is capable of propelling the device at a maximum speed of not more than thirty (30) miles per hour on level ground and, as originally manufactured, meets federal motor vehicle safety standards for motor-driven cycles. A moped is not required to be titled and no motorcycle endorsement is required for its operator. A moped does not include an electric-assisted bicycle.

(10) "Motorbike" means a vehicle as defined in section 67-7101 , Idaho Code. Such vehicle shall be titled and may be approved for motorcycle registration pursuant to section 49-402 , Idaho Code, upon certification by the owner of the installation and use of conversion components that make the motorbike compliant with federal motor vehicle safety standards. A motorbike does not include an electric-assisted bicycle.

(11) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three (3) wheels in contact with the ground or designed to travel on two (2) wheels in contact with the ground which is modified by the addition of two (2) stabilizing wheels on the rear of the motor vehicle, that meets the federal motor vehicle safety standards as originally designed, and includes a converted motorbike, but does not include a motor-driven cycle, a motorbike, a tractor, an electric-assisted bicycle, or a moped.

(12) "Motor carrier" means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire.

(13) "Motor-driven cycle" means a cycle with a motor that produces five (5) brake horsepower or less as originally manufactured that meets federal motor vehicle safety standards as originally designed, and does not include mopeds or electric-assisted bicycles. Such vehicle shall be titled and a motorcycle endorsement is required for its operation.

(14) "Motor home" means a vehicular unit designed to provide temporary living quarters, built into an integral part or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems that meet the national fire protection association (NFPA) 1192 standard on recreational vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating and/or air conditioning, a potable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(15) "Motorized wheelchair" means a motor vehicle with a speed not in excess of eight (8) miles per hour, designed for and used by a person with a disability.

(16) "Motor number." (See "Identifying number," section 49-110 , Idaho Code)

(17) "Motor vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(18) "Motor vehicle liability policy" means an owner's or operator's policy of liability insurance, certified as provided in section 49-1210 , Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(19) "Motor vehicle record" means any record that pertains to a motor vehicle registration, motor vehicle title or identification documents or other similar credentials issued by the department or other state or local agency.

(20) "Multiuse path" means a path physically separated from motor vehicle traffic by an open space or barrier and within either a public right-of-way or easement that accommodates two-way nonmotorized travelers including pedestrians, bicyclists, joggers, and skaters.

49-115 — Definitions — N

49-115. Definitions — N.

(1) "National network" means highways available to vehicles authorized by the provisions of the federal surface transportation assistance act of 1982, as amended, and listed in 23 CFR part 658, appendix A.

(2) "Neighborhood electric vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(3) "Noncommercial vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(4) "Nonresident" means every person who is not a resident of this state.

(5) "Nonresident's operating privilege" means the privilege conferred on a nonresident by the laws of this state pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this state.

49-116 — Definitions — O

49-116. Definitions — O.

(1) "Off-highway vehicle" or "OHV" means an off-highway vehicle as defined in section 67-7101 , Idaho Code.

(2) "Operator" means every person who is in actual physical control of a motor vehicle upon a highway or private property open to public use.

(3) "Out-of-service order" means a temporary prohibition against operating a commercial vehicle as declared by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction and which is applicable to a driver, a commercial motor vehicle, or a motor carrier operation pursuant to federal regulations 49 CFR 386.72, 392.5, 395.13, or 396.9, or compatible laws, or to the North American uniform out-of-service criteria.

(4) "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. "Owner," for the purposes of chapter 12, title 49 , Idaho Code, means the person legally responsible for the operation of a vehicle upon the highways of the state of Idaho, whether as owner, lessee, or otherwise.

49-117 — Definitions — P

49-117. Definitions — P.

(1) "Park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(2) "Park model recreational vehicle" means a recreational vehicle that is designed to provide temporary accommodations for recreational, camping or seasonal use, is built on a single chassis, was originally mounted on wheels, has a gross trailer area not exceeding four hundred (400) square feet in the set-up mode and is certified by its manufacturer as complying with the American National Standards Institute (ANSI) A119.5 Standard for Recreational Park Trailers, and includes park models, park trailers and recreational park trailers.

(3) "Part-time salesman" means any person employed as a vehicle salesman on behalf of a dealer fewer than thirty (30) hours per week.

(4) "Peace officer." (See section 19-5101 (d), Idaho Code)

(5) "Pedestrian" means any person afoot and any person operating a wheelchair or a motorized wheelchair or an electric personal assistive mobility device.

(6) "Pedestrian path" means any path, sidewalk or way set aside and used exclusively by pedestrians. (7)(a) "Person" means every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, political subdivision, state or federal governmental department, agency, or instrumentality and, for the purposes of chapter 22, title 49 , Idaho Code, shall include a private, common or contract carrier operating a vehicle on any highway of this state.

(b) "Person with a disability" means:

(i) A person who is unable to walk two hundred (200) feet or more unassisted by another person; (ii) A person who is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair; or (iii) A person who is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments: neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (iv) For the purposes of chapters 3 and 4, title 49 , Idaho Code, a person with a permanent disability is one whose physician certifies that the person qualifies as a person with a disability pursuant to this paragraph and further certifies that there is no expectation for a fundamental or marked change in the person’s condition at any time in the future.

(8) "Personal delivery device" means an electrically powered device that is operated on sidewalks, crosswalks, and the sides or berms of highways and is intended primarily to transport property; weighs less than five hundred fifty (550) pounds, excluding cargo; operates at a maximum speed of ten (10) miles per hour when on sidewalks; and is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person. A personal delivery device shall not be defined as a vehicle or motor vehicle in any section of the law, unless expressly so stated.

(9) "Personal delivery device operator" means an entity or its agent that exercises direct physical control or monitoring over the navigation system and operation of a personal delivery device. For the purposes of this subsection, the term "agent" means a person charged by the entity with the responsibility of navigating, monitoring, or operating the personal delivery device. The term "personal delivery device operator" does not include an entity or person who requests the services of a personal delivery device for the purpose of transporting property or an entity, nor does it include a person who merely arranges for and dispatches the requested services of a personal delivery device.

(10) "Personal information" means information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations, the five-digit zip code of the person's address, or status of the driver's license or motor vehicle registration.

(11) "Pneumatic tire." (See "tires," section 49-121 , Idaho Code)

(12) "Pole trailer." (See "trailer," section 49-121 , Idaho Code)

(13) "Possessory lien" means a lien dependent upon possession for compensation to which a person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the towing, storage, repair, or safekeeping of any vehicle of a type subject to registration.

(14) "Possessory lienholder" means any person claiming a lien, which lien claimed to have accrued on a basis of services rendered to the vehicle that is the subject of the lien.

(15) "Preceding year" means, for the purposes of section 49-434 , Idaho Code, a period of twelve (12) consecutive months fixed by the department, prior to July 1 of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangement for the proportional registration of vehicles.

(16) "Pressure regulator valve" means a device or system that governs the load distribution and controls the weight borne by a variable load suspension axle in accordance with a predetermined valve setting.

(17) "Principal place of business" means an enclosed commercial structure located within the state, easily accessible and open to the public at all reasonable times, with an improved display area large enough to display five (5) or more vehicles of the type the dealer is licensed to sell, immediately adjoining the building, and at which the business of a dealership, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances, and in which building the public shall be able to contact the dealer or his salesmen in person or by telephone at all reasonable times. The books, records and files necessary to conduct the business of the dealership must be kept or reproduced electronically at the dealership's licensed location(s). A dealership keeping its physical books, records and files at an off-site location must notify the department in writing of such location at least thirty (30) days in advance of moving such books, records and files off-site. Physical books, records and files must be made available to the department upon request within three (3) business days of such request. The principal place of business shall display an exterior sign permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event shall a room or rooms in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this title unless the entire ground floor of that hotel, apartment house, or rooming house building or dwelling house be devoted principally to and occupied for commercial purposes, and the office or offices of the dealer be located on the ground floor.

(18) "Private property open to the public" means real property not owned by the federal government or the state of Idaho or any of its political subdivisions, but is available for vehicular traffic or parking by the general public with the permission of the owner or agent of the real property.

(19) "Private road" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(20) "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars ($25,000) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to the limit for one (1) person, in the amount of fifty thousand dollars ($50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand

dollars ($15,000) because of injury to or destruction of property of others in any one (1) accident.

(21) "Proper authority" means a public highway agency.

(22) "Public highway agency" means the state transportation department, any city, county, highway district or any other state agency that has jurisdiction over public highway systems and public rights-of-way.

(23) "Public right-of-way" means a right-of-way open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic.

(24) "Public road jurisdiction" means a public highway agency.

(25) "Purchase." (See "sell," "sold," and "buy," section 49-120 , Idaho Code)

49-119 — Definitions — R

49-119. Definitions — R.

(1) "Racing" means the use of one (1) or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(2) "Radio operator, amateur" means any person licensed by the Federal Communications Commission to engage in private and experimental two-way radio operation and holding a conditional class license or higher.

(3) "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

(4) "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

(5) "Railroad sign" or "signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(6) "Recreational vehicle" means a motor home, travel trailer, fifth-wheel trailer, park model recreational vehicle, truck camper or folding camping trailer, with or without motive power, designed for recreational or emergency occupancy. It does not include pickup hoods, shells, or canopies designed, created or modified for occupational usage. School buses or van type vehicles which are converted to recreational use, are defined as recreational vehicles.

(7) "Registered maximum gross weight" means the maximum gross weight established on the registration document as declared by the owner at the time of registration or renewal of registration.

(8) "Registered owner" means any person required to register a vehicle, whether or not a lienholder appears on the title in the records of the department.

(9) "Registration" means the registration certificate or certificates and license plate or plates issued under the laws of this state pertaining to the registration of vehicles.

(10) "Rental utility trailer" means a utility trailer offered for hire to the general public for private or commercial use.

(11) "Rescission of sale." (See section 28-2-608 , Idaho Code)

(12) "Resident" means for purposes of vehicle registration, titling, a driver’s license or an identification card, a person whose domicile has been within Idaho continuously for a period of at least thirty (30) days, excluding a full-time student who is a resident of another state. However, any driver’s license or identification card issued to a person who has been domiciled in Idaho for less than thirty (30) days may not be used for identification for the purpose of voting. The department may title or register a vehicle to a person who has an Idaho driver’s license or identification card and has been domiciled in Idaho for less than thirty (30) days. Establishment of residency shall include a spouse and dependent children who reside with that person in the domicile. A domicile shall not be a person’s workplace, vacation or part-time residence.

(13) "Residential district." (See "District," section 49-105 , Idaho Code)

(14) "Residential neighborhood" for purposes of this chapter, is an area abutting a highway which is used primarily for nontransient human habitation, parks and churches.

(15) "Revocation of driver’s license" means the termination by formal action of the department or as otherwise provided in this title of a person’s driver’s license or privilege to operate a motor vehicle on the highways, which terminated driver’s license or privilege shall not be subject to renewal or restoration except that an application for a new driver’s license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this title.

(16) "Revocation of vehicle registration" means the termination by formal action of the department or as otherwise provided in this title of a person's vehicle registration or, in the case of fleets of vehicles, all vehicle registrations in each fleet operated by a company. Upon revocation, the privileges of operating the vehicles on Idaho highways is terminated until the difficulty that caused the revocation is corrected and an application for new registration is presented and acted upon.

(17) "Ridesharing arrangement" means the nonprofit transportation in a passenger motor vehicle with a seating capacity not exceeding fifteen (15) people including the driver, which is not otherwise used for commercial purposes or as a public conveyance, whereby a fixed group, not exceeding fifteen (15) people including passengers and driver, is transported between their residences or nearby termini, and their places of employment or educational or other institutions or termini near those places, in a single daily round trip where the driver is also on the way to or from his place of employment or education or other institution.

(18) "Right-of-way" means the right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other. The term shall not be interpreted to mean that a highway user is relieved from the duty to exercise reasonable care at all times and from doing everything to prevent an accident. Failure to yield right-of-way shall not be construed as negligence per se or as prima facie evidence of negligence.

(19) "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and rights-of-way.

49-120 — Definitions — S

49-120. Definitions — S.

(1) "Saddlemount combination" means a combination of vehicles in which a truck or truck tractor tows one (1), two (2) or three (3) trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. A smaller vehicle mounted completely on the frame of either the first or last vehicle may be used in a saddlemount combination.

(2) "Safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) "Safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(4) "Salvage pool" means a licensed vehicle dealer engaged primarily in the business of disposing of salvage vehicles, recovered stolen vehicles, or both.

(5) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of "Minimum Standards for School Buses" and is used to transport children to or from school or in connection with school approved activities and includes buses operated by contract carriers.

(6) "Secretary" means the secretary of transportation of the United States.

(7) "Security agreement." (See section 28-9-102 , Idaho Code)

(8) "Security interest." (See section 28-1-201 , Idaho Code)

(9) "Sell," "sold," "buy," and "purchase," mean and include, as used in sections 49-2401 through 49-2406 , Idaho Code, exchange, barter, gift, and offer or contract to sell or buy.

(10) "Semitrailer." (See "Trailer," section 49-121 , Idaho Code)

(11) "Serious traffic violation" means conviction of an offense specified in 49 CFR part 383 and including any subsequent amendments thereto, while operating a commercial motor vehicle, and shall include driving a commercial motor vehicle:

(a) Without obtaining a commercial driver's license; or

(b) Without having a commercial driver's license in the driver's possession; or

(c) Without the proper license class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

(12) "Service-only facility" means a customer-facing or noncustomer-facing facility operated by a licensed dealer within the dealer's relevant market area where the dealer performs any repairs or performs any other services on motor vehicles but does not engage in the sale, lease, trade, or display of new or used motor vehicles. A service-only facility shall not be considered a dealer or dealership for the purposes of this title.

(13) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use by pedestrians.

(14) "Signal." (See "Railroad sign," section 49-119 , Idaho Code)

(15) "Skills test" means an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(16) "Slow moving vehicle" means any vehicle not normally operated upon the highways.

(17) "Snow tire." (See "Tires," section 49-121 , Idaho Code)

(18) "Sold." (See "Sell," "buy," and "purchase," this section)

(19) "Solid rubber tire." (See "Tires," section 49-121 , Idaho Code)

(20) "Special license plate" means a license plate that is made available to the public as a personal alternative to the standard issue license plate. No special program fee shall be charged for the registration or plates issued under sections 49-403 , 49-403A , 49-404 , 49-405 , 49-410 , 49-415 , 49-415A and 49-415B , Idaho Code.

(21) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes, and earth moving equipment. The term does not include travel trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(22) "Specially constructed vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(23) "Specialty off-highway vehicle." (See "Vehicle," section 49-123 , Idaho Code)

(24) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(25) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of Canada.

(26) "Stop" means the act of or complete cessation from movement.

(27) "Stopping" means the act of any halting even momentarily of a vehicle.

(28) "Street." (See "Highways," section 49-109 , Idaho Code)

(29) "Street rod" means any pre-1949 vehicle which has had a significant drive train update from a more modern vehicle. Changes may include engine, transmission, rear axle, and other suspension components. The body will be, or resemble the same as the manufacturer's original issue after its first sale after manufacture.

(30) "Studded tire." (See "Tires," section 49-121 , Idaho Code)

(31) "Substandard width lane" means a lane that is too narrow for a bicycle and a motor vehicle to travel safely side by side within the lane.

(32) "Supplemental lot" means a physically separate location owned and maintained by a licensed dealer or manufacturer within the same or adjacent county as the principal place of business which meets all the requirements for a principal place of business.

(33) "Suspension of driver's license" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

(34) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's vehicle registration or, in the case of fleets of vehicles, all vehicle registrations in each fleet operated by a company. Upon suspension, the privileges of operating the vehicle or vehicles on Idaho

highways is terminated until the difficulty that caused the suspension is corrected and notification is provided that the suspension has been lifted.

49-121 — Definitions — T

49-121. Definitions — T.

(1) "Temporary supplemental lot" means a location other than the principal place of business, or supplemental lot within the same or adjacent county as the principal place of business, where a licensed dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten (10) days for a specific purpose such as auto shows, auctions, shopping center promotions, tent sales, etc. Temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted. The requirements for a principal place of business shall not be applicable to temporary supplemental lot locations. The adjacent county restriction shall not apply if the dealer holds the franchise for the products to be displayed or sold and has approval from a manufacturer for the location where the proposed temporary supplemental lot license will be issued by the department. Nonfranchised dealers shall be permitted to temporarily display or sell their products within a one hundred seventy-five (175) mile radius of their principal place of business, upon approval by the department.

(2) "Tires" means:

(a) Metal. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(b) Pneumatic. Every tire in which compressed air is designed to support the load.

(c) Snow tire. Every rubber tire with tread design or material embedded in the tire to improve winter traction except studded tires.

(d) Solid rubber. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(e) Studded tire. Every tire with built-in lugs of tungsten carbide or other suitable material designed to contact the road surface for improved winter traction.

(3) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

(4) "Traffic lane" or "lane of travel" means that portion of the roadway for movement of a single line of vehicles.

(5) "Traffic-control device" means any device, whether manually, electrically or mechanically operated, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

(6) "Trailer" means:

(a) General. Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle.

(b) Fifth-wheel trailer. A vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.

(c) Fold down camping trailer. A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls, which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.

(d) Pole trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(e) Semitrailer. Every vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

(f) Travel trailer. A vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.

(g) Utility trailer. (See "Utility trailer," section 49-122 , Idaho Code)

(7) "Transitional ownership document" means a document used to perfect a lien against creditors or subsequent purchasers when the primary ownership document is not available and the selling dealer, new security interest holder or their agent, to the best of their knowledge, will not have possession of the primary ownership document, within thirty (30) days of the sale, or if no sale is involved, the date the contract or security agreement being perfected was signed, and contains all of the following:

(a) The date of sale or if no sale is involved, the date the contract or security agreement being perfected was signed;

(b) The name and address of each owner of the vehicle;

(c) The name and address of each security interest holder;

(d) If there are multiple security interest holders, the priorities of interest if the security interest holders do not jointly hold a single security interest;

(e) The vehicle identification number;

(f) The name of the security interest holder or person who submits the transitional ownership document for the security interest holder; and

(g) Any other information the department may require for its records.

(8) "Transportation," for the purposes of chapter 22, title 49 , Idaho Code, means the movement of any regulated quantity of hazardous material or hazardous waste within, through, or to any destination in this state upon the highways of this state.

(9) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer, except in chapter 22, title 49 , Idaho Code, where it means any person who transports a hazardous material or hazardous waste within, through, or to any destination upon the highways of this state.

(10) "Truck" means:

(a) Refuse/sanitation. Any vehicle designed and used solely for the purpose of transporting refuse.

(b) General. Every motor vehicle exceeding eight thousand (8,000) pounds gross weight designed, used or maintained primarily for the transportation of property.

(c) Pickup truck. Every motor vehicle eight thousand (8,000) pounds gross weight or less which is designed, used or maintained primarily for the transportation of property.

(d) Truck camper. A portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck, and containing at least one (1) of the following facilities: stove; refrigerator or icebox; self-contained toilet; heater or air conditioner; potable water supply including a faucet and sink; separate 110-125 volt electrical power supply; or LP-gas supply. Truck campers originally constructed with an overall length of six (6) feet or longer shall be titled as provided in chapter 5 of this title 49 . A truck camper does not include pickup hoods, shells or canopies.

(e) Truck tractor. Every motor vehicle designed and used primarily for drawing other vehicles but not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(11) "True mileage driven" means the mileage of the vehicle as registered by the odometer within the manufacturer's designed tolerance.

49-122 — Definitions — U

49-122. Definitions — U.

(1) "Unauthorized vehicle" means any vehicle parked or otherwise left on private property without the consent of the person owning or controlling that property.

(2) "United States" means the fifty (50) states and the District of Columbia.

(3) "Unladen weight." (See "Light weight," section 49-113 , Idaho Code)

(4) "Unregistered vehicle" means a vehicle without current registration on file with the department or with the appropriate agency of another state, unless exempt from registration.

(5) "Unusual noise." (See "Excessive," section 49-106 , Idaho Code)

(6) "Urban district." (See "District," section 49-105 , Idaho Code)

(7) "Utility trailer" means a trailer or semitrailer designed primarily to be drawn behind a passenger car or pickup truck for domestic and utility purposes. Utility or domestic use shall include a farm trailer while being used to haul agricultural products or livestock from farm to storage, market or processing plant, or returning therefrom.

(8) "Utility type vehicle" or "UTV" means a utility type vehicle or UTV as defined in section 67-7101 , Idaho Code.

49-123 — Definitions — V

49-123. Definitions — V.

(1) "Variable load suspension axle" means an axle or axles designed to support a part of the vehicle and load and which can be regulated to vary the amount of load supported by such an axle or axles and which can be deployed or lifted by the operator of the vehicle. (See also section 49-117 , Idaho Code)

(a) "Fully raised" means that the variable load suspension axle is in an elevated position preventing the tires on such axle from having any contact with the roadway.

(b) "Fully deployed" means that the variable load suspension axle is supporting a portion of the weight of the loaded vehicle as controlled by the preset pressure regulator valve.

(2) "Vehicle" means:

(a) General. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(b) Assembled vehicle or vessel. A vehicle or vessel, not including a salvage vehicle or vessel, that has been constructed using major component parts from two (2) or more vehicles or vessels or that has been repaired using new factory major component parts so that the resulting vehicle or vessel has the same appearance as a vehicle or vessel that was manufactured under a specific make and model by a manufacturer. A vehicle or vessel utilizing a kit for the entire body or a glider kit vehicle is not an assembled vehicle.

(c) Authorized emergency vehicle. Vehicles operated by any fire department or law enforcement agency of the state of Idaho or any political subdivision of the state, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, vehicles belonging to or operated by a wildland fire agency or association while responding to a wildland urban interface fire, vehicles belonging to or operated by EMS personnel certified or otherwise recognized by the Idaho military division while in the performance of emergency medical services, sheriff's search and rescue vehicles that are under the immediate supervision of the county sheriff, wreckers that are engaged in motor vehicle recovery operations and are blocking part or all of one (1) or more lanes of traffic, other emergency vehicles designated by the director of the Idaho state police or vehicles authorized by the Idaho transportation board and used in the enforcement of laws specified in section 40-510 , Idaho Code, pertaining to vehicles of ten thousand (10,000) pounds or greater.

(d) Commercial vehicle or commercial motor vehicle. For the purposes of chapters 3 and 9 of this title, driver's licenses and vehicle equipment, a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

(i) Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or (ii) Has a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds; or (iii) Is designed to transport sixteen (16) or more people, including the driver; or (iv) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F). For the purposes of chapter 4, title 49 , Idaho Code, motor vehicle registration, a vehicle or combination of vehicles of a type used or maintained for the transportation of persons for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49 , Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A , Idaho Code, or exempted by section 49-426 , Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating

capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(e) Farm vehicle. A vehicle or combination of vehicles owned by a farmer or rancher, or by his designated agent, which are operated over public highways, and used exclusively to transport unprocessed agricultural products raised, owned or grown by the owner of the vehicle to market or place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies or products purchased by that farmer or rancher for his own use, and used in the farming or ranching operation or used by a farmer partly in transporting agricultural products or livestock from the farm of another farmer that were originally grown or raised on the farm, or when used partly in transporting agricultural supplies, equipment, materials or livestock to the farm of another farmer for use or consumption on the farm but not transported for hire, and shall not include vehicles of husbandry or vehicles registered pursuant to sections 49-402 and 49-402A , Idaho Code.

(f) Foreign vehicle. Every vehicle of a type required to be registered under the provisions of this title brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(g) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

(h) Motor vehicle. Every vehicle that is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107 , Idaho Code. Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices, personal delivery devices, electric-assisted bicycles, and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49 , Idaho Code.

(i) Multipurpose passenger vehicle (MPV). For the purposes of section 49-966 , Idaho Code, a motor vehicle designed to carry ten (10) or fewer persons which is constructed either on a truck chassis or with special features for occasional off-road operation.

(j) Neighborhood electric vehicle (NEV). A self-propelled, electrically powered, four-wheeled motor vehicle which is emission free and conforms to the definition and requirements for low-speed vehicles as adopted in the federal motor vehicle safety standards for low-speed vehicles under federal regulations at 49 CFR part 571. An NEV shall be titled, registered and insured according to law as provided respectively in chapters 4, 5 and 12, title 49 , Idaho Code, and shall only be operated by a licensed driver. Operation of an NEV on a highway shall be allowed as provided in section 49-663 , Idaho Code.

(k) Noncommercial vehicle. For the purposes of chapter 4, title 49 , Idaho Code, motor vehicle registration, a noncommercial vehicle shall not include those vehicles required to be registered under sections 49-402 and 49-402A , Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.

(l) Passenger car. For the purposes of section 49-966 , Idaho Code, a motor vehicle, except a multipurpose passenger vehicle, motorcycle or trailer, designed to carry ten (10) or fewer persons.

(m) Rebuilt salvage vehicle or vessel. Every vehicle or vessel previously determined or declared to be a salvage vehicle that has been rebuilt or repaired using like make and model parts and visually appears as a vehicle or vessel that was originally constructed under a distinctive manufacturer. This includes a salvage vehicle or vessel which is damaged to the extent that a "rebuilt salvage" brand is required to be added to the title.

(n) Replica vehicle or vessel. A vehicle or vessel made to replicate any vehicle or vessel previously manufactured, using metal, fiberglass or other composite materials. Replica vehicles must look like the original vehicle being replicated but may use a more modern drive train. At a minimum, replica vehicles shall meet the same federal motor vehicle safety and emission standards in effect for the year and type of vehicle being replicated.

(o) Salvage vehicle or vessel. Any vehicle or vessel for which a salvage certificate of title, salvage bill of sale or other documentation has been issued showing evidence that the vehicle or vessel has been declared salvage or which has

been damaged to the extent that the owner, or an insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor minus the salvage value makes it uneconomical to repair or rebuild. When an insurance company has paid money or has made other monetary settlement as compensation for a total loss of any vehicle or vessel, such vehicle shall be considered to be a salvage vehicle or vessel.

(p) Specially constructed vehicle or vessel. Every vehicle or vessel of a type required to be registered not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles or vessels and not materially altered from its original construction and cannot be visually identified as a vehicle or vessel produced by a particular manufacturer. This includes:

(i) A vehicle or vessel that has been structurally modified so that it does not have the same appearance as a similar vehicle or vessel from the same manufacturer; or (ii) A vehicle or vessel that has been constructed entirely from homemade parts and materials not obtained from other vehicles or vessels; or (iii) A vehicle or vessel that has been constructed by using major component parts from one (1) or more manufactured vehicles or vessels and cannot be identified as a specific make or model; or (iv) A vehicle or vessel constructed by the use of a custom kit that cannot be visually identified as a specific make or model. All specially constructed vehicles of a type required to be registered shall be certified by the owner to meet all applicable federal motor vehicle safety standards in effect at the time construction is completed, and all requirements of chapter 9, title 49 , Idaho Code.

(q) Specialty off-highway vehicle. A specialty off-highway vehicle as defined in section 67-7101 , Idaho Code.

(r) Tank vehicle.

(i) Any commercial motor vehicle transporting, or designed to transport, any liquid or gaseous materials within: 1. A tank that is either permanently or temporarily attached or secured to the vehicle or chassis and has a rated capacity of one thousand (1,000) gallons or more; or 2. Multiple tanks either permanently or temporarily attached or secured, when the aggregate rated capacity of those tanks is one thousand (1,000) gallons or more, as determined by adding the capacity of each individual tank with a capacity of more than one hundred nineteen (119) gallons. (ii) If a commercial motor vehicle transports one (1) or more tanks that are manifested either as empty or as residue and that are actually empty or contain only residue, those tanks shall not be considered in determining whether the vehicle is a tank vehicle.

(s) Total loss vehicle. Every vehicle that is deemed to be uneconomical to repair. A total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to the owner when it is deemed to be uneconomical to repair the damaged vehicle. The compensation for total loss as defined herein shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental or for anything other than the amount paid for the actual damage to the vehicle.

(3) "Vehicle identification number." (See "identifying number," section 49-110 , Idaho Code)

(4) "Vehicle salesman" means any person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, or regularly or occasionally by any dealer to sell, purchase or exchange, or to negotiate for the sale, purchase or exchange of vehicles. (See also "full-time salesman," section 49-107 , Idaho Code, and "part-time salesman," section 49-117 , Idaho Code)

(5) "Vessel." (See section 67-7003 , Idaho Code)

(6) "Veteran." (See section 65-203 , Idaho Code)

(7) "Violation" means a conviction of a misdemeanor charge involving a moving traffic violation, or an admission or judicial determination of the commission of an infraction involving a moving traffic infraction, except bicycle infractions.

49-124 — Definitions — W

49-124. Definitions — W.

(1) "Wheelchair, motorized." (See "Motorized wheelchair," section 49-114 , Idaho Code)

(2) "Wholesaler" means a dealer who sells used vehicles to Idaho dealers.

(3) "Work zone" means a construction or maintenance area that is located on or adjacent to a highway and marked by appropriate warning signs.

(4) "Wrecker" means a motor vehicle designed and used primarily for towing other vehicles that may be disabled. A wrecker engaged in a motor vehicle recovery operation and which is blocking part or all of one (1) or more lanes of traffic shall be designated an emergency vehicle.

CHAPTER 2

49-201 — Duties of board

49-201. Duties of board.

(1) With the exception of requirements for sections 49-217 and 49-218 and chapters 6 and 9, title 49 , Idaho Code, which shall be the responsibility of the director of the Idaho state police, and section 49-447 , Idaho Code, which shall be the responsibility of the director of the department of parks and recreation, the board shall adopt and enforce administrative rules and may designate agencies or enter into agreements with private companies or public entities as may be necessary to carry out the provisions of this title. It shall also provide suitable forms for applications, registration cards, vehicle licenses, and all other forms requisite for the purpose of the provisions of this title, and shall prepay all transportation charges.

(2) The board may enter into agreements, compacts or arrangements with other jurisdictions on behalf of Idaho for the purpose of conforming procedures for proportional registration of commercial vehicles and other types of reciprocal agreements. Copies of agreements, compacts or arrangements shall be placed on file in the department and the board shall, as to all filings and adoption, conform with the provisions of chapter 52, title 67 , Idaho Code. The board may approve, on a case-by-case basis, exemption from operating fees for private nonprofit entities who are bringing public interest programs into the state. These entities may not be in competition with companies who transport goods and services for hire.

(3) The board shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this title for use upon highways within the state. The uniform system shall correlate with and, so far as possible, conform to the system set forth in the most recent edition of the manual on uniform traffic-control devices for streets and highways and other standards issued or endorsed by the federal highway administrator.

(4) Whenever the board shall determine upon the basis of an engineering and traffic investigation that any maximum speed is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway or interstate highway system, the board may determine and declare a reasonable and safe maximum limit, thereat, not exceeding a maximum limit of seventy-five (75) miles per hour on interstate highways provided that this speed may be increased to eighty (80) miles per hour if the department completes an engineering and traffic study on the interstate highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion and sixty-five (65) miles per hour on state highways provided that this speed may be increased to seventy (70) miles per hour if the department completes an engineering and traffic study on the state highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion, which shall be effective when appropriate signs giving notice are erected. The speed limit may be declared to be effective at all times or at the times as indicated upon the signs. Differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(5) The board shall adopt and enforce rules as may be consistent with and necessary to determine the classification of and the basis on which fees shall be computed.

49-201B — Base state agreements

49-201B. Base state agreements. Pursuant to federal law, the Idaho transportation department is hereby authorized to enter into reciprocal agreements with the regulatory agencies of other states having jurisdiction and authority over motor carriers to provide for base state agreements in which the registration of interstate carriers operating in participating states may be accomplished by registration in one (1) base state. Carriers electing to register under base state agreements shall be subject to the jurisdiction and authority of the Idaho transportation department to the same extent as they would if they did not participate in the base state agreement. The fees authorized by federal law, or such lesser fees as the participating states agree to, may be collected, and the base state may require further filings of certificates of insurance, surety bonds, et cetera, to show the carrier’s qualifications to operate. Participating carriers shall register their authority directly with the transportation department and not with other state or local agencies.

49-202 — Duties of department

49-202. Duties of department.

(1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours, except for those records declared by law to be for the confidential use of the department, or those records containing personal information subject to restrictions or conditions regarding disclosure. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

(a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license

(b) For issuing every Idaho certificate of title

(c) For furnishing a duplicate copy of any Idaho certificate of title

(d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner (rush titles), in addition to any other fee required by this section

(e) For recording a transitional ownership document, in addition to any other fee required by this section

(f) For furnishing a replacement of any physical receipt of registration

(g) For furnishing copies of registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license record Additional contractor fee, not to exceed

(h) For services in searching files of vehicle or other registrations, vehicle titles, or driver's licenses per hour

(i) Placing "stop" cards in vehicle registration or title files, each

(j) For issuance of an assigned or replacement vehicle identification number (VIN)

(k) For a vehicle identification number (VIN) inspection whether conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection

(l) For all replacement stickers, each

(m) For issuing letters of temporary vehicle clearance to Idaho-based motor carriers

(n) For all sample license plates, each

(o) For filing release of liability statements

(p) For safety and insurance programs for each vehicle operated by a motor carrier A lesser amount may be set by rule of the board.

(3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(g) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services. (5)(a) The department shall pay three dollars ($3.00) of the fee collected by a county assessor or other authorized agent of the department as provided in subsection (2)(a) through (f) of this section, and four dollars ($4.00) as provided in subsection (2)(g) of this section, to the county assessor or sheriff of the county or authorized agent of the department collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund when collected by the county. When fees are collected by the department or an authorized agent of the department, such fees shall be deposited with the issuing entity. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway account.

(b) The fee collected under subsection (2)(k) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the Idaho state police if conducted by the Idaho state police or in the state highway account if conducted by the department.

(c) The fee collected under subsection (2)(o) of this section for filing release of liability statements shall be retained by the county assessor of the county collecting such fee and shall be deposited with the county treasurer and credited to the county current expense fund. Any fees collected by the department for filing release of liability statements shall be

retained by the department. However, the fees provided for in subsection (2)(o) of this section shall not apply when a transaction is filed electronically with the department.

(d) The fee in subsection (2)(m) of this section shall not apply when the Idaho-based motor carrier or its representative obtains and prints the document using internet access.

(e) The fee collected under subsection (2)(p) of this section for motor carriers shall be paid by the department to the state treasurer and placed in the state highway account. The director and the director of the Idaho state police shall jointly determine the amount to be transferred from the state highway account to the law enforcement fund for motor carrier safety programs conducted by the Idaho state police pursuant to the provisions of section 67-2901A , Idaho Code.

(6) The department as often as practicable may provide to law enforcement agencies the record of suspensions and revocations of driver licenses via the public safety and security information system (ILETS).

(7) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in Ada county all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering certificates of title, and shall maintain in the department indices for such certificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner.

(8) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof.

(9) The department shall not renew a driver's license or identification card when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including insufficient fund checks, until those fees have been paid.

(10) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including insufficient fund checks.

(11) The department or its authorized agents have the authority to request any person to submit to medical, vision, highway, or written examinations, to protect the safety of the public upon the highways. The department or its authorized agents may exercise such authority based upon evidence which may include, but is not limited to, observations made.

(12) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier requests revocation, or whenever an interstate carrier's federal operating authority has been revoked;

(e) For failure of the owner or operator to file the reports required or nonpayment of audit assessments or fees assessed against the owner by the department or the state tax commission pursuant to audit under the provisions of section 49-439 , Idaho Code;

(f) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 U.S.C. 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and readjustment; provided that no vehicle shall be identified to the department under this subsection unless:

(i) The city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and (ii) The city or county reimburses the department for all direct costs associated with the registration revocation procedure.

(13) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and interest have been paid.

(14) The department shall institute educational programs, demonstrations, exhibits and displays.

(15) The department shall cancel a driver's license or identification card when fees required by law have not been paid or where fees are due, owing and unpaid including insufficient fund checks, until those fees have been paid.

(16) The department shall examine persons and vehicles by written, oral, vision and skills tests without compulsion except as provided by law.

(17) The department shall employ expert and special help as needed in the department.

(18) The department shall compile accident statistics and disseminate information relating to those statistics.

(19) The department shall cooperate with the United States in the elimination of road hazards, whether of a physical, visual or mental character.

(20) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission. The placement and maintenance of such a traffic-control device by a local authority shall be made according to the board's manual and specifications for a uniform system of traffic-control devices.

(21) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and, if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(22) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs.

(23) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(24) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(25) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(26) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40 , Idaho Code.

(27) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

(28) On any informational material printed after July 1, 1995, by or at the order of the department and distributed to counties, school districts or individuals for the purpose of assisting a person to successfully pass a driver's license test, the department shall include material about the state's open range law and responsibilities, liabilities and obligations of drivers driving in the open range.

(29) All employees, agents, and contractors of the department who have access to the source systems used by the division of motor vehicles shall be required to complete data security compliance training and to pass a federal bureau of investigation criminal background check. The department shall administer access to and provide for the training required pursuant to this subsection.

49-203 — Prohibition on release and use of personal information contained in motor vehicle and driver records

49-203. Prohibition on release and use of personal information contained in motor vehicle and driver records.

(1) Except as otherwise provided, the department and any officer, employee, agent or contractor thereof, shall not knowingly disclose to any person or entity personal information about any individual when such information was obtained from a motor vehicle or driver record.

(2) Personal information shall be disclosed, except as restricted in subsection (6) of this section, for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act (15 USC 1231 et seq.), the Motor Vehicle Information and Cost Savings Act (49 USC 32101 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966, the Anti Car Theft Act of 1992, and the Clean Air Act (42 USC 7401 et seq., as amended.)

(3) Personal information may be disclosed if the requesting person demonstrates in such form and manner as the department prescribes, that he has obtained the written consent of the individual to whom the personal information pertains.

(4) Personal information may be disclosed, except as restricted in subsection (6) of this section, on proof of the identity of the person requesting a record, and representation by such person that the use of the personal information will be strictly limited to any of the following described uses:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

(b) For use in matters of motor vehicle or driver safety and theft; motor vehicle emissions, motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original records of motor vehicle manufacturers.

(c) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and (ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the services of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.

(e) For use in research activities, and for use in producing statistical reports, so long as personal information is not published, redisclosed or used to contact individuals.

(f) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees or contractors, in connection with claims investigation activities, rating or underwriting.

(g) For use in providing notice to the owners of towed or impounded vehicles.

(h) For use by any licensed private investigative agency or licensed security service for any purpose permitted under the provisions of title 49 , Idaho Code.

(i) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC 31101 et seq.).

(j) For bulk distribution for surveys, marketing, or solicitations if the department has obtained the written consent of the person to whom such personal information pertains.

(k) For any other use specifically authorized under Idaho Code, if such use is related to public safety or the operation of a motor vehicle.

(l) For use in connection with the operation of private toll transportation facilities, including companies that operate parking facilities for the purpose of providing notice to the owners of vehicles who have used the facility.

(5) Personal information obtained in an individual's motor vehicle or driver record shall be disclosed, except as restricted in subsection (6) of this section, in response to requests for individual motor vehicle or driver records without regard to the intended use of such personal information if the department has obtained the written consent of the person to whom such personal information pertains.

(6) In addition to the restrictions and prohibitions on the disclosure of personal information contained in motor vehicle and driver records, an individual's photograph, digitized image of a photograph, digitized signature, social security number, and medical or disability information shall not be disclosed without the written consent of the person to whom such information pertains, except for uses permitted under subsections (4)(a) and (4)(d) of this section.

(7) Authorized recipients of personal information may redisseminate such information only for those purposes set forth in paragraphs (a) through (l) of subsection (4) of this section. For the purposes of this subsection (7), "authorized recipients" means an individual, organization or entity who receives personal information for uses permitted in paragraphs (a) through (l) of subsection (4) of this section and includes record redisseminators who agree to redisseminate such information only for the purposes set forth in paragraphs (a) through (l) of subsection (4) of this section.

49-203A — Rules, policies and waiver procedures on disclosure of personal information

49-203A. Rules, policies and waiver procedures on disclosure of personal information.

(1) The department is authorized to adopt rules in compliance with Idaho's motor vehicle and driver record disclosure requirements. The rules may include procedures under which the department, upon receiving a request for personal information that is not subject to disclosure as provided in section 49-203 , Idaho Code, may mail a copy of such request to each individual who is the subject of the personal information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive such individual's right to privacy in the requested personal information.

(2) Disclosure of personal information permitted under the provisions of chapter 2, title 49 , Idaho Code, shall be subject to payment by the requesting person to the department of all fees for the information required by statute, rule or the terms of any contract with the requesting person, on such terms for payment as may be required or agreed.

49-204 — Misrepresentation to obtain records

49-204. Misrepresentation to obtain records. Any person requesting disclosure of personal information from department records who misrepresents his identity or makes a false statement to the department on any application required to be submitted to obtain records shall be guilty of perjury.

49-205 — Duties of local officers

49-205. Duties of local officers.

(1) The assessors of the various counties of the state shall be agents of the department and shall perform duties prescribed in this title. With the concurrence of the department, a county assessor may appoint one (1) or more agents to perform the duties prescribed in chapters 4 and 5 of title 49 , Idaho Code. Such agent shall post a faithful performance bond in an amount and form acceptable to the department. The assessor may negotiate for reasonable reimbursement of expenses to an agent for any duties performed by the agent under terms of agreement with the county assessor.

(2) The county assessors shall receive and file in their respective offices all instruments required by chapter 5 of this title to be filed with the county assessors.

(3) It shall be the duty of peace officers within the state of Idaho to enforce and make arrests for the violation of the provisions of this title without the necessity of procuring a warrant. It shall be the duty of authorized employees of the department to enforce compliance with the laws in accordance with section 40-511 , Idaho Code.

49-206 — Provisions uniform throughout state

49-206. Provisions uniform throughout state. The provisions of this title shall be applicable and uniform throughout this state in all political subdivisions and municipalities and no local authority shall enact or enforce any ordinance on a matter

covered by the provisions of this title unless expressly authorized.

49-207 — Municipal registration prohibited — Power to enact regulatory ordinances not abolished

49-207. Municipal registration prohibited — Power to enact regulatory ordinances not abolished.

(1) Authorities of counties and cities shall have no power to pass, enforce or maintain any ordinance requiring, from any owner of a vehicle or any dealer to which this title shall be applicable, any tax, license or permit for the free use of the public highways of a county or city, or prohibiting or excluding any owner or dealer from the free use of such highways or excluding or prohibiting any vehicle registered in compliance with the provisions of this title from the free use of the highways. Powers given by general statutes to local authorities in cities to enact general ordinances applicable equally and generally to all vehicles and the use of highways to bring about the orderly passage of vehicles upon certain highways in such cities where the traffic is heavy and continuous, and powers given to cities to regulate vehicles offered to the public for hire, or processions, assemblages or parades on the highways or in public places shall remain in full force and effect, and all ordinances which may have been or which may be enacted in pursuance of those powers shall remain in full force and effect. These provisions of law shall not be construed to prevent cities from enacting and enforcing general ordinances prescribing additional requirements as to speed, manner of driving or operating vehicles on any of the highways of such cities, and prescribing other requirements pertaining to signals to be given by drivers or operators of motor vehicles, the carrying of lights on motor vehicles, the turning of motor vehicles on highways, and requirements for motor vehicles in passing other vehicles and pedestrians.

(2) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering or traffic investigation, and the residential, urban or business character of the neighborhood abutting the highway in a residential, business or urban district that the speed limit permitted under this title is greater than is reasonable and safe under the conditions found to exist upon a highway or part of a highway or because of the residential, urban or business character of the neighborhood abutting the highway in a residential, business or urban district, the local authority may determine and declare a reasonable and safe maximum limit which:

(a) Decreases the limit within a residential, business or urban district;

(b) Increases the limit within a nonresidential area of an urban district but not to more than seventy (70) miles per hour; or

(c) Decreases the limit outside an urban district.

(3) Local authorities in their respective jurisdictions shall determine by an engineering or traffic investigation the proper maximum speed not exceeding a maximum limit of seventy (70) miles per hour for all arterial highways and shall declare a reasonable and safe maximum limit which may be greater or less than the limit permitted under this title for an urban district.

(4) Any altered speed limit established shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice are erected upon the highway. Any alteration of maximum limits on state highways or extensions in a municipality by local authorities shall not be effective until the alteration has been approved by the department. Provided however, that any alteration of speed limits must be based upon a traffic engineering study approved by the department and completed according to department standards. The alteration of speed limits by local authorities shall be done in consultation with the department. In the event of disagreement between the department and local authorities, the department traffic study shall be adopted, unless the local government traffic study is submitted to the Idaho transportation department board and the board adopts the local study in whole or in part.

49-208 — Powers of local authorities

49-208. Powers of local authorities.

(1) The provisions of this title shall not be deemed to prevent local authorities with respect to highways under their jurisdiction and within the reasonable exercise of the police power from:

(a) Regulating or prohibiting stopping, standing or parking;

(b) Regulating traffic by means of peace officers or traffic-control devices;

(c) Regulating or prohibiting processions or assemblages on the highways;

(d) Designating particular highways for use by traffic moving in one (1) direction;

(e) Establishing speed limits for vehicles in public parks;

(f) Designating any highway as a through highway or designating any intersection or junction of highways as a stop or yield intersection or junction;

(g) Restricting the use of highways as authorized in chapter 10, title 49 , Idaho Code;

(h) Regulating or prohibiting the turning of vehicles or specified types of vehicles;

(i) Altering or establishing speed limits;

(j) Designating no-passing zones;

(k) Prohibiting or regulating the use of controlled-access highways by any class or kind of traffic;

(l) Prohibiting or regulating the use of heavily traveled highways by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(m) Establishing minimum speed limits;

(n) Prohibiting pedestrians from crossing a highway in a business district or any designated highway except in a crosswalk;

(o) Restricting pedestrian crossings at unmarked crosswalks;

(p) Establishing the maximum speed of vehicles on a bridge or other elevated structure;

(q) Requiring written accident reports;

(r) Regulating persons propelling pushcarts;

(s) Regulating persons upon skates, coasters, sleds and other toy vehicles;

(t) Adopting and enforcing temporary or experimental regulations as may be necessary to cover emergencies or special conditions;

(u) Prohibiting drivers of ambulances from exceeding maximum speed limits;

(v) Adopting such other traffic regulations as are specifically authorized by this title.

(2) No ordinance or regulation enacted under paragraphs (d) through (p) of subsection (1) of this section shall be effective until traffic-control devices giving notice of local traffic regulations are erected upon or at the entrances to the highway or part affected as may be most appropriate.

(3) No local authority shall erect or maintain any traffic-control device at any location so as to require traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the department.

(4) Local authorities by ordinance may adopt by reference all or any part of title 49 , Idaho Code, without publishing or posting in full the provisions thereof, provided that not less than one (1) copy is available for public use and examination in the office of the clerk.

(5) Local authorities may adopt an ordinance establishing procedures for the abatement and removal of abandoned, junk, dismantled or inoperative vehicles or their parts from private or public property, including highways, provided the ordinance is not in conflict with the provisions of this title.

49-209 — Local traffic-control devices

49-209. Local traffic-control devices. Local authorities in their respective jurisdictions shall place and maintain traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this title, or local traffic ordinances, or to regulate, warn or guide traffic. All traffic-control devices erected shall conform to the state manual and specifications referred to in section 49-201 , Idaho Code; provided, however, that any offense created hereunder shall constitute an infraction as the same is defined in section 49-3401 (3), Idaho Code.

49-210 — Authority to restrict pedestrian crossings

49-210. Authority to restrict pedestrian crossings. Local authorities by ordinance and the department by erecting appropriate traffic-control devices, are hereby empowered within their respective jurisdictions to prohibit pedestrians from crossing any highway except in a crosswalk.

49-211 — Authority to close unmarked crosswalks

49-211. Authority to close unmarked crosswalks. The department and local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or when pedestrians must yield the right-of-way to vehicles. Restrictions shall be effective only when traffic-control devices indicating the restrictions are in place.

49-212 — Authority for stop signs and yield signs

49-212. Authority for stop signs and yield signs. The department and local authorities with reference to highways under their jurisdiction may erect and maintain stop signs, yield signs, or other traffic-control devices to designate through highways, or to designate intersections or other junctions at which vehicular traffic on one or more of the highways should yield, or stop and yield, before entering the intersection or junction.

49-213 — Parking spaces for persons with a disability — Marking and signing — Enforcement

49-213. Parking spaces for persons with a disability — Marking and signing — Enforcement.

(1) Local governments and owners of private property open to public use shall designate parking zones and spaces to be used exclusively by vehicles displaying a special license plate for a person with a disability, or a special placard as prescribed in section 49-410 , Idaho Code. Any parking zones and spaces so designated shall conform to the following requirements:

(a) Parking lots will conform to the requirements of federal Public Law 101-336, Americans with disabilities act of 1990.

(b) One (1) parking space shall be designated for every thirty-five (35) spaces of on-street parking available on each downtown street block. These parking spaces shall be parallel with the sidewalk where parallel parking is required, or at an angle to the sidewalk where angle parking is required. Should angle parking be used, the parking spaces so designated for use by a person with a disability shall conform to the federal Americans with disabilities act. All accessible parking spaces shall be located on the shortest route to curb cuts and ramps for use by wheelchairs and other mobility aids and devices. For the purposes of this section, the term "downtown" means the business center of a city as designated by the city council of the city. The term "street block" means that portion of a city street between consecutive parallel intersections.

(c) For each designated parking space or area there shall be posted immediately adjacent to, and visible from each stall or space, a sign consisting of the international accessibility symbol as shown in section 49-410 , Idaho Code.

(d) Should any city desire to modify any of the requirements of subsection (1)(a) or (b) of this section, a city council may do so by ordinance, after complying with the following requirements: 1. The city council, or any other body designated by the city council by ordinance, shall receive a recommendation from a board, commission or committee created in conformity with section 50-210 , Idaho Code, of which at least one-half (1/2) of the members shall be persons with a disability as defined in section 49-117 , Idaho Code; and 2. The city shall cause notice of public hearing on the proposed ordinance modifying the standards specified in subsection (1)(a) or (b) of this section, to be published in a newspaper of general circulation in the city at least fourteen (14) days before the public hearing.

(2) Parking a vehicle or the standing of a vehicle in a space reserved for a person with a disability, which space is signed in conformance with the requirements specified in subsection (1)(c) of this section, is prohibited, unless a vehicle is momentarily in the space for the purpose of allowing a person with a disability to enter or leave the vehicle, or unless special license plates or placard or temporary placard for a person with a disability is displayed on the vehicle. It is prohibited for any person to park a motor vehicle in a properly marked access aisle in a manner which prevents or reasonably could restrict a person with a disability from entering or exiting their vehicle or in such manner as it would block access to a curb cut or ramp. The registered owner of a vehicle parked in violation of the provisions of this subsection is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100). Vehicles parked in violation of this section may be towed pursuant to provisions of state law or local ordinance.

(3) Law enforcement officials and/or their designees as authorized by a city or county are empowered to enter upon private property open to public use to enforce the provisions of this section.

49-217 — Regulations relative to school buses

49-217. Regulations relative to school buses. Any officer or employee of any school or school district operating a school bus who violates any regulations promulgated in conformance with the provisions of section 49-201 , Idaho Code, may be guilty of misconduct and subject to removal from office or employment. Any person operating a school bus under contract with a school or school district who fails to comply with any regulations may be guilty of breach of contract and such

contract may be cancelled after notice of hearing by the responsible officers of the school or school district.

49-218 — Designation of authorized emergency vehicles

49-218. Designation of authorized emergency vehicles. The director of the Idaho state police shall designate any particular vehicle as an authorized emergency vehicle upon a finding that designation of that vehicle is necessary to the preservation of life or property, or to the execution of emergency governmental functions. Any person who operates a motor vehicle in a manner which would lead one to reasonably believe it was an emergency vehicle without prior approval of the director of the Idaho state police, shall be guilty of a misdemeanor and shall be subject to a fine of not less than three hundred dollars ($300) and may be incarcerated for not more than thirty (30) days in jail for each occurrence.

49-221 — Removal of traffic hazards

49-221. Removal of traffic hazards.

(1) It shall be the responsibility of the owner of real property to remove from his property any hedge, shrubbery, fence, wall or other sight obstructions of any nature, except public traffic or highway signs, buildings and trees, where these sight obstructions constitute a potential traffic hazard. The above sight obstructions shall not extend more than three (3) feet, or less than ten (10) feet, in height above the existing center line highway elevation within the vision triangle of vehicle operators. The boundaries of the vision triangle are defined by measuring from the intersection of the edges of two (2) adjacent highways forty (40) feet along each highway and connecting the two (2) points with a straight line. The sight distance obstruction restriction is also applicable to railroad-highway grade crossings with vision triangle defined by measuring forty (40) feet along the railroad property line when intersecting with a highway.

(2) When the department or any local authority determines that a traffic hazard exists, it may notify the owner and order that the hazard be removed within an appropriate time as determined by the department or local authority, considering the circumstances and conditions involved. The appropriate time may be specified in the notice. Such notice shall not obligate the department or local authorities to pursue removal or abatement until all legal remedies are exhausted.

(3) The failure of the owner to remove the traffic hazard within the appropriate specified time shall constitute a misdemeanor and every day the owner shall fail to remove the obstruction may be considered a separate and distinct offense. Civil action may also be initiated by state or local officials to enforce vision triangle restrictions.

(4) Local officials may, by resolution or ordinance, establish standards and procedures for protecting vision triangles at the intersections of local streets and roads. Such locally adopted standards or procedures, which may be more or less restrictive than the provisions hereof, shall not modify the standards established by this section concerning intersections with state maintained highways and intersections with railroads.

49-222 — Rights of owners of real property

49-222. Rights of owners of real property. Nothing in this title shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as a matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this title, or otherwise regulating such use as may seem best to the owner, except as provided in section 49-213 , Idaho Code.

49-223 — Sale of nonconforming traffic-control devices

49-223. Sale of nonconforming traffic-control devices. A person shall not sell nor offer for sale any sign, signal, marking or other device intended to regulate, warn or guide traffic unless it conforms with the adopted state manual and specifications.

49-226 — Filing false affidavit of theft or embezzlement of a vehicle

49-226. Filing false affidavit of theft or embezzlement of a vehicle. It shall be unlawful and a felony for the owner of any vehicle to file an affidavit as required in section 49-449 , Idaho Code, knowing the same to be false or misleading.

49-227 — Operating vehicle without owner’s consent

49-227. Operating vehicle without owner’s consent. Any person who shall operate a vehicle, not his own, without the consent of the owner, and with intent temporarily to deprive the owner of his possession of such vehicle, without intent to steal the vehicle, shall be guilty of a misdemeanor, unless the damages caused to the vehicle as a result of a violation of this section exceed one thousand dollars ($1,000) in value, or the value of property taken from the vehicle exceeds one thousand dollars ($1,000), or a combination of the damages caused to the vehicle and the value of property taken

exceeds one thousand dollars ($1,000), in which case such person is guilty of a felony. The consent of the owner of a vehicle to its taking or operating shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or operating of the vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any unauthorized taking or operation shall also be guilty of a misdemeanor, unless the damages caused to the vehicle as a result of a violation of this section exceed one thousand dollars ($1,000) in value, or the value of property taken from the vehicle exceeds one thousand dollars ($1,000), or a combination of the damages caused to the vehicle and the value of property taken exceeds one thousand dollars ($1,000), in which case such person is guilty of a felony. For the purpose of this section vehicle shall include, but is not limited to vehicles defined in section 49-123 , Idaho Code, boats, airplanes, snowmobiles, three and four wheel all-terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles.

49-228 — Receiving or transferring stolen vehicles

49-228. Receiving or transferring stolen vehicles. Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen, shall receive or transfer possession of the vehicle from or to another, or who shall have in his possession any vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as an officer of the law, shall be guilty of a felony and upon conviction shall be punished as provided in section 18-112 , Idaho Code.

49-229 — Injuring vehicle

49-229. Injuring vehicle. Except as authorized by section 49-1806 , Idaho Code, any person who shall individually, or in association with one (1) or more others, willfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying the vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of the vehicle, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of the vehicle shall be guilty of a misdemeanor.

49-231 — Farm implements — Purchasing or selling when identifying number altered or defaced a felony

49-231. Farm implements — Purchasing or selling when identifying number altered or defaced a felony. Any person who knowingly buys, receives, disposes of, sells, offers for sale or has in his possession any tractor, trailer, or other farm implement or engine removed from a tractor or farm implement from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number, has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the tractor, trailer or farm implement or engine, is guilty of a felony.

49-232 — Fraudulent removal or alteration of numbers prohibited

49-232. Fraudulent removal or alteration of numbers prohibited. No person shall with fraudulent intent deface, destroy or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a vehicle or a tractor, or other farm implement; nor shall any person place or stamp any fictitious or unauthorized serial, engine or other number of distinguishing mark with the intention that the same pass for a number or mark placed thereon by the manufacturer of the vehicle or tractor or farm implement. This section shall not prohibit the restoration by an owner or repair man of an original serial, engine or other number or distinguishing mark, but is designed to prohibit and prevent the fraudulent removal or alteration of marks or numbers placed on the vehicles or tractors and other farm implements by the manufacturer.

49-235 — Enforcement by peace officers

49-235. Enforcement by peace officers.

(1) The director of the Idaho state police, his officers and employees, and other peace officers as the director of the Idaho state police may authorize in writing may, upon reasonable cause, require the driver of a vehicle to stop and submit the vehicle and its equipment to an inspection and a test as may be appropriate.

(2) In the event a vehicle is found to be in an unsafe condition, or the required equipment is not present, or is not in proper repair and adjustment, the officer shall give a written notice to the driver and send a copy to the Idaho state police. The notice shall require that the vehicle be placed in safe condition and its equipment in proper repair and adjustment, and a certificate of inspection and approval for the vehicle be obtained within five (5) days. Every owner or driver upon receiving such a notice shall comply with the notice and shall within the five (5) days secure an endorsement upon the

notice by the person making the repair or adjustment that the vehicle is in safe condition and its equipment in proper repair and adjustment, and shall forward the notice to the Idaho state police.

(3) No person shall operate any vehicle after receiving a notice as provided in this section, until the vehicle and its equipment have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this title.

49-236 — Penalties

49-236. Penalties.

(1) It is a misdemeanor for any person to violate any of the provisions of this title except the provisions of chapter 3, other than sections 49-301 , 49-316 , 49-331 and 49-332 , Idaho Code, chapter 4 and chapters 6 through 9 of this title, unless otherwise specifically provided.

(2) It is an infraction for any person to violate any of the provisions of chapters 3, 4 and 6 through 9 of this title unless otherwise specifically provided.

(3) Any offense punishable by imprisonment in the state penitentiary is a felony.

(4) Punishments shall be as provided in sections 18-111 , 18-112 , 18-113 and 18-113A , Idaho Code, unless otherwise specifically provided.

(5) Whenever a person is arrested for any violation of the provisions of this title declared to be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other felony.

(6) It is an infraction punishable by a fine of seventy-five dollars ($75.00) for any person to violate the provisions of either section 49-1229 , 49-1232 or 49-1428 , Idaho Code.

49-237 — Records to be sent to department

49-237. Records to be sent to department. Upon the conviction or reversal of conviction of any person for the violation of any of the provisions of this title, the judicial officer before whom the proceedings are had or the clerk of the district court shall immediately transmit the facts of the case to the department, either in paper or electronic form, including the name, address, date of birth, and the driver's license number or social security number of the party charged, and any judgment issued, including a withheld judgment. The judicial officer or the clerk of the district court shall also forward to the department information regarding the character of the punishment, and the amount of any fine imposed and paid, the ordered sentence and its terms, and the ordered suspension period, including when the suspension is to commence. The information provided to the department shall be certified if submitted in paper form; no certification is required for electronic transfers of information. The department shall enter the facts either in the records of registered vehicles, or in the records of registered dealers, or in the driver's license records, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in a record of offenders, to be kept for that purpose. If an individual is reincarcerated while that person's driver's license or driving privileges are suspended, the department of correction is to notify the department that the individual is reincarcerated, as well as the terms and period of reincarceration. If the conviction be reversed on appeal, the person whose conviction has been reversed may serve on the department a certified copy of the order of reversal, and the department shall enter the reversal in the proper records.

49-238 — Charging violations and rule in civil actions

49-238. Charging violations and rule in civil actions.

(1) In every charge of violation of any speed regulation in this title, the complaint or citation shall specify the speed at which the defendant is alleged to have been driving and the speed limit applicable within the district or at the location.

(2) The provision of this title declaring maximum speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

(3) Upon the trial of any person charged with a violation of speed limitations, proof of determination of the maximum speed by the local jurisdictions and the existence of appropriate signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to a bridge or structure.

49-239 — Disposition of fines, penalties, forfeitures and fees

49-239. Disposition of fines, penalties, forfeitures and fees. All fines, penalties, and forfeitures collected for violations of any of the provisions of chapter 4 of this title, shall be remitted to the state treasurer and placed in the highway distribution

account.

(2) All other fines, penalties and forfeitures collected by any court or judge, for violation of motor vehicle laws, for violation of state driving privilege laws or for any other provisions of this title, shall be distributed as provided in section 19-4705 , Idaho Code.

(3) All fees collected shall be remitted to the state treasurer and placed in the highway distribution account unless otherwise provided in this title.

49-240 — Certain circumstances for forfeiture of bond for traffic offenses

49-240. Certain circumstances for forfeiture of bond for traffic offenses.

(1) Whenever a person has received a written uniform misdemeanor traffic citation, summons or complaint containing a notice to appear before a magistrate, and if the attorney prosecuting the case and the defendant concur that it is in the best interest of justice that the defendant may post and forfeit an amount of the bond agreed upon by the parties, the court shall dismiss the charge. When bond is forfeited under the provisions of this subsection, no violation points, as prescribed in section 49-326 , Idaho Code, shall accrue. A forfeiture of bond under the provisions of this subsection shall not be recorded as a conviction, but the proceeds of the bond shall be distributed as court costs and fines as though there were a conviction.

(2) The provisions of subsection (1) of this section shall not be available when citations, summons or complaints are written for a violation of the provisions of section 18-8001 , 18-8004 , 18-8006 or 49-1401 , Idaho Code.

(3) Whenever a person who, while operating a commercial motor vehicle or whenever a holder of a class A, B or C license, has received a written uniform traffic citation, summons or complaint containing a notice to appear before a magistrate for an offense arising out of the operation of a motor vehicle, any bond forfeiture shall be treated as though it were a conviction.

49-243 — Severability

49-243. Severability. The provisions of this title are declared to be severable, and if any provision of this title or the application of that provision to any person or circumstance is declared invalid for any reason, that declaration shall not affect the validity of remaining portions of this title.

49-244 — idaho residency and domicile requirements — indian reservations

49-244. idaho residency and domicile requirements — indian reservations. Notwithstanding the residency and domicile requirements provided for in chapters 1, 4 and 5 of title 49 , Idaho Code, enrolled tribal members, residing and domiciled within the boundaries of a federally recognized Indian reservation, which boundaries are located in whole or in part within this state, shall be considered Idaho residents for purposes of vehicle registration and vehicle titling in Idaho.

49-245 — next of kin database

49-245. next of kin database.

(1) The department shall collect from each applicant for any type of driver's license pursuant to chapter 3, title 49 , Idaho Code, or for an identification card pursuant to sections 49-2442 and 49-2443 , Idaho Code:

(a) The name and phone number of no more than two (2) next of kin who are eighteen (18) years of age or older and whom the applicant wishes to be notified in the event of an emergency involving the applicant; or

(b) An indication that the applicant has chosen not to provide any next of kin information pursuant to this section.

(2) The department shall confidentially maintain all next of kin information collected pursuant to subsection (1) of this section. Such information shall be made available only under the circumstances described in subsection (3) of this section.

(3) Next of kin information collected by the department pursuant to this section shall be disclosed only to a coroner, state police officer, sheriff, or other peace officer in this state or another state for the purpose, as applicable, of making contact with the person or persons named as next of kin by an individual to report only the injury, death, or other emergency situation involving such individual. Such information shall be communicated by the department or otherwise made available to a coroner, state police officer, sheriff, or other peace officer only through the Idaho public safety and security information system.

(4) The department shall establish and maintain procedures by which individuals may update, change, or revoke their election to provide the department with next of kin information as provided for in this section. The department shall also establish and maintain procedures by which persons identified as next of kin for another individual may remove themselves as such person's next of kin.

(5) The department is authorized to promulgate rules if necessary to carry out the requirements of and to enforce the provisions of this section.

(6) For the purposes of this section only, "next of kin" means the closest living blood relative, including spouse, adult child, parents, siblings, grandparents, aunts and uncles, and cousins.

CHAPTER 3

49-301 — Drivers to be licensed

49-301. Drivers to be licensed.

(1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a current and valid Idaho driver's license. Provided however, that those persons holding a restricted school attendance driving permit may drive upon a highway pursuant to the restrictions set forth in section 49-307A , Idaho Code.

(2) No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license. The provisions of this subsection shall not apply to persons operating autocycles.

(3) No person shall operate a motor vehicle in violation of any valid restriction identified on, or attached to, his valid driver's license.

(4) 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.

(5) No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time.

(6) No person shall operate a commercial motor vehicle as defined in section 49-123 , Idaho Code, upon a highway:

(a) Without obtaining a commercial driver's license.

(b) Without having the appropriate class A, B or C commercial driver's license in the operator's possession.

(c) Without the proper license class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

(d) Unless the operator has a seasonal or class A, B or C driver's license with required endorsements in his possession.

(e) Without having a current and valid medical examiner's certificate on file with the department while operating in a "non-excepted" status as required by the federal motor carrier safety administration. Medical examiner's certificates submitted for filing must be legible and shall be submitted in a manner acceptable to the department. If the federal motor carrier safety administration has issued a medical exemption letter or skill performance evaluation certificate, the driver must have the current and valid documentation in physical possession and available upon request to a duly authorized federal, state or local enforcement official.

(7) 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.

(8) A person operating a vehicle that requires a class A, B or C license without a current and valid license required to drive such vehicle is guilty of a misdemeanor. Except as provided in sections 18-8001

(1) and 49-304 , Idaho Code, operating a vehicle without a current and valid class D driver's license in violation of this section is an infraction punishable by a fine of one hundred fifty dollars ($150). A second conviction for operating a vehicle without a current and valid class D driver's license within a period of five (5) years of the first conviction is an infraction

punishable by a fine of three hundred dollars ($300). A third and any subsequent conviction for operating a vehicle without a current and valid class D driver's license within a period of five (5) years of the first conviction shall be a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both.

49-302 — What persons are exempt from license

49-302. What persons are exempt from license. The following persons are exempt from licensing if driving privileges are not suspended, canceled, revoked, disqualified, denied or refused:

(1) Any person while driving or operating any farm tractor or implement of husbandry when incidentally operated on a highway.

(2) Farmers are exempt from obtaining a class A, B or C driver's license to operate a commercial motor vehicle that is:

(a) Controlled and operated by a farmer, including operation by employees or family members; and

(b) Used to transport agricultural products, farm machinery, or farm supplies to or from a farm; and

(c) Not used in the operations of a common or contract motor carrier; and

(d) Used within one hundred fifty (150) miles of the person's farm.

(3) Any person is exempt from obtaining a class A, B or C driver's license for the operation of commercial motor vehicles that are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulations.

(4) Any person is exempt from obtaining a class A, B or C license to operate a commercial vehicle that is exclusively used to transport personal possessions or family members for nonbusiness or recreational purposes.

(5) A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may operate a motor vehicle in Idaho only as a class D operator with driving privileges restricted to daylight hours only pursuant to section 49-307 (10), Idaho Code, and with full privileges at sixteen (16) years of age, and only if Idaho residency is not established.

(6) A nonresident who is at least fifteen (15) years of age and who has in his possession a valid driver's license with a motorcycle endorsement or who has a valid motorcycle driver's license issued to him in his home state or country may operate a motorcycle in Idaho with driving privileges restricted to daylight hours only and with full privileges at sixteen (16) years of age.

(7) A nonresident who has in his immediate possession a valid commercial driver's license issued to him in his home state or country may operate a motor vehicle in Idaho.

(8) A nonresident on active duty in the armed forces of the United States who has a valid driver's license issued by his home jurisdiction and such nonresident's spouse or dependent son or daughter who has a valid driver's license issued by such person's home jurisdiction.

(9) Any active duty military personnel, active duty U.S. coast guard personnel, and members of the reserves and national guard on active duty, including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians who as civilians are required to wear military uniforms and are subject to the code of military justice, are exempt from obtaining a commercial driver's license to operate military vehicles. This exemption does not apply to U.S. reserve technicians.

(10) Any person with a valid driver's license issued in their name is exempt from the requirement to obtain a motorcycle endorsement on the license when operating a motorcycle on highways or sections of highways designated for unregistered motorcycle use under section 49-426 (3), Idaho Code.

(11) Any person under the age of sixteen (16) years when operating an ATV, UTV, specialty off-highway vehicle or motorbike on roads on federal or state land where the road is not part of the highway system of the state of Idaho or local road management authority and is supervised by a licensed adult operator eighteen (18) years of age or older, and the road is open for such use, subject to the following:

(a) Any unlicensed operators under the age of sixteen (16) years on national forest roads must have completed a motorbike or ATV safety course approved by the Idaho department of parks and recreation, and a certificate or other proof of completion of such safety course shall be in the possession of the unlicensed operator of any ATV, UTV, specialty off-highway vehicle or motorbike or shall be present in the vehicle at all times when the vehicle is operated on

national forest roads. The certificate or proof of completion shall be provided for inspection to any peace officer upon request. No person shall be convicted of violating the provisions of this subsection if that person produces, at any time prior to conviction, the certificate or proof of completion of the approved safety course where the certificate shows completion of the course prior to the violation. In the event of a violation of the provisions of this subsection, the supervising adult may be charged with an infraction.

(b) For purposes of this subsection, "supervised" means that the supervising adult must be in a position, on another ATV, UTV, specialty off-highway vehicle or motorbike, or if on the ground, within three hundred (300) feet of the unlicensed operator, to provide close support, assistance or direction to the unlicensed operator.

49-303 — which persons shall not be licensed

49-303. which 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, shall 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's training course, who 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 pursuant to section 49-307 (10), Idaho Code, and with full privileges at sixteen (16) years of age. 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's 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. Notwithstanding the provisions of this section, a person who has had his noncommercial Idaho driver's license suspended may renew his driver's license as provided in section 49-319 , Idaho Code, which renewal shall be subject to the suspension.

(6) Has been adjudged by a court of competent jurisdiction to be a habitual drunkard or addicted to the use of narcotic drugs and such order has been received by the department.

(7) Has been adjudged by a licensed physician or by a court of competent jurisdiction to be afflicted with or suffering from any mental incompetence that would affect the person's ability to safely operate a motor vehicle and who has not at the time of application been restored to competency by the methods provided by law and such order has been received by the department.

(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 driver's license, except he may be issued a class D driver's license.

(12) Is under eighteen (18) years of age, is not enrolled in school, and 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.

(14) Is not lawfully present in the United States.

49-303A — Driver's license or permits issued to certain persons under the age of eighteen years

49-303A. Driver's license or permits issued to certain persons under the age of eighteen years.

(1) Attendance requirements. The department may issue a driver's license, a class D driver's training instruction permit, a class D supervised instruction permit, or a class D instruction permit to a minor younger than eighteen (18) years of age if, at the time of application, the minor:

(a) Has received a high school diploma, a high school equivalency diploma, a special diploma or a certificate of high school completion;

(b) Is enrolled in a public or private school and satisfies relevant attendance requirements;

(c) Is enrolled in a study course in preparation for a test of general educational development and satisfies relevant attendance requirements;

(d) Is enrolled in a home education program and satisfies the requirements of rules of the state board of education and the state department of education for such programs; provided that students shall be in compliance with the requirements and have been enrolled in the home education program for at least one (1) school year prior to verification of the attendance request, unless documentation of meeting the requirements of this section in the school year contiguous to enrollment in the home education program can be provided;

(e) Is enrolled in an accredited college or university;

(f) Is enrolled in a postsecondary vocational program or a postsecondary adult vocational program and satisfying relevant attendance requirements;

(g) Is enrolled in a job training program pursuant to state or federal law and satisfying relevant attendance requirements; or

(h) Is enrolled in other educational activities approved by the board of trustees of the school district and satisfying relevant attendance requirements.

(2) (a) An applicant for a driver's license who is under the age of eighteen (18) shall provide written verification of compliance with the requirements of subsection (1) of this section or receipt of a waiver therefrom pursuant to subsection (3) of this section to the department. The necessary verification shall be obtained from the school district. If the applicant is enrolled in or has graduated from a private high school, the verification shall be obtained by the applicant from the governing body of the private school. A school district shall not refuse to provide written verification of compliance with the requirements of this section to the department.

(b) Schools may implement interventions designed to improve student attendance with their district policies and procedures.

(c) When applying for a license or any instruction permit, an applicant under age eighteen (18) must provide written verification to the department of compliance with the requirements of subsection (1) of this section or receipt of a waiver therefrom, pursuant to subsection (3) of this section. Written verification shall be obtained from the applicant's school. The applicant's school shall not refuse to provide written verification of compliance with the requirements of this section to the department.

(3) (a) A public school principal, or the principal's designee, or the designee of the governing body of a private school shall provide written notification to a minor and the minor's parent, guardian or custodian of the school district's or private school's intent to request that the department suspend the minor's driving privileges because the minor has dropped out of school and has failed to comply with the requirements of subsection (1) of this section.

(b) The minor or the parent, guardian or custodian of the minor shall have fifteen (15) calendar days from the date of receipt of this notice to request a hearing before the public school principal, or the principal's designee, or the designee of the governing body of a private school for the purpose of reviewing the pending suspension. The hearing shall be conducted within thirty (30) calendar days after the public school principal, or the principal's designee, or the designee of the governing body of a private school receives the request.

(c) The public school principal, or the principal's designee, or the designee of the governing body of a private school shall waive the requirements of subsection (1) of this section for any minor under its jurisdiction for whom a personal or family hardship requires that the minor have a driver's license for his or her own or his or her family's employment or medical care. The public school principal, or the principal's designee, or the designee of the governing body of a private school shall take into account the recommendations of teachers, other school officials, guidance counselors or academic advisors prior to granting a waiver to the requirements of subsection (1) of this section.

(d) The hardship waiver provided in paragraph (c) of this section shall be requested, if desired by the minor or the minor's parent, guardian or custodian at the initial hearing.

(4) Any person denied a hardship waiver by a public school principal, or the principal's designee, or the designee of the governing body of a private school may appeal the decision to the board of trustees of the school district or the governing body of the private school. The public or private school shall notify the department of all students not in compliance with subsection (1) of this section or who have been granted a hardship waiver pursuant to subsection (3) of this section.

(5) Upon receiving written verification that the reinstatement fees have been paid and the minor is again in compliance with the requirements of subsection (1) of this section, the department shall reinstate the minor's privilege to drive. Thereafter, if the school district determines that the minor is not in compliance with the requirements of subsection (1), the department shall suspend the minor's driving privilege until the minor is eighteen (18) years old or otherwise satisfies the requirements of subsection (1) of this section, whichever occurs first.

(6) The department shall report quarterly to each school district the disposition of all requests to suspend driver's licenses of students of that district. Beginning with the 1996-97 school year, each school district and each private school shall report the number of notifications issued of possible student driver's license suspensions based on nonattendance, requests to the department to suspend a driver's license and student driver's licenses actually suspended.

49-304 — Motorcycle endorsement

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) No person may operate a motorcycle upon a highway without a motorcycle "M" endorsement on a valid driver's license.

(2) Any person who applies for a driver's license or renewal of a license may also apply for a motorcycle "M" endorsement. 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 49, 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 division of career technical education.

(4) Any person who applies for a motorcycle endorsement on a driver's license, 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.

(6) The provisions of this section shall not apply to persons operating autocycles.

49-305 — Instruction permits — commercial learner's permit — conditional licenses — Motorcycle endorsement instruction permit

49-305. Instruction permits — commercial learner's permit — conditional licenses — Motorcycle endorsement instruction permit.

(1) Upon passage of the required knowledge tests appropriate for the vehicle being operated, the department may issue a commercial learner's permit for the type of vehicle(s) the person will be operating or a class D instruction permit for a class D motor vehicle. Applicants, while in immediate possession of a commercial learner's permit, may drive a motor vehicle on the highways for a period of up to one (1) year. Applicants with a class D instruction permit may drive a motor vehicle on the highways for a period of up to one (1) year or as provided in paragraph (b) of this subsection for certain class D instruction permits. That person must be accompanied by an adult driver eighteen (18) years of age or older who holds a valid driver's license appropriate for the vehicle being operated and who is actually occupying a seat beside the driver.

(a) Any person under the age of seventeen (17) years who has successfully completed an approved driver's training course and has satisfied the requirements of a class D supervised instruction permit, or any person who has reached the age of seventeen (17) years, may apply for a class D instruction permit. Any person applying for any class D instruction permit or driving privileges who is under the age of eighteen (18) years shall be in compliance with school attendance requirements of section 49-303A , Idaho Code.

(b) If a person reaches the age of seventeen (17) years while operating a class D vehicle with a class D supervised instruction permit, and such class D supervised instruction permit becomes a class D instruction permit as provided in section 49-307 , Idaho Code, then such class D instruction permit shall expire five (5) days after the permittee's eighteenth birthday.

(c) Any person who has reached the age of eighteen (18) years, holds a valid Idaho class D driver's license, and has at least one (1) year of driving experience may apply for a commercial learner's permit.

(d) The department shall not issue a hazardous material endorsement on any commercial learner's permit.

(2) The department may, at its discretion, issue a conditional class D driver's license to an applicant for a class D driver's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The conditional license may be canceled at the department's discretion at any time after issuance. The conditional license must be in the applicant's immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's driver's license has been issued or for good cause has been refused.

(3) Proof of identity and citizenship status pursuant to section 49-306 (5)(d), Idaho Code, shall be required before a class D driver's license or class D instruction permit will be issued.

(4) The department may issue a motorcycle endorsement instruction permit to an applicant who has a valid driver's license and who has successfully completed the motorcycle rider's knowledge test and paid the appropriate fees. The permit entitles the applicant, while having the permit in his immediate possession, to operate a motorcycle on the highways for a period not to exceed one (1) year. If the permittee passes the skills test for a motorcycle endorsement within the validity period of the motorcycle endorsement instruction permit, he shall not be required to pay the motorcycle endorsement fee. A person holding a motorcycle instruction permit shall not carry any passenger while operating a motorcycle, shall not operate a motorcycle except during the hours of daylight only, and shall not operate a motorcycle on any interstate highway system. A violation of the conditions of a motorcycle endorsement instruction permit is an infraction. The department shall cancel the permit whether or not such violation results in conviction of the infraction.

49-306 — Application for driver's license, instruction permit, commercial learner's permit or restricted school attendance driving permit

49-306. Application for driver's license, instruction permit, commercial learner's permit or restricted school attendance driving permit.

(1) Every application for any instruction permit, restricted school attendance driving permit, or driver's license shall be made on 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, agents authorized by the department, and sheriffs and their deputies are authorized to administer the oaths without charge.

(2) Every application for a permit, extension, driver's license, or knowledge test shall be accompanied by a nonrefundable fee pursuant to this subsection. Fee portions identified as going to the current expense fund shall be retained by the issuing entity. If the issuing entity is the department or an agent authorized by the department, other than the county, such fee portion shall be deposited in the state highway account. All other remaining fee portions shall be remitted to the state treasurer. If the fee is collected by a county, all remaining fee portions shall be paid over to the county treasurer and the county treasurer shall remit such fees to the state treasurer not less than monthly. The state treasurer shall immediately allocate such fees in accordance with the schedule identified following each fee:

(a) Class A, B, C (4-year) license with endorsements — age 21 years and older

(i) $5.00 to the current expense fund; (ii) $2.00 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $4.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $28.00 to the state highway account; and

(v) $1.00 to the motorcycle safety program fund;

(b) Class A, B, C (8-year) license with endorsements — age 21 to 63 years

(i) $5.00 to the current expense fund; (ii) $4.00 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $8.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $41.00 to the state highway account; and

(v) $2.00 to the motorcycle safety program fund;

(c) Class A, B, C (3-year) license with endorsements — age 18 to 21 years

(i) $5.00 to the current expense fund; (ii) $1.50 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $3.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $19.50 to the state highway account; and

(v) $1.00 to the motorcycle safety program fund;

(d) Class A, B, C (1-year) license with endorsements — age 20 years

(i) $5.00 to the current expense fund; (ii) $0.50 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $1.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $8.16 to the state highway account; and

(v) $0.34 to the motorcycle safety program fund;

(e) Class D (3-year) license — age 15 to 18 years or age 18 to 21 years

(i) $10.00 to the current expense fund; (ii) $1.50 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $3.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $4.00 to the driver training fund;

(v) $10.50 to the highway distribution account; and (vi) $1.00 to the motorcycle safety program fund;

(f) Class D (1-year) license — age 17 or 20 years

(i) $10.00 to the current expense fund; (ii) $0.50 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $1.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $1.33 to the driver training fund;

(v) $6.83 to the highway distribution account; and (vi) $0.34 to the motorcycle safety program fund;

(g) Class D (4-year) license — age 21 years and older

(i) $10.00 to the current expense fund; (ii) $2.00 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $4.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $5.30 to the driver training fund;

(v) $12.70 to the highway distribution account; and (vi) $1.00 to the motorcycle safety program fund;

(h) Class D (8-year) or class A, B, C license with endorsements — age 21 to 63 years

(i) $15.00 to the current expense fund; (ii) $4.00 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $8.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; (iv) $10.60 to the driver training fund;

(v) $20.40 to the highway distribution account; and (vi) $2.00 to the motorcycle safety program fund;

(i) Commercial learner's permit

(i) $5.00 to the current expense fund; (ii) $4.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; and (iii) $20.00 to the state highway account;

(j) Class D instruction permit

(i) $10.00 to the current expense fund; (ii) $2.60 to the driver training fund; and (iii) $7.40 to the highway distribution account;

(k) Duplicate driver's license or permit

(i) $10.00 to the current expense fund; (ii) $2.60 to the driver training fund; and (iii) $7.40 to the highway distribution account;

(l) Driver's license extension

(i) $2.60 to the driver training account; and (ii) $7.40 to the state highway account;

(m) License classification change (upgrade)

(i) $10.00 to the current expense fund; and (ii) $20.00 to the state highway account;

(n) Endorsement addition

(i) $10.00 to the current expense fund; and (ii) $10.00 to the state highway account;

(o) Class A, B, C skills tests

(i) $10.00 to the state highway account; and (ii) Remainder retained by entity administering the test;

(p) Class D skills test

(i) $6.50 to the state highway account; and (ii) Remainder retained by entity administering the test;

(q) Motorcycle endorsement skills test (amount charged retained by entity administering the test)

(r) Knowledge test (fee retained by the entity administering the test)

(s) Seasonal driver's license

(i) $10.00 to the current expense fund; (ii) $2.00 to the emergency medical services fund established in section 57-829 , Idaho Code; (iii) $4.00 to the emergency medical services vehicle and equipment grant fund established in section 57-830 , Idaho Code; and (iv) $28.00 to the state highway account;

(t) Onetime motorcycle "M" endorsement

(i) $2.50 to the current expense fund; and (ii) $12.50 to the state highway account;

(u) Motorcycle endorsement instruction permit

(i) $2.50 to the current expense fund; and (ii) $12.50 to the state highway account;

(v) Restricted driving permit or restricted school attendance driving permit (fee to the state highway account)

(3) The fee for any electronic driver's license renewal allowed pursuant to section 49-319 (10), Idaho Code, shall be five dollars ($5.00) less than the applicable application fee prescribed in subsection (2) of this section. This fee reduction shall be accounted for by subtracting five dollars ($5.00) from the portion of fees retained by the department.

(4) A person who applies for a driver's license or a driver's license renewal may designate a voluntary contribution of two dollars ($2.00) for the purpose of promoting and supporting organ donation. Such a contribution shall be treated as a voluntary contribution to the organ donation contribution fund created in section 49-2447 , Idaho Code, and not as a driver's license fee. Each voluntary contribution shall be deposited into the organ donation contribution fund created in section 49-2447 , Idaho Code.

(5) Every application shall state the applicant's true and full name, date of birth, sex, declaration of Idaho residency, Idaho residence address and mailing address if different, height, weight, hair color, eye color, and social security number as verified by the social security administration. If an applicant has submitted an application pursuant to the provisions of chapter 58, title 19 , Idaho Code, then the applicant may state, in his or her application pursuant to this section, the applicant's alternative Idaho mailing address in place of his or her Idaho residence address and mailing address.

(a) The requirement that an applicant provide a social security number as verified 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, commercial learner's permit 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.

(c) Every application for a class A, B or C license shall state where the applicant has been licensed for the preceding ten (10) years and under which of the following driving categories the applicant will operate:

(i) Non-excepted interstate. The applicant operates or expects to operate in interstate commerce and is required to provide a medical examiner's certificate; (ii) Excepted interstate. The applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted by the federal motor carrier safety administration from all or parts of the qualification requirements of federal motor carrier safety regulation 49, part 391, and is therefore not required to provide a medical examiner's certificate; (iii) Non-excepted intrastate. The applicant operates only in intrastate commerce and is subject to and meets all Idaho driver qualification requirements and the applicable parts of federal motor carrier safety regulation 49, part 391, and is required to provide a medical examiner's certificate; or (iv) Excepted intrastate. The applicant operates in intrastate commerce, but engages exclusively in exempted transportation or operations as listed in section 67-2901B (2), Idaho Code, and the applicable parts of federal motor carrier safety regulation 49, part 391, and is therefore not required to provide a medical examiner's certificate. All applications 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 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.

(d) The applicant must submit proof of identity and citizenship status acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate or a valid, unexpired passport. If the applicant does not possess a certified copy of his birth certificate or a delayed birth certificate and does not possess a valid, unexpired passport, another government-issued document may be submitted that provides satisfactory evidence of a person's full legal name and date of birth acceptable to the examiner or the department.

(e) Every applicant for a class A, B or C driver's license or commercial learner's permit shall provide proof of United States citizenship or lawful permanent residency in the United States upon application for issuance, transfer, upgrade or renewal, unless the applicant's driving record already contains documentation confirming United States citizenship or lawful permanent residency.

(f) Individuals required to register in compliance with section 3 of the federal military selective service act, 50 U.S.C. App. 451 et seq., as amended, shall be provided an opportunity to fulfill such registration requirements in conjunction with an application for a driver's license, commercial learner's permit or instruction permit. Any registration information so supplied shall be transmitted by the department to the selective service system.

(6) 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.

(7) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(8) 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 or commercial learner's permit to ensure identification of the person and to obtain clearance to issue the license.

(9) The department shall request information from the drug and alcohol clearinghouse to determine whether an applicant for any class A, B, or C driver's license or commercial learner's permit is eligible for the credential.

(10) 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.

(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 be valid only 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 be obtained only 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 of motor vehicle; and

(e) Are at least sixteen (16) years old.

49-307 — Class D driver's training instruction permit — Class D supervised instruction permit — Application for a class D driver's license — Restrictions on class D driver's license

49-307. Class D driver's training instruction permit — Class D supervised instruction permit — Application for a class D driver's license — Restrictions on class D driver's license.

(1) No enrollee of any class D driver's training course shall be allowed to attend classes or participate in driving instruction unless he has obtained a class D driver's training instruction permit or a class D instruction permit as provided in subsection (4) of this section.

(2) Every enrollee of a class D driver's training course shall pay a nonrefundable fee of fifteen dollars ($15.00), except that a pupil who participates in parent-student on-road driver's training pursuant to subsection (6) of this section shall pay a nonrefundable fee of ten dollars ($10.00). Five dollars ($5.00) of each fee so imposed shall be deposited in the state highway account and five dollars ($5.00) shall be deposited in the county current expense fund. The additional five dollars ($5.00) for every class D driver's training course enrollee shall be:

(a) Deposited in the driver training account if the person is taking driver's training from a public school; or

(b) Paid to the division of occupational and professional licenses and deposited in the state treasury to the credit of the occupational licenses fund if the person is taking driver's training from a private driver's training program. The amount to be remitted to the division of occupational and professional licenses shall be annually calculated and paid. To calculate such amount, the total number of public driver's training students as submitted to the state department of education shall be subtracted from the total number of permits sold as reported by the Idaho transportation department, and the resulting number shall be multiplied by five dollars ($5.00).

(3) Each enrollee of a class D driver's training course shall provide the type of information required for a driver's license or instruction permit. If an enrollee of a class D driver's training course cannot provide a certified copy of his birth certificate at the time of application for a permit, the department may issue a class D driver's training instruction permit or a class D instruction permit upon receipt of identification acceptable to the department. The certified copy of an applicant's birth certificate or another government-issued identity document and documentation to establish the applicant's relationship to a person who is willing to assume responsibility for such applicant shall be required before a class D driver's license will be issued.

(4) The class D driver's training instruction permit shall expire five (5) days after the permittee's eighteenth birthday for permittees fourteen and one-half (14 1/2) years of age through seventeen and one-half (17 1/2) years of age. The class D driver's training instruction permit shall expire one hundred eighty (180) days from the date of issue for persons seventeen and one-half (17 1/2) years of age or older. Persons aged seventeen (17) years or older may attend classes or participate in driver's training instruction while operating with a class D instruction permit or a class D driver's training instruction permit.

(5) The class D driver's training instruction permit shall be issued to the instructor of the course or to the qualifying parent or legal guardian pursuant to subsection (6) of this section. (6)(a) An eligible student may satisfy the requirements of section 33-1702 , Idaho Code, regarding driver's training courses through parent-student on-road driver's training pursuant to this subsection. Notwithstanding any other provision of law to the contrary, students eligible for driver's training pursuant to section 33-1703 , Idaho Code, may receive the in-car observation and behind-the-wheel instruction components of a driver's training course from a qualifying parent or legal guardian instead of a licensed instructor.

(b) A student participating in parent-student on-road driver's training pursuant to this subsection shall enroll and successfully complete the thirty (30) hours of classroom instruction for driver's training required under section 33-1702 , Idaho Code, through any online driver's training course approved by the state department of education. The approved online driver's training program shall make online driver's training courses available to all students eligible for driver's training. The state department of education shall publish a list of all approved online driver's training programs on the department's website and such list shall also be made available at each county driver's license office.

(c) A parent or legal guardian who is qualified to provide parent-student on-road driver's training pursuant to this subsection may teach the driving portion of a driver's training course, including the six (6) hours of in-car observation and the six (6) hours of behind-the-wheel instruction required under section 33-1702 , Idaho Code. Such training shall be done concurrently with the classroom component of the driver's training course. The in-car observation and behind-the-wheel instruction components shall satisfy all content standards and benchmarks of the Idaho driver education curriculum approved by the state department of education. More than one (1) qualifying parent or legal guardian may provide the parent-student on-road driver's training to a student.

(d) A parent or legal guardian qualifies to provide parent-student on-road driver's training pursuant to this subsection if:

(i) The parent or legal guardian possesses a valid Idaho driver's license that permits unaccompanied driving; and
(ii) The parent or legal guardian has not had a license suspended, revoked, or canceled and has not been disqualified from holding an Idaho driver's license for the previous two (2) years. A parent or legal guardian shall no longer be qualified if a license becomes suspended, revoked, or canceled or if a parent or legal guardian becomes disqualified from holding an Idaho driver's license during the student's education.

(e) A qualifying parent or legal guardian who provides parent-student on-road driver's training pursuant to this subsection shall fill out a driving log containing the date, time, location, and skills practiced for each driving session. Upon completion, the parent or legal guardian shall submit the driving log to the county driver's license office and comply with the requirements of subsection (7) of this section.

(f) A student must meet the requirements of subsection (8) of this section relating to the class D supervised instruction permit before applying for a class D driver's license. (7)(a) Upon successful completion of the class D driver's training course, the driver's training instructor shall submit the student log to the county driver's license office and give the class D driver's training instruction permit to the parent or legal guardian of the permittee unless the permit has been issued pursuant to subsection (6) of this section. The parent or legal guardian shall assume responsibility for ensuring that the permittee complies with the requirements of operating a vehicle with a class D supervised instruction permit. The class D driver's training instruction permit shall then serve as a class D supervised instruction permit.

(b) In the event the permittee reaches seventeen (17) years of age while operating a class D vehicle with a class D supervised instruction permit, the supervised instruction permit shall become a class D instruction permit.

(8) No permittee may apply for a class D driver's license sooner than fifteen (15) years of age and no sooner than six (6) months after completing a class D driver's training course, during which time the permittee shall satisfy all requirements for operation of a class D vehicle with a class D supervised instruction permit as follows:

(a) The permittee shall not operate a vehicle unless he is accompanied by a driver who holds a valid driver's license, is twenty-one (21) years of age or older, and is actually occupying a seat beside the permittee driver. The supervising driver and the permittee shall be the only occupants of the front passenger section of the vehicle.

(b) Over a period of time not less than six (6) months, the permittee shall accumulate at least fifty (50) hours of supervised driving time, ten (10) hours of which shall be during hours of darkness.

(c) The permit shall be in the permittee's immediate possession at all times while operating a vehicle.

(d) In addition to the permittee driver and the supervising driver, all other occupants of the vehicle shall wear a seat belt or be restrained by child passenger restraints as required by law.

(e) The permittee is subject to the provisions of sections 18-1502 and 18-8004 , Idaho Code, relating to violation of age restrictions on consumption of beer, wine, and alcohol and driving under the influence of alcohol, drugs or any other intoxicating substances, respectively.

(f) The permittee shall not have been convicted of any moving traffic violation, have had driving privileges suspended by the department or the court for any offense, or have been found to be in violation of any of the restrictions on the class D supervised instruction permit for a period of at least six (6) months from the date the driver's training instructor gave the permit to the parent or legal guardian, or from the date a canceled class D supervised instruction permit was reissued, or until the permittee reaches seventeen (17) years of age.

(g) If the permittee is under seventeen (17) years of age and is convicted of a violation of any traffic law, or section 18-1502 , 18-8004 or 23-949 , Idaho Code, or is found to be in violation of any of the restrictions on the class D supervised instruction permit, the department shall cancel the class D supervised instruction permit, and the cancellation shall not be used to establish rates of motor vehicle insurance charged by a casualty insurer. If the permittee is under seventeen (17) years of age, the permittee may reapply for and be issued a new class D supervised instruction permit upon payment of the appropriate fee and shall again be required to operate with the class D supervised instruction permit for at least six (6) months from the date of reissue without a conviction or suspension, accumulate the required hours of driving time, and adhere to the requirements as specified in paragraphs (a) through (f) of this subsection.

(9) Upon completion of the requirements in subsection (8) of this section, the permittee shall take the knowledge test and skills test administered by a person certified by the Idaho transportation department to administer knowledge and skills tests. (10)(a) Upon passage of the knowledge and skills tests, the permittee may apply for a class D driver's license with driving privileges restricted to daylight hours only for persons under sixteen (16) years of age and with full privileges at sixteen (16) years of age or older.

(b) For purposes of this subsection, "daylight hours only" means the period of time between 5:00 a.m. and 10:00 p.m. local time.

(c) The restriction on daylight hours only driving privileges for persons under sixteen (16) years of age shall not apply if:

(i) The person under sixteen (16) years of age has a valid class D driver's license; (ii) The person under sixteen (16) years of age is accompanied by a driver who holds a valid driver's license and is twenty-one (21) years of age or older and is actually occupying a seat beside the licensee who is under sixteen (16) years of age; and (iii) The two (2) licensed drivers are the only occupants of the front passenger section of the vehicle.

(11) Upon passage of the knowledge and skills tests, the permittee may apply for a class D driver's license. Any such licensee who is under seventeen (17) years of age shall be required, during the first six (6) months from the date of issue of the class D driver's license, to limit the number of passengers in the vehicle who are under seventeen (17) years of age to not more than one (1) such passenger. Provided however, the limit of one (1) passenger under seventeen (17) years of age shall not apply to passengers who are related to the driver by blood, adoption or marriage.

49-307A — Restricted school attendance driving permit

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.

49-308 — Driver training account established

49-308. Driver training account established. The driver training account is established in the office of the state treasury, which account is continuously appropriated for the purpose of driver training. All disbursements for driver training purposes made under certificate of the state board of education shall be made from the driver training account.

49-310 — Applications of persons under the age of eighteen years

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, driver training instruction 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. When the minor person applies for a class D driver's license, a parent or guardian or a person authorized by the parent or guardian 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. 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 maintains, or there is maintained upon his behalf, proof of financial responsibility 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 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, bicycle, or electric-assisted bicycle infraction, and provided this subsection shall not apply to any civil action where the plaintiff is other than the state of Idaho.

49-311 — Release from liability

49-311. Release from liability. Any person who has signed the application for a driver's license of a person under the age of eighteen (18) years may file with the department a verified written request that the driver's license so granted be cancelled and the department shall cancel the driver's license. The person who signed the application shall be relieved from the liability imposed by reason of having signed the application, of any subsequent negligence or willful misconduct of the person signed for in operating a motor vehicle.

49-312 — Death of person signing application for person under eighteen years of age

49-312. Death of person signing application for person under eighteen years of age. The department, upon receipt of satisfactory evidence of the death of the person(s) who signed the application of a person under the age of eighteen (18) years for a driver's license, shall cancel the driver's license and shall not issue a new driver's license until a new application, duly signed and verified, is made. This provision shall not apply in the event the licensee has attained the age of eighteen (18) years.

49-313 — Examination of applicants

49-313. Examination of applicants.

(1) The sheriff, his deputy or authorized agents of the department shall examine every applicant for an instruction permit, commercial learner's permit, restricted school attendance driving permit, seasonal driver's license, driver's license or a motorcycle endorsement, except as otherwise provided by law. The examination shall include a vision screening and a test of the applicant's 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 division of career technical education.

(4) The department shall not issue the following endorsements except as provided:

(a) 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.

(b) A passenger endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge and skills test.

(c) A school bus endorsement unless the applicant, in addition to all other applicable qualifications, has passed appropriate knowledge and skills tests. Until September 30, 2005, the department may waive the school bus endorsement skills test requirement if the applicant meets the conditions set forth in accordance with 49 CFR part 383.123.

(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) calendar 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 division of career technical 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 division of career technical 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 vision screening, 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.

49-314 — Local examiners appointed by department

49-314. Local examiners appointed by department.

(1) The department shall appoint the sheriff in each county and may appoint any deputy sheriff, chief of police, or other officials or private citizens whom the department deems qualified as examiners, who shall be agents of the department and shall perform duties prescribed in this title.

(2) The department shall appoint at least one (1) employee in the department who shall be skilled and highly qualified in the method of giving driver's license examinations, who shall have authority, and it shall be this person's duty to instruct the examiners appointed by the department in the method of giving driver's license examinations and acquaint them with the use of equipment and forms needed in examining applicants for licensure.

(3) Agents of the department appointed to administer skills tests for class A, B or C driver's licenses must be certified according to 49 CFR part 383.

(4) Agents of the department appointed to administer the skills test for a motorcycle endorsement shall be certified by the division of career technical education.

(5) Agents of the department to administer skills tests for class D driver's licenses shall be certified by the department.

49-315 — Licenses issued to drivers

49-315. Licenses issued to drivers.

(1) The department shall issue to every qualifying applicant a distinguishing driver's license as applied for, which shall bear a distinguishing number assigned to the licensee, the full name, date of birth, Idaho residence address, sex, weight, height, eye color, hair color, color photograph, name of this state, date of issuance, date of expiration, license class, endorsements, restrictions, and the applicant's signature. If an applicant has submitted an application pursuant to the provisions of chapter 58, title 19 , Idaho Code, then the applicant's driver's license shall contain his or her alternative Idaho mailing address in place of his or her Idaho residence address. Driver's licenses for persons under eighteen (18) years of age shall include a notation "under 18 until (month, day, year)," and driver's licenses for persons eighteen (18) years of age to twenty-one (21) years of age shall include a notation "under 21 until (month, day, year)." No driver's license shall be valid until it has been signed on the signature line of the license by the licensee. Driver's licenses for persons who are United States citizens shall, where possible, include the notation "USA."

(2) Every driver's license shall bear a color photograph of the licensee, which shall be taken by the examiner at the time the application is made. The photograph shall be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant. A waiver may be granted by the department allowing the applicant to wear headgear or other head covering for medical, religious or safety purposes as long as the face is not disguised or otherwise concealed. At the request of the applicant, a driver's license may contain a statement or indication of the medical condition of the licensee.

(3) The department shall notify the commercial driver license information system that a class A, B or C driver's license has been issued as required by 49 CFR parts 383 and 384.

(4) A licensee applying for a hazardous material endorsement on a driver's license shall have a security background records check and shall receive clearance from the federal transportation security administration before the endorsement can be issued, renewed or transferred as required by 49 CFR part 383, subject to procedures established by the federal transportation security administration.

(5) A licensee who desires to donate any or all organs or tissue in the event of death, and who has completed a document of gift pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39 , Idaho Code, may, at the option of the donor, indicate this desire on the driver's license by the imprinting of the word "donor" on the license. The provisions of this subsection shall apply to licensees fifteen (15) years of age or older but less than eighteen

(18) years of age if the requirements provided in chapter 34, title 39 , Idaho Code, have been complied with and the donor indicates this desire be placed on the license.

(6) A licensee who is a person with a permanent disability may request that the notation "permanently disabled" be imprinted on the driver's license, provided the licensee presents written certification from a licensed physician verifying that the licensee's stated impairment qualifies as a permanent disability according to the provisions of section 49-117 , Idaho Code.

(7) A licensee who is a veteran may request that his or her status as such be designated on the driver's license at no additional cost. Any such request shall be accompanied by proof of being a current or former member of the United States armed forces. Upon request and submission of satisfactory proof, the department shall indicate such person's status as a veteran on any class of driver's license issued pursuant to this section. Such designation shall be made upon original issuance or renewal of a driver's license. Designation shall also be made on any duplicate driver's license issued, provided that the fee for such duplicate driver's license is paid in accordance with section 49-306 , Idaho Code. Satisfactory proof of being a current or former member of the United States armed forces must be furnished by an applicant to the department before a designation of veteran status will be indicated on any class of driver's license. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs that identifies a character of service upon separation as "honorable" or "general under honorable conditions."

49-316 — Driver's license to be carried and exhibited on demand

49-316. Driver's license to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall, upon demand, surrender the driver's license into the hands of a peace officer for his inspection. However, no person charged with a violation of the provisions of this section shall be convicted if a driver's license issued to the person and valid at the time of his arrest is produced in court.

49-317 — Restricted driver's licenses

49-317. Restricted driver's licenses.

(1) The department, upon issuing a driver's license, shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to:

(a) The type of or special mechanical control devices required or not permitted on a motor vehicle which the licensee may operate;

(b) Medical variances as determined by the federal motor carrier safety administration; or

(c) Other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The department may either issue a special restricted driver's license or may set forth restrictions upon the usual driver's license form.

(3) The department shall, upon receiving satisfactory evidence of any violation of the restrictions of a driver's license, suspend the driver's license or privileges for a period of thirty (30) days but the licensee shall be entitled to a hearing as provided in section 49-326 , Idaho Code.

49-318 — Duplicate driver licenses and substitute permits

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 or another document that 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.

49-319 — Expiration and renewal of driver's license

49-319. Expiration and renewal of driver's license.

(1) Every noncommercial Idaho driver's license issued to a driver shall expire and be renewable as follows:

(a) For drivers twenty-one (21) years of age or older, the driver's license shall expire on the licensee's birthday in the fourth year following the issuance of the driver's license.

(b) At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of age, the driver's license shall expire on the licensee's birthday in either the fourth year or the eighth year following the issuance of the driver's license.

(c) Except for the provisions found in subsections (1)(e) and (3) of this section, every driver's license issued to a driver under eighteen (18) years of age shall expire five (5) days after the licensee's eighteenth birthday.

(d) Except for the provisions found in subsections (1)(e) and (3) of this section, every driver's license issued to a driver eighteen (18) years of age but under twenty-one (21) years of age shall expire five (5) days after the licensee's twenty-first birthday.

(e) Every driver's license that is not, as provided by law, suspended, revoked or disqualified in this state or any other jurisdiction shall be renewable on or before its expiration, but not more than twenty-five (25) months before, upon application, payment of the required fee, and satisfactory completion of the required vision screening. Notwithstanding the provisions of this section, a person who has had his noncommercial Idaho driver's license suspended may renew his driver's license as provided in this section, which renewal shall be subject to the suspension.

(2) Except for the provisions of subsection (3) of this section, at the option of the applicant, every commercial driver's license issued to a person twenty-one (21) years of age through sixty-two (62) years of age shall expire on the licensee's birthday in the fourth or eighth year following issuance of the license. Any class A, B or C license issued to a person eighteen (18), nineteen (19) or twenty (20) years of age shall expire five (5) days after the licensee's twenty-first birthday.

(3) Every driver's license issued to a person who is not a citizen or permanent legal resident of the United States shall have an expiration date that is the same date as the end of lawful stay in the United States, as indicated on documents issued and verified by the department of homeland security; however, the expiration date shall not extend beyond the expiration date for the same category of license issued to citizens. Persons whose department of homeland security documents do not state an expiration date shall be issued a driver's license with an expiration date of one (1) year from the date of issuance. Fees shall be in accordance with the expiration periods and classes listed in section 49-306 (1), Idaho Code.

(4) An applicant who is issued a driver's license in another jurisdiction after an Idaho driver's license has been issued is not eligible for renewal or a duplicate of the Idaho driver's license. The applicant may apply for a new Idaho driver's license as provided in section 49-306 , Idaho Code.

(5) No knowledge test shall be required for renewal of a driver's license. No knowledge test shall be required if an applicant for a new class D Idaho driver's license has previously held an Idaho driver's license. Appropriate knowledge and skills tests shall be required for an upgrade in a driver's license class, renewal of a hazardous material endorsement, or an endorsement addition. In the case of a name change, the applicant shall provide legal documentation to verify the

change in accordance with department rules.

(6) Applicants for a hazardous material endorsement shall provide either proof of United States citizenship or proof of lawful, permanent United States residence and a valid federal bureau of citizenship and immigration services alien registration number. A security background records check and federal transportation security administration clearance shall be required for issuance, renewal or transfer of a hazardous material endorsement in accordance with 49 CFR 383, subject to procedures established by the federal transportation security administration.

(7) When a driver's license has been expired for fewer than twenty-five (25) months, the renewal of the driver's license shall start from the original date of expiration, regardless of the year in which the application for renewal is made. If the driver's license is expired for twenty-five (25) months or more, the applicant shall be required to take the appropriate knowledge test(s) and skills test(s) for the class of license or endorsement being applied for and undergo vision screening. The license shall expire on the licensee's birthday in the fourth year following issuance of the driver's license for drivers twenty-one (21) years of age or older, except as otherwise provided in subsections (1)(e) and (3) of this section. At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of age, the renewed license shall expire on the licensee's birthday in either the fourth year or the eighth year following issuance, except as otherwise provided in subsections (1)(e) and (3) of this section. (8)(a) If a driver's license has expired or will expire and the licensee is temporarily out of state, except on active military duty, and the driver's license has not, as provided by law, been suspended, revoked, canceled, denied, refused or disqualified, the licensee may request in writing on a form prescribed by the department an extension of the driver's license. The request shall be accompanied by the fee fixed in section 49-306 , Idaho Code, and the extension shall be no more than a twelve (12) month period. If the department determines that an extension of the driver's license is necessary, it may issue a license showing the date to which the expired driver's license is extended. License extensions are limited to two (2) consecutive extensions per licensee.

(b) Upon returning to the state of Idaho, the licensee shall, within ten (10) days, apply for a renewal of the expired driver's license and surrender the extended license and the expired driver's license.

(c) A hazardous material endorsement cannot be extended.

(9) An Idaho driver's license issued to any person prior to serving on active duty in the armed forces of the United States, or a member of the immediate family accompanying such a person, if valid and in full force and effect upon entering active duty, shall remain in full force and effect and shall, upon application, be extended for a period of four (4) years as long as active duty continues or shall be renewed upon application in person without the requirement to take a knowledge or skills test if the Idaho driver's license expired while on active duty, if the driver's license is not suspended, denied, disqualified, canceled or revoked, as provided by law, during the active duty, and the driver's license shall remain in full force and effect sixty (60) days following the date the holder is released from active duty.

(10) The department may use a mail or electronic renewal process for class D and commercial driver's licenses based on criteria established by rule.

(11) A seasonal driver's license is valid only for a one-hundred-eighty (180) day period from the date of issuance. Only one (1) seasonal driver's license may be obtained in any twelve (12) month period and may be obtained only twice in a driver's lifetime.

(12) A person who applies for renewal of a license may request that the notation "permanently disabled" be imprinted on the license, and the department shall imprint "permanently disabled" on the license if:

(a) The person has a permanent disability;

(b) The person presents written certification from a licensed physician, licensed physician assistant, or licensed advanced practice professional nurse verifying that the person's stated impairment qualifies as a permanent disability as provided in section 49-117 , Idaho Code; and

(c) The department determines that the person meets the requirements for issuance of a license as specified in section 49-313 , Idaho Code.

49-320 — Notice of change of address

49-320. Notice of change of address. It is the responsibility of every licensed driver and every person applying for a driver's license to keep a current address on file with the department.

(1) Whenever any person after applying for or receiving a driver's license shall move from the address shown in the application or in the driver's license issued, that person shall, within thirty (30) days, notify the department in writing of the old and new addresses.

(2) Whenever any statute or rule requires a driver to receive notice of any official action with regard to the person's driver's license or driving privileges taken or proposed by a court or the department, notification by first class mail at the address shown on the application for a driver's license or at the address shown on the driver's license or at the address given by the driver, shall constitute all the legal notice that is required.

(3) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (1) of this section.

49-321 — Records to be kept by the department

49-321. Records to be kept by the department.

(1) The department shall file every application for a driver's license received by it and shall maintain suitable indices containing:

(a) All applications denied and on each note the reason for denial;

(b) All applications granted;

(c) The name of every licensee whose driver's license has been suspended, revoked, canceled, denied or disqualified by the department and after each name note the reasons for the action;

(d) The driver's license number for the applicant;

(e) The social security number of the applicant; and

(f) Record of the proof relied upon by the department in determining the applicant's status as a United States citizen or non-United States citizen.

(2) The department shall file the original or copy of the medical examiner's certificates, medical exemption letters and skill performance evaluation certificates of all commercial driver's license or instruction permit holders required to provide documentation of their physical qualification. The department shall maintain the document(s) for a period of three (3) years beyond the date the certificate or document was issued.

(3) The department shall also file all accident reports and abstracts of court records of convictions received by it under the law from any jurisdiction and is authorized to forward records of convictions, suspensions or disqualifications to any jurisdiction. Records may be in either paper or electronic form. The department shall maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions and the traffic accidents in which the licensee has been involved shall be readily ascertainable and available for consideration of the department upon any application for renewal of a driver's license and at other suitable times.

(4) The department of health and welfare, on or about the 25th day of each month, shall, upon the request of the department, furnish the department a listing showing the name, age, county of residence, and residence address of each Idaho resident who has died during the preceding month. The listing shall be used only for purposes of updating the driver's license files of the department and shall be subject to disclosure according to chapter 1, title 74 , Idaho Code.

(5) The department, upon request by the office of the secretary of state, shall provide the office of the secretary of state with a digital copy of the driver's license or identification card signature of a person who is an applicant for voter registration pursuant to section 34-409 , Idaho Code.

49-322 — Authority of department to cancel and downgrade driver's license or instruction permit

49-322. Authority of department to cancel and downgrade 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, that the licensee or permittee failed to give the required or correct information in his application, or that the licensee or permittee committed fraud in making the application.

(2) Upon a cancellation, the licensee or permittee shall surrender the canceled driver's license or 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) The department shall decertify the medical status and initiate a downgrade of any driver who is required by the federal motor carrier safety administration to maintain a medical examiner's certificate and/or medical exemption letter or skill performance evaluation certificate upon determining the person's medical certification has expired or has been revoked or canceled. The department shall change the person's driving status in the driver record to "not-certified," within ten (10) days and shall mail a notification letter regarding the pending decertification and downgrade action to the driver's last known address. The downgrade action shall occur no more than sixty (60) days from the date the not-certified status is posted to the record. Drivers can remove the not-certified medical status from their driving record by presenting a current and valid medical examiner's certificate and/or medical exemption letter or skill performance evaluation certificate to the department or by submitting an application to the department requesting their medical status be changed to "excepted."

(5) The department shall remove and, when applicable, subsequently reinstate a driver's commercial driving privileges upon receiving notification of a driver's status change in the drug and alcohol clearinghouse.

(6) When a driver's license has been 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.

49-323 — Suspending privileges of nonresidents and reporting convictions

49-323. Suspending privileges of nonresidents and reporting convictions.

(1) The privilege of driving a motor vehicle on the highways given to a nonresident shall be subject to suspension, disqualification or revocation by the department in a like manner and for a like cause as a driver's license issued to a resident may be suspended, disqualified or revoked.

(2) Upon receipt of a record of the conviction, suspension, disqualification or revocation in this state of a nonresident driver for any offense under the motor vehicle laws, the department shall forward a certified copy or electronic transfer of the record of the conviction, suspension, disqualification or revocation and its cause to the motor vehicle administrator in the state wherein the person so convicted is a resident and to the national driver register.

49-324 — Suspending resident's license and privileges upon conviction, administrative action or court order in another state or jurisdiction

49-324. Suspending resident's license and privileges upon conviction, administrative action or court order in another state or jurisdiction. The department shall suspend, disqualify or revoke the driver's license or privilege of any resident of this state or the privilege of a nonresident to operate a motor vehicle in this state upon receiving notice of the conviction, administrative action or court order of that person in another state or jurisdiction of an offense which, if committed in this state, would be grounds for the suspension, disqualification or revocation of the driver's license and privileges of the driver. The department shall forward a certified copy or electronic transfer to the national driver register.

49-325 — Mandatory revocation by department — Temporary restricted permit

49-325. Mandatory revocation by department — Temporary restricted permit.

(1) The department shall revoke the operating privilege of any driver upon receiving a record of the person's conviction of any of the following offenses, when the conviction has become final, if the court has not ordered the suspension or revocation of the privilege:

(a) Vehicular manslaughter;

(b) Any felony in the commission of which a motor vehicle is used, except that a court of competent jurisdiction shall have exclusive authority to suspend or revoke operating privileges upon conviction of a violation of the provisions of section 18-8004 or 18-8006 , Idaho Code;

(c) Perjury or the making of a false affidavit or statement under oath to the department under any law relating to the ownership or operation of motor vehicles;

(d) Conviction, or forfeiture of bail, upon three (3) charges of reckless driving committed within a period of twelve (12) months;

(e) Conviction of a violation of the provisions of section 49-1301 , Idaho Code. Revocation in this event shall be for a period of not less than one (1) year.

(2) Whenever any driver's license, permit or operating privilege has been revoked by the department on the basis of subsections (1)(b) through (1)(e) of this section, the department may issue a temporary restricted permit, except when restricted operating privileges are specifically prohibited by other provisions of law.

(a) A temporary restricted permit shall specify the restrictions as to time and area of use and any further restrictions as the department, in its discretion, may impose.

(b) A temporary restricted permit may be issued to grant noncommercial driving privileges, but no temporary restricted permit shall be issued which grants driving privileges to operate a commercial motor vehicle.

49-326 — Authority of department to suspend, disqualify or revoke driver's license and privileges

49-326. Authority of department to suspend, disqualify or revoke driver's license and privileges.

(1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

(a) Has committed an offense for which mandatory revocation, suspension or disqualification of license or privileges is required upon conviction, court order or administrative action;

(b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license or privileges had the charge been prosecuted under a state law;

(c) Is incompetent to drive a motor vehicle; 1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle. 2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be presumed incompetent to operate a motor vehicle. This presumption can be overcome by any person whose vision can be corrected to a visual acuity of 20/40 or better in one (1) eye as documented by a licensed ophthalmologist or optometrist. 3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department. 4. Any physician who has reason to believe that a patient is incompetent to drive a motor vehicle as defined in this subsection, may submit a report to the department. Before submitting a report, a physician should notify the patient or the patient's family of the physician's concerns about the patient's ability to drive. If the physician submits a report, the physician shall provide a copy of the report to the patient or to a member of the patient's family. If a physician submits a report in good faith, no professional disciplinary procedure, no monetary liability and no cause of action may arise against the physician for submission of the report;

(d) Has permitted an unlawful or fraudulent use of a driver's license;

(e) Has committed an offense in another state or jurisdiction as evidenced by a conviction, court order or administrative action, which if committed in Idaho would be grounds for suspension, disqualification or revocation;

(f) Has been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall

be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;

(g) Has failed to satisfy a judgment as set forth in chapter 12, title 49 , Idaho Code;

(h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49 , Idaho Code;

(i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;

(j) Is an habitual violator of traffic laws;

(k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;

(l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;

(m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;

(n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A , Idaho Code;

(o) Was cited under the age of seventeen (17) years and subsequently received a conviction involving a moving traffic violation arising out of the operation of a motor vehicle, and providing the driver shall be sent a written warning from the Idaho transportation department for a first conviction; the driver's license shall be suspended for a period of thirty (30) days for a second conviction; and the driver's license shall be suspended for a period of sixty (60) days for a third or subsequent conviction; and providing further that no restricted driving privileges shall be issued during any period of suspension hereunder.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320 , Idaho Code. Upon his request, the department shall afford him an opportunity for a hearing before a hearing officer appointed by the director. The hearing may be held by telephone within twenty (20) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten (10) day period. The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing, the hearing officer may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing, the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license. Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section, other than as set forth in subsection (1)(c), (d), (g), (h), (m), (n) or (o) of this section, the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be provided by administrative rule. A temporary restricted permit may be issued to grant noncommercial driving privileges, but no temporary restricted permit shall be issued which grants driving privileges to operate a commercial motor vehicle.

(5) The department shall not suspend or revoke a driver's license or privileges for a period of more than one (1) year, unless otherwise provided by law. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325 , Idaho Code, nor shall it be applicable to those suspensions placed on an individual's record for the purpose of administering suspensions ordered to take effect after an individual's release from confinement or imprisonment pursuant to chapter 80, title 18 , Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

49-326A — Administration by department of judicial suspensions of driver's licenses or privileges to become effective after release from confinement

49-326A. Administration by department of judicial suspensions of driver's licenses or privileges to become effective after release from confinement. When a court's judgment or order provides that the suspension of an individual's driver's license or driving privileges shall begin after the individual is released from confinement or imprisonment, the department, for purposes of administering the ordered suspension, shall consider the driver's license or driving privileges as suspended effective as of the end of the last day of the fixed portion of the ordered sentence, as shown by the judgment or sentencing order of the court.

(1) Unless otherwise ordered by the court, the suspension shall remain in effect until the individual applies for reinstatement of his or her driver's license or driving privileges and can provide verifiable documentation to establish the date of release from confinement or imprisonment and show that the court-ordered suspension period has expired since the individual's release. Upon such a showing, the department will reinstate the individual's driver's license or driving privileges as provided by law.

(2) Where the department is notified of the release of the individual, either by the court or the agency having custody over the individual during the period of confinement or imprisonment, the department shall amend its records to reflect the actual court-ordered period of suspension.

(3) No time credit against the court-ordered period of suspension will be given while the individual is incarcerated or if the individual is reincarcerated. The entire period of the court-ordered suspension must run after the individual is released from confinement or imprisonment.

49-328 — Reinstatement of revoked, disqualified or suspended driver's license — Fee — When reinstatement prohibited

49-328. Reinstatement of revoked, disqualified or suspended driver's license — Fee — When reinstatement prohibited.

(1) When the period of revocation, disqualification or suspension of a driver's license has expired, or the reason for the revocation, disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver.

(2) The application shall be in the form prescribed by the department and accompanied by a reinstatement fee of twenty-five dollars ($25.00) which shall be deposited in the state highway account.

(3) A driver's license shall not be suspended for failure to pay an infraction penalty. All driver's licenses suspended prior to July 1, 2018, for failure to pay an infraction penalty shall be reinstated upon application and without charge to the applicant.

(4) In addition to any other fees required in this section to be collected, the department shall collect sixty dollars ($60.00) for reinstating a driver's license after conviction for driving under the influence, without privileges, and after conviction or other violation of any other traffic-related misdemeanor or infraction, of which fees forty dollars ($40.00) shall be paid over to the county treasurer of the county in which the conviction occurred for support of that county's justice fund, or the current expense fund if no county justice fund has been established, and the twenty dollars ($20.00) shall be deposited in the state highway account.

(5) In addition to any other fees required in this section to be collected, the department shall collect two hundred dollars ($200) for reinstating a driver's license after a suspension imposed under the provisions of section 18-8002 or section 18-8002A , Idaho Code, or after a revocation, disqualification or suspension arising out of any alcohol or drug-related offense, other than a suspension imposed upon a person under eighteen (18) years of age pursuant to section 18-1502 (d), Idaho Code. Funds collected pursuant to this subsection shall be deposited in the state highway account.

(6) When there is more than one (1) reason why a driver's license was revoked or suspended or why a driver was disqualified, the department shall not collect multiple fees for reinstatement, but shall only collect one (1) reinstatement fee, which shall be the greater reinstatement fee, provided however, the department shall collect a reinstatement fee for each revocation, disqualification or suspension under chapter 80, title 18 , Idaho Code.

49-329 — No operation under foreign license during suspension or revocation in Idaho

49-329. No operation under foreign license during suspension or revocation in Idaho. No resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in Idaho has been suspended or revoked shall operate a motor vehicle in this state under a driver's license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after revocation until a new driver's license is obtained when and as permitted under this chapter.

49-330 — Right of appeal to court

49-330. Right of appeal to court. Any person denied a driver's license by the department or whose driver's license has been cancelled, suspended, disqualified, revoked, or restricted by the department shall have the right to file a petition for judicial review pursuant to chapter 52, title 67 , Idaho Code.

49-331 — Unlawful use of driver's license

49-331. Unlawful use of driver's license.

(1) It is a misdemeanor for any person:

(a) To display or cause or permit to be displayed any mutilated or illegible, canceled, revoked, suspended, disqualified, fictitious, or fraudulently altered driver's license or to have in his possession any driver's license canceled pursuant to section 49-322 (1), Idaho Code;

(b) To lend his driver's license to any other person or knowingly permit the use of his driver's license by another;

(c) To display or represent as one's own a driver's license not issued to him;

(d) To fail or refuse to surrender to the department, upon its lawful demand, any driver's license that has been canceled pursuant to section 49-322 (1), Idaho Code;

(e) To use a false or fictitious name in any application for a driver's license, to knowingly make a false statement, or to knowingly conceal a material fact or otherwise commit a fraud in any application;

(f) To permit any unlawful use of a driver's license issued to him; or

(g) To manufacture, produce, sell, offer for sale or transfer to another person any document purporting to be a certificate of birth or driver's license.

(2) In addition to the misdemeanor penalties that may be imposed for violation of the provisions of subsection (1) of this section, the court upon conviction may enter an order directing the department to suspend the driver's license, a permit to drive, privileges, or any nonresident's driving privileges for a period of ninety (90) days. A conviction under this section shall not be used as a factor or considered in any manner for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer, and such conviction shall not be grounds for nonrenewal of any insurance policy as provided in section 41-2507 , Idaho Code.

49-332 — Making false affidavit perjury

49-332. Making false affidavit perjury. Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the provisions of this chapter to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punished as provided by law.

49-333 — Prohibitions

49-333. Prohibitions. No person shall:

(1) Cause or knowingly permit his child or ward under the age of eighteen (18) years to operate a motor vehicle upon any highway when the child or ward is not authorized under or is in violation of any of the provisions of this chapter.

(2) Authorize or knowingly permit a motor vehicle owned by him or under his control to be operated upon any highway by any person who is not authorized under or is in violation of any of the provisions of this chapter.

(3) Employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter.

49-334 — Renting motor vehicle to another

49-334. Renting motor vehicle to another.

(1) No person shall rent a motor vehicle to any other person unless the latter person is then licensed or, in the case of a nonresident, then licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that any operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of the person written in his presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of the latter person and the date and place when and where the license was issued. This record shall be open to inspection by any peace officer or officer or employee of the department.

49-335 — Disqualifications and penalties — Commercial driver's license

49-335. Disqualifications and penalties — Commercial driver's license.

(1) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if convicted in the form of a judgment or withheld judgment of a first violation under any state or federal law of:

(a) Operating a motor vehicle while under the influence of alcohol or a controlled substance;

(b) Operating a commercial motor vehicle while the alcohol concentration of the person's blood, breath or bodily substance is 0.04 or more;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of any felony;

(e) Operating a commercial motor vehicle when the person's class A, B or C commercial driver's license driving privileges were revoked, suspended or canceled or during a time when such person was disqualified from operating a commercial motor vehicle, if the reason for such revocation, suspension, cancellation or disqualification was the result of a violation that occurred while the person was operating a commercial motor vehicle;

(f) Causing a fatality through negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.

(2) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

(3) If any of the offenses specified in subsection (1) or (2) of this section occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three (3) years.

(4) A person is disqualified for the period of time specified in 49 CFR 383 if found to have committed two (2) or more of any of the offenses specified in subsection (1) or (2) of this section, or any combination of those offenses, arising from two (2) or more separate incidents.

(5) A person is disqualified for the period of time specified in 49 CFR 383 from operating a commercial motor vehicle who uses a motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance or possession of a controlled substance with the intent to manufacture, distribute or dispense such controlled substance.

(6) A person who uses a commercial motor vehicle in the commission of a felony involving an act or practice of trafficking in persons, as described in 22 U.S.C. 7102 and chapter 86, title 18 , Idaho Code, is disqualified for the period of time specified in 49 CFR 383 from operating a commercial motor vehicle.

(7) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period. A conviction for reckless driving shall be considered a serious traffic violation if committed while operating a commercial motor vehicle or a noncommercial motor vehicle, as specified in 49 CFR 383.

(8) A person who drives, operates, or is in physical control of a commercial motor vehicle within this state while having any detectable amount of alcohol in his system or who refuses to submit to an alcohol test must be placed out of service for twenty-four (24) hours and be subject to the provisions of section 18-8002 , Idaho Code.

(9) It is unlawful to violate an out-of-service order. A person who is convicted in the form of a judgment or withheld judgment of a violation of an out-of-service order while driving a commercial motor vehicle is disqualified for not less than:

(a) One hundred eighty (180) days or more than one (1) year for a first conviction;

(b) Two (2) years or more than five (5) years for a second conviction arising from separate incidents during any ten (10) year period;

(c) Three (3) years or more than five (5) years for three (3) or more convictions arising from separate incidents during any ten (10) year period.

(10) A person who is convicted in the form of a judgment or withheld judgment of a violation of an out-of-service order while driving a commercial motor vehicle and transporting hazardous materials required to be placarded under the hazardous materials transportation act or while operating motor vehicles designed to transport sixteen (16) or more people including the driver is disqualified for not less than:

(a) One hundred eighty (180) days or more than two (2) years for a first conviction;

(b) Three (3) years or more than five (5) years for subsequent convictions arising from separate incidents in any ten (10) year period.

(11) A person is disqualified from operating a commercial motor vehicle if convicted of a railroad grade crossing violation as specified in 49 CFR 383 or applicable state laws while operating a commercial motor vehicle. The disqualification shall be for a period of:

(a) Sixty (60) days for a first conviction;

(b) One hundred twenty (120) days for a second conviction during any three (3) year period;

(c) One (1) year for a third or subsequent conviction during any three (3) year period.

(12) A person is disqualified from operating a commercial motor vehicle if the federal motor carrier safety administration has determined the person's driving constitutes an imminent hazard, as defined in 49 CFR 383.5.

(a) An imminent hazard disqualification may not exceed one (1) year in duration. The driver, or a representative on his or her behalf, may file an appeal of the disqualification with the assistant administrator, adjudications counsel, federal motor carrier safety administration.

(b) Any imminent hazard disqualification transmitted by the federal motor carrier safety administration shall become a part of the driver's record.

(c) The imminent hazard disqualification shall run concurrent to any other existing disqualification.

(13) In addition to the disqualification periods in subsections (9) and (10) of this section, a driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) for the first conviction and not less than five thousand dollars ($5,000) for any subsequent conviction.

(14) A person who is disqualified from holding a commercial driver's license pursuant to 49 CFR 383.51 and subsection (4) of this section may make application to the department for reinstatement after a minimum ten (10) year period of disqualification.

(a) To be eligible for reinstatement following a lifetime disqualification under 49 CFR 383.51 and pursuant to subsection (4) of this section, a person shall:

(i) Have a valid class D driver's license from Idaho or any other jurisdiction for a minimum of three (3) consecutive years prior to the date of application, provided that during such three (3) year period the applicant has not been incarcerated; (ii) Meet all statutory requirements for issuance of a commercial driver's license or commercial learner's permit as a new commercial driver applicant; (iii) Voluntarily and successfully complete the national safety council four (4) hour defensive driving course and the professional truck driver four (4) hour course and provide proof of completion of both courses to the department; (iv) Submit a valid medical examiner's certificate, if applicable;

(v) Submit a criminal background check showing that the applicant has not been convicted of any alcohol or drug-related offenses for the ten (10) years prior to the date of application; and (vi) If the lifetime disqualification was based on an alcohol or controlled substance conviction, submit proof of the applicant's successful completion of an appropriate rehabilitation program.

(b) A person who has been reinstated and issued a commercial driver's license under this subsection who subsequently is convicted of a disqualifying major offense under 49 CFR 383.51 shall not be eligible for future reinstatement of a

commercial driver's license.

(c) The driving records for a person applying for reinstatement under this subsection shall be reviewed by the department. Such driving records shall include records regarding Idaho as well as any other jurisdiction. To be eligible for reinstatement as set forth in this subsection, such records for the ten (10) years preceding the date of application for reinstatement must be free of any convictions occurring in a commercial vehicle, any convictions or withdrawals related to alcohol or drugs, and any felony convictions involving a motor vehicle. Within the three (3) years preceding the date of application for reinstatement, the person's driving record must be free of any convictions requiring a mandatory withdrawal of driving privileges, whether in this state or any other jurisdiction.

(d) If a person has moved from another jurisdiction that issued the lifetime disqualification, that jurisdiction must be willing to reinstate the disqualification or the person will remain ineligible for a commercial driver's license in Idaho.

49-337 — Employee and employer responsibilities

49-337. Employee and employer responsibilities.

(1) Any operator of a commercial motor vehicle or any person who holds a class A, B or C driver's license issued by this state, and who is convicted of violating any state law or local ordinance in any other state relating to motor vehicle traffic control, other than parking violations, such person shall notify the department of the conviction in the manner specified by the department within thirty (30) days of the date of conviction.

(2) Any operator of a commercial motor vehicle or any person who holds a class A, B or C driver's license issued by this state, and who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, such person shall notify his employer in writing of the conviction within thirty (30) days of the date of conviction.

(3) Each employee whose class A, B or C driver's license is suspended, revoked, denied, refused or canceled by this state or who loses the privilege to operate a commercial motor vehicle in any state for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his employer of that fact before the end of the business day following the day the employee received notice of that fact.

(4) Each person who applies for employment as an operator of a commercial motor vehicle with an employer shall provide notification to the employer, at the time of application, of his previous employment as an operator of a commercial motor vehicle. The period of previous employment of which notification must be given shall be the ten (10) year period ending on the date of application for employment.

(5) No employer shall knowingly allow, permit, require or authorize an employee to operate a commercial motor vehicle in the United States during any period:

(a) In which the employee has a driver's license suspended, revoked or canceled by a state, has lost the privilege to operate a commercial motor vehicle in a state or has been disqualified from operating a commercial motor vehicle; or

(b) In which the employee has more than one (1) driver's license; or

(c) In which the employee, or the motor vehicle being driven, or the motor carrier operation, is subject to an out-of-service order.

(6) An employer who is convicted of a violation of subsection (5)(c) of this section shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) nor more than twenty-five thousand dollars ($25,000).

(7) No employer shall knowingly allow, permit, require or authorize an employee to operate a commercial motor vehicle in the United States in violation of any federal, state or local law or federal regulation pertaining to railroad grade crossings. An employer who is convicted of a violation of this subsection (7) shall, in addition to the general penalties provided for in this title, be subject to a civil penalty of not more than ten thousand dollars ($10,000).

(8) Each employer shall require the information specified in subsection (4) of this section to be provided by the employee.

CHAPTER 4

49-401 — Registration fee in lieu of property tax

49-401. Registration fee in lieu of property tax. The registration fee imposed for vehicles under the provisions of this chapter shall be in lieu of all taxes on vehicles, general or local, and vehicles properly registered and for which the

required fee for any part of the previous year has been paid shall be exempt from ad valorem taxation.

49-401A — Owner to secure registration from a county assessor or the department

49-401A. Owner to secure registration from a county assessor or the department.

(1) Every owner of a motor vehicle, trailer or semitrailer who intends to operate the vehicle upon any highway in this state shall, before the same is so operated, apply to a county assessor or to the department or an agent of the department and obtain registration for vehicles pursuant to sections 49-402

(1) through (3), 49-402A , 49-402B and 49-422 , Idaho Code. All others shall be obtained from the department except as provided in subsection (2) of this section. Owners of vehicles specified in section 49-426 , Idaho Code, are exempt from the provisions of this section. Owners of vehicles operating on a temporary basis as provided in sections 49-431

(3) and 49-432 , Idaho Code, are exempt from the provisions of this section to the extent that the temporary permits in use are unexpired.

(2) Commercial vehicles in excess of twenty-six thousand (26,000) pounds gross weight, farm and noncommercial vehicles in excess of sixty thousand (60,000) pounds gross weight and all vehicles registered under section 49-435 , Idaho Code, shall be registered by the department. All other commercial, farm and noncommercial vehicles and the vehicles in paragraphs (a), (b), and (c) of this subsection shall be registered by the county assessor or by the department or an agent of the department.

(a) Motor vehicles equipped primarily to haul passengers on a commercial basis, doing strictly an intrastate business, and having gross weights of twenty-six thousand (26,000) pounds or less.

(b) Any farm vehicle or combination of vehicles where each vehicle or combination of vehicles shall not exceed a gross weight of sixty thousand (60,000) pounds.

(c) Nonresident vehicles or combination of vehicles owned by transient labor used in hauling unprocessed agricultural products for hire and not exceeding sixty thousand (60,000) pounds gross weight shall register their vehicle for the appropriate gross weight scale for the annual fee if registered on or before June 30 and for one-half (1/2) the annual fee if not registered until on or after July 1 of any year, with the assessor of the county in which the owner resides.

(3) Commercial, farm and noncommercial vehicles of any weight doing strictly an intrastate business may be registered by the county assessor or by the department or an agent of the department by mutual agreement between the department and the county.

49-401B — Application for registration — Receipt for fee — Record of applicants

49-401B. Application for registration — Receipt for fee — Record of applicants.

(1) Application for the registration of a vehicle required to be registered under the provisions of section 49-401A , Idaho Code, shall be made to the assessor or the department, as specified in that section, by the owner on the appropriate form. Every application shall contain the owner's Idaho driver's license number, Idaho identification card number, social security number or individual taxpayer identification number. In the case of a business, the employer tax identification number is required. Every application shall also contain the owner's true and full legal name, and every applicant must submit proof of identity pursuant to section 49-306 , Idaho Code, if he has not already done so. In the event that the owner does not possess a social security number, the owner shall present written documentation sufficient to the department to determine that no social security number has been issued. In the event that a business, trust or other statutorily created entity is not required to have and does not possess an employer tax identification number, the applicant shall provide a written statement certifying that the entity does not possess an employer tax identification number. Such application must be signed by the owner and contain his residence address and mailing address, if different, and a brief description of the vehicle to be registered, including the name of the maker, the type of fuel used, and the identification number. If an applicant has submitted an application pursuant to the provisions of chapter 58, title 19 , Idaho Code, then the applicant may state in the application required pursuant to this section the applicant's alternative Idaho mailing address in place of his or her residence address. Upon registration of a new vehicle, the application shall also show the date of sale by the manufacturer or dealer to the person first operating such vehicle. The application shall contain any other information as may be required by the department and shall contain a provision that allows an owner to choose to participate in the Idaho state parks passport program. The assessor shall issue to the applicant a receipt for any fee paid. Social security numbers collected shall not appear on certificates of registration, and all applications on file shall be exempt from disclosure, except as provided in sections 49-202 , 49-203 and 49-203A , Idaho Code.

(2) The assessor shall record on a form prescribed and furnished by the department the names of all owners of vehicles residing in the county who make application for registration, together with the amounts of the fees paid by such owners.

(3) When application for registration is made by any motor carrier, the assessor or the department shall require each such applicant to execute a certification of safety compliance.

(4) Vehicles registered under the proportional registration provisions of section 49-435 , Idaho Code, shall be registered by the department.

(5) Every owner of a vehicle registered by a county assessor shall give his physical domicile residence address or the business physical principal address to the assessor so that the proper county can be entered upon the registration. Failure to do so shall be unlawful. The department shall then attribute the registration, and all fees to be apportioned to the highway distribution account, to the county of residence regardless of the county in which the registration occurred. Fees imposed under the provisions of sections 40-827 and 40-1416 , Idaho Code, shall be separately identified and accounted for and paid to the highway district for which collected. Fees collected in addition to vehicle registration fees for the Idaho state parks passport program, as provided in section 49-402 (11), Idaho Code, shall be separately identified and accounted for and paid to the state treasurer on a monthly basis to be deposited in the park and recreation fund as specified in section 49-402 (11), Idaho Code. For the purposes of vehicle registration, a person is an actual and permanent resident of the county in which he has his principal residence or domicile. A principal residence or domicile shall not be a person's workplace, vacation, or part-time residence.

(6) A violation of the provisions of this section shall be an infraction.

49-401C — electronic vehicle credential providerS

49-401C. electronic vehicle credential providerS.

(1) In order to continue improving the quality of its products and services, the department may establish contracts with electronic vehicle credential (EVC) providers that operate programs that provide vehicle registration services. An authorized EVC provider may act on behalf of the department and county assessors in receiving, processing, and transmitting to the department registration applications and related fees.

(2) The department shall establish any additional requirements for the purpose of safeguarding privacy and protecting the information authorized for handling under this section.

(3) The department may establish the maximum amount that an EVC provider may charge its customers in providing the services authorized under subsection (1) of this section.

(4) The department shall adopt procedures that ensure adequate oversight and monitoring of an EVC provider to protect vehicle owners from improper use of vehicle records.

(5) The number of EVC providers that may be established in Idaho shall not exceed ten (10).

(6) The department is authorized to promulgate rules to administer the EVC provider program.

49-402 — Annual registration

49-402. Annual registration.

(1) The annual fee for operating each pickup truck, each neighborhood electric vehicle and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds and that complies with the federal motor vehicle safety standards as defined in section 49-107 , Idaho Code, shall be: Vehicles one (1) and two (2) years old Vehicles three (3) and four (4) years old Vehicles five (5) and six (6) years old Vehicles seven (7) and eight (8) years old Vehicles over eight (8) years old There shall be twelve (12) registration periods, starting in January and proceeding consecutively through December. Each registration period 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 at midnight on the last day of the registration period in the year designated by the registration card. The registration period is fixed by the registration card under the staggered registration system 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 month, 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) and shall be subject to staggered registration for the purpose of reregistration and notice of expiration.

(3) For all motorcycles and motor-driven cycles that comply with the federal motor vehicle safety standards, operated on the public highways, the annual fee shall be nineteen dollars ($19.00) and shall be subject to staggered registration for the purpose of reregistration and notice of expiration.

(4) For operation of an all-terrain vehicle, utility type vehicle or motorbike, excluding a motorbike with an engine displacement of fifty (50) cubic centimeters or less, on city, county or highway district roads or highways open to such use, a restricted vehicle license plate fee pursuant to section 49-450 , Idaho Code, shall be paid. In addition, the certificate of number fee specified in section 67-7122 , Idaho Code, shall be paid as provided in section 67-7122 , Idaho Code. The certificate of number and restricted vehicle license plate exemption provided in section 49-426 (2), Idaho Code, applies to all-terrain vehicles, utility type vehicles, motorbikes and motorcycles used for the purposes described in section 49-426 (2), Idaho Code. Nonresidents shall be allowed to purchase a restricted vehicle license plate and validation sticker pursuant to section 67-7124 , Idaho Code, for an all-terrain vehicle, utility type vehicle, or motorbike.

(5) 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.

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

(7) 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 subject to staggered registration for the purpose of reregistration and notice of expiration.

(8) A wrecker or towing business engaged in the process of towing motorized vehicles that have been wrecked, abandoned, salvaged or may be disabled may apply for a wrecker plate to be displayed on those vehicles being towed, provided the power unit is properly registered under this chapter. The registration fees for wrecker 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 and shall be subject to staggered registration for the purpose of reregistration and notice of expiration.

(9) 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 , 49-418 and 49-418D , Idaho Code. For special plates issued pursuant to sections 49-417E and 49-417G , Idaho Code, there shall be an initial program fee of seventy dollars ($70.00) and an annual program fee of fifty dollars ($50.00). 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 49-415D , 49-416A , 49-417 , 49-417A , 49-417B , 49-417C , 49-417D , 49-418A , 49-418B , 49-418C , 49-419 , 49-419A , 49-419C , 49-419E , 49-420 , 49-420A , 49-420B , 49-420C , 49-420D , 49-420J , 49-420K , 49-420M , 49-420Q , 49-420R , 49-420S , 49-420T , and 49-420U , Idaho Code, and unless otherwise expressly provided for in this chapter, any new special plate program effective on and after January 1, 2013, pursuant to section 49-402D , 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 and shall be subject to staggered registration for the purpose of reregistration and notice of expiration. 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.

(10) Any vehicle that does not meet federal motor vehicle safety standards shall not be registered and shall not be permitted to operate on public highways of the state, as defined in section 40-117 , Idaho Code, unless otherwise specifically authorized.

(11) In addition to annual registration fees as provided in this section, registrants may pay a fee to purchase an Idaho state parks passport authorizing resident motor vehicle entry into all Idaho state parks. Registrants may pay the fee for a one (1) year or two (2) year period of time. The fee shall be ten dollars ($10.00) for one (1) year and twenty dollars ($20.00) for two (2) years. All fees collected pursuant to this subsection shall be deposited into the park and recreation fund and shall be subject to appropriation. Fees collected pursuant to this subsection shall not be considered a motor vehicle registration fee as provided in section 17, article VII of the constitution of the state of Idaho.

49-402A — Utility trailers — Registration, fees and transfers

49-402A. Utility trailers — Registration, fees and transfers.

(1) The department shall register a utility trailer for a period of one (1) year for a fee of five dollars ($5.00).

(2) The department may register a utility trailer for a five (5) year period or for a ten (10) year period, and shall issue a license plate with the year of expiration designated by the registration card. Five (5) year registrations shall cost twenty dollars ($20.00) and ten (10) year registrations shall cost thirty dollars ($30.00) and shall be subject to staggered registration for the purpose of reregistration and notice of expiration.

(3) If ownership or interest in the trailer transfers as a result of a sale, neither the registration card nor plate can be transferred to another person. The registration card and plate shall remain in the possession of the transferor and may be transferred to another utility trailer owned by the transferor, and shall be valid until expiration of the original registration.

49-402B — Optional biennial registration

49-402B. Optional biennial registration.

(1) At the option of the applicant, any vehicle registered under the provisions of section 49-402

(1) through (5) or 49-434 (1), Idaho Code, may be registered for a period of two (2) years for a fee that is double the fee currently assessed for annual registration of the vehicle in section 49-402 or 49-434 (1), Idaho Code.

(2) If any vehicle registered under a special license plate program is registered for a two (2) year period as provided in this section, the registrant shall also be required to pay the special programs fees for a two (2) year period.

(3) Any vehicle registered pursuant to section 49-435 , Idaho Code, shall not be eligible for biennial registration.

(4) The additional fee collected for emergency medical services pursuant to section 49-452 , Idaho Code, or project choice pursuant to section 49-454 , Idaho Code, shall also be doubled for any registration issued under the provisions of this section.

(5) The administrative fee collected for issuance of a motor vehicle registration shall be the same as for an annual registration and shall not be doubled or in any way increased solely because of registration under the provisions of this section.

49-402C — Special license plate programs — Standardized plate color and design

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)(a) 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 subsections (2) through (5) 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:

(i) The identification of county shall be omitted; (ii) The word "Idaho" shall appear on every plate; (iii) The inscription "Scenic Idaho" may be omitted without legislative consideration and approval; and (iv) 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®."

(b) The provisions of this subsection shall not apply to the plate designs issued pursuant to the provisions of section 49-417 or 49-417B , 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) Unless otherwise specifically provided, 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) Notwithstanding any other provision of law to the contrary, on and after July 1, 2020, no new special license plate or special license plate program shall be established for the benefit of any entity that is not the state of Idaho or an agency of the state of Idaho. With respect to any special license plate program that is in existence on July 1, 2020, that has a nonprofit agency as a recipient of the proceeds from the sales of such plate, if fewer than one thousand (1,000) plates are issued in the first year of the special plate program's existence, fewer than one thousand five hundred (1,500) plates are issued in the second year of the special plate program's existence, or fewer than two thousand (2,000) plates in the third or any subsequent year of such special plate program's existence, the department shall discontinue that special license plate program.

(7) With respect to a special license plate that has been discontinued prior to July 1, 2020, or is discontinued after that date for any reason, any existing plates may be renewed upon their expiration until the physical license plates must be replaced pursuant to section 49-443 (2), Idaho Code. No duplicate or replacement plates will be produced if such plates are lost or damaged.

49-402D — special license plate prequalification process

49-402D. special license plate prequalification process. (1)(a) For any new special license plate program approved by the legislature, the program sponsor shall, before issuance of any such special license plate, meet the prequalification process outlined in this section. The program sponsor for any special plate program shall:

(i) Submit a financial plan for the use of the proceeds from the special license plate sales and certify that all such proceeds shall be deposited in the highway distribution account, except for military license plates and any new special plate that may be established for the benefit of the state of Idaho or any department, division, bureau, or agency thereof, including an Idaho college or university pursuant to section 49-418A , Idaho Code, or a license plate for the benefit of firearms safety education programs pursuant to section 49-420S , Idaho Code; and (ii) Designate an individual who shall be deemed responsible by the agency for certifying compliance with the requirements of this section and working with the department.

(b) The department is authorized and shall adopt and promulgate rules to carry out the provisions of this section.

(2) If the request for a special license plate is approved by the department, the following requirements, in addition to those set out in subsection (1) of this section, shall be met by September 1 prior to the next legislative session and prior to the issuance of any special license plates approved by the legislature.

(a) The applicant shall deposit estimated programming and administrative costs with the department to be utilized for programming costs of the specialty plate. Administrative costs in the amount of one thousand dollars ($1,000) shall be nonrefundable.

(b) In addition to the requirements provided for in section 49-402C , Idaho Code, the applicant requesting a special license plate program shall provide to the department an acceptable plate design.

(c) The applicant shall transmit to the department a list of two hundred fifty (250) applicants, whose vehicles are currently registered in the state of Idaho, who intend to purchase the specialty plate when available, as evidenced by completing forms provided by the department.

(3) The department shall submit the completed applications for special license plate programs that meet the requirements of this section to the chairmen of the senate transportation committee and the house of representatives transportation and defense committee each year on behalf of the agency to be included for consideration in the next legislative session.

(4) On an annual basis, by December 1 of each calendar year, the sponsor of a special license plate program shall prepare an annual report, which shall be made available on request and shall be forwarded to the department. Such report shall include an accounting of revenues and expenditures associated with the funds collected for the special

license plate program. The department shall compile and forward such reports to the chairmen of the senate transportation committee and the house of representatives transportation and defense committee by January 15 of each year. Failure of the agency to provide such report by the due date shall result in the discontinuation of the special license plate program sales on January 1. The provisions of this section shall exclude special plates established for the highway distribution account, the state of Idaho or any department, division, bureau, or agency thereof, an Idaho college or university pursuant to section 49-418A , Idaho Code, a license plate for the benefit of firearms safety education programs pursuant to section 49-420S , Idaho Code, and military license plate programs.

(5) Any decision by the department that the special license plate program application does not meet the provisions of this section may be appealed to the director of the department. Such notice of appeal shall be made in writing within twenty (20) days of the notice of denial. For all denied applications, the department shall, at the next legislative session, report to the senate and house of representatives transportation committees on such denied applications and the reason for the denials.

49-402E — rental fleet registration

49-402E. rental fleet registration.

(1) As used in this section "rental fleet" means more than twenty-five (25) motor vehicles that are:

(a) Owned by a rental company;

(b) Offered for rental without a hired driver through a rental agreement; and

(c) Designated by the registered owner of the motor vehicle as a rental fleet vehicle at the time of registration. (2)(a) On and after the effective date of this act, an owner that registers a motor vehicle, weighing sixteen thousand (16,000) pounds or less, under the provisions of chapter 4, title 49 , Idaho Code, may obtain an alternative special registration card if the motor vehicle is owned by a rental company and maintained in the rental company's rental fleet.

(b) Although annual registration shall be required for each fleet vehicle, the registration card issued under paragraph (a) of this subsection are valid for the life of the motor vehicle while the motor vehicle is maintained in the rental fleet.

(3) An owner that receives the alternative special registration card issued under this section shall renew the annual registration. If registration is not renewed, the registration shall be canceled.

(4) In addition to the registration fees collected under chapter 4, title 49 , Idaho Code, the department shall also collect an additional two dollars ($2.00) for the initial registration for each vehicle registered under this section, which shall be deposited in the state highway account.

49-403 — Disabled veteran — License plates

49-403. Disabled veteran — License plates. No fee shall be charged for the registration or reregistration of a motor vehicle owned by a veteran who has established his rights to benefits under the provisions of Public Law 662, 79th Congress, as amended, and Public Law 187, 82nd Congress, as amended. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds, nor to any vehicle registered under section 49-434 (5), Idaho Code. No fee shall be charged for the registration or reregistration of a motor vehicle owned by a veteran, who is at the time of the registration or reregistration receiving compensation from the veterans administration or in lieu thereof, from any of the armed forces of the United States, for one hundred percent (100%) service-connected disability or for any of the following specific disabilities: Loss or permanent loss of use of one (1) or both feet; loss or permanent loss of use of one (1) or both hands; loss of sight in both eyes or permanent impairment of vision in both eyes to the degree as to constitute virtual blindness. These provisions shall be considered applicable not only as to the vehicle originally purchased under this authorization, but also as to any vehicle subsequently purchased and owned by the same veteran, so long as the privilege shall not extend to more than one (1) vehicle at a time. Special license plates shall be issued for such a vehicle, identified by the inscription "D.V.", and a separate number series shall be used to further identify the license plates so issued. These license plates shall not be issued by the counties but shall be issued by the department. The plates shall be displayed in accordance with the procedure applicable to license plates set forth in section 49-428 , Idaho Code. A vehicle displaying plates issued in accordance with the provisions of this section shall be afforded the same privileges specified in section 49-410 (7), Idaho Code. Together with a license plate issued pursuant to this section the department shall issue a special placard pursuant to section 49-410 (4), Idaho Code.

49-403A — Purple heart recipient — License plates

49-403A. Purple heart recipient — License plates.

(1) Purple heart recipient license plates are available to any applicant who is a veteran or an active or retired member of any of the armed forces of the United States, reserve forces, or Idaho national guard and who furnishes proof of entitlement by providing one (1) of the following documents:

(a) A copy of form DD214 or equivalent document showing an award of the purple heart medal;

(b) A copy of the certificate presented with the medal; or

(c) A copy of the military order describing the award of the medal to the applicant.

(2) The applicant shall be charged the regular registration fee but shall not be charged the plate fee required in section 49-450 , Idaho Code. Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the registration shall expire, but the purple heart recipient may transfer his plates to another vehicle upon payment of the required transfer fees. He may display the plates only after receipt of new registration from the department. A purple heart recipient may register multiple vehicles under the provisions of this section. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds, nor to any vehicle registered under section 49-434 (5), Idaho Code.

(3) Purple heart recipient license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased purple heart recipient. In addition, the surviving spouse of a deceased purple heart recipient is eligible to reapply for and shall be issued purple heart recipient license plates if the deceased purple heart recipient died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

(4) The purple heart recipient license plates shall be of a color and design acceptable to the military order of the purple heart association and approved by the department, utilizing a numbering system as determined by the department.

(5) Effective January 1, 2015, for those purple heart recipients who are listed as an owner of the vehicle who also qualify as disabled pursuant to section 49-410 , Idaho Code, the international accessible symbol will also appear on the purple heart license plates. Such requirements must be met upon application for the license plates. Those plates with the disability symbol shall be nontransferable to a surviving spouse, unless the requirements of section 49-410 , Idaho Code, can be met by the spouse.

(6) A purple heart recipient who qualifies for a disabled veteran fee exemption under section 49-403 , Idaho Code, shall have a choice between a purple heart recipient license plate or a disabled veteran license plate and shall not be charged a plate fee or a fee for registration or reregistration of the motor vehicle. The provisions of this subsection shall apply to the vehicle originally purchased under this authorization and also to any vehicle subsequently purchased and owned by the same veteran. The privilege shall not extend to more than one (1) vehicle owned by the veteran at a time.

49-403B — gold star — license plates

49-403B. gold star — license plates.

(1) In this section:

(a) "Qualifying cause of death" means a death of a person while serving in the armed forces of the United States on active duty as the division of veterans services may define by rule.

(b) "Qualifying family member" means a surviving spouse, parent, stepparent, child, stepchild, sibling, half-sibling, stepsibling, grandparent, or legal guardian:

(i) Of a person who died due to a qualifying cause of death; or (ii) Who has been awarded a gold star lapel pin.

(2) Qualifying family members are eligible to apply for gold star license plates. As proof of eligibility, the applicant shall furnish to the department a statement from the division of veterans services certifying eligibility.

(3) The division of veterans services shall establish by rule the requirements for receipt of a certificate of eligibility, including proof of qualifying familial relationship to the deceased service member, the death of the service member due to a qualifying cause of death, or proof of having been awarded a gold star lapel pin.

(4) No special plate program fee shall be charged in addition to regular registration or renewal of registration of a motor vehicle owned by the spouse, parent, or stepparent of a service member who receives gold star license plates.

(5) A qualifying family member who is not the spouse, parent, or stepparent shall be charged the regular registration fee and plate fee required in section 49-450 , Idaho Code, and an additional 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 gold star license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be deposited in the veterans support fund, section 65-209 , Idaho Code, and shall be used to defray the costs of administration of the eligibility certification program and to provide programs to support veterans.

(6) Gold star license plates shall be used only on a motor vehicle owned by the qualifying family member.

(7) Whenever title or interest in a motor vehicle registered under this section is transferred or assigned, the registration shall expire, but the qualifying family member may transfer the gold star license plates to another motor vehicle upon payment of the required transfer fees. The qualifying family member may display the gold star license plates only after receipt of new registration from the department.

(8) A qualifying family member shall not register more than two (2) motor vehicles under this section. This section shall not apply to any motor vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds, nor to any vehicle registered under section 49-434 (5), Idaho Code.

(9) Gold star license plates may be retained and displayed on motor vehicles owned by the surviving spouse of a qualifying family member. In addition, the surviving spouse is eligible to reapply for and shall be issued gold star license plates if the deceased qualifying family member died on or after January 1 of the five (5) years preceding the date of reapplication for the gold star license plates. Such plates shall be used only on a motor vehicle owned by the surviving spouse of the qualifying family member.

(10) The gold star license plates shall be of a color and design acceptable to the veterans affairs commission and approved by the department, utilizing a numbering system as determined by the department. Gold star license plates shall not be subject to discontinuance pursuant to section 49-402C (6), Idaho Code.

49-403C — Purple Heart Recipient motorcycle license plate

49-403C. Purple Heart Recipient motorcycle license plate.

(1) On and after January 1, 2015, any person who is the owner of a motorcycle registered under the provisions of section 49-402 , Idaho Code, may apply for and upon department approval receive a purple heart motorcycle license plate in lieu of a regular motorcycle license plate.

(2) Purple heart recipient license plates are available to any applicant who is a veteran or an active or retired member of any of the armed forces of the United States, reserve forces or Idaho national guard, and who furnishes proof of entitlement by providing one (1) of the following documents:

(a) A copy of form DD214 or equivalent document showing an award of the purple heart medal;

(b) A copy of the certificate presented with the medal; or

(c) A copy of the military order describing the award of the medal to the applicant.

(3) In addition to the regular registration fee, the applicant shall be charged the plate fee required in section 49-450 , Idaho Code. Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the registration shall expire, but the purple heart recipient may transfer his plates to another vehicle upon payment of the required transfer fees. He may display the plates only after receipt of new registration from the department. A purple heart recipient may register multiple vehicles under the provisions of this section.

(4) Purple heart recipient license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased purple heart recipient. In addition, the surviving spouse of a deceased purple heart recipient is eligible to reapply for and shall be issued purple heart recipient motorcycle license plates if the deceased purple heart recipient died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a motorcycle owned by the surviving spouse.

(5) The purple heart recipient motorcycle license plates shall be of a color and design acceptable to the military order of the purple heart association and approved by the department, utilizing a numbering system as determined by the department.

(6) For those purple heart recipients who are listed as an owner of a motorcycle who also qualify as disabled pursuant to section 49-410 , Idaho Code, the international accessible symbol will also appear on the purple heart motorcycle license plates. Such requirements must be met upon application for the motorcycle license plates. Those plates with the disability symbol shall be nontransferable to a surviving spouse, unless the requirements of section 49-410 , Idaho Code, can be met by the spouse.

49-404 — National guard members — Distinctive plates

49-404. National guard members — Distinctive plates.

(1) In order to enhance visibility and identification of national guard members during mobilizations and emergencies, any active member of the Idaho national guard residing in the state of Idaho may, upon application to the department, register not more than two (2) motor vehicles and receive for each vehicle distinctive national guard 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. The national guard license plates shall be designed, subject to the approval of the department, by the adjutant general. Proof of being an active member in the Idaho national guard must be furnished to the department before plates will be issued. The Idaho national guard shall, prior to an individual's discharge from active duty in the national guard, require that the national guard license plates either be turned in to the department or exchanged for other proper license plates as a condition of discharge.

(2) Whenever a member of the Idaho national guard transfers or assigns his title or interest to a vehicle especially registered under the provisions of this section, the registration shall expire but the member may hold his national guard license plates which he may have reissued to him upon the payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(3) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the national guard member shall pay the plate fee specified in section 49-450 , Idaho Code.

49-404A — Members of the armed forces reserve — Special plates

49-404A. Members of the armed forces reserve — Special plates.

(1) Any active member of the armed forces reserves of the United States who is the owner of a vehicle registered under section 49-402

(1) or section 49-434 (1), Idaho Code, may, upon application to the department, register not more than two (2) motor vehicles and receive for each vehicle special license plates in lieu of regular numbered 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. The special license plates shall be designated by the department with the word "RESERVIST" centered along the bottom edge and be numbered in sets of two (2) with a different number following appropriate letters as follows: United States Army Reserve: Army (number); United States Navy Reserve: Navy (number); United States Marine Corps Reserve: USMC (number); United States Air Force Reserve: USAF (number); and United States Coast Guard Reserve: USCG (number). Proof of being an active member in the United States armed forces reserves must be furnished to the department before special plates will be issued. Special license plates issued under this section shall be issued under the staggered registration process provided for in section 49-402 (1), Idaho Code, or the annual registration in section 49-434 (1), Idaho Code.

(2) Any branch of the armed forces reserves of the United States shall, prior to an individual's discharge from duty in that branch of the armed forces reserve, require that the special armed forces reserve license plates either be turned back to the department or exchanged for other proper license plates as a condition of discharge.

(3) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402 , Idaho Code. 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 this special license plate program which is provided to the public as a personal alternative to the standard license plate requirement. When a plate holder transfers or assigns his title or interest in the vehicle registered under this section, the registration shall expire, but the special plates may be transferred to another vehicle upon payment of the required transfer fee. Special plates shall only be displayed after receipt of the new registration.

(4) The design and numbering scheme of the military reservist special plate shall be coordinated by the department with representatives of the armed forces reserves. However, the department shall have the final approval of the plate design and numbering scheme to ensure conformity within existing issues of plates and to contain costs within the limit of the fees received from applicants.

49-405 — Radio amateurs — Special license plates

49-405. Radio amateurs — Special license plates.

(1) In order to enhance visibility and identification of radio amateurs during times of emergency, any radio amateur residing in the state of Idaho may, upon application to the department, register one (1) motor vehicle per radio license issued by the federal government and receive for that vehicle special 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. The number on the plates shall be the same combination of figures and letters that make up the radio call sign of the amateur radio operator.

(2) The radio amateur license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The distinguishing features of the license plate shall be:

(a) A representation of a radio tower emitting radio waves in the form of lightning bolts with the phrase "Amateur Radio" beneath it;

(b) The phrase "CQ DE" spelled out in international Morse code; and

(c) The phrase "Emergency Communication" at the bottom of the plate and underneath the call sign.

(3) The design and any slogan on the plate shall be acceptable to the Idaho section of the American radio relay league. Any future design or redesign of the plate shall also be approved by the Idaho section of the American radio relay league. Initial costs of the plate program, including costs of plate design, shall be borne by the department.

(4) Proof of holding an amateur license from the federal communications commission must be furnished to the department before the plates will be issued. Should the amateur's radio license expire during any given year and not be renewed, the special license plates must be surrendered to the department and regular license plates obtained.

(5) Radio amateurs will notify the department at a time to be set by the department of their intention to procure special license plates under the terms specified in this section. Failure to do so will result in the amateur being required to accept regular license plates should the department be unable to procure the special plates. Special plates may still be procured when available, but amateurs will be subject to the usual transfer fee.

(6) Whenever an amateur transfers or assigns his title or interest to a vehicle especially registered, the registration shall expire but the amateur may hold his special license plates, which he may have reissued to him upon the payment of the required transfer fees. He may display the plates only after receipt of new registration from the department.

(7) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the plate fee specified in section 49-450 , Idaho Code.

49-406 — Idaho old timer — Special license plate program — Registration and standard license plates

49-406. Idaho old timer — Special license plate program — Registration and standard license plates.

(1) Any motor vehicle manufactured prior to January 1, 1943, that is maintained to its original likeness using original-type parts and materials, without major modifications shall be known as an "Idaho Old Timer." Any motor vehicle which is altered from its original design is not an "Idaho Old Timer" as herein defined.

(2) Any motor vehicle which qualifies as an "Idaho Old Timer" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes or as customary and usual transportation.

(3) Applicants for a special "Idaho Old Timer" license plate shall pay an initial program fee of twenty-five dollars ($25.00) and the license plate fee required in section 49-450 , Idaho Code, for each "Idaho Old Timer" plate which shall be displayed on the rear of the vehicle. The initial program fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(4) The reissue of license plates as specified in section 49-443 (2), Idaho Code, shall not be required unless there is a general consensus among the majority of plate holders that a new plate design is needed. Representatives of the plate

holders shall make the request known to the department. The cost of manufacturing a new design will be set by the department based upon the cost of manufacturing supplies and administering the reissue. The equivalent cost of each plate will be charged to each plate holder who purchases the new plate. If a new plate design is authorized, the design and color shall be approved by representatives of the interest group. The design, color and numbering scheme shall also be subject to approval of the department. The existing plate design will be canceled and all plate holders, present and future shall purchase and display the new plate.

(5) An applicant for the special "Idaho Old Timer" plate shall execute an affidavit on a form provided by the department that the vehicle qualifies as an old timer and shall only be used for the purposes allowed. The department shall have the authority to refuse to issue a plate and may demand the return of such plate if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Old Timer" is to be used as customary and usual transportation, or for business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402 , or section 49-434 , Idaho Code, as applicable, and shall obtain and display the standard issue of license plates after payment of the plate fee required in section 49-450 , Idaho Code. It shall be permissible to display both the standard issue of plates and the special "Idaho Old Timer" plate.

(7) Whenever title or interest in an Old Timer vehicle is transferred or assigned, the transferor may retain the plates for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434 , Idaho Code, the provisions of section 49-431 , Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

49-406A — Idaho classic — Special license plate program — Registration and standard license plates

49-406A. Idaho classic — Special license plate program — Registration and standard license plates.

(1) Any motor vehicle or motorcycle which is at least thirty (30) years old that does not qualify as an "Idaho Old Timer" and that is maintained to its original likeness using original-type parts and materials, without major modifications shall be known as an "Idaho Classic." Any motor vehicle which is altered from its original design is not an "Idaho Classic" as herein defined.

(2) Any motor vehicle or motorcycle which qualifies as an "Idaho Classic" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes or as customary and usual transportation.

(3) Applicants for a special "Idaho Classic" license plate shall pay an initial program fee of twenty-five dollars ($25.00) and the license plate fee required in section 49-450 , Idaho Code, for each Idaho classic plate which shall be displayed on the rear of the vehicle. The initial program fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(4) The reissue of license plates as specified in section 49-443 (2), Idaho Code, shall not be required unless there is a general consensus among the majority of plate holders that a new plate design is needed. Representatives of the plate holders shall make the request known to the department. The cost of manufacturing a new design will be set by the department based upon the cost of manufacturing supplies and administering the reissue. The equivalent cost of each plate will be charged to each plate holder who purchases the new plate. If a new plate design is authorized, the design and color shall be approved by representatives of the interest group. The design, color and numbering scheme shall also be subject to the approval of the department. The existing plate design will be canceled and all plate holders, present and future shall purchase and display the new plate.

(5) An applicant for the special "Idaho Classic" plate shall execute an affidavit on a form provided by the department that the vehicle or motorcycle qualifies as an "Idaho Classic" and shall only be used for the purposes allowed. The department shall have the authority to refuse to issue the plate and may demand the return of such plate if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Classic" is to be used as customary and usual transportation, or for business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402 , or section 49-434 , Idaho Code, as applicable, and shall obtain and display the standard issue of license plates after payment of the plate fee required in section 49-450 , Idaho Code. It shall be permissible to display both the standard issue of plates and the "Idaho Classic" plate.

(7) Whenever title or interest in an Idaho classic motor vehicle or motorcycle is transferred or assigned, the transferor may retain the special plate for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434 , Idaho Code, the provisions of section 49-431 , Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

49-407 — Year of manufacture plate

49-407. Year of manufacture plate. Pursuant to rules of the department, any person who is the owner of a motor vehicle with any model year up to and through 1974 which is registered under section 49-402 (1), Idaho Code, or section 49-434 (1), Idaho Code, may display on the rear of the vehicle an authentic Idaho plate manufactured with a painted or embossed year matching the model year of the vehicle. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. In addition to the regular registration fees required in sections 49-402 (1), and 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402 , Idaho Code. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

49-408 — Street rod

49-408. Street rod.

(1) Any motor vehicle manufactured prior to the year 1949, or designed and manufactured to resemble such a vehicle and which has been certified as a street rod may be registered as a street rod under the provisions of this section. However, 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) Any street rod shall have all equipment in operating condition which was specifically required by law as a condition for its first sale after manufacture. No law requiring any particular equipment or specifying any standards to be met by motor vehicles shall apply to street rods unless it so specifically states.

(3) Upon receipt of an application on a form prescribed by the department for a special street rod automobile plate, accompanied by other documentation required in this section, the department shall issue to the applicant a special street rod automobile plate which shall be displayed on the rear of the vehicle. The registration certificate need not specify the weight of the street rod, and the plate issued shall bear no date but shall bear the inscription "Street Rod," "Idaho," a picture of a 1929 highway roadster, and the registration number issued for the street rod, and the plate shall be valid upon annual renewal under section 49-402 or 49-434 (1), Idaho Code, as long as the vehicle is in existence. The plate will be issued for the applicant’s use only for the particular vehicle, and in the event of a transfer of title, the transferor may hold the plate and transfer it to another qualifying street rod.

(4) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402 , Idaho Code. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

(5) The department has the power to revoke any registration issued under this section for cause shown for failure of the applicant to comply with the provisions of this section.

49-408A — custom vehicle license plates

49-408A. custom vehicle license plates.

(1) Any motor vehicle that is a replica vehicle pursuant to section 49-123 (2)(n), Idaho Code, and is designed and manufactured to resemble a vehicle or motorcycle that would qualify for Idaho classic license plates pursuant to section 49-406A , Idaho Code, may be registered as a custom vehicle under the provisions of this section. The provisions of this section do not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds.

(2) A vehicle must be in compliance with Idaho law with respect to its equipment and operating condition to qualify for a custom vehicle license plate under this section.

(3) Upon receipt of an application on a form prescribed by the department for a custom vehicle license plate, accompanied by other documentation that may be required to verify that a vehicle qualifies under this section, the department shall issue to the applicant a custom vehicle license plate that shall be displayed on the rear of the vehicle.

The registration certificate need not specify the weight of the custom vehicle. The license plate issued shall bear no date but shall bear the inscription "Custom Vehicle," "Idaho," and the registration number issued for the custom vehicle, and the license plate shall be valid upon annual renewal under section 49-402 or 49-434 (1), Idaho Code, as long as the vehicle is in existence. The license plate will be issued for the applicant's use only for the particular vehicle, and, in the event of a transfer of title, the transferor may hold the license plate and transfer it to another qualifying custom vehicle.

(4) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402 , Idaho Code. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

(5) The department has the power to revoke any registration issued under this section for cause shown for failure of the applicant to comply with the provisions of this section.

49-409 — Personalized license plates

49-409. Personalized license plates.

(1) Any person who is the owner of a vehicle registered under section 49-402 or 49-434 (1), Idaho Code, may apply to the department for personalized license plates in lieu of regular numbered plates except that this provision shall not apply to a vehicle registered under section 49-434 (1), Idaho Code, with a maximum gross weight over twenty-six thousand (26,000) pounds or any vehicle registered under section 49-435 , Idaho Code. In addition to the regular registration fees required in section 49-402

(1) and (2), section 49-422 , and section 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402 , Idaho Code. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account. The personalized license plates shall be of the same color and design as other license plates, and shall consist of numbers or letters, or any combination thereof, not exceeding seven (7) positions. No more than one (1) particular combination of letters and numbers shall be in existence at any one (1) time. The form for application of the plates will be as prescribed by the director who, at his discretion, may refuse to issue the plates.

(2) When personalized license plates are issued for a vehicle, the regular license plates for that vehicle belong to the registrant and may be transferred to another vehicle owned by the personalized plate applicant.

49-410 — Special license plates and placards for persons with a disability — Parking privileges — Placards for certain temporarily disabled persons — Enforcement

49-410. Special license plates and placards for persons with a disability — Parking privileges — Placards for certain temporarily disabled persons — Enforcement.

(1) Any person with a disability as defined in section 49-117 , Idaho Code, or any parent or guardian of a dependent child with a disability as defined in section 49-117 , Idaho Code, without regard to the age of the dependent child, shall be eligible for the use of special license plates bearing the international accessible symbol, for any vehicle owned by such person or owned by a qualified parent or guardian, but excluding any commercial vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. The parking privileges granted under the provisions of subsection (7) of this section shall apply to any vehicle displaying special license plates or placard issued pursuant to this section.

(2) Registration and license plate fees for vehicles owned by a person with a disability or qualified parent or guardian of a dependent child with a disability shall be as provided, respectively, in sections 49-402 , 49-434

(1) and 49-450 , Idaho Code. Nothing in this section shall be construed as abrogating provisions of section 49-445 , Idaho Code. The use of the special placard issued under the provisions of subsection (4) of this section, shall not exempt the owner of a motor vehicle from otherwise properly registering and licensing the motor vehicle.

(3) Special license plates for persons with a disability and for the parent or guardian of a dependent child with a disability shall be the same size and color as other license plates, and shall have displayed upon them the registration numbers assigned to the vehicle and to the owner. The plates shall be numbered in a manner prescribed by the department, but the plates shall display the international accessible symbol. International Accessible Symbol

(4) The department shall issue a special placard bearing the international accessible symbol and other information the department may require to:

(a) Any qualified person with a disability who does not own a motor vehicle;

(b) Any qualified person with a disability who owns a motor vehicle, without regard to weight or use of the vehicle;

(c) Any parent or guardian of a dependent child with a disability who owns a motor vehicle without regard to weight or use of the vehicle;

(d) Any business entity that is engaged in transportation of persons with a disability, which business shall not be required to submit a physician's certification. In addition to other application requirements, a business applicant shall sign a declaration that he is engaged in the transportation of persons with a disability. A business entity may include but not be limited to hospitals, nursing homes, federal, state and local governmental agencies and taxicabs; and

(e) Any recipient of a disabled veteran license plate pursuant to section 49-403 , Idaho Code.

(5) Any person or business issued a special placard shall affix the special placard to a motor vehicle in a conspicuous place designated by the department. The placard shall bear distinguishing marks, letters or numerals indicating the vehicle is utilized by a permanently disabled person. When the placard is affixed to a motor vehicle and the motor vehicle is transporting a person with a disability, special parking privileges are granted as provided in subsection (7) of this section.

(6) Application for special license plates, a special placard, or both as applicable and at the option of the applicant, shall be made upon a form furnished by the department and shall include a written certification by a licensed physician, licensed physician assistant, or licensed advanced practice professional nurse verifying that the applicant's stated impairment qualifies as a disability according to the provisions of section 49-117 , Idaho Code.

(7) Any motor vehicle displaying special license plates for a person with a disability, without regard to the state of residence or displaying the special placard provided in subsections (4) and (8) of this section, shall be allowed to park for unlimited periods of time in parking zones or areas that are otherwise restricted as to the length of time parking is permitted, to park in spaces and zones designated for persons with a disability, and to park in any public parking space with metered parking without being required to pay any parking meter fee. The provisions of this subsection shall not be applicable to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles, to areas where vehicular parking is prohibited for periods in excess of forty-eight (48) hours, or to areas where parking is prohibited for certain periods of time in order to allow snow removal, street construction or maintenance or for other emergency purposes. Nothing herein shall prohibit the designation of parking spaces for use by disabled persons for unlimited periods of time.

(8) Any person who shall submit satisfactory proof to the department that he is so temporarily disabled as defined in section 49-117 (7)(b), Idaho Code, shall be entitled to receive for one (1) motor vehicle only, a special placard to be affixed to a motor vehicle in a conspicuous place designated by the department, bearing distinguishing marks, letters or numerals indicating that the vehicle is utilized by a temporarily disabled person. This special temporary placard shall be valid between one (1) and six (6) months depending on the written authorization of the licensed physician, licensed physician assistant, or licensed advanced practice professional nurse and as specified by the department on the placard.

(9) Any use of the plate or placard by any person other than those meeting the definition of disability under section 49-117 (7)(b), Idaho Code, or as otherwise authorized by this section, to obtain parking shall constitute an infraction punishable by a fine of one hundred dollars ($100).

(10) Any person who unlawfully possesses, sells, copies, duplicates, distributes, or manufactures or aids and abets in the unlawful possession, sale, copying, duplicating, distributing or manufacturing of a special plate or placard is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for a period not to exceed thirty (30) days or by both. The court shall also impose as a term of the sentence a period not to exceed forty (40) hours of community service provided to a nonprofit organization which serves people with disabilities. The unlawfully obtained special plate or placard shall be subject to confiscation by law enforcement officials. Following conviction or dismissal, the special plate or placard confiscated by law enforcement shall be sent to the department. Law enforcement officials and/or their designees as authorized by a city or county shall enforce the provisions of subsections (1) through (9) of this section and are empowered, using reasonable discretion, to check personal identification to determine if the user of the plate or placard is authorized to use accessible parking privileges. Any fines collected shall be retained by the city or county whose law enforcement official issued the citation.

49-411 — Dealer and manufacturer plate — Fees

49-411. Dealer and manufacturer plate — Fees.

(1) Any person conducting the business of manufacturing, buying, selling or dealing in vehicles, and licensed as a manufacturer of or a dealer in vehicles, and owning and operating any such vehicle upon any highway may, in lieu of registering each vehicle, obtain from the department upon application on the proper form and payment of the required fee, and attach to each vehicle, one (1) number plate as required for different classes of vehicles in section 49-434 , Idaho Code. The special number plate shall bear a distinctive number assigned to the manufacturer or dealer, the name of this state, which may be abbreviated, and the year for which the plate is issued, together with words which may be abbreviated or a distinguishing symbol indicating that the plate is issued to a manufacturer or dealer.

(a) Dealer license plates shall be limited to two (2) license plates for up to twenty (20) vehicles sold during the previous dealer licensing period and one (1) license plate for each ten (10) additional vehicles sold during the previous dealer licensing period. Any new dealer who applies for a dealer license shall be eligible for the number of dealer plates requested based on the number of vehicles that the dealer estimates he will sell during the first year of licensure.

(b) Upon renewal of a dealer's license, the department may audit vehicle sales from previous years to determine the number of dealer plates that will be authorized for the current dealer licensing period.

(2) The fee to validate a dealer or manufacturer number plate shall be twelve dollars ($12.00).

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

(4) Laden dealer or manufacturer plates shall be available to licensed dealers and manufacturers operating vehicles with laden loads in furtherance of their business pursuant to section 49-1627 (5), Idaho Code. Such plates shall be exempt from the limit provisions of subsection (1)(a) of this section. The operating fee for a laden dealer or manufacturer plate will be equal to the fees for commercial vehicles pursuant to section 49-434 (1), Idaho Code, for twenty-six thousand (26,000) pounds. Laden dealer and manufacturer plates are limited to a maximum combined gross vehicle weight of twenty-six thousand (26,000) pounds. Temporary weight increase permits may be purchased pursuant to section 49-432 (2), Idaho Code.

49-412 — Vehicle dealer loaner plate

49-412. Vehicle dealer loaner plate.

(1) A dealer, owning a vehicle may obtain, upon application to the department upon a proper form and payment of the fee required, and display on a vehicle loaned to a customer, a loaner vehicle number plate. The plate shall be the same design and numbering system as the plate issued for passenger vehicles or motorcycles.

(2) The fee for each loaner plate or registration card shall be as provided in section 49-402 (1), Idaho Code, for new vehicles.

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

49-414 — Legislative license plates — Fees

49-414. Legislative license plates — Fees.

(1) Special legislative license plates shall be issued by the department upon application and payment of the required fees. Each legislator is eligible to register and receive special license plates for one (1) vehicle whose registered maximum gross weight does not exceed twenty-six thousand (26,000) pounds. The registration period shall be for one (1) year, from January 1 through December 31, and may be renewed, as long as the legislator holds office. The plates shall bear either the inscription "House" or "Senate," shall contain a consecutive numbering from one (1) through the maximum number of members in each body with the numbers to be assigned by the speaker of the house of representatives and the president pro tempore of the senate, and shall otherwise comply with the provisions of section 49-443 , Idaho Code.

(2) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section 49-402 , Idaho Code. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

49-415 — Former prisoner of war license plates

49-415. Former prisoner of war license plates.

(1) Any veteran, who was a prisoner of war (POW) of an armed enemy of the United States during active service in the armed forces of the United States, that service occurring during any portion of a recognized war period enumerated in this section, and who has been released or discharged from the armed forces under other than dishonorable conditions, may upon application to the department, register and receive for not more than two (2) motor vehicles, special former prisoner of war 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.

(2) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the plate fee required in section 49-450 , Idaho Code. Whenever a former prisoner of war transfers or assigns his title or interest to a vehicle registered under this section the registration shall expire, but the former prisoner of war may hold the special plates and may have them transferred to another vehicle upon payment of the required transfer fee provided in section 49-431 , Idaho Code. He may only display the plates after receipt of the new registration document from the department.

(3) Former prisoner of war license plates shall bear the words "Former Prisoner of War" and a declaration of the period of service, and shall in all other respects be as provided by law.

(4) Recognized war periods for the purpose of this section shall be any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11).

(5) Former prisoner of war license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased former prisoner of war. In addition, the surviving spouse of the deceased former prisoner of war is eligible to reapply for and shall be issued former prisoner of war license plates if the deceased former prisoner of war died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

49-415A — Congressional medal of honor license plates

49-415A. Congressional medal of honor license plates.

(1) Congressional medal of honor license plates are available to applicants who furnish proof of entitlement by certification from the United States Veterans Administration attesting to their status as a congressional medal of honor recipient.

(2) The license plates shall be provided free of charge. The applicant shall pay the regular annual registration fees required by section 49-402 or 49-434 (1), Idaho Code. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. If the plate holder transfers his title or interest to a vehicle registered under this section, the plates may be transferred to another vehicle owned by the plate holder. If the plates are unexpired, the plate holder shall be given credit for the unexpired portion of the registration fee against the new registration fee. The transfer fee specified by section 49-431 (1), Idaho Code, shall apply.

(3) These provisions shall apply to the vehicle to which the plates were originally issued and to any vehicle subsequently purchased and owned by the medal of honor recipient, except that the privilege shall not extend to more than two (2) vehicles at a time.

(4) Congressional medal of honor license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased congressional medal of honor recipient. In addition, the surviving spouse of a deceased congressional medal of honor recipient is eligible to reapply for and shall be issued congressional medal of honor license plates if the deceased congressional medal of honor recipient died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

49-415B — Pearl Harbor survivor special plates

49-415B. Pearl Harbor survivor special plates.

(1) Any veteran who was on active duty in the armed forces of the United States and assigned or stationed at Pearl Harbor, Hawaii, or within three (3) miles of the island of Oahu on December 7, 1941, and who has been released or discharged from the armed forces under other than dishonorable conditions, may upon application to the department, register and receive for not more than two (2) motor vehicles, special Pearl Harbor survivor number plates in lieu of regular number 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 registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall be charged the plate fee required in section 49-450 , Idaho Code. Whenever a qualifying survivor of the Japanese attack on Pearl Harbor on December 7, 1941, transfers or assigns his title or interest to a vehicle especially registered under this section, the registration shall expire, but the Pearl Harbor survivor may hold his special plates which he may have reissued to him upon the payment of the required transfer fees. He may only display those plates after receipt of a new registration from the department.

(3) Pearl Harbor survivor plates shall bear the characters: "Pearl Harbor Survivor" and shall in all other respects be as provided by law.

(4) Pearl Harbor survivor license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased Pearl Harbor survivor veteran. In addition, the surviving spouse of a deceased Pearl Harbor survivor veteran is eligible to reapply for and shall be issued Pearl Harbor survivor license plates if the deceased Pearl Harbor survivor veteran died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

49-415D — Support our troops plates

49-415D. Support our troops plates.

(1) On and after January 1, 2008, 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 support our troops 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 support our troops 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 Idaho support our troops, inc.'s principal office located in Boise, Idaho, and shall be used by the Idaho support our troops, inc. as administrator of the funds, to provide support and assistance to the children, dependents and spouses of military service members and armed forces members of the army, navy, air force, marine corps, national guard, space force, coast guard and air national guard and reserves.

(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 support our troops license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to the board of directors of the Idaho support our troops, inc. and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho support our troops, inc.

(5) Sample support our troops 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 support our troops, inc.'s principal office located in Boise, Idaho, and shall be used to provide support and assistance to the children, dependents and spouses of military service members and armed forces members of the army, navy, air force, marine corps, national guard, space force, coast guard and air national guard and reserves.

49-415G — idaho north america plate — Special permanent or business logo

49-415G. idaho north america plate — Special permanent or business logo.

(1) Any person or business who is the owner of a trailer or semitrailer registered under the provisions of subsection (4)(a) of section 49-434 , Idaho Code, may apply for and, upon department approval, may receive a special permanent or business logo license plate of the owner's company.

(2) In addition to the registration fee required in section 49-434 (4)(a), Idaho Code, an applicant for a business logo plate shall pay the estimated initial programming costs, which fees shall be deposited in the state highway account. The business logo plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code, and acceptable to the owner or business and shall be approved by the department and utilize a numbering system as determined by the department.

(3) Whenever title or interest in a trailer or semitrailer registered under the provisions of this section is transferred or reassigned, the plates issued pursuant to subsection (4)(a) of section 49-434 , Idaho Code, are nontransferable and the registration fee is nonrefundable.

(4) The north America permanent trailer plate program shall be subject to the provisions of section 49-402C , Idaho Code.

(5) Any specific business logo plate program created under this section shall be discontinued if no plates are issued under the program for two (2) consecutive years after the year of implementation.

(6) Sample special permanent or business logo license plates may be purchased for a fee of thirty dollars ($30.00), which shall be placed in the state highway account.

49-416 — Statehood centennial license plates

49-416. Statehood centennial license plates.

(1) Statehood centennial license plates are available to owners of motor vehicles required to be registered under section 49-402

(1) or section 49-434 (1), Idaho Code, upon application at a county assessor’s office or at the department. 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 statehood centennial plates for other classes of vehicle registrations shall be as authorized by rule of the department. In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section 49-402 , Idaho Code. All revenues from such initial registration and annual renewal fees shall be deposited in the highway distribution account.

(2) The statehood centennial license plates shall be of a color and design approved by the department, utilizing a numbering system approved by the board. The statehood centennial license plates must be surrendered upon failure to pay the annual special fee and renewal fees.

(3) Any person who applies for statehood centennial license plates, may also apply for personalized numbers and/or letters on those plates, as provided for in section 49-409 , Idaho Code.

49-416A — America250 plates

49-416A. America250 plates.

(1) Notwithstanding the provisions of section 49-402C , Idaho Code, on and after July 1, 2026, 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 America250 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 America250 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, 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 the 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 heritage trust.

(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 America250 license plate shall have a red, white, and blue background and display the text "America250" centered on the bottom. The design shall be acceptable to the Idaho heritage trust and shall be approved by the department. Beginning January 1, 2027, the text "America250" shall no longer be required. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho heritage trust.

(6) Sample America250 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 heritage trust.

49-417 — Idaho wildlife special plates

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 three (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 three (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.

49-417A — Idaho timber special plates

49-417A. Idaho timber 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 Idaho timber 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 department of lands fund for use in reforestation activities on state lands, provided however, that prior to the beginning of any fiscal year, the state board of land commissioners may agree that funds made available under this section to the department of lands for the coming year would better further reforestation objectives of the management and conservation of forest resources on public and private lands in the state if expended for educational efforts set forth in this section. 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) The Idaho timber license plate shall be of a color and design acceptable to the members of the Idaho forest products commission and 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 director of the department of lands from funds appropriated to that department.

(4) Sample Idaho timber plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the department of lands fund for use in reforestation activities or educational efforts as set forth in this section.

(5) Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee of each timber special license plate, and twenty dollars ($20.00) for each sample timber special license plate, shall be deposited with the state treasurer and credited to the department of lands. Funds so deposited and subsequently directed by the state board of land commissioners for educational efforts as set forth in this section shall be expended as agreed by the state board of land commissioners upon recommendations developed jointly by the department of lands and the Idaho forest products commission. Such efforts may include signs or other appropriate means designed to help build public understanding of reforestation or the management and conservation of forest resources on public and private lands in Idaho.

49-417B — Idaho agriculture plates

49-417B. Idaho agriculture 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 Idaho agriculture plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho agriculture plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of 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 the 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 warrant on a monthly basis by the Idaho transportation department to Idaho ag in the classroom created by the provisions of section 57-815 , Idaho Code.

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

(4) The Idaho agriculture license plate shall be of a color and design that is acceptable to the Idaho ag in the classroom board of directors and shall be approved by the department and utilize a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid from the Idaho ag in the classroom account.

(5) Sample Idaho agriculture plates may be purchased from the department 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 by warrant on a monthly basis by the Idaho transportation department to Idaho ag in the classroom.

49-417C — Famous potatoes license plates

49-417C. Famous potatoes license plates.

(1) On and after January 1, 2001, any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special famous potatoes license plates in lieu of regular license plates. Availability of famous potatoes license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49 , Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho potato commission created in chapter 12, title 22 , Idaho Code, and shall be used exclusively for the purposes described in subsection (17) of section 22-1207 , Idaho Code.

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

(4) The famous potatoes license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The distinguishing feature of the license plate shall be a representation of a prepared Idaho potato with a melting pat of butter. The design and any slogan on the plate shall be acceptable to the Idaho potato commission and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho potato commission.

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

49-417D — Idaho rangeland plates

49-417D. Idaho rangeland plates.

(1) On and after January 1, 2009, 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 Idaho rangeland plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho rangeland plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular registration 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 the 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 an Idaho rangeland resource commission account provided in section 58-1415 , Idaho Code.

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

(4) The Idaho rangeland 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 Idaho rangelands shall be acceptable to the Idaho rangeland resource commission and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid from the Idaho rangeland resource commission account.

(5) Sample Idaho rangeland plates may be purchased from the department 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 rangeland resource commission account.

49-417E — IDAHO world FAMOUS POTATOES BLACK AND WHITE LICENSE PLATE

49-417E. IDAHO world FAMOUS POTATOES BLACK AND WHITE LICENSE PLATE.

(1) On and after July 1, 2025, 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 world famous potatoes black and white 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 world famous potatoes black and white 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 pursuant to this chapter, the applicant shall be charged a fee of seventy dollars ($70.00) for the initial issuance of plates and fifty dollars ($50.00) for each succeeding annual registration. Forty-five dollars ($45.00) of the initial fee and thirty-five dollars ($35.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho potato commission created in chapter 12, title 22 , Idaho Code, and shall be used exclusively for the purposes described in section 22-1207 (17), Idaho Code.

(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) Notwithstanding the provisions of section 49-402C , Idaho Code, the Idaho world famous potatoes black and white license plate shall have a black background, white characters, and display the words "Idaho World Famous Potatoes." The design shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho potato commission.

(6) Sample Idaho world famous potatoes black and white license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho potato commission. No additional fee shall be charged for personalizing sample plates.

49-417F — IDAHO WORLD FAMOUS POTATOES WHITE AND TEAL LICENSE PLATE

49-417F. IDAHO WORLD FAMOUS POTATOES WHITE AND TEAL LICENSE PLATE.

(1) On and after July 1, 2025, any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, may apply for and, upon department approval, receive Idaho world famous potatoes white and teal 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 world famous potatoes white and teal license plates for other vehicles shall be subject to the rules, policies, and procedures of the department.

(3) Notwithstanding the provisions of section 49-450 , Idaho Code, the plate fee for the license plate created by this section shall be two dollars and seventy-five cents ($2.75) per license plate. Such fee shall be deposited into the plate manufacturing account created in section 49-450A , Idaho Code. Regular registration fees shall be charged pursuant to the requirements of this chapter. There shall be no special plate program fee.

(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) Notwithstanding the provisions of section 49-402C , Idaho Code, the Idaho world famous potatoes white and teal license plate shall have a white background, teal green characters, and display the words "Idaho World Famous Potatoes." The design shall be approved by the department, utilizing a numbering system as determined by the department.

(6) Sample Idaho world famous potatoes white and teal license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho potato commission. No additional fee shall be charged for personalizing sample plates.

49-417G — White and black LICENSE Plates

49-417G. White and black LICENSE Plates.

(1) On and after July 1, 2026, 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 white and black 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 the white and black 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 pursuant to this chapter, the applicant shall be charged a fee of seventy dollars ($70.00) for the initial issuance of plates and fifty dollars ($50.00) for each succeeding annual registration. Five dollars ($5.00) of the initial fee and five dollars ($5.00) 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. Sixty-five dollars ($65.00) of each initial fee and forty-five dollars ($45.00) of each renewal fee shall be transferred by the state treasurer to the Idaho law enforcement fund created pursuant to section 67-2914 , Idaho Code, and shall be used exclusively for the purposes described in section 49-454 (3), Idaho Code.

(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) Notwithstanding the provisions of section 49-402C , Idaho Code, the white and black license plate shall have a white background and black characters. The design shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho law enforcement fund.

(6) The white and black license plate established in this section shall be exempt from the requirements of section 49-402D , Idaho Code.

(7) Sample white and black license plates may be purchased for a fee of thirty dollars ($30.00), five dollars ($5.00) of which shall be deposited in the state highway account and twenty-five dollars ($25.00) of which shall be transferred to the Idaho law enforcement fund and shall be used exclusively for the purposes described in section 49-454 (3), Idaho Code. No additional fee shall be charged for personalizing sample plates.

49-418 — Veterans plates

49-418. Veterans 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 and upon department approval receive special veterans 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 veterans plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) Proof of being a current or former member of the United States armed forces must be furnished to the department before special veterans plates will be issued. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs.

(3) In addition to the regular registration fees required in section 49-402

(1) or 49-434 (1), Idaho Code, the applicant shall pay the initial program fee of twenty-five dollars ($25.00) and the annual program fee of fifteen dollars ($15.00) as specified in section 49-402 , Idaho Code, and the plate fee specified in section 49-450 , Idaho Code. Ten dollars ($10.00) of the initial program fee and ten dollars ($10.00) of the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Fifteen dollars ($15.00) of the initial program fee and five dollars ($5.00) of the annual program fee shall be deposited to the veterans cemetery maintenance fund created in section 65-107 , Idaho Code, and shall be used to operate and maintain a state veterans cemetery.

(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 veterans license plate design shall include the colors red, white and blue, shall designate one (1) of the five (5) branches of military service, and display either:

(a) The word "VETERAN";

(b) The name of a conflict or war period recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as defined in 38 U.S.C. 101(11); or

(c) For a current or former member of the United States armed forces who has served in Afghanistan or Iraq during the post 9/11 global operations period, as defined in 38 U.S.C. 4110A(c), the name of the post 9/11 global operations theater. The license plate design shall comply with all applicable rules of the department and shall include a separate and distinct numbering system. The design, color, and numbering system shall be subject to approval of the department.

(6) Veterans license plates may be retained and displayed on vehicles owned by the surviving spouse of a qualified veteran. In addition, provided that the deceased veteran met the criteria set forth above in this section, surviving spouses of qualified veterans shall be authorized to apply for and receive veterans plates and may retain, renew and display veterans plates for so long as the surviving spouse is within the definition set forth in 38 U.S.C. 101(3). There shall be no requirement that the veteran, while living, resided in Idaho or had applied for or received veterans plates. Such plates shall be used on a vehicle owned by the surviving spouse.

49-418A — Idaho college and university plates

49-418A. Idaho college and university 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 special plates featuring one (1) of Idaho's colleges or universities. 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 college and university special license plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of 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 to be used by the department to fund highway, road and bridge construction projects and to fund the cost of administration of this special license plate program. The department shall transfer twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee for deposit to the institution designated on the license plate.

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

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

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

(b) Each college or university that chooses to participate in this program shall provide that portion of the design which features the particular institution and such design shall be acceptable to the president of the institution. For public colleges and universities, approval of the state board of education and board of regents of the university of Idaho shall also be required. Each version of the special college and university plate featuring the participating college or university shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid by the participating college or university.

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

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

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

(6) For the purposes of this section, nonpublic colleges and universities shall mean and are limited to: The College of Idaho located in Caldwell, Idaho; Northwest Nazarene University located in Nampa, Idaho; and Brigham Young University-Idaho located in Rexburg, Idaho.

(7) Sample college and university license plates may be purchased from the department for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be retained by the department for deposit to the state highway account and twenty dollars ($20.00) of which shall be transferred by the department to the college or university designated on the license plate. No additional fee shall be charged for personalizing sample plates.

49-418B — Idaho youth plates

49-418B. Idaho youth plates.

(1) On or after January 1, 2000, 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 youth license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho youth 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 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 the 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 county assessor’s motor vehicle registration division of each county into the youth programs fund of the sheriff of that county, for use in implementation of prevention and early intervention programs for Idaho’s at-risk youth including, but not limited to: (a) providing mentoring programs, (b) creating safe places and structured activities in nonschool hours, (c) fostering good health, (d) developing effective education opportunities for marketable career skills, and (e) providing an opportunity for youth to give back to their community.

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

(4) The Idaho youth 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 Idaho association of counties, 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 Idaho association of counties.

(5) Sample Idaho youth license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the sheriff’s youth program fund of the county where the plate was purchased for the implementation of youth programs for at-risk youth. No additional fee shall be charged for personalizing sample plates.

49-418C — Firefighters license plates

49-418C. Firefighters license plates.

(1) On and after January 1, 2001, any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special firefighters license plates in lieu of regular license plates. Availability of firefighters 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 fire chiefs association in Boise, Idaho, and shall be used exclusively for the fire safety education of firefighters, fire chiefs and the general public.

(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 firefighters 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 firefighters in action. The design and any slogan on the plate shall be acceptable to the Idaho fire chiefs association 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 fire chiefs association.

(5) Sample firefighters 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 fire chiefs association. No additional fee shall be charged for personalizing sample plates.

49-418D — Military veteran motorcycle license plate

49-418D. Military veteran motorcycle license plate.

(1) On and after January 1, 2006, any person who is the owner of a motorcycle registered under the provisions of section 49-402 , Idaho Code, may apply for and upon department approval receive a military veteran motorcycle license plate in lieu of a regular motorcycle license plate.

(2) Proof of being a current or former member of the United States armed forces must be furnished to the department before a military veteran motorcycle plate will be issued. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs.

(3) In addition to the annual registration fee required in section 49-402 (3), Idaho Code, the applicant shall be charged a fee of twenty-five dollars ($25.00) for the initial issuance of a plate, and fifteen dollars ($15.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial program fee and ten dollars ($10.00) of the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special motorcycle license plate program. Fifteen dollars ($15.00) of the initial program fee and five dollars ($5.00) of the annual program fee shall be deposited to the veterans cemetery maintenance fund created in section 65-107 , Idaho Code, to operate and maintain a state veterans cemetery.

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

(5) The military veteran motorcycle license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. In addition, there shall be no decals to indicate the veteran’s branch of service or the period of duty served; the plate shall display the words "Scenic Idaho" at the top and "Veteran" at the bottom of the plate; and the license plate design shall be approved by the department and any portion of the design which represents veterans shall be acceptable to the administrator of the Idaho division of veterans services and a unique numbering system shall be utilized by the department.

49-419 — Idaho snowskier plates

49-419. Idaho snowskier plates.

(1) On and after January 1, 1999, 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 snowskier license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho snowskier 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 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 division of tourism fund within the department of commerce for use in general promotion of Idaho's ski industry.

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

(4) The Idaho snowskier 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 Idaho ski areas association, 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 Idaho ski areas association.

(5) Sample Idaho snowskier license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the division of tourism fund within the department of commerce for use in general promotion of Idaho's ski industry. Any moneys expended by the department of commerce for promotion of Idaho's ski industry shall be done in consultation with the Idaho ski area association. No additional fee shall be charged for personalizing sample plates.

49-419A — Idaho sawtooth national recreation area plates

49-419A. Idaho sawtooth national recreation area plates.

(1) On and after January 1, 2000, 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 Idaho sawtooth national recreation area license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho sawtooth national recreation area plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fees 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 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 park and recreation fund established in section 67-4225 , Idaho Code, for use in the maintenance of parks and facilities. This fee shall be treated as a contribution to the outdoor recreation 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.

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

(4) The Idaho sawtooth national recreation area license plate design shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. That portion of the design which features the Idaho sawtooth national recreation area shall be acceptable to the sawtooth society and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of the plate design, shall be paid by the sawtooth society.

(5) Sample Idaho sawtooth national recreation area plates may be purchased from the department for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited by the state treasurer in the park and recreation fund for use in the maintenance of parks and facilities. No additional fee shall be charged for personalizing sample plates.

49-419C — Idaho white water rafting plates

49-419C. Idaho white water rafting plates.

(1) On and after January 1, 2004, any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special Idaho white water rafting license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho white water rafting 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 tourism and promotion fund of the department of commerce, and shall be used by the department of commerce for the general education and promotion of Idaho's white water rivers and the rafting and kayaking industries. The department of commerce shall confer with the consulting panel representing white water river communities and the rafting and kayaking industries before expending any moneys from the fund that were received into the fund from revenue derived from this special license plate program.

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

(4) The Idaho white water rafting license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to the department of commerce and the consulting panel representing Idaho's white water river communities and the rafting and kayaking industries, and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the department of commerce. Not more than fifteen percent (15%) of all revenues made available to the department of commerce from the sale and renewal of Idaho white water rafting license plates shall be used by the department of commerce to pay for the costs of the plate design and for those administrative expenses necessarily incurred by operation of the general education and promotion program.

(5) Sample Idaho white water rafting 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 tourism and promotion fund of the department of commerce and shall be used for the general education and promotion of Idaho's white water rivers and the rafting and kayaking industries. No additional fee shall be charged for personalizing sample plates.

49-419E — Idaho mountain biking plates

49-419E. Idaho mountain biking plates.

(1) On and after January 1, 2011, 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 mountain biking license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho mountain biking 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 the plates and twenty-five dollars ($25.00) upon each succeeding annual registration. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be deposited by the state treasurer in a dedicated fund in the department of parks and recreation or any successor state agency or department thereto which fund shall be used by any such agency or department exclusively for the preservation, maintenance and expansion of recreational trails within the state of Idaho and on which mountain biking is permitted.

(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 a new registration from the department.

(4) The Idaho mountain biking license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to the department of parks and recreation or any successor agency or department thereto, and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho mountain bike trail preservation association.

(5) Sample Idaho mountain biking license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be deposited in a dedicated fund within the department of parks and recreation or any successor state agency or department thereto and which fund shall be used by any such agency or department exclusively for the preservation, maintenance and expansion of recreational trails within the state of Idaho and on which mountain biking is permitted.

49-420 — Idaho snowmobile plates

49-420. Idaho snowmobile plates.

(1) On and after January 1, 1999, 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 snowmobile license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho snowmobile 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 deposited by the state treasurer in the Idaho department of parks and recreation state snowmobile account established pursuant to section 67-7106 , Idaho Code.

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

(4) The Idaho snowmobile 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 Idaho state snowmobile association, 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 Idaho state snowmobile association.

(5) Sample Idaho snowmobile license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the state snowmobile account within the department of parks and recreation. No additional fee shall be charged for personalizing sample plates.

49-420A — Idaho state capitol commission plates

49-420A. Idaho state capitol commission plates.

(1) On and after January 1, 2002, 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 state capitol commission 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 state capitol commission 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 deposited by the state treasurer in the capitol maintenance reserve fund established in section 67-1610A , Idaho Code, and shall be used exclusively for the purposes of chapter 16, title 67 , Idaho Code.

(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) Notwithstanding the provisions of section 49-402C , Idaho Code, the Idaho state capitol commission license plate shall be of a color and design acceptable to the Idaho state capitol commission, except that the word "Idaho" shall appear on each plate and the county designator shall be omitted to provide for distinguishing designs and slogans. The design shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho state capitol commission.

(6) Sample Idaho state capitol commission license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the Idaho capitol endowment income fund. No additional fee shall be charged for personalizing sample plates.

49-420B — Lewis and Clark commemorative plates

49-420B. Lewis and Clark commemorative plates.

(1) On and after January 1, 2001, any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special Lewis and Clark commemorative 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 Lewis and Clark commemorative 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 governor’s Idaho Lewis and Clark trail committee fund created in section 67-8601 , Idaho Code, and shall be used exclusively for the purposes described in section 67-8601 , Idaho Code.

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

(4) The Lewis and Clark commemorative 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 Lewis and Clark and other commemorative aspects of their trail and journeys shall be acceptable to the governor’s Lewis and Clark advisory 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 from the Lewis and Clark trail committee fund.

(5) Sample Lewis and Clark commemorative 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 governor’s Idaho Lewis and Clark trail committee fund. No additional fee shall be charged for personalizing sample plates.

49-420C — Peace officer memorial plates

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.

49-420D — Appaloosa license plates

49-420D. Appaloosa license plates.

(1) On and after January 1, 2003, any person who is the owner of a vehicle registered pursuant to the provisions of section 49-402 , Idaho Code, or registered pursuant to 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 twenty-six thousand (26,000) 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 museum and heritage center foundation and shall be used exclusively for the purpose of funding education and programming related to horses in the state of Idaho.

(3) Whenever title or interest in a vehicle registered pursuant to 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 display the plates on another vehicle only 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 that features an Appaloosa shall be acceptable to the Appaloosa museum and heritage center foundation and shall be approved by the department utilizing a numbering system as determined by the department.

(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 museum and heritage center foundation. No additional fee shall be charged for personalizing sample plates.

49-420J — selway-bitterroot wilderness plates

49-420J. selway-bitterroot wilderness plates.

(1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, may apply for and upon department approval receive special Idaho Selway-Bitterroot wilderness 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 Selway-Bitterroot wilderness 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be transferred by the state treasurer to the Selway-Bitterroot foundation and shall be used by the foundation for the purpose of assisting in the stewardship of the Idaho Selway-Bitterroot wilderness and surrounding wildlands of north central 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 license plate design shall be acceptable to the Selway-Bitterroot foundation and 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 Selway-Bitterroot foundation.

(5) Sample Idaho Selway-Bitterroot wilderness license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be transferred to the Selway-Bitterroot foundation.

49-420K — Idaho aviation foundation plates

49-420K. Idaho aviation foundation plates.

(1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, may apply for and upon department approval receive special Idaho aviation foundation license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho aviation foundation 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be transferred by the state treasurer to the Idaho aviation foundation and shall be used by the foundation for grants relating to the maintenance, upgrade and development of airstrips and for improving access and promoting safety at backcountry and recreational airports in 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 display the plates on another vehicle only upon receipt of the new registration from the department.

(4) The license plate design shall be of a color and design in accordance with the provisions of section 49–402C, Idaho Code. The design and any slogan on the plate shall be acceptable to the Idaho aviation foundation and shall be approved by the department and shall use 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 aviation foundation.

(5) Sample Idaho aviation foundation license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be transferred to the Idaho aviation foundation.

49-420M — Idaho 4-H plates

49-420M. Idaho 4-H plates.

(1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 , Idaho Code, may apply for and upon department approval receive special Idaho 4-H license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho 4-H 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be transferred by the state treasurer to the University of Idaho foundation, friends of 4-H division, and shall be used by the division for 4-H youth development programs across Idaho for the purpose of funding educational 4-H events, securing supplemental resource materials, providing scholarship and leadership training opportunities and integrating additional STEM-based programming into curriculum offerings to better prepare Idaho youth for future careers.

(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 display the plates on another vehicle only upon receipt of the new registration from the department.

(4) The license plate design shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to the University of Idaho foundation, friends of 4-H division, and shall be approved by the department and shall use a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the University of Idaho foundation, friends of 4-H division.

(5) Sample Idaho 4-H license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be transferred to the University of Idaho foundation, friends of 4-H division.

49-420Q — pet friendly license plates

49-420Q. pet friendly license plates.

(1) 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 pet friendly 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 pet friendly 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 this chapter, 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be deposited in the Idaho humane society’s pet lovers fund and used in accordance with the provisions of subsection (5) of this section.

(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 display the plates on another vehicle only upon receipt of the new registration from the department.

(4) The pet friendly license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to the Idaho humane society and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho humane society.

(5) Sample pet friendly license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be deposited in the Idaho humane society’s pet lovers fund. A committee of five (5) members shall be appointed by the board of directors of

the Idaho humane society to designate recipients of disbursements from the fund. The committee members shall serve two (2) year terms and shall include one (1) licensed Idaho veterinarian, one (1) certified veterinarian technician, and three (3) representatives of the rescue, sheltering, and animal welfare community unaffiliated with the Idaho humane society. Subsequent appointments to the committee shall be made by the committee. The committee shall meet once per year to designate recipients of moneys from the Idaho humane society's pet lovers fund, which recipients may include Idaho licensed veterinarians, Idaho animal shelters, or Idaho nonprofit organizations. At the direction of the committee, moneys in the fund shall be disbursed to recipients designated by the committee and used to provide assistance with veterinary services, prioritizing canine and feline spay and neuter services, to low-income residents of Idaho. The Idaho humane society, the committee members, and any organization represented by a serving committee member shall be ineligible to receive disbursements from the fund.

49-420R — CHOOSE LIFE LICENSE PLATES

49-420R. CHOOSE LIFE LICENSE PLATES.

(1) Effective January 1, 2021, 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 choose life 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 choose life 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 this chapter, 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be transferred by the state treasurer to Choose Life Idaho, Inc., and shall be used in Idaho to provide grant dollars to support life-affirming pregnancy resource centers in order to help pregnant women choose life for their babies and to encourage adoption as a positive choice for women with unplanned pregnancies.

(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 display the plates on another vehicle only upon receipt of the new registration from the department.

(4) The choose life license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code. The design and any slogan on the plate shall be acceptable to Choose Life Idaho, Inc., and shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by Choose Life Idaho, Inc.

(5) Sample choose life license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be transferred to Choose Life Idaho, Inc., to be used for the purpose stated in subsection (2) of this section.

49-420S — don't tread on me license plates

49-420S. don't tread on me license plates.

(1) Effective January 1, 2026, 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 don't tread on me 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 don't tread on me license plates shall be subject to the policies and procedures of the department.

(2) In addition to the regular registration fee required in this chapter, 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. Thirteen dollars ($13.00) of the initial fee and thirteen dollars ($13.00) 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, including the initial plate design for the plate provided for in this section. Except for the reimbursement of initial plate

design costs as provided for in subsection (4) of this section, twenty-two dollars ($22.00) of each initial fee and twelve dollars ($12.00) of each renewal fee shall be transferred by the state treasurer to the firearms safety grant fund established in section 33-1628 , Idaho Code.

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

(4) Notwithstanding the provisions of section 49-402C , Idaho Code, the don't tread on me license plate shall be bright yellow and shall consist of a likeness of the Gadsden flag with the image of a rattlesnake in the center and the words "don't tread on me" centered on the bottom. The design shall be approved by the Idaho transportation department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the state board of education and shall be reimbursed from the initial moneys distributed to the firearms safety grant fund established in section 33-1628 , Idaho Code.

(5) Sample don't tread on me license plates may be purchased for a fee of thirty dollars ($30.00), thirteen dollars ($13.00) of which shall be deposited in the state highway account and seventeen dollars ($17.00) of which shall be transferred to the firearms safety grant fund established in section 33-1628 , Idaho Code, to be used for the purpose stated in that section.

49-420T — USS IDAHO SSN 799 COMMEMORATIVE license plate

49-420T. USS IDAHO SSN 799 COMMEMORATIVE license plate.

(1) On and after January 1, 2026, 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 USS Idaho SSN 799 commemorative 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 USS Idaho SSN 799 commemorative 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 this chapter, 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. Such fees shall be deposited in the state highway account and shall be used, in part, to fund the cost of the plate design and administration of this special license plate program.

(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 display the plates on another vehicle only upon receipt of the new registration from the department.

(5) The USS Idaho SSN 799 commemorative license plate shall be of a color and design in accordance with the provisions of section 49-402C , Idaho Code, and shall include the text "USS IDAHO" on the top of the plate and the text "SSN 799 THE GEM OF THE FLEET" across the bottom of the plate. The design shall feature an image of the USS Idaho SSN 799 submarine emerging out of the ocean and other commemorative aspects. The design shall be acceptable to the USS Idaho commissioning committee and shall be approved by the department utilizing a numbering system as determined by the department.

(6) The USS Idaho SSN 799 commemorative license plate established in this section shall be exempt from the requirements of section 49-402D .

(7) Sample USS Idaho SSN 799 commemorative license plates may be purchased for a fee of fifteen dollars ($15.00), which shall be deposited in the state highway account. No additional fee shall be charged for personalizing sample plates.

49-420U — AN Appeal to heaven LICENSE plates

49-420U. AN Appeal to heaven LICENSE plates.

(1) On and after January 1, 2026, 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 an appeal to heaven 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 an appeal to heaven 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 this chapter, 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. Such fees shall be deposited in the state highway account and shall be used, in part, to fund the cost of the plate design and administration of this special license plate program.

(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 display the plates on another vehicle only upon receipt of the new registration from the department.

(5) Notwithstanding the provisions of section 49-402C , Idaho Code, the an appeal to heaven license plate design shall be of a color and design similar to the flag portion of the United States postal service's 1968 six-cent (6¢) stamp commemorating George Washington's cruisers flag of 1775, except with a brown tree trunk and the words "AN APPEAL TO HEAVEN" on the bottom center and the word "IDAHO" in the top center. Such design shall be approved by the department, utilizing a numbering system as determined by the department.

(6) The an appeal to heaven license plate established in this section shall be exempt from the requirements of section 49-402D .

(7) Sample an appeal to heaven license plates may be purchased for a fee of fifteen dollars ($15.00), which shall be deposited in the state highway account. No additional fee shall be charged for personalizing sample plates.

49-421 — Registration cards

49-421. Registration cards.

(1) Upon the registration of a vehicle, the registering agency shall issue to the owner, as defined in section 49-116 (4), Idaho Code, a registration card that shall contain the date issued, the registration number assigned the owner and to the vehicle, the name and address of the owner, a description of the registered vehicle, identification number, and any other information the department may require.

(2) The owner, upon receiving a registration card, shall validate proof of compliance with the insurance requirements of section 49-1229 , Idaho Code.

(3) Upon a change of address, the registrant shall report such change to the county assessor or the department within thirty (30) days following the change of address.

(4) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (3) of this section.

49-422 — Registration fees — Manufactured homes and towed recreational vehicles

49-422. Registration fees — Manufactured homes and towed recreational vehicles.

(1) The fees for registering manufactured homes or towed recreational vehicles shall be four dollars ($4.00). In addition to the registration fee, and as a prerequisite to registering there shall be an assessment levied on each manufactured home for ad valorem tax as provided in chapter 3, title 63 , Idaho Code. An applicant for a manufactured home registration shall be required to exhibit the general property tax receipt for the year of registration before a license may be issued. An applicant for a towed recreational vehicle registration shall be required to obtain the recreational vehicle annual license as required in section 49-445 , Idaho Code, in conjunction with the registration required in this section. It shall be unlawful for any manufactured home or towed recreational vehicle to be moved on any highway without first being registered. The registration fees collected as specified in this section shall be paid to the assessor of the county where the registration was purchased. Fifty percent (50%) of the registration fees shall be placed in the county current expense fund and the balance of the fees shall be deposited in the highway distribution account.

(2) The provisions of this section shall not apply to new manufactured homes being transported either prior to first sale at retail or to the initial setup location of the original purchaser.

49-425 — Lost certificate or license plate — Duplicates

49-425. Lost certificate or license plate — Duplicates. In the event that any license plate or registration card issued pursuant to the provisions of this chapter shall be lost, mutilated, or become illegible, the person to whom the plate or

registration card is issued shall make immediate application for and obtain a duplicate or replacement upon furnishing information of fact satisfactory to the department and upon payment of the required fees. The fee for duplicate or replacement plates is provided in sections 49-450 and 49-202 (2)(f), Idaho Code, for a replacement registration card whether issued in print or electronically.

49-426 — EXEMPTIONS FROM OPERATING FEES

49-426. EXEMPTIONS FROM OPERATING FEES. The provisions of this chapter with respect to operating fees must not apply to:

(1) Motor vehicles owned or leased by the United States, the state, a city, a county, any department thereof, any political subdivision or municipal corporation of the state, any taxing district of the state, any state-registered nonprofit subscription fire protection unit, or any organization, whether incorporated or unincorporated, organized for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its members or shareholders, but in other respects the provisions of this chapter are applicable.

(2) Farm tractors, implements of husbandry, manufactured homes that qualify for an exemption under the provisions of section 49-422 , Idaho Code, road rollers, wheel-mounted tar buckets, portable concrete or mortar mixers, wheel-mounted compressors, tow dollies, portable toilet trailers, street sweepers, other construction equipment, forestry equipment, lawn and grounds equipment, and similar devices as determined by the department that are temporarily operated or moved upon the highways need not be registered under the provisions of this chapter, nor will implements of husbandry be considered towed units under registration of vehicle combinations as defined in section 49-108 (2), Idaho Code. In addition, self-propelled wheelchairs, three-wheeled bicycles, wheelchair conveyances, golf carts, lawn mowers, and scooters operated by persons who by reason of physical disability are otherwise unable to move about as pedestrians are exempt from registration requirements under the provisions of this chapter. Motorcycles and off-highway vehicles need not be licensed under the provisions of this chapter or numbered pursuant to the provisions of sections 67-7122 and 67-7124 , Idaho Code, if they are being used exclusively in connection with agricultural, horticultural, dairy and livestock growing and feeding operations, or used exclusively for snow removal purposes. Travel upon the public highways must be limited to travel between farm or ranch locations. Motorcycles and off-highway vehicles used for this purpose must meet the emblem requirements of section 49-619 , Idaho Code.

(3) Off-highway vehicles licensed pursuant to this chapter and numbered pursuant to section 67-7122 or 67-7124 , Idaho Code, and those vehicles exempt from licensing and numbering pursuant to subsection (2) of this section are permitted to operate on:

(a) All highways that are not state highways and that are not interstate highways;

(b) Any non-full access-controlled state highway within the boundaries of a municipality and extending one (1) mile from such boundary lines where the posted speed limit is sixty (60) miles per hour or less; and

(c) Any non-full access-controlled state highway outside of municipalities where the posted speed limit is sixty-five (65) miles per hour or less for continuous distances of no more than five (5) miles for the limited purpose of connecting between OHV trails, obtaining access to or from an OHV trail, or to access necessary services such as fuel, lodging, food and beverage, and maintenance.

(4) Off-highway vehicles licensed pursuant to this chapter and numbered pursuant to section 67-7122 or 67-7124 , Idaho Code, and those vehicles exempt from licensing and numbering pursuant to subsection (2) of this section must be permitted to cross a highway, except interstate highways and full access-controlled state highways, at a public road intersection and at any point where an OHV trail intersects, provided the vehicle comes to a full and complete stop before making the crossing and yields to any highway traffic.

(5) The operation of off-highway vehicles licensed pursuant to this chapter and numbered pursuant to section 67-7122 or 67-7124 , Idaho Code, and those vehicles exempt from licensing and numbering pursuant to subsection (2) of this section are not permitted on interstate highways and full access-controlled state highways, provided that the Idaho transportation board may designate sections of such state highways upon which off-highway vehicles may travel.

(6) The Idaho transportation board may, after sufficient public notice is given and a public hearing held, designate sections of state highways that are closed or limited to off-highway vehicle use. The Idaho transportation board must deliver written notice to the director of the Idaho department of parks and recreation at least thirty (30) days before the public hearing and must accept and consider any comment from the director of the Idaho department of parks and recreation received within the thirty (30) day period or at the public hearing.

(7) Any political subdivision of the state of Idaho may, but only after sufficient public notice is given and a public hearing held, adopt local ordinances or resolutions designating highways or sections of highways under its jurisdiction that are closed or limited to off-highway vehicle use. Notice of any such public hearing must be delivered in writing at least thirty (30) days in advance to the director of the Idaho department of parks and recreation. A political subdivision must accept and consider any comment from the director of the Idaho department of parks and recreation received within the thirty (30) day period or at the public hearing.

(8) When operating an off-highway vehicle upon highways, off-highway vehicles must not travel at speeds greater than the posted speed limit or forty-five (45) miles per hour, whichever is less.

(9) The requirements of title 18 and chapters 2, 3, 6, 8, 12, 13, and 14, title 49 , Idaho Code, apply to the operation of off-highway vehicles upon highways.

(10) Off-highway vehicles may be used on highways located on state lands or federal lands that are not part of the highway system of the state of Idaho, provided the numbering requirements of section 67-7122 or 67-7124 , Idaho Code, are met.

49-427 — Registration card to be carried

49-427. Registration card to be carried. The registration card issued for a vehicle required to be registered by the provisions of this chapter shall, while the vehicle is being operated upon a highway, be in the possession of the driver or carried in the vehicle and be subject to inspection by any peace officer. A person who is issued a registration card electronically shall print the registration card, and such printed copy may be used to satisfy the provisions of this section. For drivers of commercial vehicles registered pursuant to section 49-434 or 49-435 , Idaho Code, an electronic format of the registration card is permitted.

49-428 — Display of plate

49-428. Display of plate.

(1) License plates assigned to a motor vehicle shall be attached, one (1) in the front, if the vehicle is equipped with a front license plate mounting bracket, and the other in the rear, with the exception of the following:

(a) The license plate assigned to a motorcycle, all-terrain vehicle, utility type vehicle, motorbike or semitrailer and the license plate assigned to a motor vehicle operated by a manufacturer, repossession agent or dealer shall be attached to the rear.

(b) Vehicles displaying year of manufacture, old timer, classic car, street rod, or custom vehicle license plates shall be allowed to display one (1) plate attached to the rear of the vehicle.

(c) The license plate attached to a tractor shall be attached to the front.

(d) The wrecker plate shall be displayed on the vehicle being towed in such a manner as to be visible when the vehicle being towed is approached from the rear. License plates shall be displayed during the current registration year. For the purposes of this title, the license plates together with the registration card shall be considered as license plates for the year designated on the registration card.

(2) Every license plate shall at all times be securely fastened to the vehicle to which it is assigned to prevent the plate from swinging, be at a height not less than twelve (12) inches from the ground, measuring from the bottom of the plate, be in a place and position to be clearly visible, and be maintained free from foreign materials and in a condition to be clearly legible.

49-429 — Display of copy of application pending receipt of license plate

49-429. Display of copy of application pending receipt of license plate. When an owner chooses to display special license plates, upon payment of required fees the department or the assessor shall issue to the applicant a copy of the application. The copy must be displayed in a suitable place on the rear window of a motor vehicle, or if a motorcycle, displayed on the motorcycle. The copy shall constitute compliance with the provisions of this chapter until such time as the license plates are received from the department. The copy of the application shall not have any value as compliance with the provisions of this chapter from and after the receipt of the license plates from the department.

49-430 — Registration to be renewed

49-430. Registration to be renewed.

(1) Reregistration of vehicles shall be accomplished annually or by registration period in the same manner as the original registration and upon the payment of the required fee. The director may extend this date as to individuals, counties or the state for not to exceed forty-five (45) days for good cause shown.

(2) A violation of the provisions of this section shall be an infraction.

49-431 — Assignment or transfer of interest — Procedure

49-431. Assignment or transfer of interest — Procedure.

(1) Whenever the owner of a vehicle registered under the provisions of sections 49-402 and 49-402A , Idaho Code, transfers or assigns his title or interest thereto, the registration card and license plate shall remain with and in the possession of the transferor, and before the license plate shall be displayed upon another vehicle owned by the transferor, the transferor shall have that vehicle registered as provided for in section 49-401A , Idaho Code. The transfer fees collected shall be paid to the county treasurer where the vehicle is registered and deposited in the county current expense fund or in the state highway account if the transfer is made by the department.

(a) For all vehicles registered under the provisions of section 49-402 (1), Idaho Code, the transferor shall pay the registration fee as specified in that subsection less the registration fee already paid, plus a transfer fee of five dollars ($5.00). If the transferor shall have an older vehicle to be registered, the transferor shall pay a transfer fee of five dollars ($5.00).

(b) For vehicles registered in accordance with subsections (2) through (4) of section 49-402 , Idaho Code, the operating fee shall be the fee specified in those subsections, plus a transfer fee of five dollars ($5.00).

(c) For utility trailers registered under the provisions of section 49-402A , Idaho Code, the original registration shall continue until its expiration date, upon payment of a transfer fee of five dollars ($5.00).

(2) For all vehicles registered under the fee schedule in section 49-434 , Idaho Code, except proportionally registered vehicles under section 49-435 , Idaho Code, the transferor shall pay the registration fee as specified in that section less the registration fee already paid, plus a transfer fee of five dollars ($5.00).

(3) For all vehicles registered under section 49-435 , Idaho Code, the transferor shall pay the registration fee as specified in section 49-434 , Idaho Code, apportioned according to the provisions of section 49-435 , Idaho Code, less the apportioned fee previously paid plus a transfer fee of eight dollars ($8.00).

(4) In the event of a transfer by operation of law of the title or interest of an owner in and to a vehicle registered as specified in sections 49-402 , 49-402A , 49-434 and 49-435 , Idaho Code, as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise, the registration shall expire and the registration card and plates shall be surrendered to the department. The vehicle shall not be operated upon the highways until and unless the person entitled thereto shall apply for and obtain a new registration card and plates in accordance with the provisions of section 49-401A , Idaho Code. However, an administrator, executor, trustee or other representative of the owner, or a sheriff or other officer, or legal representative of any such person may operate or cause to be operated any vehicle upon the highway from the place of removal or place where formerly kept by the owner to a place of keeping or storage, provided the place of removal and place of destination are both located within the state of Idaho, and after obtaining a written permit from the department of the local police authorities having jurisdiction of the highways and upon displaying in plain sight upon the vehicle a placard bearing the name and address of the person authorizing and directing such movement, the placard to be plainly readable from a distance of one hundred (100) feet during daylight.

49-432 — Temporary registration for residents and nonresidents — Fees

49-432. Temporary registration for residents and nonresidents — Fees. (1)(a) When a vehicle or combination of vehicles subject to registration is to be moved on the public highways in the state of Idaho, the department may issue a permit in lieu of registration for any vehicle or combination of vehicles upon the payment of a fee as set forth in the following schedule:

(i) One-hundred-twenty (120) hour permit Single vehicle Combination of vehicles, where such combination of vehicles includes more than one (1) unregistered vehicle (ii) Fuel permit (iii) Thirty (30) day unladen weight permit

(b) If an annual registration is purchased within thirty (30) calendar days of issuance of a permit under paragraph (a)(i) or (iii) of this subsection, the amount of the permit fee shall be applied to the registration fee. No portion of a permit fee is subject to refund. (2)(a) Permits to operate a vehicle or combination of vehicles in excess of the registered maximum

gross vehicle weight up to a maximum of one hundred twenty-nine thousand (129,000) pounds gross vehicle weight shall be:

(i) One hundred twenty (120) hour permit to increase gross weight (ii) Thirty (30) day permit to increase gross vehicle weight: Maximum Registered Temporary Permitted Gross Weight of Vehicle Maximum Gross Weight (Pounds) (Pounds) 80,000 86,000 96,000 106,000 116,000 129,000 50,001-60,000 $225 $250 $275 $300 $325 $350

(b) The permit issued pursuant to this subsection shall be specific to the motor vehicle to which it is issued. No permit or fee shall be transferable or apportionable to any other vehicle, nor shall any such fee be refundable. At the time of purchasing a permit, the applicant may purchase additional permits in any combination that does not exceed a maximum of ninety (90) days.

(3) Permits issued pursuant to subsection (1) or (2) of this section shall be limited to three (3) per vehicle in a calendar year, except for those permits provided for in subsection (1)(a)(ii) and (iii) of this section. The provisions of this subsection with respect to limiting the number of permits issued shall not apply to transporters and wreckers as defined in sections 49-121 and 49-124 , Idaho Code, or to laden dealer and manufacturer plates as provided for in sections 49-411

(4) and 49-1627 (5), Idaho Code.

(4) A temporary permit shall be readily available in a form required by the rules of the board at all times while the vehicle is being operated.

(5) Any permit issued pursuant to subsection (1) or (2) of this section shall be purchased prior to movement of the vehicle on a highway, and such permit shall be in addition to and available only to a vehicle that is currently and validly registered in Idaho pursuant to subsection (1) of this section, 49-434 (1), 49-434 (8)(c) or 49-435 , Idaho Code.

(6) The department may select vendors to serve as agents on state highways for the purpose of selling permits where fixed ports of entry do not adequately serve a respective highway entering the state. The vendor shall be remunerated at the rate of three dollars ($3.00) per permit sold, and he shall collect the fees specified in this section and pay the fees to the department. The vendor shall guarantee payment by giving a bond to the state in a sum as shall be fixed by the board, the premium on the bond to be paid by the department.

49-434 — Operating fees

49-434. Operating fees.

(1) There shall be paid on all commercial vehicles, noncommercial vehicles, and on all farm vehicles having a maximum gross weight not in excess of sixty thousand (60,000) pounds, an annual registration fee or a staggered registration fee for the purpose of reregistration and notice of expiration in accordance with the following schedule. Unladen Weight for Wreckers Annual Registration Fee Maximum Gross Weight Noncommercial and Commercial For Other Vehicles (Pounds) Farm Vehicles Vehicles and Wreckers 8,001-16,000 inc. $ 48.00 $ 48.00 16,001-26,000 inc. 61.08 143.40 26,001-30,000 inc. 91.68 223.80 30,001-40,000 inc. 130.08 291.60 40,001-50,000 inc. 188.28 360.00 50,001-60,000 inc. 311.88 515.40 In addition to the registration fees provided for in this subsection, there shall be an additional registration fee imposed of twenty-five dollars ($25.00).

(2) There shall be paid on all commercial vehicles, irrespective of body type, and on all farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, an annual registration fee in the amount prescribed by subsection (8) of this section, as applicable.

(3) In addition, the annual registration fee for trailers shall be:

(a) Trailer or semitrailer in a combination of vehicles

(b) Rental utility trailer with a gross weight of two thousand (2,000) pounds or less

(c) Rental utility trailer with a gross weight over two thousand (2,000) pounds

(4) As an option to the trailer and semitrailer and rental utility trailer annual registrations issued pursuant to subsection (3) of this section, the department may provide a nonexpiring plate and registration for trailers and semitrailers, and an optional, extended registration for rental utility trailers.

(a) For trailers and semitrailers, the nonexpiring registration fee shall be ninety-nine dollars ($99.00). The license plate shall remain on the trailer or semitrailer until the registration is canceled or revoked. No part of the fee is subject to refund. However, the registrant may transfer the nonexpiring plate and registration to another trailer or semitrailer titled to the registrant if the original registration date is prior to July 1, 2009. The registration document shall be the official record of

the status of the nonexpiring registration, and no registration fee shall be required after the initial registration is paid. The owner may be issued an electronic copy of the registration card issued pursuant to this section.

(i) Registration of a trailer or semitrailer based in another jurisdiction may be issued when the registrant provides a valid jurisdiction title or ownership document and certification statement, and no title transfer will be required. (ii) Periodic verification will be made to confirm ownership status. Failure of the owner to comply with the verification request to confirm ownership within thirty (30) days shall result in cancellation of the permanent plate registration.

(b) Idaho-based trailer manufacturers may purchase trailer and semitrailer registration from the department. The manufacturer may issue the annual registration to foreign-based purchasers utilizing a manufacturer's certificate of origin or manufacturer's statement of origin as proof of ownership. If the foreign-based purchaser subsequently obtains an Idaho nonexpiring registration as provided in paragraph (a) of this subsection prior to annual registration expiration, the amount of the annual registration fee shall be applied to the nonexpiring registration fee provided that the customer acquires a title for such vehicle.

(c) For rental utility trailers, the registrant may prepay the annual registration for an additional one (1), two (2), three (3) or four (4) years, but in no event shall the optional registration period extend beyond five (5) years. The fee shall be as specified in subsection (3)(b) or (c) of this section. The owner shall be issued a registration card or may request such card to be sent electronically. The expiration date shall be reflected on such registration card. The license plate shall become void if the owner's interest in the rental utility trailer changes during the five (5) year period. If the owner fails to enter the rental utility trailer on the annual renewal application during the five (5) year period, the registration record shall be purged. Any unrenewed plate shall be returned to the department if it is not entered on the renewal application.

(5) A fleet registration option is available to owners who have twenty-five (25) or more commercial or farm vehicles or any combination thereof. Such owners may register all of their company vehicles with the department in lieu of registering with a county assessor. To qualify, the fleet must be owned and operated under the unified control of one (1) person and the vehicles must be physically garaged and maintained in two (2) or more counties. Fleet registration shall not include fleets of rental vehicles. The department shall provide a registration application to the owner, and the owner shall provide all information that the department determines is necessary. The department shall devise a special license plate numbering system for fleet-registered vehicles as an alternative to county license plates. The fleet registration application and all subsequent registration renewals shall include the physical address where a vehicle is principally used, garaged and maintained. The fleet owner shall report the physical address to the department upon initial registration, on each renewal, and at any time a vehicle registered under this option is permanently transferred to another location.

(6) If the ownership of a vehicle changes during the registration period, the original owner may transfer the plate to another vehicle. The remaining fee shall be credited against the cost of the new registration. Refunds may be given for any unexpired portion of the vehicle registration fee if the plate is not transferred by the owner to another vehicle. Any request for refund shall include surrender of the license plate and registration document, if a physical document was issued. Owners of vehicles registered under the international registration plan may request a refund of the unexpired portion of the Idaho vehicle registration fee by presenting evidence from the base jurisdiction that the license plate and registration document, if a physical document was issued, have been surrendered. A license plate shall not be transferred to another owner when the ownership of a vehicle changes. The owner shall obtain a replacement plate, if required, and a printed or electronic registration document when a plate is lost, destroyed, or becomes illegible.

(7) An administrative fee of four dollars ($4.00) shall be paid and deposited to the state highway account on all registrations completed by the department under subsection (1) or (8)(a) of this section. Vehicles registered under subsection (8)(b) of this section shall pay the fee provided in section 49-435 (2), Idaho Code.

(8) There shall be paid on all commercial and farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a registration fee based upon the maximum gross weight of a vehicle as declared by the owner and the total number of miles driven on roads and highways in the state, county, city and highway district systems in Idaho, and if registered under the international registration plan (IRP), in all other jurisdictions. The appropriate registration fee shall be determined as follows:

(a) If the owner registers vehicles under the international registration plan (IRP), the appropriate mileage column shall be determined by the total miles an owner operated a fleet of vehicles on roads and highways in the state, county, city and highway district systems in Idaho and in all other jurisdictions in the preceding year, as defined in section 49-117 , Idaho Code, and by the maximum gross weight of each vehicle within a fleet.

(b) If the owner registers vehicles under the international registration plan and determines that the average international registration plan fleet miles, calculated by dividing the total IRP fleet miles in all jurisdictions by the number of registered vehicles, is less than fifty thousand one (50,001) miles, the owner may apply to the department for refund of a portion of the registration fees paid, consistent with the fee schedules set forth in this section. The department shall provide an application for the refund. An owner making application for refund under this section shall be subject to auditing as provided in section 49-439 , Idaho Code.

(c) If the owner is not registering vehicles under the international registration plan, the appropriate mileage column shall be determined by the total miles the owner operated each of the vehicles to be registered on roads and highways in the state, county, city and highway district systems in Idaho in the preceding year and by the maximum gross weight of each vehicle. Maximum Gross Weight of Vehicle (Pounds) Total Miles Driven 1 to 7,501 to 20,001 to 35,001 to Over 7,500 20,000 35,000 50,000 50,000 60,001-62,000 $223 $ 511 $ 789 $1,068 $1,560 62,001-64,000 $251 $ 576 $ 890 $1,205 $1,760 64,001-66,000 $280 $ 642 $ 992 $1,342 $1,960 66,001-68,000 $309 $ 707 $1,093 $1,479 $2,160 68,001-70,000 $337 $ 773 $1,194 $1,615 $2,360 70,001-72,000 $366 $ 838 $1,295 $1,752 $2,560 72,001-74,000 $394 $ 904 $1,396 $1,889 $2,760 74,001-76,000 $423 $ 969 $1,498 $2,026 $2,960 76,001-78,000 $451 $1,035 $1,599 $2,163 $3,160 78,001-80,000 $480 $1,100 $1,700 $2,300 $3,360 80,001-82,000 $494 $1,133 $1,751 $2,368 $3,460 82,001-84,000 $509 $1,165 $1,801 $2,437 $3,560 84,001-86,000 $523 $1,198 $1,852 $2,505 $3,660 86,001-88,000 $537 $1,231 $1,902 $2,574 $3,760 88,001-90,000 $551 $1,264 $1,953 $2,642 $3,860 90,001-92,000 $566 $1,296 $2,004 $2,711 $3,960 92,001-94,000 $580 $1,329 $2,054 $2,779 $4,060 94,001-96,000 $594 $1,362 $2,105 $2,848 $4,160 96,001-98,000 $609 $1,395 $2,155 $2,916 $4,260 98,001-100,000 $623 $1,427 $2,206 $2,985 $4,360 100,001-102,000 $637 $1,460 $2,257 $3,053 $4,460 102,001-104,000 $651 $1,493 $2,307 $3,121 $4,560 104,001-106,000 $666 $1,526 $2,358 $3,190 $4,660 106,001-108,000 $680 $1,558 $2,408 $3,258 $4,760 108,001-110,000 $694 $1,591 $2,459 $3,327 $4,860 110,001-112,000 $709 $1,624 $2,510 $3,395 $4,960 112,001-114,000 $723 $1,657 $2,560 $3,464 $5,060 114,001-116,000 $737 $1,689 $2,611 $3,532 $5,160 116,001-118,000 $751 $1,722 $2,661 $3,601 $5,260 118,001-120,000 $766 $1,755 $2,712 $3,669 $5,360 120,001-122,000 $780 $1,788 $2,763 $3,738 $5,460 122,001-124,000 $794 $1,820 $2,813 $3,806 $5,560 124,001-126,000 $809 $1,853 $2,864 $3,874 $5,660 126,001-128,000 $823 $1,886 $2,914 $3,943 $5,760 128,001-129,000 $837 $1,918 $2,965 $4,011 $5,860 In addition to the registration fees provided for in this subsection, there shall be an additional registration fee imposed of twenty-five dollars ($25.00).

(d) In addition to the fees set forth in paragraphs (a) and (c) of this subsection, an owner or operator may purchase a temporary permit as provided in section 49-432 (2), Idaho Code, for operation of a vehicle at a weight in excess of the current, valid, registered maximum gross vehicle weight. The permit so issued shall be specific to the motor vehicle to which it is issued. No permit or fee shall be transferable or apportionable to any other vehicle, nor shall any such fee be refundable.

(e) Any commercial or farm vehicle registered for more than sixty thousand (60,000) pounds up to one hundred six thousand (106,000) pounds traveling fewer than two thousand five hundred (2,500) miles annually on roads and highways in the state, county, city and highway district systems in Idaho shall pay an annual registration fee of two hundred fifty-five dollars ($255). The provisions of section 49-437 (2), Idaho Code, shall not apply to vehicles registered under this paragraph. (9)(a) During the first registration year that the fee schedule in subsection (8)(c) of this section is in use, an owner shall use the mileage data from the records used to report the mileage use fee in the immediately preceding year as the basis for determining the appropriate registration fee schedule.

(b) Any owner who registers a motor vehicle for the first time and who has no mileage history for the vehicle shall estimate the miles to determine the appropriate fee schedule in subsection (8)(c) of this section. When estimating the miles, the owner shall provide a statement on the application of the method used to arrive at the estimated miles.

(c) Any owner using any fee schedule other than the highest fee schedule under subsection (8)(c) of this section shall certify at the time of registration that the miles operated in the preceding year do not exceed the schedule applied for. Any owner using a fee schedule under subsection (8)(c) of this section that is less than the highest schedule shall maintain records to substantiate the use of the schedule as required by section 49-439 , Idaho Code.

(10) An owner registering under subsection (8)(a) or (8)(c) of this section may elect to pay the full annual registration fee at the time of registration or renewal of registration, or an owner may pay at least one-quarter (1/4) of the annual registration fee due. The remainder of the annual Idaho registration fee shall be paid in three (3) equal installments on dates as billed by the department.

(11) An owner registering or renewing a registration under subsection (8) (a) of this section electing to use installment payments as provided in subsection (10) of this section shall pay all of the fees due to other IRP jurisdictions in addition to one-quarter (1/4) of the Idaho fee due at the time of registration or reregistration. The remainder of the annual Idaho registration fee shall be paid in three (3) equal installments on dates as billed by the department.

(12) If any vehicle or combinations of vehicles haul nonreducible loads, as authorized under the provisions of section 49-1004 , Idaho Code, and weigh less than the starting weights per axle configuration listed in column 1 of section 49-1004 (2), Idaho Code, then and in that event there shall be paid for that vehicle, in addition to the other fees required in this section, an additional use fee of 2.1 mills per mile for each two thousand (2,000) pounds or fraction thereof of the maximum gross weight in excess of those set forth in section 49-1001 , Idaho Code.

49-434A — Penalties for failure to pay operating fees

49-434A. Penalties for failure to pay operating fees. Any motor vehicle or combination of vehicles operated in Idaho for which the proper registration and operating fees in Idaho have not been paid under the provisions of section 49-432 , 49-434 or 49-435 , Idaho Code, shall have committed a misdemeanor punishable as provided in section 49-1013 , Idaho Code, and shall, upon discovery, be subject to the following additional penalties: Seizure and detention for up to seventy-two (72) hours by any law enforcement agency or port of entry personnel of the vehicle and its entire cargo if the cargo does not consist of perishable food products or livestock;

(1) Release from detention shall be accomplished only by presentation of proper evidence that the applicable fees have been paid; or

(2) Off-loading of any cargo onto a properly licensed and registered vehicle.

49-435 — Proportional registration of commercial vehicles

49-435. Proportional registration of commercial vehicles.

(1) Any owner engaged in operating one (1) or more fleets of commercial vehicles may, in lieu of the registration fees imposed by section 49-434 , Idaho Code, register each fleet for operation in this state by filing an application with the department that shall contain the information required by the international registration plan (IRP) agreement. Any owner who makes application for proportional registration under the provisions of the international registration plan shall comply with the terms and conditions of the IRP agreement.

(2) The department shall register the vehicle so described and identified and may issue license plates or other suitable identification device for each vehicle listed in the application upon payment of the fees required under subsections (1) and (8) of section 49-434 , Idaho Code, and an additional identification charge of eight dollars ($8.00) per vehicle. The fees collected for the additional identification shall be deposited to the state highway account. A registration card shall be issued in print or electronically for each proportionally registered vehicle appropriately identifying it, which shall be carried and available on an electronic device or in or upon the vehicle identified at all times.

(3) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation.

(4) The right to the privilege and benefits of proportional registration of fleet vehicles extended by this section, or by any contract, agreement, arrangement or declaration made under the authority provided in section 49-201 , Idaho Code, shall be subject to the condition that each fleet vehicle proportionally registered shall also be proportionally or otherwise properly registered in at least one (1) other jurisdiction during the period for which it is proportionally registered in this state.

(5) No provision of this section relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including regular registration or temporary trip permit.

49-437 — Increase in maximum gross weight — Fees for remaining portion of year

49-437. Increase in maximum gross weight — Fees for remaining portion of year.

(1) When a motor vehicle registered under section 49-434 or 49-435 , Idaho Code, has once been registered and during the year of that registration increases the maximum gross weight, the higher fee due for the weight increase shall be offset by the fee already paid. The fee already paid and the fee due shall be prorated by one-twelfth (1/12) for each month already expired in the registration period. The difference between the two (2) fees shall be the balance due for the

remainder of the registration period. If an owner changes the weight during a registration period, the weight change shall not result in a refund of the fees already paid.

(2) If a motor vehicle is not operated on any highway during the first months of a registration period, the owner may at any time thereafter be registered for the remainder of the registration period on payment of all fees, rounded to the nearest whole dollar, as provided in this chapter, less one-twelfth (1/12) of such fees for each full calendar month which has expired prior to registering, but in no event shall the minimum fee be less than five dollars ($5.00).

49-438 — Penalty for exceeding registered gross weight or permitted maximum registered gross weight

49-438. Penalty for exceeding registered gross weight or permitted maximum registered gross weight.

(1) Any person who shall operate, cause, permit, or suffer to be operated upon any highway any vehicle or combination of vehicles with a gross weight in excess of the registered maximum gross weight of the vehicle specified in this title shall have committed a violation under the infraction or misdemeanor provisions of section 49-1013 , Idaho Code.

(2) Any person who shall operate, cause, permit, or suffer to be operated upon any highway any vehicle or combination of vehicles with a gross weight in excess of the registered maximum gross weight not authorized by a valid permit issued pursuant to section 49-432 , Idaho Code, shall have committed a violation under the infraction or misdemeanor provisions of section 49-1013 , Idaho Code.

49-439 — Audit guidelines

49-439. Audit guidelines.

(1) The state tax commission on behalf of the department may audit an owner of motor vehicles subject to fees pursuant to this chapter.

(2) Every owner whose fees are computed as specified in section 49-434 or 49-435 , Idaho Code, except those registering under subsection (8)(c) of section 49-434 , Idaho Code, for over fifty thousand (50,000) miles driven, shall maintain records and permit the state tax commission to inspect the records upon request to substantiate that the actual miles traveled, if using a mileage schedule in subsection (8)(c) of section 49-434 , Idaho Code, are less than the maximum mileage schedule.

(3) When the records are maintained outside this state by owners engaged in transportation in this state, the owner shall reimburse the state tax commission for reasonable expenses incurred by the state tax commission in conducting audits of those records and accounts at the out-of-state location. The owner or the state tax commission may request that the records be presented at a place within the state designated by the state tax commission. The records must be presented by a representative of the owner who is familiar with the records and who is responsible for the safekeeping of the records.

(4) Every owner is required to maintain records for the current year and the three (3) years immediately preceding. If an assessment has been made, such audit assessment may be collected by a proceeding in court within a period of three (3) years after the assessment or a final order entered pursuant to subsection (7) of this section.

(5) An owner who fails to maintain records as required by the provisions of this section may have the registration of all vehicles registered under section 49-434 or 49-435 , Idaho Code, suspended until such time as adequate records as required by the provisions of this section are provided. In the event that the owner does not produce records, the state tax commission may generate a notice of deficiency based on an estimate of the operation. The state tax commission shall develop a methodology to be used to calculate a notice of deficiency based on an estimate of the operation. That methodology shall be in accordance with the international registration plan and international fuel tax agreement guidelines.

(6) The state tax commission shall provide the carrier with notice of deficiency and the opportunity to use the appeals process prior to a suspension. An owner may contest a notice of deficiency made by the state tax commission within thirty (30) days from receipt of the notice by filing an appeal in accordance with sections 63-3045 , 63-3045B , 63-3047 , 63-3048 and 63-3049 , Idaho Code.

(7) An owner, as identified by the state tax commission, who fails to pay any audit assessment due is subject to suspension of vehicle registrations. A reinstatement fee of forty dollars ($40.00) shall be imposed in addition to a penalty of ten percent (10%) of the amount of audit assessment determined to be due, plus interest of one percent (1%) of the amount of the audit assessment due for each month or fraction thereof after the original registration fee became due. An order suspending the vehicle registration shall be mailed to the owner by the department. The suspension shall be

canceled if the payment due is made, plus penalty and interest, along with the reinstatement fee of forty dollars ($40.00) per carrier within fifteen (15) days after receipt of the suspension order. The reinstatement fees shall be deposited to the state highway account. The department shall not reregister or permit a vehicle to operate on a trip permit until all audit assessments, penalties and interest have been paid.

49-443 — License plates to be furnished by department — Form and contents

49-443. License plates to be furnished by department — Form and contents.

(1) The assessor or the department shall furnish to every owner whose vehicle is registered or licensed by that office, pursuant to sections 49-402 and 49-402A , Idaho Code, one (1) license plate for vehicles registered under the provisions of section 49-406 , 49-406A or 49-408 , Idaho Code, or a motorcycle, trailer, truck-tractor, or semitrailer; one (1) restricted vehicle license plate for all-terrain vehicles, utility type vehicles and motorbikes licensed pursuant to this chapter; and two (2) license plates for every other motor vehicle. If a vehicle is issued one (1) plate only, that plate shall be displayed in accordance with the provisions of section 49-428 , Idaho Code. For vehicles registered under the provisions of section 49-407 , Idaho Code, the applicant shall provide one (1) plate to be displayed on the rear of the vehicle.

(a) Commencing January 1, 1992, the color and design of the plates shall be comparable to the color and design of the statehood centennial issue of license plates with blue numerals and letters on a multicolored red, white and blue background. Each license plate must bear on its face the inscriptions "Famous Potatoes" and "Scenic Idaho." The restricted vehicle license plate for all-terrain vehicles, utility type vehicles and motorbikes shall be a white background with black numerals and letters, with "Idaho Restricted Vehicle" and no other inscription. The restricted vehicle license plate shall be the same size required for the motorcycle license plate.

(b) Every license plate shall have displayed on it the registration number assigned to the vehicle and its owner and the name "Idaho," which may be abbreviated. The plates issued under the provisions of section 49-402 (1), Idaho Code, and the required letters and numerals, including an identification of the county in which the motor vehicle to which the plates will be affixed is registered, shall be of sufficient size to be plainly readable from a distance of seventy-five (75) feet during daylight, and each license plate shall be treated with a fully reflectorized material according to specifications prescribed by the board.

(2) License plates shall be valid for as long as they are readable and legible and comply with section 49-428 , Idaho Code. For specialty license plate programs discontinued pursuant to the provisions of section 49-402C , Idaho Code, a registrant with a specialty license plate currently registered under the program may use such license plate as long as the license plate is readable and legible. This provision is intended to permit the use of the specialty plate by the registrant regardless of the number of persons who purchase the specialty plate. The registrant shall be required to pay the special plate program fees provided for specialty plates pursuant to this chapter. Such fees shall be deposited into the state highway account. For purposes of section 49-434 , Idaho Code, as it applies to commercial vehicles, and section 49-435 , Idaho Code, the department shall provide new plates bearing the same number or, upon request from the registered owner, the next available number.

(3) If registration is not renewed within sixty (60) days of its expiration, the related plate number shall be available for use by another registrant. To obtain a specific number in the recycled license plate number file, the owner of a registered vehicle may contact the county regarding availability. The provisions of this subsection shall apply only to vehicles registered under the provisions of section 49-402 (1), Idaho Code, and section 49-434 (1), Idaho Code, as it applies to noncommercial vehicles.

(4) License plates for utility trailers registered under the provisions of section 49-402A , Idaho Code, that are issued for five (5) or ten (10) years and license plates for rental utility trailers registered under the provisions of section 49-434 , Idaho Code, that are issued for up to five (5) years shall use the design in effect on the date of manufacture. If a design change occurs, plates from the effective date of the design change shall be manufactured using the new design. Unexpired plates need not be reissued to conform to a design change.

(5) For license plates that are lost, stolen, mutilated, or illegible, the owner shall apply for a duplicate or substitute. License plates issued for state, county and city motor vehicles shall remain on the vehicle for which issued from year to year and need no renewal.

(6) Whenever a vehicle is completely destroyed by fire or accident and the operator submits satisfactory proof of that destruction to the department or appropriate assessor's office, or the owner wishes to transfer the remaining registration, use increment and fees shall be transferred to the replacement vehicle for a service transfer fee of five dollars ($5.00),

which fee shall be retained by the registering authority. None of the original fees shall be subject to refund.

(7) The department shall furnish a printed or an electronic copy of the registration card to every owner whose vehicle is registered under sections 49-434 and 49-435 , Idaho Code.

(8) The board shall have authority to require the return to the department of all license plates and registration cards upon termination of the lawful use of them by the owner.

(9) The board may promulgate such rules as are necessary to implement the provisions of this section.

49-443B — License plates for state vehicles and vehicles belonging to taxing districts

49-443B. License plates for state vehicles and vehicles belonging to taxing districts.

(1) License plates for state vehicles and vehicles belonging to taxing districts shall be valid for such time as they are in compliance with section 49-443 (2), Idaho Code, and shall remain on the vehicle to which it is issued until transferred to another vehicle or until it is canceled by the department. The department shall be reimbursed by state agencies and the taxing districts for the cost of providing license plates. The department may develop rules to administer this license plate program.

(2) Each license plate issued pursuant to this section shall bear a designator to identify the agency, entity or office to which a vehicle belongs. The designators shall be as follows: Designator Agency, entity, office, or plate type C School district or miscellaneous city or county agencies, entities or offices D Highway district F Fire district G Fish and game H Department of health and welfare ISP Idaho state police J Department of commerce or department of labor L Law enforcement P City police R Department of parks and recreation SO Sheriff's office T Department of transportation X Miscellaneous state agencies, entities or offices Y Irrigation district Z Department of lands

(3) Personalized or specialty license plates are exempt from the provisions of subsection (2) of this section.

49-444 — Recreation vehicle registration

49-444. Recreation vehicle registration. An applicant for a recreational vehicle registration shall be required to obtain a recreational vehicle annual license as provided in sections 49-445 through 49-448 , Idaho Code, in conjunction with the registration. Truck campers need not be registered before the county assessor can issue a recreational vehicle annual license.

49-445 — Recreational vehicle annual license

49-445. Recreational vehicle annual license.

(1) There is levied and there shall be collected an annual license fee on each recreational vehicle in Idaho, except recreational vehicles in possession of a manufacturer or dealer and offered for sale or resale. If the recreational vehicle is registered as a motor vehicle under the provisions of this chapter, the annual license fee imposed in this section shall be in addition to and not in lieu of the motor vehicle registration fees. Initial license fees for recreational vehicles shall be prorated on a monthly basis for a new owner. Subsequent renewals of the annual license shall require annual fees regardless of the registration date.

(2) The annual license fee imposed upon each recreational vehicle shall be eight dollars and fifty cents ($8.50) for a market value of one thousand dollars ($1,000) or less, and an additional five dollars ($5.00) for each additional one thousand dollars ($1,000) or portion of it, of market value.

(3) Payment of the annual license fee shall license the recreational vehicle for a calendar year, irrespective of the month in which it is registered, change of ownership of the vehicle, or change of county of residence of the owner. The recreational vehicle annual license shall expire midnight December 31 of each year.

(4) The license sticker shall be placed on the rear of the recreational vehicle in a manner that is completely visible and shall be kept in a legible condition at all times.

(5) A recreational vehicle that conformed with the definition of a park model recreational vehicle in section 49-117 , Idaho Code, when new, may be:

(a) Titled under the provisions of chapter 5, title 49 , Idaho Code; and

(b) Licensed and registered under the provisions of this chapter unless it:

(i) Is permanently attached to a foundation; (ii) Has an attached building addition; or (iii) Has been substantially modified in such a way that it no longer meets the definition of a park model recreational vehicle in section 49-117 , Idaho Code.

49-446 — County assessor to administer and collect license fee

49-446. County assessor to administer and collect license fee.

(1) The county assessor shall administer and collect the recreational vehicle annual license fee.

(2) Market value of recreational vehicles shall be determined by the county assessor according to the rules and regulations of the state tax commission. Whenever indices are available, the rules and regulations shall use any standard industry indices of retail value of recreational vehicles to determine market value.

49-447 — Department to provide identification

49-447. Department to provide identification. The department of parks and recreation shall devise and provide to county assessors suitable identification stickers for attachment to or placement on recreational vehicles to indicate that the annual recreational vehicle license fee has been paid. The sticker shall be of suitable size and design for easy identification, and shall show the year and month of the year in which the license expires. The department shall also provide suitable license forms and all other forms required for the purpose of licensing and shall prepay all charges including mailing fees. Each recreational vehicle license shall be filed annually by the department under a distinctive number assigned to the vehicle and alphabetically under the name of the owner.

49-448 — Disposition of fees

49-448. Disposition of fees. Except as provided in subsection (3) of this section, the revenues received from the annual license fees imposed by section 49-445 , Idaho Code, for recreational vehicle registration shall be paid over monthly to the county treasurer, to be distributed as follows:

(1) Two dollars ($2.00) from each recreational vehicle license sold shall be apportioned to the county current expense fund, which shall be deemed necessary costs of collection and administration;

(2) From the balance remaining, ninety-nine percent (99%) shall be transmitted to the state treasurer for deposit in a fund known as the "state recreational vehicle fund," which is established in the state treasury, and one percent (1%) shall be distributed to the search and rescue fund created in section 67-2913 , Idaho Code;

(3) One hundred percent (100%) of the revenues received from the annual license fees for the registration of each park model recreational vehicle of such size and weight as to require a special highway movement permit shall be apportioned to the county current expense fund where the park model recreational vehicle is located.

49-449 — Cancellation of registration upon notice of theft

49-449. Cancellation of registration upon notice of theft. Whenever the owner of any motor vehicle, trailer or semitrailer which is stolen files an affidavit with a law enforcement agency alleging such fact, the department shall cancel the registration of such vehicle upon the request of the owner.

49-450 — Additional fee for each plate issued

49-450. Additional fee for each plate issued. In addition to the vehicle registration fee provided by law, whenever any plate is issued for vehicle registration, there shall be charged a fee of three dollars and seventy-five cents ($3.75) per plate, which shall be deposited into the plate manufacturing account created in section 49-450A , Idaho Code. The actual cost of producing and distributing license plates shall be paid from the plate manufacturing account. The difference between deposits into the account and disbursements out of the account not anticipated for future production cost increases shall be transferred by the state controller from the plate manufacturing account to the highway distribution account as established in section 40-701 , Idaho Code, for apportionment as designated in that section.

49-450A — Plate manufacturing account

49-450A. Plate manufacturing account. There is hereby created in the state treasury an account to be known as the "plate manufacturing account" for the purpose of paying the actual cost to produce and distribute license plates and to pay costs related to use of the centennial design on the license plate. All moneys in this account are hereby continuously appropriated to the department. Any additional funds required to pay plate production and distribution costs will be transferred by the state controller from the state highway account. Once an adequate cash balance has accumulated in the plate manufacturing account, the state controller will transfer funds from the plate manufacturing account to reimburse the state highway account.

49-451 — vehicle license cost recovery fee — limitations

49-451. vehicle license cost recovery fee — limitations.

(1) A car rental company may include separately stated surcharges, fees or charges in a rental agreement, which may include, but shall not be limited to, vehicle license cost recovery fees, airport access fees, airport concession fees and all applicable taxes.

(2) If a car rental company includes a vehicle license cost recovery fee as a separately stated charge in a rental transaction, the amount of the fee shall represent the car rental company's good-faith estimate of the car rental company's daily charge as calculated by the car rental company to recover its actual total annual motor vehicle licensing, titling, registration, plating and inspection costs.

(3) If the total amount of the vehicle license cost recovery fees collected by a car rental company under this section in any calendar year exceeds the car rental company's actual costs to license, title, register and plate motor vehicles and have the same inspected for that calendar year, the car rental company shall retain the excess amount and adjust the estimated average per vehicle licensing, titling, registration, plating and inspection charge for the following calendar year by a corresponding amount.

(4) For purposes of this section, "vehicle license cost recovery fee" means a charge that may be separately stated and charged on the rental contract in a vehicle rental transaction originating in this state to recover costs incurred by a car rental company to license, title, register, plate and inspect rental vehicles.

49-452 — Emergency medical services fee

49-452. Emergency medical services fee.

(1) An emergency medical services fee of one dollar and twenty-five cents ($1.25) shall be collected in addition to each motor vehicle registration fee amount collected under the provisions of this chapter, with the exception of those vehicles proportionally registered under section 49-435 , Idaho Code. Twenty-five cents (25¢) of the fee shall be retained by the county of residence for use in funding local emergency medical service costs. One dollar ($1.00) of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services fund established in section 57-829 , Idaho Code.

(2) For vehicles registered under the provisions of section 49-402B , Idaho Code, the fee shall be two dollars and fifty cents ($2.50). Fifty cents (50¢) of the fee shall be retained by the county of residence for use in funding local emergency medical services costs. Two dollars ($2.00) of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services fund established in section 57-829 , Idaho Code.

49-453 — Motorcycle safety program fee

49-453. Motorcycle safety program fee. A motorcycle safety program fee of six dollars ($6.00) shall be collected in addition to each motorcycle registration fee assessed pursuant to section 49-402 , Idaho Code. Such fees shall be deposited to the motorcycle safety program fund established in section 33-4904 , Idaho Code.

49-454 — Project choice fee

49-454. Project choice fee.

(1) A project choice program fee of three dollars ($3.00) shall be collected in addition to each registration fee assessed pursuant to section 49-402 (1), (2) or (3), 49-411 , 49-412 or 49-434 (1), Idaho Code. Such fees shall be deposited to the Idaho law enforcement fund established in section 67-2914 , Idaho Code.

(2) The project choice program fee shall be collected and deposited pursuant to subsection (1) of this section for registrations for calendar year 2007 and thereafter.

(3) The project choice fee shall be used, subject to appropriation, exclusively for the purposes of creating a career ladder within the Idaho state police and to provide salaries to encourage the hiring and retention of trained and qualified employees for Idaho state police positions. Idaho state police personnel who have participated in and benefited from the use of the project choice fee, as of July 1, 2010, shall continue to participate in and benefit from the project choice fee while employed by the Idaho state police. Provided however, that beginning July 1, 2010, the use of the project choice fee shall be restricted in the following manner: the project choice fee shall be used exclusively for the purposes of creating a career ladder for commissioned officers, dispatch personnel and forensic personnel within the Idaho state police; and to provide salaries to encourage the hiring and retention of trained and qualified commissioned officers, dispatch personnel and forensic personnel.

49-456 — Violations of registration provisions

49-456. Violations of registration provisions. It shall be unlawful for any person:

(1) To operate or for the owner to permit the operation upon a highway of any motor vehicle, trailer or semitrailer that is not registered and that does not have attached and displayed the license plates assigned to it for the current registration year, subject to the exemptions allowed in sections 49-426 , 49-431 and 49-432 , Idaho Code.

(2) To operate or for the owner to permit the operation on state and federal lands or upon highways, or sections of highways, as permitted under section 49-426

(3) and (4), Idaho Code, any all-terrain vehicle, utility type vehicle or motorbike that does not have a valid and properly displayed restricted license plate issued pursuant to this chapter and attached validation sticker issued pursuant to section 67-7122 or 67-7124 , Idaho Code, subject to the exemptions allowed in section 49-426 (2), Idaho Code.

(3) To display or cause or permit to be displayed, or to have in possession, any registration card or license plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(4) To lend or knowingly permit the use by one not entitled to any registration card or license plate issued to the person so lending or permitting that use.

(5) To fail or refuse to surrender to the department, upon demand, any registration card or license plate that has been suspended, canceled or revoked.

(6) To use a false or fictitious name or address in any application for the registration of any vehicle, or for any renewal or duplicate, or knowingly to make a false statement or conceal a material fact or otherwise commit a fraud in any application.

49-457 — ELECTRIC VEHICLE FEE — plug-in HYBRID VEHICLE FEE

49-457. ELECTRIC VEHICLE FEE — plug-in HYBRID VEHICLE FEE.

(1) An electric vehicle fee of one hundred forty dollars ($140) shall be collected in addition to all other registration fees assessed pursuant to this chapter on each electric vehicle registered. Provided however, the provisions of this subsection shall not apply to neighborhood electric vehicles as defined in sections 49-115 and 49-123 , Idaho Code.

(2) A plug-in hybrid vehicle fee of seventy-five dollars ($75.00) shall be collected in addition to all other registration fees assessed pursuant to this chapter on each plug-in hybrid vehicle registered.

(3) All fees provided for in this section shall be deposited to the highway distribution account as established in section 40-701 , Idaho Code, and shall be apportioned as provided for in that section.

(4) For purposes of this chapter, "electric vehicle" means a vehicle powered only by a form of electricity and "plug-in hybrid vehicle" means a motor vehicle with a hybrid propulsion system that operates on both electricity obtained from the grid and traditional fuel.

49-458 — military vehicles

49-458. military vehicles. Notwithstanding any provisions of law to the contrary, a vehicle built for the United States armed forces may be registered and operated on public highways of this state, because such vehicles were manufactured in accordance with department of defense military safety standards. A federal form 97 shall be provided at the time of registration. If no federal form 97 is available, the applicant may apply for a conditional title.

CHAPTER 5

49-501 — Titling requirements — Exemptions

49-501. Titling requirements — Exemptions.

(1) The provisions of this chapter shall apply to every vehicle required to be registered with the department in chapter 4, title 49 , Idaho Code.

(2) In addition, the titling requirements of this chapter shall apply to the following vehicles which are not required to be registered under the provisions of chapter 4, title 49 , Idaho Code:

(a) All-terrain vehicles, motorbikes, snowmobiles and utility type vehicles as defined in section 67-7101 , Idaho Code, except that such vehicles having an internal combustion engine with a displacement of less than fifty (50) cubic

centimeters will not be titled;

(b) Manufactured homes as defined in section 39-4105 , Idaho Code;

(c) Recreational vehicles that conformed with the definition of a park model recreational vehicle in section 49-117 , Idaho Code, when new, that are not registered; and

(d) Truck campers as defined in section 49-121 , Idaho Code, that were originally constructed with an overall length of six (6) feet or longer. Titling is optional for truck campers acquired before January 1, 2009. Liens and encumbrances on truck campers that were filed with the office of the secretary of state in compliance with chapter 9, title 28 , Idaho Code, prior to January 1, 2009, shall be in full force and effect until said lien or encumbrance is satisfied and released by the lienholder who perfected the original lien or encumbrance.

(3) Certain vehicles which are required to be registered under the provisions of chapter 4, title 49 , Idaho Code, shall be exempt from the titling requirements of this chapter as follows:

(a) Utility trailers whose unladen weight is less than two thousand (2,000) pounds; and

(b) The board may, by rule, exempt vehicles and motor vehicles registered under the provisions of sections 49-434 and 49-435 , Idaho Code, from the titling requirements of this chapter.

(4) Vehicles exempt from registration under the provisions of section 49-426 , Idaho Code, are exempt from the titling requirements of this chapter, unless otherwise specifically required by the provisions of subsection (2) of this section.

49-501A — Application to vessel titling

49-501A. Application to vessel titling. The procedures provided in this chapter shall apply to all vessel titling programs referenced in chapter 70, title 67 , Idaho Code. Unless otherwise provided, any reference to "vehicle" in this chapter shall also mean "vessel."

49-502 — Delivery of certificate of title upon sale or disposition — Reassignment by dealers

49-502. Delivery of certificate of title upon sale or disposition — Reassignment by dealers.

(1) No person shall sell or otherwise dispose of a vehicle without delivery to the purchaser or transferee a certificate of title with an assignment as necessary to show title in the purchaser or transferee except as provided for in subsection (2) of this section.

(2) The owner shown on the records of the department of any vehicle that has a 2010 or older model year or has a model year at least twenty (20) years old when transferred after January 1, 2031, or is over sixteen thousand (16,000) pounds gross vehicle weight or has no odometer device, or the owner of any vessel that has a certificate of title that has become lost, mutilated or illegible, may dispose of such vehicle or vessel by delivering to the purchaser or transferee a completed application for duplicate title, together with an assignment as necessary to show title in the purchaser or transferee. To obtain a certificate of title, the purchaser or transferee shall pay the fees pursuant to section 49-202 (2)(b), Idaho Code.

(3) No resident shall purchase or otherwise acquire or bring into the state a vehicle except for temporary use as provided by section 49-432 , Idaho Code, unless he shall obtain a certificate of title in his name in accordance with the provisions of this chapter.

(4) Any dealer holding a current Idaho dealer license may, in lieu of having a certificate of title issued in his name, reassign either any existing certificate of title issued in this state or any application of duplicate certificate of title completed pursuant to subsection (2) of this section.

49-503 — Issuance of certificate of title requisite to acquisition of title — Waiver or estoppel

49-503. Issuance of certificate of title requisite to acquisition of title — Waiver or estoppel. Except as provided in sections 49-502 , 49-510 through 49-512 and 49-514 , Idaho Code, no person acquiring a vehicle from the owner, whether the owner is a dealer or otherwise, shall acquire any right, title, claim or interest in or to the vehicle until he has issued to him a certificate of title to that vehicle, nor shall any waiver or estoppel operate in favor of that person against a person having possession of a certificate of title or an assignment of the certificate of the vehicle for a valuable consideration.

49-504 — Applications to department for certificates — Procedure — Identification numbers

49-504. Applications to department for certificates — Procedure — Identification numbers.

(1) Application for a certificate of title shall be made on a form furnished by the department and shall contain the owner’s Idaho driver’s license number, Idaho identification card number or social security number or individual taxpayer

identification number. In the case of a business, the employer tax identification number is required. Every application shall also contain the owner's true and full legal name, and every applicant must submit proof of identity pursuant to section 49-306 , Idaho Code, if he has not already done so. In the event that the owner does not possess a social security number, the owner shall present written documentation sufficient to the department to determine that no social security number has been issued. In the event that a business, trust, or other statutorily created entity is not required to have and does not possess an employer tax identification number, the applicant shall provide a written statement certifying that the entity does not possess an employer tax identification number. The form must contain the owner's physical domicile address or, in the case of a business, trust or other statutorily created entity, such entity's physical address and any mailing address if different from the physical address. If the owner has submitted an application pursuant to the provisions of chapter 58, title 19 , Idaho Code, then the owner may state, in the application required pursuant to this section, the applicant's alternative Idaho mailing address in place of his or her physical domicile address. Such application must be signed by the owner and contain a full description of the vehicle, including the make, identification numbers, and the odometer reading at the time of sale or transfer, and whether the vehicle is new or used, together with a statement of the applicant's title and of any liens or encumbrances on the vehicle, and the name and address of the person to whom the certificate of title shall be delivered, and any other information as the department may require. The application shall be filed with the department and, if a certificate of title has previously been issued for that vehicle in this state, shall be accompanied by the certificate of title duly assigned, unless otherwise provided for in this chapter. The department may promulgate rules to provide for exceptions to the odometer requirement. Social security numbers collected shall not appear on certificates of title, and all applications on file shall be exempt from disclosure, except as provided in sections 49-202 , 49-203 and 49-203A , Idaho Code.

(2) If the current certificate of title was not issued for the vehicle in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a certificate of title, bill of sale, electronic motor vehicle record, or other evidence of ownership required by the law of any other jurisdiction from which the vehicle was brought into this state and a vehicle identification number inspection completed by any city, county or state peace officer or other special agent authorized by the department.

(3) In the case of a new vehicle being titled for the first time, no certificate of title or registration shall be issued unless the application is endorsed by a franchised new vehicle dealer licensed to sell a new vehicle. Each application shall be accompanied by a statement completed by the franchised new car dealer that it is authorized to transfer the vehicle to the purchaser. The dealer shall retain in its records a manufacturer's certificate of origin or manufacturer's statement of origin executed by the manufacturer and delivered to his agent or his franchised vehicle dealer. The certificate or statement of origin shall be in a form prescribed by the board and shall contain the year of manufacture or the model year of the vehicle, the manufacturer's vehicle identification number, the name of the manufacturer, the number of cylinders, a general description of the body, if any, and the type or model. Upon sale of a new vehicle, the manufacturer or his agent or franchised dealer shall execute and deliver to the purchaser an assignment of the certificate or statement, together with any lien or encumbrance to which the vehicle is subject. The certificate or statement will be retained by the dealer for five (5) years so that it is available for inspection by the department.

(4) The department shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The department shall maintain an identification numbers index of registered vehicles, but said index is not required to include operators who have been issued a certificate of number or nonresident user certificate pursuant to sections 67-7122 and 67-7124 , Idaho Code, and upon receiving an application for a certificate of title shall first check the identification number shown in the application against the index. The department, when satisfied that the applicant is the owner of the vehicle and that the application is in proper form, shall issue in the name of the owner of the vehicle a certificate of title bearing a title number, the date issued and a description of the vehicle as determined by the department, together with a statement of the owner's title and of all liens or encumbrances on the vehicle, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(5) In all cases of transfer of vehicles, the application for certificates of title shall be filed within thirty (30) calendar days after the delivery of the vehicles. Licensed dealers need not apply for certificate of title for vehicles in stock or when they are acquired for stock purposes.

(6) In the case of the sale of a vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If a lien is to be recorded, the title documentation as required in this section shall be submitted to the department by the dealer or the lienholder upon

application signed by the purchaser. A copy of this application shall be given to the purchaser to be used as a seventy-two (72) hour temporary permit, unless the application is submitted by an electronic means approved by the department, in which case a forty-five (45) calendar day temporary permit may be issued. In all other cases, the certificates shall be obtained by the purchaser and the certificate of title properly assigned and dated by the seller, or the seller's bill of sale shall serve as a seventy-two (72) hour permit. The seventy-two (72) hour time period for temporary permits shall be calculated excluding weekend days and legal holidays observed by the state of Idaho. These temporary permits allow operation of any noncommercial vehicle or unladened commercial vehicle or vehicle combination without license plates for the period of time specified in the permit. A ladened commercial vehicle or vehicle combination may also operate without license plates for the period of time specified in the temporary permit, provided that the owner or operator has also obtained a permit issued under the provisions of section 49-432 , Idaho Code.

(7) If the vehicle has no identification number, then the department shall designate an identification number for that vehicle at the time of issuance of the certificate of title. The identification number shall be permanently affixed to or indented on the frame of the vehicle and legibly maintained by the owner at all times while a certificate of title to the vehicle is issued and outstanding.

(8) An EVC provider authorized pursuant to section 49-401C , Idaho Code, may act on behalf of the department in receiving, processing, and transmitting applications for title and any related fees to the department. The security, oversight, and processing requirements in chapter 4, title 49 , Idaho Code, shall also apply to titling transactions conducted by an EVC provider.

(9) The department may allow a person to submit a required document by using electronic media deemed feasible by the department instead of requiring an original document. If a signature on a document is required by law and the document is submitted electronically, the signature requirement will be satisfied by an authenticated electronically submitted signature. An electronically submitted document, once accepted by the department, shall be deemed the same as an original document and shall be admissible in all administrative, quasi-judicial, and judicial proceedings.

49-504A — Penalty for late filing — Transfer of certificate of title — Disposition of moneys

49-504A. Penalty for late filing — Transfer of certificate of title — Disposition of moneys.

(1) When a transfer of ownership arises, a penalty of twenty dollars ($20.00) for presentation of a previously issued certificate of title shall be assessed against the new owner when the presentation for transfer of title or creation of an electronic ownership record in the new owner's name occurs more than thirty (30) days after the vehicle was transferred. All fines collected under the provisions of this section shall be distributed to the county current expense fund.

(2) When a licensed Idaho vehicle dealer, or entity exempted from licensing as defined in section 49-105 (1), Idaho Code, either takes possession of a vehicle for the purpose of resale or transfers ownership of that vehicle, no penalty shall be assessed.

(3) When a person acquires ownership of a vehicle in another state, the thirty (30) day filing requirement shall begin upon initial entry of the vehicle into the state of Idaho.

(4) Vehicles acquired prior to July 1, 1989, and all-terrain vehicles, motorbikes and snowmobiles acquired prior to January 1, 1991, are specifically exempt from this penalty.

49-505 — Issuance of certificates of title by department — Delivery — Electronic file for lienholders

49-505. Issuance of certificates of title by department — Delivery — Electronic file for lienholders. Certificates of title shall be printed by the department. The original copy shall be delivered to the applicant if there are no liens or encumbrances on the certificate. If there are liens or encumbrances recorded, the certificate shall be delivered or mailed to the holder of the lien or encumbrance who is first in time on the date of the application. In place of physically issuing a paper certificate of title, the department may create a paperless electronic record of title and suspend the requirement to issue a certificate of title. If a lien is being recorded, the department and the lienholder will enter into a written agreement authorizing the creation of the electronic record of the certificate of title. Any reference to a "certificate of title" in this chapter shall also apply to an "electronic record of title." The department may require that lienholders, licensed dealers, and rental car vendors be issued an electronic record of title in lieu of the issuance of paper certificates if the department determines such method to be more cost effective than a paper system.

49-506 — Destruction of records

49-506. Destruction of records. Records pertaining to certificates of title used to record each title transaction shall be retained a minimum of twenty (20) years, after which time they may be destroyed. The records shall be maintained so as to permit the tracing of title of the vehicles designated.

49-507 — Departmental regulations for transfer of vehicles — Appointment of deputies and assistants

49-507. Departmental regulations for transfer of vehicles — Appointment of deputies and assistants. Procedure for the transfer of vehicles, and the issuance of certificates of title not otherwise expressly provided for by this chapter, may be provided for by regulations issued by the department, and in addition the director shall appoint all necessary personnel to carry out the provisions of this chapter.

49-508 — Cancellation of certificates of title — Return of registration receipts and license plates

49-508. Cancellation of certificates of title — Return of registration receipts and license plates.

(1) If it appears that a certificate of title has been improperly issued, the department shall, after notice and hearing, cancel the certificate. The notice shall be served in person or by first class mail to the person to whom that certificate of title was issued, as well as any lienholders appearing thereon. The holder of the certificate of title shall return it to the department upon cancellation, but the cancellation of any certificate of title shall not affect the validity of any lien recorded on it.

(2) If a receipt of registration has been issued to the holder of a canceled certificate of title, the department shall immediately cancel it and demand the return of the receipt of registration and license plates, and the holder of the receipt of registration and license plates shall immediately return them to the department.

49-509 — Stolen vehicles — Reporting by officers

49-509. Stolen vehicles — Reporting by officers. It shall be the duty of every sheriff, chief of police, officer of the Idaho state police, or officer having taken a report of a stolen vehicle, to immediately enter the information regarding the stolen vehicle into the national crime information center stolen vehicle file.

49-510 — Liens and encumbrances — Filing — Fee — Notation on certificate — Constructive notice

49-510. Liens and encumbrances — Filing — Fee — Notation on certificate — Constructive notice.

(1) No lien or encumbrance on any vehicle registered under the laws of this state created subsequent to December 31, 1986, irrespective of whether such registration was effected prior or subsequent to the creation of the lien or encumbrance, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor, agent or assignee, has complied with the requirements of section 49-504 , Idaho Code, and has filed the properly completed title application and all required supporting documents with the department or an agent of the department.

(2) When the holder of a lien or encumbrance, his successor, agent or assignee, has filed with the department or agent of the department a properly completed title application and supporting documents as required by section 49-504 , Idaho Code, it shall be the duty of the department or agent of the department to file the same, endorsing on the title application the date of receipt. A lien is perfected as of the date of the filing of a properly completed application with the department or an agent of the department.

(3) When the department is satisfied as to the genuineness and regularity of the documents submitted, it shall issue a new certificate of title or create a paperless electronic record of the title and lien filing when substantiated by a written agreement as provided in section 49-505 , Idaho Code. The title shall contain the name of the owner of the vehicle, the name and address of each holder of a lien or encumbrance, and a statement of all liens or encumbrances which have been filed with the department, together with the date of each lien or encumbrance and the date received by the department or agent of the department. The filing of a lien or encumbrance and the notation of it shall be a condition of perfection and shall constitute constructive notice of the lien or encumbrance and its contents to creditors and subsequent purchasers and encumbrancers. All liens or encumbrances so filed with the department shall be perfected and take priority according to the order in which the same are noted upon the certificate of title or entered into the electronic records of the department.

49-511 — Cancellation or discharge of lien or encumbrance

49-511. Cancellation or discharge of lien or encumbrance.

(1) When a lien or encumbrance is canceled or discharged, the lienholder shall provide notice of such cancellation or discharge to the department within thirty (30) days. If the lienholder was holding the paper certificate of title, he shall note the cancellation or discharge on the certificate of title in the space provided, over his signature, or by some other legal document, discharging the encumbrance, and shall deliver the paper certificate of title to the owner within thirty (30) days of receipt of payoff of the encumbrance. If the lienholder was holding an electronic title, he shall send the department an electronic transaction that directs the department to provide a paper title to the owner free of the lienholder's lien within thirty (30) days of receipt of payoff of the encumbrance. (2)(a) Notwithstanding the provisions of subsection (1) of this section, when an Idaho vehicle dealer licensed pursuant to chapter 16, title 49 , Idaho Code, cancels or discharges a lien or encumbrance, the lienholder shall provide notice of such cancellation or discharge to the department within ten (10) business days of receipt of verified funds. If the lienholder was holding the paper certificate of title, such lienholder shall note the cancellation or discharge on the certificate of title in the space provided, over his signature, or by some other legal document, discharging the encumbrance. If the lienholder has received authorization from the current owner to do so, by personal notification from the current owner, by power of attorney, or by other legal document granted to a dealer, the lienholder shall send the paper certificate of title to the dealer within ten (10) business days of receipt of verified funds to pay off the encumbrance.

(b) For the purposes of this subsection, "verified funds" means funds when such funds credit to the lienholder's account and become final in accordance with the law or rules applicable to the method by which the funds were transmitted to the lienholder.

49-512 — Security interests — Method of giving constructive notice exclusive

49-512. Security interests — Method of giving constructive notice exclusive. The method provided in this chapter for perfection of a security interest on a vehicle is exclusive, except as to security interests in vehicles held in inventory for sale, which shall be governed by the provisions of chapter 9, title 28 , Idaho Code.

49-512A — Effect of a terminal rental adjustment clause

49-512A. Effect of a terminal rental adjustment clause. Notwithstanding any provision of law to the contrary, a transaction involving a motor vehicle or trailer does not create a sale or security interest merely because the transaction provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon the sale or other disposition of the motor vehicle or trailer.

49-513 — Sale of encumbered vehicle — Consent of lienholder — Effect

49-513. Sale of encumbered vehicle — Consent of lienholder — Effect. Sale of any vehicle by the owner with the knowledge and consent of the holder of any lien or encumbrance properly noted upon the certificate of title or upon the electronic records of the department, shall not render the sale void or ineffective as against that lien or encumbrance.

49-514 — Transfer of ownership by operation of law — Liens — Vehicles registered in foreign state — Certificates of title

49-514. Transfer of ownership by operation of law — Liens — Vehicles registered in foreign state — Certificates of title. In the event of the transfer of ownership of a vehicle by operation of law, as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, or execution sale, or whenever a vehicle is sold to satisfy storage or repair charges, or if the interest of the owner is terminated or the vehicle is sold under a security agreement, the department may upon the surrender of the prior certificate of title, or when that is not possible, upon presentation of satisfactory proof to the department of ownership and right to possession of the vehicle and presentation of an application for a certificate of title, issue to the applicant a certificate of title. Only an affidavit by the person or agent of the person to whom possession of the vehicle so passed, setting forth facts entitling him to possession and ownership, together with a copy of the journal entry, court order or instrument upon which the claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership he may apply directly to the department and submit any evidence as he may have, and the department shall, if it finds the evidence sufficient, issue a certificate of title to the applicant. If from the records in the office of the department there appears to be any prior lien or liens on the vehicle, the certificate of title shall contain a statement of those liens, unless the application is accompanied by proper evidence of their satisfaction or discharge. Upon the death of the owner of one (1) or more registered vehicles, the following heirs of the owner, to wit: the surviving spouse, the children, lawful issue of the deceased children, the parents, the brothers or sisters, or the guardian of the estate of any minor or insane or

incompetent person having such relationship to the owner, if such person has a right to succeed to the property of the owner, may secure a transfer of the certificate or certificates of title of the owner to the vehicle or vehicles, upon presenting to the department the appropriate certificate or certificates of title, if available, and an affidavit of the person or persons setting forth the fact of survivorship or heirship, the names and addresses of any other heirs, that the decedent died intestate, that the decedent has no creditors, that the decedent did not leave other property necessitating probate, and if required by the department, a certificate of the death of the deceased. The department, when satisfied of the genuineness and regularity of the transfer, shall transfer the registrations and titles accordingly.

49-515 — Lost, mutilated or illegible certificates — Duplicate certificates

49-515. Lost, mutilated or illegible certificates — Duplicate certificates. In the event any certificate of title is lost, mutilated or becomes illegible, the owner or legal representative of the owner of the vehicle, or the holder of the lien which is prior in date and time as shown by the records of the department, shall immediately make application for and may obtain a duplicate certificate of title upon the applicant furnishing information satisfactory to the department. Any certificate of title issued pursuant to this section shall have printed or stamped in ink upon its face "duplicate title". In the event of the recovery of the original certificate of title by the owner or the first lienholder, he shall immediately surrender it to the department for cancellation.

49-516 — Junked or changed vehicles — Cancellation of certificate

49-516. Junked or changed vehicles — Cancellation of certificate. Each owner of a vehicle and each person mentioned as owner in the last certificate of title when a vehicle is dismantled, destroyed or changed in a manner that it is not the vehicle described in the certificate of title, shall surrender his certificate of title to the department, and the department shall with the consent of any holders of any liens, enter a cancellation upon its records. The department upon receipt of a certified copy of an order or judgment from a court of competent jurisdiction that a partially dismantled, junked, abandoned or non-operating vehicle is a public nuisance shall cancel the certificate of title to the vehicle if there be one. Upon cancellation of a certificate of title in the manner prescribed by this section the department may cancel and destroy all certificates in that chain of title.

49-517 — Printing and form of certificates

49-517. Printing and form of certificates.

(1) All certificates of title shall be printed upon safety paper to be selected by the department, and shall be in such form as the department shall prescribe.

(2) When substantiated by a written agreement as provided in section 49-505 , Idaho Code, the department may create a paperless electronic record of a certificate of title in place of issuing a paper document whenever a lien is to be recorded; however, upon written demand from the owner and payment of the fee as provided in subsection (2)(b) of section 49-202 , Idaho Code, the department shall issue a paper certificate of title.

(3) In the absence of a certificate of title, the computer records of the department shall be the original title document.

49-518 — Altering or forging certificate — Stolen cars — Destroying or altering engine or decal number — Use of fictitious name — Fraud

49-518. Altering or forging certificate — Stolen cars — Destroying or altering engine or decal number — Use of fictitious name — Fraud. It shall be a felony for any person to:

(1) Alter or forge any certificate of title or salvage certificate of ownership to a vehicle, or any assignment thereof, or any cancellation of any liens on a vehicle; or

(2) Hold or use a certificate of title or salvage certificate of ownership or assignment or cancellation knowing it to be altered or forged; or

(3) Procure or attempt to procure a certificate of title to a vehicle, or to pass or attempt to pass a certificate of title or any assignment to a vehicle, knowing or having reason to believe that the vehicle has been stolen; or

(4) Sell or offer for sale in this state a vehicle on which the motor number, manufacturer’s serial number, or "repaired vehicle" or "reconstructed vehicle" decal has been destroyed, removed, covered, altered or defaced, with knowledge of that destruction, removal, covering, alteration or defacement of the motor number, manufacturer’s serial number, or "repaired vehicle" or "reconstructed vehicle" decal; or

(5) Use a false or fictitious name, or give a false or fictitious address, or make a false statement in any application or affidavit required under the provisions of this chapter, or any bill of sale or sworn statement of ownership, or otherwise commits a fraud in any application; or

(6) Purport to sell or transfer a vehicle without delivering to the purchaser or transferee a certificate of title or salvage certificate of ownership duly assigned to the purchaser.

49-519 — Operation of vehicle without certificate of title — Failure to surrender certificate — Salvage certificate

49-519. Operation of vehicle without certificate of title — Failure to surrender certificate — Salvage certificate. It shall be unlawful, except as otherwise provided in this chapter, for a person:

(1) To operate a vehicle for which a certificate of title is required, without the certificate having been obtained in accordance with the provisions of this chapter; or

(2) To operate a vehicle for which the certificate of title has been cancelled; or

(3) Not being an enfranchised dealer, or acting upon behalf of such dealer, to acquire, purchase, hold or display for sale a new vehicle without having obtained a certificate of title as provided for in this chapter; or

(4) To fail to surrender a certificate of title or any certificate of registration or license plate upon cancellation of the same by the department, as provided by this chapter; or

(5) To fail to surrender the certificate of title to the department in connection with the destruction, dismantling or change of a vehicle in any respect that it is not the vehicle described in the certificate of title; or

(6) To sign as assignor, or for any person to have in his possession a salvage certificate or certificate of title which has been signed by the owner as assignor, without the name of the assignee and other information required on the form prescribed by the department.

(7) To violate any of the other provisions of this chapter or any laws, or rules or regulations promulgated pursuant to this title.

49-520 — Refusal to issue certificate of title or register vehicle — Revocation after issuance or registration

49-520. Refusal to issue certificate of title or register vehicle — Revocation after issuance or registration. If the department shall determine an applicant for a certificate of title to a vehicle is not entitled to it, it shall refuse to issue a certificate or to register the vehicle, and in that event unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of title or registration on the statements in the application. The department may for a like reason after notice and hearing, revoke registration already acquired or any outstanding certificate of title. The notice shall be served in person or by first class mail. An appeal may be taken from any decision of the department.

49-521 — Dealers in vehicles — Records of purchases and sales — Possession of certificates of title — Foreign vehicles

49-521. Dealers in vehicles — Records of purchases and sales — Possession of certificates of title — Foreign vehicles.

(1) Every dealer in vehicles, trailers or semitrailers shall maintain a record in a form as prescribed by the department of every used vehicle, trailer or semitrailer bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange. The record shall contain a description of the vehicle, including the name of the manufacturer, type, serial number, odometer reading and other distinguishing marks, and whether any numbers thereon have been defaced, destroyed, or changed and shall state with reference to each vehicle the name and address of the person from whom purchased or received, when sold or otherwise disposed of by the licensee, and the name and address of the person to whom sold or delivered.

(2) Every licensee shall have in his possession a separate certificate of title assigned to him or other documentary evidence of his right to the possession of and for every vehicle in his possession.

49-522 — Endorsement "for junk only" on certificate when vehicle sold or transferred — Operation prohibited

49-522. Endorsement "for junk only" on certificate when vehicle sold or transferred — Operation prohibited.

(1) The owner of any vehicle who sells or transfers it to another with the intention or understanding that the vehicle is not to be used as an operating unit shall, at the time of sale or transfer, endorse on the face of the certificate of title to that vehicle the words "for junk only," and the department shall place those words on the face of each subsequent certificate of title to that vehicle.

(2) No person shall operate upon a highway any vehicle, the certificate of title to which has been so endorsed, and no person shall sell or attempt to sell that vehicle for use as an operating unit.

49-523 — Procedure when department unsatisfied as to ownership or security interests — Temporary registration procedure

49-523. Procedure when department unsatisfied as to ownership or security interests — Temporary registration procedure.

(1) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department may register the vehicle, but shall either:

(a) Withhold issuance of a certificate of ownership until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(b) As a condition of issuing a certificate of ownership, require the applicant to file with the department all documents held as to the applicant's ownership of the vehicle, together with a bond in the form prescribed by the department and executed by the applicant, or a deposit of cash in a like amount. The bond shall be in an amount equal to one and one-half (1 1/2) times the value of the vehicle, as determined by the department, and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of ownership of the vehicle, or on account of any defect in or disclosed security interest on the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, or any cash deposit, shall be returned at the end of three (3) years, or prior to that time if the vehicle is no longer registered in this state and the current valid certificate of ownership is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

(c) As to a vehicle at least ten (10) model years old, an applicant who is a resident of the state of Idaho may file with the department, before its authorized representative, a verified statement of facts setting out in detail the manner in which the applicant came into possession of the vehicle, the establishment of ownership, and a summary of the applicant's attempts to contact any prior owners of the vehicle. Upon receipt by the department of the verified statement and all documentation relating to the applicant's possession of the vehicle, and completion of an inspection of the vehicle identification number by an authorized representative of the department, the applicant shall execute a document in the form provided by the department releasing the department of any and all damages that may be suffered by the applicant, along with warranties that the applicant will pay any and all damages suffered by any person or entity as to the issuance of a title for that vehicle by the department. The department shall then issue a certificate of title to the applicant in a form set out by this section. The certificate of title shall include the statement, "ISSUED ON STATEMENT OF APPLICANT," in permanent letters on its face. The title issued pursuant to this subsection shall be presumed to indicate legal ownership of the vehicle at the end of the three (3) year period from the date of issue of that title, provided the vehicle is still registered in the state of Idaho, and there are no actions or claims pending against the applicant that place legal ownership in question. The department and the state of Idaho shall be immune as to any damages suffered by any person or entity as a result of the issuance of a certificate of title as provided by this subsection.

(2) Every dealer desiring the privilege of issuing temporary registration permits for the operation of vehicles shall make application to the department. If the privilege is granted, the dealer will receive a series of permits, consecutively numbered by the department, secured by the dealer at a fee of nine dollars ($9.00) for each permit. A permit subsequently issued by a dealer to a purchaser shall be valid for a period not to exceed thirty (30) days. The dealer shall issue temporary registration permits in numerical sequence, one (1) only for each vehicle sold to a bona fide purchaser. Each permit, and the attached stub, shall be completed in duplicate, in ink or by typewriter, at the time of issuance. The expiration date on the original permit shall be filled in by rubber stamp or broad-tipped marking pen, and the print shall be at least three-fourths (3/4) inch high and one-eighth (1/8) inch wide. The original permit shall be displayed in the rear window of the vehicle for which it is issued, except when issued for a convertible, station wagon, motorcycle, or other

vehicle for which this would not be practical. In these exceptional cases, the permit should be conspicuously displayed in a place where the number of the permit and the expiration date may be easily read and where protected from exposure to weather conditions that would render it illegible.

(3) The dealer shall keep a written record of every temporary registration permit issued. This record shall include the name and address of the person or firm to whom the permit is issued and a description of the vehicle for which it is issued, including year, make, model, identification number, and the date of issue. This record shall list all permits in numerical sequence and shall be open to inspection by any peace officer or designated employee of the department.

(4) The fees collected from dealers by the department under the provisions of this section shall be transmitted by the department to the state treasurer for deposit in the highway distribution account.

(5) Upon application for title and for registration of a vehicle for which temporary registration has been issued under this section, the county assessor shall collect and fees shall be deemed due from the date of issuance of the temporary registration permit rather than from the date of application for title or registration.

(6) The department or a county assessor may issue temporary vehicle registration permits in emergency situations, or for two (2) thirty (30) day periods per vehicle, per owner, if such owner is attempting to sell the vehicle. The fee for a temporary registration shall be nine dollars ($9.00) and shall be valid for a period of thirty (30) days. The temporary fees collected by the department shall be transmitted to the state treasurer for deposit in the highway distribution account. Temporary fees collected by an assessor shall be distributed as follows: five dollars ($5.00) shall be deposited in the county current expense fund and four dollars ($4.00) shall be transmitted to the department for deposit through the state treasurer in the highway distribution account.

49-523A — title stop when ownership of vehicle disputed

49-523A. title stop when ownership of vehicle disputed.

(1) Whenever a party claims an interest in a vehicle subject to a title, the party may request a title stop be placed upon the title record of the vehicle.

(2) The request for title stop shall be provided to the department, together with documentation supporting the request and the fee required pursuant to the provisions of section 49-202 (2)(i), Idaho Code.

(3) A verbal request to the department for a title stop may be placed on the title record for up to five (5) business days upon advising the requestor of the requirements and giving the requestor time to send the written request. Failure to send the written request shall terminate the request at the end of the five (5) business days.

(4) Upon receipt of the request for title stop, the department may place a stop on the title record of the subject vehicle if it appears from the documentation provided that there exists a reasonable dispute as to the ownership of the vehicle.

(5) Notwithstanding the placement of a stop or the filing of a stop request, the department shall process an application for title accompanied by a properly completed affidavit of repossession, or to record a lien or encumbrance, unless the requestor of the stop has provided the department with a court order restraining the issuance of title. In all other applications for title, the department shall place or maintain a stop and shall notify the title applicant that a stop is in place.

(6) Once the title stop is placed by the department, the requesting party shall provide evidence of a judicial filing relating to the subject vehicle within thirty (30) days of the title stop becoming effective. Failure to provide such evidence shall result in the department's cancellation of the title stop.

(a) Upon receipt of a written request for a title stop and the required fee, the department shall send notice of the title stop to the titled owners and any other party with recorded interest or lienholder recorded on the title records of the department.

(b) Upon receipt by the department of satisfactory evidence of a judicial filing, the title stop shall remain in place until a final order of the judicial proceeding is received, the requesting party has instructed the department to remove the stop, the requesting party has failed to respond to notice under paragraph (c) of this subsection or for one (1) year, unless renewed by the requestor, whichever comes first.

(c) Except as provided in subsection (5) of this section, if a person files evidence with the department that the person has acquired title to the vehicle for which a title stop has been placed, then the department shall send notice to the original requesting party providing ten (10) business days from the date notice was mailed to object to the release of the title stop. If the department does not receive timely response from the requesting party or if the requesting party instructs the department to remove the stop, then the title stop shall be immediately released.

(7) During the pendency of the title stop, no title applications for the vehicle to which the stop pertains shall be processed by the department except as otherwise provided in this section.

(8) Title stops requested by a governmental agency shall be exempt from the provisions of subsection (6) of this section. Such title stop shall be valid for two (2) years, unless renewed by the governmental agency requesting the stop. Governmental agencies shall be exempt from the fee required in section 49-202 (2)(i), Idaho Code.

(9) The provisions of this section shall be effective for any title stop received on and after July 1, 2015.

49-524 — Salvage certificate of title or electronic file to replace certificate of title or certificate of origin on vehicles

49-524. Salvage certificate of title or electronic file to replace certificate of title or certificate of origin on vehicles.

(1) Every person acquiring a vehicle that has been determined to be a salvage vehicle shall obtain a salvage certificate of title on that vehicle.

(2) The salvage certificate of title shall replace the manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document and shall indicate ownership only; it shall not be valid for registration purposes.

(3) A salvage certificate of title shall be issued by the department or under the direction of the department and shall be on a form or electronic file as prescribed by the department. The form shall provide for assignments of the salvage certificate of title.

(4) The fee for a salvage certificate of title or electronic filing of a salvage certificate of title shall be in accordance with the provisions of section 49-202 (2)(b), Idaho Code. The fee shall be deposited in the state highway account.

(5) Every insurer making payment for a vehicle that has been determined to be a salvage vehicle shall, within thirty (30) days from receipt of the properly released manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document, surrender such document to the department, along with an application for salvage certificate of title, the salvage certificate of title fee and other documents as required by the department for processing. The department shall issue a salvage certificate of title to the applicant if all requirements have been satisfied.

(6) If a salvage pool receives a manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document for a vehicle that has been determined to be a salvage vehicle, the salvage pool shall, within thirty (30) days and upon receipt of the properly released ownership document, surrender such document to the department, along with an application for salvage certificate of title, the salvage certificate of title fee and other documents as required by the department for processing. The department shall issue a salvage certificate of title to the applicant if all requirements have been satisfied.

(7) If an insurer has made payment for a salvage vehicle and the insurer or a salvage pool is unable to obtain a properly released manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document for the salvage vehicle within thirty (30) days after the acceptance by the owner of an amount in settlement of a total loss, then the insurer or salvage pool may submit an application for salvage certificate of title to the department without having first obtained one (1) of the aforementioned ownership documents. In place of one (1) of the aforementioned ownership documents, the insurer or the salvage pool shall submit to the department the following: a sworn statement that it made at least two (2) written attempts to obtain from the owner the properly released manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document by sending notice to the owner at the owner's address of record with the department, together with a copy of each such written attempt. Additionally, the insurer or salvage pool shall include proper evidence of the satisfaction or discharge of any lien or encumbrance properly noted upon the certificate of title or upon the electronic records of the department, an application for salvage certificate of title, the salvage certificate of title fee, indemnifying affidavit and other documents as required by the department for processing. The department shall issue a salvage certificate of title if all requirements have been satisfied.

(8) It is a misdemeanor, punishable by up to six (6) months in jail, a fine of one thousand dollars ($1,000) or both, if the owner of a retained salvage vehicle fails to surrender the title and be issued a salvage certificate of title, or to sell the vehicle and not tell the buyer that the vehicle is totaled.

(9) If an insurer has allowed the owner to retain ownership of the salvage vehicle, the owner must surrender the certificate of title for such vehicle to the department not later than thirty (30) days from the date that the claim was satisfied. The insurer must notify the department of a total loss payoff within thirty (30) days. The department shall issue a salvage certificate of title to the owner prior to any sale or disposition of the salvage vehicle.

(10) If an insurer acquires the manufacturer's certificate of origin, manufacturer's statement of origin, certificate of title or other comparable ownership document for a vehicle in a settlement of a theft claim, the insurer shall immediately, upon receipt of the properly released ownership document, surrender such document to the department, along with an application for salvage certificate of title in the name of the insurer, the salvage certificate of title fee and other documents as required by the department for processing.

(11) If an insurer has acquired a vehicle in a settlement of a theft claim, has made application to and has been issued a new salvage certificate of title in the name of the insurer and the vehicle is subsequently recovered and is not damaged to the extent that it is a salvage vehicle, the insurer may complete an affidavit indemnifying the department stating the facts of acquisition and disposition of the vehicle in a form prescribed by the department and deliver the salvage certificate of title of ownership, affidavit and any other documents required by the department to the transferee at the time of delivery of the vehicle. When these documents are submitted with an application for title, the subsequent title for the vehicle will not be issued with the brand "rebuilt salvage" based on the theft incident, but a notation of "theft recovery" shall be made on the title certificate and title record.

(12) Any person acquiring ownership of a salvage vehicle purchased in a state or jurisdiction that does not require surrender of the certificate of title or comparable ownership document shall, within thirty (30) days following delivery of the certificate of title or ownership document, surrender such title or document to the department and apply for a salvage certificate of title.

(13) An owner of a salvage vehicle who sells or transfers said vehicle shall provide a properly executed assignment of the salvage certificate of ownership to the transferee.

(14) A purchaser of a salvage vehicle shall not possess or retain a salvage vehicle without a salvage certificate of title. The salvage vehicle purchaser shall display the salvage certificate of title upon the request of any peace officer or agent of the department.

49-525 — Salvage-certified vehicle — Branded certificate of title

49-525. Salvage-certified vehicle — Branded certificate of title.

(1) The department shall issue a branded certificate of title on any vehicle for which a salvage certificate of title, salvage bill of sale or other documentation showing evidence that the vehicle has been declared salvage has been issued by this or any other state, provided, if documentation of salvage certification has been received from another state, the requirements specified in section 49-524 , Idaho Code, shall be applied to that vehicle.

(2) If an otherwise correct application is made for a certificate of title on any salvage vehicle, the department shall issue a branded certificate of title as a "rebuilt salvage vehicle" if the application for a certificate of title is supported by a salvage vehicle statement completed by the owner which states:

(a) That the owner personally rebuilt or repaired the vehicle or personally supervised its rebuilding or repairing and includes a description of work done to restore the vehicle to the operating condition that existed prior to the event which caused the salvage certificate of title to be issued;

(b) That the identification numbers of the restored vehicle and its parts have not, to the knowledge of the owner, been removed, destroyed, falsified, altered or defaced;

(c) That the salvage certificate of title document or out-of-state title certificate attached to the application has not to the knowledge of the owner been forged, falsified or altered; and

(d) That all information contained on the application and its attachments is true and correct.

(3) Each branded certificate of title or other ownership document received from another jurisdiction or authorized ownership document-issuing entity shall have its brand carried forward to all subsequent certificates of title issued in this state.

(4) Every brand retrieved from the national motor vehicle title information system shall be carried forward to all subsequent titles issued by this state.

(5) The department may promulgate rules as necessary to implement the provisions of sections 49-524 and 49-525 , Idaho Code.

49-526 — Release of liability upon sale of vehicle

49-526. Release of liability upon sale of vehicle.

(1) The department shall require that a separate release of liability statement be completed by the owner of a motor vehicle upon sale or transfer of the motor vehicle to another party. The statement shall be forwarded to the department by the former owner, together with the proper fee as provided in section 49-202 , Idaho Code, within five (5) days of delivery of the motor vehicle to a dealer, purchaser or other transferee. The statement shall include the motor vehicle identification number, vehicle description, name of seller, name and address of buyer or other transferee, date of sale, odometer reading, and sales price. Provided that:

(a) A lienholder may complete the release of liability on behalf of the registered owner when the title is released by the lienholder directly to a dealer or new purchaser.

(b) Motor vehicle dealers licensed under chapter 16, title 49 , Idaho Code, are not required to report dealer-to-dealer transfers to the department. However, dealers are required to maintain a record of the transfer for audit and tracking purposes.

(2) Any former owner who files a release of liability statement with the department pursuant to this section shall not be liable under section 49-2417 , Idaho Code, nor shall the former owner be liable for any motor vehicle infractions, towing, storage, repair or service charges that may occur subsequent to delivery of the vehicle to a dealer, purchaser or other transferee.

(3) It shall be unlawful for any person to knowingly file or attempt to file a release of liability statement which contains false information.

49-527 — Purpose of transitional ownership document

49-527. Purpose of transitional ownership document. The purpose of a transitional ownership document is to enable security interest to be perfected in a timely manner when the primary ownership document is not available. The transitional ownership document serves to perfect a lien against creditors or subsequent purchasers.

(1) To perfect a security interest the transitional ownership document must be received by the department or agent within thirty (30) days of the date of sale. To determine the thirty (30) days, exclude the first day (i.e., date of sale) and count each calendar day thereafter. If the thirtieth day falls on a weekend or holiday it is not counted; the last date the transitional ownership document will be accepted is the following business day of the department or agent.

(2) The lien will be perfected as of the date and time of filing consistent with section 49-510 , Idaho Code.

(3) The transitional ownership document is not intended to supersede the requirements of section 49-504 , Idaho Code, but rather to provide an alternative method of lien perfection.

(4) Once a transitional ownership document has been filed with the department or agent, the primary ownership document must be received by the department or agent within ninety (90) calendar days from the date of the security agreement or contract. To determine ninety (90) days, exclude the first day (i.e., day of sale) and count each calendar day thereafter. If the ninetieth day falls on a weekend or holiday, the last date the transitional ownership document may be used to determine date of security interest perfection is the following business day of the department or agent.

49-528 — Circumstances under which transitional ownership document acceptable as evidence of ownership

49-528. Circumstances under which transitional ownership document acceptable as evidence of ownership. A transitional ownership document is acceptable as evidence of ownership only if the primary ownership document:

(1) Is not in the possession of the selling dealer, new security interest holder or the agent of either at the time the transitional ownership document is submitted to the department; and

(2) To the best of the knowledge of the selling dealer, security interest holder or agent, will not be available for submission to the department within thirty (30) days of the date of sale or if no sale is involved, within the date of a security agreement or contract.

49-529 — Mandatory rejection or invalidation of transitional ownership document by department

49-529. Mandatory rejection or invalidation of transitional ownership document by department. The transportation department shall reject, return or subsequently invalidate a transitional ownership document if:

(1) More than thirty (30) days have elapsed between the date of sale, or if no sale is involved, more than thirty (30) days have elapsed between the date the contract or security interest being perfected was signed and the date the transitional ownership document is received by the department;

(2) The transitional ownership document does not contain all of the information contained in section 49-121 (7), Idaho Code;

(3) It is determined that persons named on the transitional ownership document as having a security interest did not have a security interest on the date the transitional ownership document was received;

(4) It is determined the person who submitted the transitional ownership document made false statements in completing the transitional ownership document;

(5) The department does not receive the primary ownership document from the date of sale within ninety (90) days of the date of sale or if no sale is involved, within ninety (90) days from the date the security agreement or contract was signed;

(6) The security interest holder or person submitting the transitional ownership document elects to retain, requests it be returned or requests that the transitional ownership document be withdrawn; or

(7) The information on or in the transitional ownership document has been changed or altered in a manner that is not acceptable to the department.

49-530 — Discretionary rejection or invalidation of document by department

49-530. Discretionary rejection or invalidation of document by department. The transportation department may reject, return or subsequently invalidate a transitional ownership document if it is determined that:

(1) Title is to be issued to someone other than the person shown on the transitional ownership document;

(2) Interests reflected on the primary ownership document or in information submitted in conjunction with that document conflict with the interests as reflected on the transitional ownership document;

(3) The person submitting the transitional ownership document has failed to submit the nonrefundable fee required by section 49-202 (e), Idaho Code; or

(4) A copy of the application for certificate of title is not attached as required by the department.

CHAPTER 6

49-601 — Application

49-601. Application. The provisions of this chapter relate exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section. They shall not apply to persons, motor vehicles and equipment while actually engaged in work upon a highway, or to owners or operators of a ditch, canal, conduit or drain while engaged in work within and pursuant to a right-of-way for a ditch, canal, conduit or drain, but shall apply to persons, owners, operators and vehicles when traveling to or from that work.

49-602 — Unattended motor vehicle

49-602. Unattended motor vehicle. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first locking the vehicle if the engine is running, effectively setting the parking brake and, when standing upon any grade, turning the front wheels to the curb or side of the highway. The provisions of this section do not apply to motor vehicles on private property.

49-603 — Starting parked vehicle

49-603. Starting parked vehicle. No person shall start movement of a vehicle which is stopped, standing or parked unless movement can be made with reasonable safety.

49-604 — Limitations on backing

49-604. Limitations on backing.

(1) The driver of a vehicle shall not back the vehicle unless that movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back it upon any shoulder or lane of travel of any controlled-access highway.

49-605 — Driving upon sidewalk

49-605. Driving upon sidewalk. No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or temporary driveway. This section shall not apply to any vehicle moved exclusively by human power, a personal delivery device, an electric personal assistive mobility device, nor to any motorized wheelchair. For the purposes of assuring the safety of pedestrians and others using sidewalks, a political subdivision having jurisdiction over sidewalks may, by ordinance or by traffic control device, regulate the time, place and manner of the operation of electric personal assistive mobility devices.

49-606 — Coasting prohibited

49-606. Coasting prohibited. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gear or transmission in neutral nor with the clutch disengaged.

49-607 — Opening and closing vehicle doors

49-607. Opening and closing vehicle doors. No person shall open the door of a motor vehicle on a side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on a side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

49-608 — Riding in manufactured homes or commercial coaches

49-608. Riding in manufactured homes or commercial coaches. No person shall occupy a manufactured home or commercial coach while it is being moved upon a highway.

49-609 — Persons riding animals or driving animal-drawn vehicles

49-609. Persons riding animals or driving animal-drawn vehicles. Every person riding an animal or driving any animal-drawn vehicle upon a highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this title, except those provisions of this title which, by their very nature, can have no application.

49-612 — Obstruction to driver’s view or driving mechanism

49-612. Obstruction to driver’s view or driving mechanism.

(1) No person shall drive a vehicle when it is so loaded or when there are in the front seat a number of persons exceeding three (3), as to obstruct the view of the driver to the front or the sides of the vehicle, or as to interfere with the driver’s control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in a position as to interfere with the driver’s view ahead or to the sides, or to interfere with his control of the driving mechanism of the vehicle.

(3) No vehicle shall be operated when the windshield and/or windows of the vehicle are coated with ice, snow, sleet, or dust to the extent that the driver’s view ahead, or to the sides or rear of the vehicle are obstructed.

49-613 — Putting glass or other injurious materials on highway prohibited

49-613. Putting glass or other injurious materials on highway prohibited. The following shall apply to persons and vehicles not otherwise exempted from the application of this section by federal or state law:

(1) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal or vehicle upon the highway.

(2) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove that material or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from that vehicle.

(4) No vehicle shall be operated on any public highway unless such vehicle's load is secured to prevent the load from becoming loose, detached or a hazard to other users of the highway.

(5) No person may operate on any public highway any vehicle with any load unless the load is secured and such covering as required thereon by subsection (6) of this section is securely fastened to prevent the covering or load from becoming loose, detached or a hazard to other users of the highway.

(6) Any vehicle operating on a paved public highway with a load of dirt, sand or gravel susceptible to being dropped, spilled, leaked or otherwise escaping therefrom shall be covered so as to prevent spillage. Covering of such loads is not required if six (6) inches of freeboard is maintained.

(7) The provisions of subsections (5) and (6) of this section shall not apply to a government, quasi-government, their agents or employees or contractors thereof, in performance of maintenance or construction of a highway.

(8) The provisions of subsections (4), (5) and (6) of this section shall not apply to vehicles owned by canal companies, irrigation districts, drainage districts or their boards of control, lateral ditch associations, water districts or other irrigation water delivery or management entities, or operated by any employee or agent of such an entity, performing construction, operation or maintenance of facilities.

(9) The provisions of subsections (4), (5) and (6) of this section shall not apply to vehicles transporting unprocessed agricultural products, agricultural byproducts, agricultural materials or agricultural inputs.

49-614 — Stop when traffic obstructed

49-614. Stop when traffic obstructed. No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, railroad trains, or other on-track equipment, regardless of any traffic control signal indication to proceed.

49-615 — Drivers to exercise due care

49-615. Drivers to exercise due care. Notwithstanding other provisions of this title or the provisions of any local ordinance, every driver of a motor vehicle shall exercise due care to avoid colliding with any pedestrian or any operator or rider of a human-powered vehicle, bicycle, or electric-assisted bicycle and shall give an audible signal when necessary. Every driver of a motor vehicle shall exercise proper precaution upon observing any child or any obviously confused, incapacitated, or intoxicated person.

49-616 — Driving through safety zone prohibited

49-616. Driving through safety zone prohibited. No vehicle shall at any time be driven through or within a safety zone.

49-619 — Slow moving vehicles — Restrictions and exceptions, equipment — Emblems on certain machinery — Limited exemption

49-619. Slow moving vehicles — Restrictions and exceptions, equipment — Emblems on certain machinery — Limited exemption.

(1) It shall be unlawful to operate a slow moving vehicle on the highways at the following times and under the following circumstances:

(a) From one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, unless the vehicle or equipment is equipped with lights as required by section 49-916 , Idaho Code;

(b) At a speed in excess of twenty-five (25) miles per hour, unless the vehicle or equipment, including towed units of farm equipment, is designed to safely travel at speeds in excess of twenty-five (25) miles per hour, but no such vehicle or equipment shall exceed the posted maximum speed limit and shall be operated by a licensed driver; and

(c) In such a manner as to obstruct the free movement of traffic on the highways except when no safe and reasonable designated turnout or location exists for a slow moving vehicle, farm tractor, construction equipment, or implement of husbandry to temporarily exit the roadway or otherwise allow traffic to pass.

(2) A slow moving vehicle shall be equipped with a braking system and with a mechanical signaling device as required for other similarly constructed vehicles.

(3) All slow moving vehicles, farm tractors, road rollers, and implements of husbandry shall have affixed at the rear of the vehicle an emblem identifying them as slow moving equipment. The Idaho traffic safety commission shall recommend to

the board the minimum standards for the emblem.

(4) Emergency and snow removal vehicles owned and operated by the state or its political subdivisions when en route to, from, or in the performance of activities essential to the public safety, shall be exempt from the provisions of paragraphs (a) and (c) of subsection (1) of this section.

49-623 — Authorized emergency or police vehicles

49-623. Authorized emergency or police vehicles.

(1) The driver of an authorized emergency or police vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated.

(2) The driver of an authorized emergency or police vehicle may:

(a) Park or stand, irrespective of the parking or standing provisions of this title;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the maximum speed limits so long as he does not endanger life or property;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to an authorized emergency or police vehicle shall apply when necessary to warn and to make use of an audible signal having a decibel rating of at least one hundred (100) at a distance of ten (10) feet and/or is displaying a flashing light visible in a 360 degree arc at a distance of one thousand (1,000) feet under normal atmospheric conditions.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons, nor shall these provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(5) The foregoing provisions shall apply to the driver of an authorized emergency or police vehicle of another state of the United States who enters this state in response to an emergency call, or when in the fresh pursuit of a suspected felon as provided in section 19-701 , Idaho Code, or when responding to but not upon returning from a fire alarm.

49-624 — Driver duty upon approaching a stationary vehicle displaying flashing lights

49-624. Driver duty upon approaching a stationary vehicle displaying flashing lights. The driver of a motor vehicle, upon approaching a stationary police vehicle displaying flashing lights, an authorized emergency vehicle displaying flashing lights, a stationary tow truck displaying flashing lights, or a stationary highway incident response vehicle displaying flashing lights, shall:

(1) If the driver is traveling on a highway with two (2) or more lanes carrying traffic in the same direction, immediately reduce the speed of his vehicle below the posted speed limit, proceed with due caution and, if traveling in a lane adjacent to a stationary police vehicle displaying flashing lights, an authorized emergency vehicle displaying flashing lights, a stationary tow truck displaying flashing lights, or a highway incident response vehicle displaying flashing lights, change lanes into a lane that is not adjacent to such vehicle as soon as it is possible to do so in a manner that is reasonable and prudent under the conditions then existing, with regard to actual and potential hazards.

(2) If the driver is traveling on a highway with one (1) lane for each direction of travel, immediately reduce the speed of his vehicle below the posted speed limit and maintain a safe speed for the road, weather, and traffic conditions until completely past the stationary police vehicle, authorized emergency vehicle, stationary tow truck, or highway incident response vehicle.

49-625 — Operation of vehicles on approach of authorized emergency or police vehicles

49-625. Operation of vehicles on approach of authorized emergency or police vehicles.

(1) Upon the immediate approach of an authorized emergency or police vehicle making use of an audible or visible signal, meeting the requirements of section 49-623 , Idaho Code, the driver of every other vehicle shall yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the nearest edge or curb on the right side of the highway and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed, except when otherwise directed by a peace officer.

(2) This section shall not operate to relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons using the highway.

49-626 — Following fire apparatus prohibited

49-626. Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow closer than five hundred (500) feet any fire apparatus traveling in response to a fire alarm, or stop a vehicle within five hundred (500) feet of any fire apparatus stopped in answer to a fire alarm.

49-627 — Crossing fire hose

49-627. Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, road or driveway to be used at any fire or alarm of fire, without the consent of the fire department official in command.

49-630 — Drive on right side of roadway — Exceptions

49-630. Drive on right side of roadway — Exceptions.

(1) Upon all highways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway. Any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within a distance as to constitute an immediate hazard;

(c) Upon a highway divided into three (3) marked lanes for traffic under the applicable rules; or

(d) Upon a highway restricted to one-way traffic.

(2) Upon all highways any vehicle proceeding at less than normal speed of traffic at the time and place and under the conditions then existing, shall be driven in the right-hand lane available for traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) No vehicle shall be driven to the left of the center line upon any highway having four (4) or more lanes for moving traffic and providing for two-way movement of traffic, except when authorized by a traffic-control device designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b) of this section. This subsection shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road or driveway.

49-631 — Passing vehicles proceeding in opposite directions

49-631. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right. Upon highways having width for not more than one (1) line of traffic in each direction, each driver shall give to the other at least one-half the main traveled portion of the highway as possible.

49-632 — Overtaking a vehicle on the left

49-632. Overtaking a vehicle on the left. The following shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special requirements stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

49-633 — When passing on the right is permitted

49-633. When passing on the right is permitted.

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a highway with unobstructed pavement of sufficient width for two (2) or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. That movement shall not be made by driving off the roadway.

49-634 — Limitations on overtaking on the left

49-634. Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the highway in overtaking and passing another vehicle proceeding in the same direction, unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred (200) feet of any approaching vehicle.

49-635 — Further limitations on driving on left of center of highway

49-635. Further limitations on driving on left of center of highway.

(1) No vehicle shall be driven on the left side of the highway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within a distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing, unless otherwise indicated by traffic control devices;

(c) When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

(2) The foregoing limitations shall not apply upon a one-way highway, nor under the conditions described in subsection (1)(b) of section 49-630 , Idaho Code, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

(3) A motorist may drive to the left of no passing pavement markings to complete a passing maneuver started in advance of the no-passing zone, providing the requirements of section 49-634 , Idaho Code, are met.

(4) The provisions of this section do not apply under the conditions described in section 49-630 (1)(b), Idaho Code, nor to the driver of a vehicle turning into, or from a highway.

49-636 — One-way highways

49-636. One-way highways. Upon a highway designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by traffic-control devices.

49-637 — Driving on highways laned for traffic

49-637. Driving on highways laned for traffic. Whenever any highway has been divided into two (2) or more clearly marked lanes for traffic the following, in addition to all else, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.

(2) Upon a highway which is divided into three (3) lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance, or in preparation for making a left-turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and the allocation is designated by a traffic-control device.

(3) Traffic-control devices may be erected directing specified traffic to use a designated lane, or designate those lanes to be used by traffic moving in a particular direction, regardless of the center of the highway and drivers of vehicles shall obey the directions of every device.

(4) Traffic-control devices may be installed prohibiting the changing of lanes on sections of highways and drivers of vehicles shall obey the directions of every device.

49-638 — Following too closely

49-638. Following too closely.

(1) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway.

(2) The driver of any motor vehicle drawing another vehicle when traveling upon a highway outside of a business or residential district and which is following another motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This shall not prevent a motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.

(3) Motor vehicles being driven upon any highway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each vehicle or combination of vehicles in order to enable any other vehicle to enter and occupy the space without danger. This provision shall not apply to funeral processions.

49-639 — Turning out of slow moving vehicles

49-639. Turning out of slow moving vehicles. On a two-lane highway outside an urban area where passing is unsafe due to oncoming traffic or other conditions, the driver of a vehicle, including but not limited to a vehicle traveling slower than the normal speed of traffic, a slow moving vehicle, a farm tractor, construction equipment, or an implement of husbandry, behind which three (3) or more vehicles are formed in line shall turn off the roadway at the nearest place designated as a turnout or at the next available location where it is safe and reasonable for the vehicle to be pulled over in order to permit the following vehicles to pass. Such driver shall not be deemed to violate this section if he has not, during the time when three (3) or more vehicles are formed in line behind his vehicle, passed a designated turnout or location where it would be safe and reasonable for the vehicle to be pulled over.

49-640 — Vehicles approaching or entering unmarked or uncontrolled intersection

49-640. Vehicles approaching or entering unmarked or uncontrolled intersection.

(1) When two (2) vehicles approach or enter an unmarked or uncontrolled intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(2) The right of way rule declared in subsection (1) of this section is modified as follows:

(a) At "T" intersections where one (1) highway ends when it meets a second highway not ending at that point of convergence. When two (2) vehicles approach or enter a "T" intersection from different directions at approximately the same time, the driver of the vehicle on the highway ending at the intersection shall yield the right of way to the other vehicle;

(b) At through highways; and

(c) Otherwise as stated in this title.

49-641 — Vehicle turning left

49-641. Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection, or so close as to constitute an immediate hazard.

49-642 — Vehicle entering highway

49-642. Vehicle entering highway. The driver of a vehicle about to enter or cross a highway from any place other than another highway shall yield the right-of-way to all vehicles approaching on the highway to be entered or crossed.

49-643 — Highway construction and maintenance

49-643. Highway construction and maintenance.

(1) The driver of a vehicle shall yield the right-of-way to any vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by traffic-control devices.

(2) The driver of a vehicle shall yield the right-of-way to any authorized vehicle obviously and actually engaged in work upon a highway whenever that vehicle displays flashing lights meeting the requirements adopted by the board.

49-644 — Required position and method of turning

49-644. Required position and method of turning. The driver of a vehicle intending to turn shall do so as follows:

(1) Both the approach for a right turn and the right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction on the highway being entered.

(3) Where a special lane for making left turns by drivers proceeding in opposite directions has been indicated by traffic-control devices:

(a) A left turn shall not be made from any other lane;

(b) A vehicle shall not be driven in the lane except when preparing for or making a left turn from or into the highway or when preparing for or making a U-turn when otherwise permitted by law.

49-645 — Limitations on turning around

49-645. Limitations on turning around.

(1) The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(2) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet, or where a no-passing zone has been established.

49-648 — Obedience to signal indicating approach of train or other on-track equipment

49-648. Obedience to signal indicating approach of train or other on-track equipment.

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements shall apply when:

(a) A stop sign is in place and there is an absence of any mechanical warning signals;

(b) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment;

(c) A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment;

(d) A railroad train or other on-track equipment approaching within approximately one thousand five hundred (1,500) feet of the highway crossing emits a signal audible from that distance and the railroad train or other on-track equipment, by reason of its speed or nearness to the crossing, is an immediate hazard;

(e) An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to the crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

49-649 — Compliance with stopping requirement at all railroad grade crossings

49-649. Compliance with stopping requirement at all railroad grade crossings.

(1) The driver of any vehicle stopped at a railroad grade crossing shall listen and look in both directions along the track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment and shall not proceed until he can do so safely. Upon proceeding when it is safe to do so the driver shall cross only in a gear of the vehicle in order that there will be no necessity for manually changing gears while traversing the crossing, and the driver shall not manually shift gears while crossing the tracks.

(2) This section shall not apply at:

(a) Any railroad grade crossing at which traffic is controlled by a peace officer or flagman;

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train or other on-track equipment; or

(d) Any railroad grade crossing at which a traffic control device gives notice that the stopping requirement imposed by this section does not apply.

49-650 — Moving heavy equipment at railroad grade crossings

49-650. Moving heavy equipment at railroad grade crossings.

(1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half (1/2) inch per foot of the distance between any two (2) adjacent axles or, in any event, of less than nine (9) inches, measured above the level surface of a highway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of intended crossing shall be given to a station agent of the railroad and a reasonable time be given to the railroad to provide proper protection at the crossing.

(3) Before making the crossing, the person operating or moving the vehicle or equipment shall first stop not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of the railroad and while so stopped shall listen and look in both directions along the track for any approaching train or other on-track equipment or for signals indicating the approach of a train or other on-track equipment and shall not proceed until the crossing can be made safely.

(4) No crossing shall be made when warning is given by automatic signal, crossing gates, a flagman, or otherwise of the immediate approach of a railroad train, car, or other on-track equipment. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

49-651 — Emerging from alley, driveway or building

49-651. Emerging from alley, driveway or building. The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the highway to be entered where the driver has a view of approaching traffic.

49-652 — school safety patrols — failure to obey unlawful

49-652. school safety patrols — failure to obey unlawful.

(1) It shall be unlawful for the operator of any vehicle to fail to stop his or her vehicle when directed to do so by a member of a school safety patrol who is on duty and who is wearing the school-designated insignia of a school safety patrol member. It shall further be unlawful for the operator of any vehicle to disregard any other reasonable directions of a properly identified member of a school safety patrol while he or she is on duty.

(2) For the purposes of this section, a school safety patrol consists of one (1) or more student body members appointed by an administrative officer of a school. A school safety patrol member shall wear a badge or other appropriate insignia marked "School Patrol" while in the performance of his or her duties, and may display "STOP" or other proper traffic directional signs at school crossings or other points where school children are crossing or about to cross a public street or highway.

49-654 — Basic rule and maximum speed limits

49-654. Basic rule and maximum speed limits.

(1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling on any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (2)(a) Where no special hazard or condition exists that requires lower speed for compliance with subsection (1) of this section, the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

(i) Thirty-five (35) miles per hour in any residential, business or urban district, unless otherwise posted in accordance with section 49-207

(2) or (3), Idaho Code; (ii) Seventy-five (75) miles per hour on interstate highways, unless otherwise posted in accordance with section 49-201 (4), Idaho Code, and provided that this speed may be increased to eighty (80) miles per hour if the department completes an engineering and traffic study on the interstate highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion; (iii) Sixty-five (65) miles per hour on state highways, unless otherwise posted in accordance with section 49-201 (4), Idaho Code, and provided that this speed may be increased to seventy (70) miles per hour if the department completes an engineering and traffic study on the state highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion; (iv) Fifty-five (55) miles per hour in other locations, unless otherwise posted, up to a maximum of seventy (70) miles per hour.

(b) Subject to all other applicable motor vehicle laws, a driver of a passenger car, motorcycle or pickup truck, not towing any other vehicle, may exceed the posted speed limit by up to fifteen (15) miles per hour while passing another vehicle traveling at less than the posted speed limit, in order to safely pass the vehicle. The overtaking vehicle shall return to the right-hand lane and reduce speed to the posted speed limit as soon as practicable. This paragraph shall be applicable only to:

(i) Passing on the left on roadways divided into two (2) lanes providing only one (1) lane of traffic in each direction and where the posted speed limit is fifty-five (55) miles per hour or greater; or (ii) Passing one (1) or more vehicles traveling in the same direction while in a passing lane. For the purposes of this subparagraph, "passing lane" means an extra roadway lane created by widening a length of roadway to allow faster-moving vehicles to overtake slower-moving vehicles traveling in the same direction without crossing into an opposing travel lane. This subparagraph shall not apply to a vehicle that passes on the right within a passing lane area or to a vehicle that overtakes another vehicle by moving into an opposing traffic lane. This subparagraph shall not apply to roadways with a posted speed limit below fifty-five (55) miles per hour or to any portion of a roadway that is within an incorporated city. (iii) This paragraph shall not be applicable in construction zones. For purposes of basic rule violations and penalties imposed pursuant to this section and Idaho infraction rule 9, the fifteen (15) mile per hour allowance in passing situations provided in this paragraph shall be deemed to be the maximum speed limit from which fines are determined.

(3) For vehicles with five (5) or more axles operating at a gross weight of more than twenty-six thousand (26,000) pounds, the maximum lawful speed limits on interstate highways, in nonurban areas, in urban areas, on state highways, or in other locations shall be the same as for vehicles with less than five (5) axles and operating at a gross weight of twenty-six thousand (26,000) pounds or less.

49-655 — Minimum speed regulation

49-655. Minimum speed regulation. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law. Notwithstanding any minimum speed that may be authorized and posted pursuant to this section, no person shall operate a vehicle in the extreme left-hand lane of a controlled-access highway for a period of time that impedes the flow of other traffic traveling at a lawful rate of speed.

49-656 — Special speed limitations

49-656. Special speed limitations. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure, when the structure is posted as provided in this title.

49-657 — Work zone speed limits — Penalty

49-657. Work zone speed limits — Penalty.

(1) No person shall operate a vehicle in excess of the posted maximum speed limit established for a highway work zone when the work zone is designated by appropriately placed signs indicating: the work zone; the reduced speed limit; and notice of an enhanced penalty for exceeding the reduced speed limit.

(2) Violation of the provisions of this section shall be an infraction punishable by a fixed penalty of fifty dollars ($50.00).

49-658 — School zone speed limit — Penalty

49-658. School zone speed limit — Penalty.

(1) No person shall operate a vehicle in excess of the posted maximum speed limit established for a posted school zone. If a posted school zone speed limit sign includes the words "when children are present," the term shall mean one (1) or more children. The definition applies to children present on the same side of the street as the school building or across the street from the school building in any direction within the marked school zone.

(2) Violation of the provisions of this section shall be an infraction punishable by a minimum penalty of not less than seventy-five dollars ($75.00).

49-659 — Stopping, standing or parking outside business or residential districts

49-659. Stopping, standing or parking outside business or residential districts.

(1) Outside a business or residential district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park or so leave the vehicle off the roadway, but in every event in an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicle shall be available from a distance of two hundred (200) feet in each direction upon the highway.

(2) This section and sections 49-660 and 49-661 , Idaho Code, shall not apply to the driver of any vehicle which is disabled in such a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the vehicle in that position.

49-660 — Stopping, standing or parking prohibited in specified places

49-660. Stopping, standing or parking prohibited in specified places.

(1) Except when necessary to avoid conflict with other traffic, in compliance with law, the directions of a peace officer or traffic control device, no person shall:

(a) Stop, stand or park a vehicle: 1. On the traffic side of any vehicle stopped or parked at the edge or curb of a highway; 2. On a sidewalk; 3. Within an intersection; 4. On a crosswalk; 5. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings; 6. Alongside or opposite any highway excavation or obstruction when stopping, standing, or parking would obstruct traffic; 7. Upon any bridge or other elevated structure upon a highway or within a highway tunnel; 8. On any railroad tracks; 9. On any controlled-access highway; 10. At any place where traffic-control devices prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers: 1. In front of a public or private driveway; 2. Within fifteen (15) feet of a fire hydrant; 3. Within twenty (20) feet of a crosswalk at an intersection; 4. Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a highway; provided, however, that local authorities may by ordinance or resolution permit the standing or parking of vehicles which are six (6) feet or less in height within such thirty (30) foot distance, or as may be specified by ordinance or resolution or as may be designated with appropriate signs; 5. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a highway opposite the entrance to any fire station within seventy-five (75) feet of the entrance (when properly sign-posted); 6. At any place where traffic-control devices prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers: 1. Within fifty (50) feet of the nearest rail of a railroad crossing; 2. At any place where traffic-control devices prohibit parking.

(2) No person shall move a vehicle not lawfully under his control into any prohibited area or away from a curb such a distance as to be unlawful.

49-661 — Additional parking regulations

49-661. Additional parking regulations.

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way highway shall be stopped or parked with the right-hand wheels parallel to and within eighteen (18) inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(2) Except when otherwise provided by local ordinances, every vehicle stopped or parked upon a one-way highway shall be stopped or parked parallel to the curb or edge of the highway, in the direction of authorized traffic movement, with its right-hand wheels within eighteen (18) inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within eighteen (18) inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(3) Local authorities may permit angle parking on any highway, except that angle parking shall not be permitted on any federal-aid or state highway unless the transportation department has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

49-662 — Officers authorized to remove vehicles

49-662. Officers authorized to remove vehicles.

(1) Whenever any peace officer finds a vehicle in violation of any of the provisions of section 49-659 , Idaho Code, the officer is authorized to move the vehicle, or require the driver or other person in charge of the vehicle to move it to a position off the roadway.

(2) Any peace officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway in a position or under circumstances as to obstruct the normal movement of traffic.

(3) Any peace officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(a) A report has been made that the vehicle has been stolen or taken without the consent of its owner; or

(b) The person or persons in charge of the vehicle are unable to provide for its custody or removal; or

(c) The person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

(4) Whenever any peace officer finds a vehicle inoperable as a result of an accident and standing upon a highway, the officer is authorized to require the driver or other person in charge of the vehicle to have the vehicle removed from the scene of the accident to a position off the paved or main-traveled part of the highway. In the event that the owner of the vehicle is left incapacitated resulting from injuries suffered from the accident, the officer is authorized to have the inoperative vehicle moved from the scene to the nearest garage or other place of safety.

(5) A peace officer is authorized to require the removal from the main-traveled part of the highway cargo or debris caused by a motor vehicle accident, provided that:

(a) The accident occurs with no apparent serious personal injury or death; and

(b) The removal can be accomplished safely and the removal will result in the improved safety or convenience of travel on the highway.

(6) A transportation department employee in the exercise of the management, control and maintenance of a highway of the state highway system may assist in the removal from the main-traveled part of the highway cargo or debris caused by a motor vehicle accident when directed by a peace officer.

(7) Neither the peace officer nor transportation department employee, nor anyone acting under the direction of the officer is liable for damage to the motor vehicle, cargo or debris caused by reasonable efforts of removal.

(8) Nothing herein shall be construed to interfere with the duty of any city, county or state police officer to investigate and detect crime and enforce the penal, traffic or highway laws of this state or any political subdivision.

49-663 — Restricted use of neighborhood electric vehicles on highways

49-663. Restricted use of neighborhood electric vehicles on highways.

(1) It is unlawful to operate a neighborhood electric vehicle on any highway with a posted speed limit of over thirty-five (35) miles per hour.

(2) It is unlawful for a person operating a neighborhood electric vehicle to cross any highway with a posted speed limit greater than forty-five (45) miles per hour.

49-665 — Riding on motorcycles

49-665. Riding on motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached to it, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the vehicle.

49-666 — Motorcycle, motorbike, UTV and ATV safety helmets AND SEATBELTS — Requirements and standards

49-666. Motorcycle, motorbike, UTV and ATV safety helmets AND SEATBELTS — Requirements and standards.

(1) No person under eighteen (18) years of age shall ride upon or be permitted to operate a motorcycle, motorbike, utility type vehicle or an all-terrain vehicle unless at all times when so operating or riding upon the vehicle he is wearing, as part of his motorcycle, motorbike, UTV or ATV equipment, a protective safety helmet of a type and quality equal to or better than the standards established for helmets by the director. The provisions of this section shall not apply when such vehicles are operated or ridden on private property or are used as an implement of husbandry. The provisions of this section shall also not apply to completely enclosed autocycles or to UTVs that are equipped with a roll cage and seat belts.

(2) Except as provided in section 49-672 , Idaho Code, any operator or passenger in a UTV equipped with safety restraints who is sixteen (16) years of age or younger shall wear a safety restraint that is properly fastened about such operator's or passenger's body at all times while the vehicle is in motion.

(3) A citation may be issued to any occupant of a UTV who is sixteen (16) years of age or younger and who fails to wear a safety restraint while such vehicle is in motion pursuant to the requirements of subsection (2) of this section.

(4) A citation may be issued to any person who operates a UTV if any occupant of such UTV who is sixteen (16) years of age or younger fails to wear a safety restraint while such vehicle is in motion pursuant to the requirements of subsection (2) of this section.

(5) A person who is issued a citation pursuant to this section shall be subject to a fine of fifty dollars ($50.00). A conviction under this section shall not result in violation point counts pursuant to section 49-326 , Idaho Code, nor shall such a conviction be deemed to be a moving traffic violation for the purposes of establishing rates of motor vehicle insurance charged by a casualty insurer.

49-669 — Snowmobile operation limited

49-669. Snowmobile operation limited.

(1) No person shall operate a snowmobile on any controlled-access highway.

(2) No person shall operate a snowmobile on any other highway except when crossing the highway at a right angle, when use of the highway by other vehicles is impossible because of snow, or when the operation is authorized by the authority having jurisdiction over the highway.

49-672 — Passenger safety for children

49-672. Passenger safety for children.

(1) No noncommercial motor vehicle operator shall transport a child who is six (6) years of age or younger in a motor vehicle manufactured with seat belts after January 1, 1966, unless the child is properly secured in a child safety restraint that meets the requirements of federal motor vehicle safety standard no. 213.

(2) The provisions of this section shall not apply:

(a) If all of the motor vehicle's seat belts are in use, but in such an event any unrestrained child to which this section applies shall be placed in the rear seat of the motor vehicle, if it is so equipped; or

(b) When the child is removed from the car safety restraint and held by the attendant for the purpose of nursing the child or attending the child's other immediate physiological needs.

(3) The failure to use a child safety restraint shall not be considered under any circumstances as evidence of contributory negligence, nor shall such failure be admissible as evidence in any civil action with regard to negligence.

49-673 — Safety restraint use

49-673. Safety restraint use.

(1) Except as provided in section 49-672 , Idaho Code, and subsection (2) of this section, each occupant of a motor vehicle that has a gross vehicle weight of not more than eight thousand (8,000) pounds, and that was manufactured with safety restraints in compliance with federal motor vehicle safety standard no. 208, shall have a safety restraint properly fastened about the occupant's body at all times when the vehicle is in motion.

(2) The provisions of this section shall not apply to:

(a) An occupant of a motor vehicle who possesses a written statement from a licensed physician that the occupant is unable for medical reasons to wear a safety restraint;

(b) Occupants of motorcycles, implements of husbandry and emergency vehicles;

(c) Occupants of seats of a motor vehicle in which all safety restraints are then properly in use by other occupants of that vehicle; or

(d) Mail carriers only if all vehicle regulations and safety practices of the United States postal service are adhered to.
(3)(a) A citation may be issued to:

(i) Any occupant of the motor vehicle who is age eighteen (18) years or older and fails to wear a safety restraint as required in this section; and (ii) The operator of the motor vehicle who is age eighteen (18) years or older if any occupant under eighteen (18) years of age fails to wear a safety restraint as required in this section. For purposes of this subparagraph, it shall be deemed a single violation regardless of the number of occupants not properly restrained.

(b) A person issued a citation pursuant to this subsection shall be subject to a fine of ten dollars ($10.00). A conviction under this subsection shall not result in violation point counts as prescribed in section 49-326 , Idaho Code, nor shall such a conviction be deemed to be a moving traffic violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(4) A citation may be issued to the operator of the motor vehicle if the operator is under eighteen (18) years of age and the operator or any other occupant who is under eighteen (18) years of age fails to wear a safety restraint as required in this section. For purposes of this subsection, it shall be deemed a single violation regardless of the number of occupants not properly restrained. A person issued a citation pursuant to this subsection shall be subject to a fine of ten dollars ($10.00), plus court costs. A conviction under this subsection shall not result in violation point counts as prescribed in section 49-326 , Idaho Code. In addition, a conviction under this subsection shall not be deemed to be a moving traffic violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when the operator of the motor vehicle has been detained for a suspected violation of another law.

(6) The department shall initiate and conduct an educational program, to the extent sufficient private donations or federal funds for this specific purpose are available to the department, to encourage compliance with the provisions of this section and to publicize the effectiveness of use of safety restraints and other restraint devices in reducing risk of harm to occupants of motor vehicles.

(7) The department shall evaluate the effectiveness of the provisions of this section and shall include a report of its findings in its annual evaluation report on the Idaho highway safety plan which it submits to the national highway traffic safety administration and federal highway administration pursuant to 23 U.S.C. section 402.

(8) The failure to use a safety restraint shall not be considered under any circumstances as evidence of contributory or comparative negligence, nor shall such failure be admissible as evidence in any civil action with regard to negligence.

49-674 — Harvest season

49-674. Harvest season. Harvest season for the purpose of vehicles transporting agricultural products shall be year-round.

49-675 — legislative intent

49-675. legislative intent. The Idaho transportation department and the Idaho state police are authorized to enter into one (1) or more joint exercise of powers agreements pursuant to sections 67-2328 through 67-2333 , Idaho Code, as deemed necessary to implement the provisions of this act. The purpose of this legislation is to provide a practical inspection method to ensure regulation with a minimum amount of disruption.

49-676 — dyed fuel — inspection

49-676. dyed fuel — inspection.

(1) The provisions of this section shall be carried out through the use of existing state law enforcement and Idaho transportation department resources.

(2) When stopped at a fixed or portable check station or when otherwise lawfully stopped as described in this section, any commercial diesel-powered motor vehicle that is within either of the definitions provided in section 49-123 (2)(d) or (2)(e), Idaho Code, and that has a gross vehicle weight in excess of twenty-six thousand (26,000) pounds may be subject to visual inspection for dyed fuel in the diesel fuel tanks mounted to such vehicle when the operator is requested to submit to such inspection:

(a) By any Idaho state police officer, when so requested as a secondary action when the operator of the motor vehicle has been detained for a suspected violation of another law;

(b) By any Idaho state police officer at a fixed or portable check station established by the Idaho transportation department pursuant to the provisions of section 40-510 , Idaho Code; or

(c) By an authorized employee of the Idaho transportation department on duty at a fixed or portable check station established by the Idaho transportation department pursuant to the provisions of section 40-510 , Idaho Code.

(3) Neither the Idaho state police nor the Idaho transportation department shall set up random inspection stations for the purpose of testing for dyed diesel.

(4) No state agency shall report any violation of section 63-2425 , Idaho Code, to any agency of the federal government.

(5) Inspection authority as provided in subsection (2) of this section shall be limited solely to the motor vehicle inspected and shall not serve as reasonable suspicion for any state agency to thereafter inspect other motor vehicles, facilities, or property of the motor vehicle's owner beyond the scope of subsection (2) of this section. Inspection authority shall not apply to portable fuel tanks or slip tanks that may be in the motor vehicle being inspected or to any bulk storage tanks.

(6) If dyed fuel is discovered pursuant to an inspection authorized by this section, a citation shall be issued to the operator of the vehicle. The applicable penalty shall be as provided for in section 63-2460 (2), Idaho Code, except that the penalty for a refusal of inspection shall be one thousand dollars ($1,000). No additional fines or penalties shall be imposed. The operator of the vehicle shall be responsible for any penalty pursuant to this section. All penalties collected shall be remitted to the state treasurer and placed in the highway distribution account.

(7) The provisions of this section shall not apply in the event of a disaster or emergency declared by the governor under chapter 10, title 46 , Idaho Code, or by the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. 5121 et seq., if the use of dyed fuel is necessary to assist with such disaster or emergency.

(8) For purposes of this section, "dyed fuel" means diesel fuel that has been dyed or marked at a refinery or terminal under the provisions of 26 U.S.C. 4082 and regulations adopted thereunder or under the clean air act and regulations adopted thereunder on which the tax under section 63-2402 , Idaho Code, has not been paid.

(9) For purposes of this section, "highways" shall have the same meaning as provided in section 63-2401 , Idaho Code.

(10) By January 1, 2021, the Idaho transportation department and the Idaho state police shall enter into one (1) or more joint exercise of powers agreements pursuant to sections 67-2328 through 67-2333 , Idaho Code, as necessary to implement the provisions of this section.

(11) Prior to conducting any inspections under the authority of this section, the Idaho state police and the Idaho transportation department, in collaboration with private groups, trade associations, and other dyed fuel user groups, shall provide outreach and education on the use of dyed fuels in Idaho for a period of six (6) months from the effective date of this section.

(12) The provisions of this section and associated funding shall be evaluated by the legislature following a period of five (5) years after the effective date of this section.

CHAPTER 7

49-701 — Pedestrian obedience to traffic-control devices and traffic regulations

49-701. Pedestrian obedience to traffic-control devices and traffic regulations.

(1) A pedestrian shall obey the instructions of any traffic-control devices specifically applicable to him, unless otherwise directed by a peace officer.

(2) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in sections 49-802 and 49-803 , Idaho Code.

(3) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this title.

49-702 — Pedestrians' right-of-way in crosswalks

49-702. Pedestrians' right-of-way in crosswalks.

(1) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to yield to a pedestrian crossing the highway within a crosswalk.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(3) Subsection (1) of this section shall not apply under the conditions stated in section 49-704 (2), Idaho Code.

(4) Whenever any vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the highway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(5) Except where otherwise indicated by a crosswalk or other traffic-control devices a pedestrian shall cross the highway at right angles to the curb or by the shortest route to the opposite curb.

49-703 — Pedestrians to use right half of crosswalks

49-703. Pedestrians to use right half of crosswalks. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

49-704 — Crossing at other than crosswalks

49-704. Crossing at other than crosswalks.

(1) Every pedestrian crossing a highway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway.

(2) Any pedestrian crossing a highway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the highway.

(3) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) No pedestrian shall cross a highway intersection diagonally unless authorized by traffic-control devices. When authorized to cross diagonally, pedestrians shall cross only in accordance with the traffic-control devices pertaining to crossing movements.

49-705 — Pedestrians yield to authorized emergency vehicles

49-705. Pedestrians yield to authorized emergency vehicles.

(1) Upon the immediate approach of an authorized emergency vehicle making use of an audible or visual signal meeting the requirements of section 49-623 , Idaho Code, or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right-of-way to the authorized emergency or police vehicle.

(2) This section shall not relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

49-706 — pedestrian with a disability has right-of-way

49-706. pedestrian with a disability has right-of-way. The driver of a vehicle shall yield the right-of-way to any individual with a disability carrying a clearly visible white cane or accompanied by a service dog.

49-707 — Pedestrians' right-of-way on sidewalks

49-707. Pedestrians' right-of-way on sidewalks. The driver of a vehicle crossing a sidewalk shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk.

49-708 — Pedestrians on highways

49-708. Pedestrians on highways.

(1) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(2) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way highway, shall walk only on the left side of the highway.

(4) Except as otherwise provided in this title, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

49-709 — Pedestrians soliciting rides or business

49-709. Pedestrians soliciting rides or business.

(1) No person shall stand on a highway for the purpose of soliciting a ride.

(2) No person shall stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle, provided however, that a person may stand on a highway other than a state or federal highway to solicit contributions if authorized to do so in writing by the local authority having jurisdiction over the highway, and provided further, that any such authorization shall not be valid for more than one (1) year from the date of issuance.

(3) No person shall stand on or in proximity to a highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

49-710 — Bridge and railroad signals

49-710. Bridge and railroad signals.

(1) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(2) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

49-713 — Application

49-713. Application.

(1) The parent of any child and the guardian of any ward shall not authorize or knowingly permit the child or ward to violate any of the provisions of the remainder of this chapter.

(2) Statutes applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to exceptions stated herein.

49-714 — Traffic laws apply to operators or riders of human-powered vehicles, bicycles, or electric-assisted bicycles — Due care

49-714. Traffic laws apply to operators or riders of human-powered vehicles, bicycles, or electric-assisted bicycles — Due care.

(1) Every operator or rider of a human-powered vehicle, bicycle, or electric-assisted bicycle shall have all of the rights and all of the duties applicable to the driver of any other vehicle under the provisions of chapters 6 and 8 of this title, except as otherwise provided in this chapter and except as to those provisions which by their nature can have no application.

(2) Every operator or rider of a human-powered vehicle, bicycle, or electric-assisted bicycle shall exercise due care.

49-715 — Riding on human-powered vehicles, bicycles, or electric-assisted bicycles

49-715. Riding on human-powered vehicles, bicycles, or electric-assisted bicycles.

(1) No operator or rider of a human-powered vehicle, bicycle, or electric-assisted bicycle shall ride other than on or astride an attached permanent and regular seat.

(2) No human-powered vehicle, bicycle, or electric-assisted bicycle shall be used to carry more persons at one (1) time than the number for which it is designed and equipped.

(3) An adult rider may carry a child securely attached to his person in a backpack or sling or in a child carrier attached to a human-powered vehicle, bicycle, or electric-assisted bicycle.

49-716 — Clinging to or following vehicles

49-716. Clinging to or following vehicles.

(1) No person riding upon any bicycle, coaster, roller skates, skateboard, sled or toy vehicle shall attach it or himself to any vehicle upon a highway.

(2) The provisions of this section shall not prohibit the attachment of a bicycle trailer or bicycle semitrailer to a bicycle if that trailer or semitrailer has been designed for that attachment.

(3) No person riding upon any bicycle or human-powered vehicle shall follow a vehicle so closely as to constitute an immediate hazard to the rider.

49-717 — Position on highway

49-717. Position on highway.

(1) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

(a) When overtaking and passing another bicycle or vehicle proceeding in the same direction.

(b) When preparing for a left turn at an intersection or into a private road or driveway.

(c) When reasonably necessary to avoid conditions including fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards or substandard width lanes that make it unsafe to continue along the right-hand curb or edge.

(2) Any person operating a bicycle upon a one-way roadway with two (2) or more marked traffic lanes may ride as near the left-hand curb or edge of the roadway as practicable.

49-718 — Riding two abreast

49-718. Riding two abreast. Persons riding bicycles upon a highway shall not ride more than two (2) abreast except on paths or parts of highways set aside for the exclusive use of bicycles. Persons riding two (2) abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

49-719 — Carrying articles

49-719. Carrying articles. No person operating a bicycle shall carry any package, bundle or article which prevents the operator from using at least one (1) hand in the control and operation of the bicycle.

49-720 — Stopping — Turn and stop signals

49-720. Stopping — Turn and stop signals.

(1) A person operating a bicycle, human-powered vehicle, or an electric-assisted bicycle approaching a stop sign shall slow down and, if required for safety, stop before entering the intersection. After slowing to a reasonable speed or stopping, the person shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the person is moving across or within the intersection or junction of highways, except that a person, after slowing to a reasonable speed and yielding the right-of-way, if required, may cautiously make a turn or proceed through the intersection without stopping.

(2) A person operating a bicycle or human-powered vehicle approaching a steady red traffic control light shall stop before entering the intersection and shall yield to all other traffic. Once the person has yielded, he may proceed through the steady red light with caution. Provided however, that a person, after slowing to a reasonable speed and yielding the right-of-way, if required, may cautiously make a right-hand turn. A left-hand turn onto a one-way highway may be made on a red light after stopping and yielding to other traffic.

(3) A person riding a bicycle shall comply with the provisions of section 49-644 , Idaho Code.

(4) A signal of intention to turn right or left shall be given during not less than the last one hundred (100) feet traveled by the bicycle before turning, provided that a signal by hand and arm need not be given if the hand is needed in the control or operation of the bicycle.

49-721 — Bicycles on sidewalks

49-721. Bicycles on sidewalks.

(1) A person operating a bicycle upon and along a sidewalk, or across a highway upon and along a crosswalk, shall yield the right-of-way to any pedestrian, and shall give an audible signal before overtaking and passing a pedestrian or another bicyclist.

(2) A person shall not operate a bicycle along and upon a sidewalk or across a highway upon and along a crosswalk, where the use of bicycles is prohibited by official traffic control devices.

(3) A person operating a vehicle by human power, or operating a motorized wheelchair or an electric personal assistive mobility device upon and along a sidewalk, or across a highway upon and along a crosswalk, shall have all the rights and duties applicable to a pedestrian under the same circumstances.

49-722 — Bicycle racing

49-722. Bicycle racing.

(1) Bicycle racing on the highways is prohibited except as authorized in this section.

(2) Bicycle racing on a highway shall not be unlawful when a racing event has been approved by the department or local law enforcement authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events shall be granted only under conditions which assure reasonable safety for all race participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users.

(3) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempt from compliance with any traffic laws otherwise applicable, provided that traffic control is adequate to assure the safety of all highway users.

49-723 — Light and reflector required at night

49-723. Light and reflector required at night. Every bicycle in use at the times described in section 49-903 , Idaho Code, shall be operated with a light emitting device visible from a distance of at least five hundred (500) feet to the front, attached to the bicycle or the rider, and with a reflector clearly visible from the rear of the bicycle.

49-724 — Additional lights authorized

49-724. Additional lights authorized. A bicycle or its rider may be equipped with lights or reflectors in addition to those required in section 49-723 , Idaho Code.

49-725 — rights and duties of electric-assisted bicycles

49-725. rights and duties of electric-assisted bicycles. Except as otherwise provided in this title, an electric-assisted bicycle shall be subject to all the safety requirements of a bicycle. A rider of an electric-assisted bicycle shall be afforded all the rights and privileges and be subject to all of the duties and safety requirements as the rider of a bicycle. Subject to the provisions in this chapter, electric-assisted bicycles may be ridden where bicycles are permitted to travel, unless excluded by local ordinance or by signage posted by the public agency with jurisdiction after notice by inclusion on a governing board agenda.

49-726 — insurance, licensing, and registration

49-726. insurance, licensing, and registration. Electric-assisted bicycles are not subject to the provisions of section 49-301 , Idaho Code, relating to driver's licenses. An electric-assisted bicycle and any person operating an electric-assisted bicycle are not subject to the provisions of this title relating to financial responsibility, driver's licenses, titles, registration, and license plate requirements. An electric-assisted bicycle shall be considered a motor vehicle to the extent required by 23 U.S.C. 154.

49-727 — labeling

49-727. labeling. On and after September 1, 2019, manufacturers or distributors of electric bicycles shall apply a label that is permanently affixed, in a prominent location, to each electric bicycle. The label shall contain the classification number, top assisted speed, and motor wattage of the electric bicycle, and shall be printed in arial font in at least 9-point type.

49-728 — path use by electric-assisted bicycles

49-728. path use by electric-assisted bicycles. Electric-assisted bicycles may be used in places where bicycles are permitted to travel including but not limited to multiuse paths, unless excluded by local ordinance or by signage posted by the public agency with jurisdiction after notice by inclusion on a governing board agenda.

49-729 — violation

49-729. violation. A violation of applicable provisions in this chapter or in chapter 6, title 49 , Idaho Code, by a rider of an electric-assisted bicycle shall be an infraction.

CHAPTER 8

49-801 — Obedience to and required traffic-control devices

49-801. Obedience to and required traffic-control devices.

(1) The driver of any vehicle shall obey the instructions of any traffic-control device placed or held in accordance with the provisions of this title, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle by this title.

(2) No provisions of this title for which traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation a device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that traffic-control devices are required, the section shall be effective even though no devices are erected and in place.

(3) Whenever traffic-control devices are placed or held in position approximately conforming to the requirements of this title, the devices shall be presumed to have been placed or held by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(4) Any traffic-control device placed or held pursuant to the provisions of this title and purporting to conform to the lawful requirement pertaining to those devices shall be presumed to comply with the requirements of this title, unless the contrary shall be established by competent evidence.

49-802 — Traffic-control signal legend

49-802. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one (1) at a time or in combination, only the colors green, red and yellow shall be used, except for pedestrian-control signals and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication:

(a) A driver facing a circular green signal shall proceed straight through or turn right or left unless a sign prohibits a right or left turn. Any driver, including one turning, shall yield the right-of-way to other traffic and to pedestrians lawfully within the intersection, as defined in section 49-110 , Idaho Code, or an adjacent crosswalk.

(b) A driver facing a green arrow signal, shown alone or in combination with another indication, shall enter the intersection only to make the movement indicated by the green arrow, or other movement that is permitted by other indications shown at the same time. A driver facing a left turn green arrow shall yield the right-of-way to other traffic and to pedestrians lawfully within the intersection or an adjacent crosswalk.

(c) A pedestrian facing a circular green signal, unless prohibited by a sign or otherwise directed by a pedestrian-control signal, as provided in section 49-803 , Idaho Code, may proceed across the highway within any marked or unmarked crosswalk, but shall yield the right-of-way to vehicles lawfully within the intersection at the time that signal is first shown.

(d) A pedestrian facing a green arrow turn signal, unless otherwise directed by a pedestrian-control signal, as provided in section 49-803 , Idaho Code, shall not enter the highway.

(2) Steady yellow indication:

(a) A driver facing a steady circular yellow or yellow arrow signal is being warned that the related green movement is ending, or that a red indication will be shown immediately after it.

(b) A pedestrian facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal, as provided in section 49-803 , Idaho Code, is being warned that there is insufficient time to cross the highway.

(3) Steady red indication:

(a) A driver facing a steady circular red signal alone shall stop before entering the intersection, as defined in section 49-110 , Idaho Code, and shall remain stopped until an indication to proceed is shown except as provided in paragraph (b) of this subsection. While stopped at the intersection, the driver shall remain stopped behind the marked limit line, as defined in section 49-113 , Idaho Code, or if there is no marked limit line, shall not block the crosswalk.

(b) Except when a sign is in place prohibiting a turn, a driver after stopping, facing a steady circular red signal, may turn right, or turn left from a highway onto a one-way highway after stopping. Vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) A driver facing a steady red arrow indication shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked limit line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain stopped until an indication permitting movement is shown.

(d) Unless otherwise directed by a pedestrian-control signal, a pedestrian facing a steady circular red or red arrow signal shall not enter the traffic lanes of a highway.

(e) Notwithstanding any provision of law to the contrary, the driver of a motorcycle approaching an intersection that is controlled by a triggered traffic-control signal using a vehicle detection device that is inoperative due to the size of the motorcycle, shall come to a full and complete stop at the intersection. If the signal fails to operate after one cycle of the traffic signal, the driver may proceed after exercising due caution and care. It is not a defense to a violation of section 49-801 , Idaho Code, that the driver of a motorcycle proceeded under the belief that a traffic-control signal used a vehicle detection device or was inoperative due to the size of the motorcycle when such signal did not use a vehicle detection device or that any such device was not in fact inoperative due to the size of the motorcycle.

(4) When an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or crosswalk or limit line indicating where the stop shall be made, but in the absence of a sign or marking, the stop shall be made at the signal.

49-803 — Pedestrian-control signals

49-803. Pedestrian-control signals. Whenever a pedestrian-control signal showing the words "Walk" or "Wait" or "Don't Walk" is in place, the signal shall indicate the following:

(1) Flashing or Steady "Walk". A pedestrian facing the signal may proceed across the highway in the direction of the signal, but shall yield the right-of-way to vehicles lawfully within the intersection at the time the signal is first shown.

(2) Flashing or Steady "Don't Walk" or "Wait". No pedestrian shall start to cross the highway in the direction of the signal, but any pedestrian who has partially completed crossing shall proceed to a sidewalk or safety island while the "Don't Walk" or "Wait" signal is showing.

49-804 — Flashing signals

49-804. Flashing signals.

(1) Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by drivers as follows:

(a) Flashing red (stop signal).– When a red lens is illuminated with rapid intermittent flashes, a driver shall stop at a clearly marked limit line, but if none before entering the crosswalk on the near side of the intersection, or if none then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering it, and the driver may proceed subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal).– When a yellow lens is illuminated with rapid intermittent flashes, a driver may proceed through the intersection or past the signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the requirements set forth in section 49-648 , Idaho Code.

49-805 — Display of unauthorized signs, signals or markings

49-805. Display of unauthorized signs, signals or markings.

(1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be, or is an imitation of, or resembles a traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain, nor shall any public authority permit upon any highway any traffic-control device bearing on it any commercial advertising, except for business signs included as a part of official roadside area information panels approved by the department.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for traffic control signs.

(4) Every prohibited sign, signal or marking is declared to be a public nuisance and the authority having jurisdiction over the highway is empowered to remove the public nuisance or cause it to be removed without notice.

49-806 — Lane use control signals

49-806. Lane use control signals. When lane use control signals are placed over individual lanes, the signals shall indicate and apply to drivers of vehicles as follows:

(1) Green indication. A driver may travel in any lane over which a green signal is shown.

(2) Steady yellow indication. A driver is being warned that a lane control change is in process.

(3) Steady red indication. A driver shall not enter or travel in any lane over which a red signal is shown.

(4) Flashing yellow indication. A driver may use the lane only for the purpose of making a left turn to or from the highway.

49-807 — Stop signs and yield signs

49-807. Stop signs and yield signs.

(1) Preferential right-of-way may be indicated by stop signs or yield signs as authorized in section 49-212 , Idaho Code.

(2) Except when directed to proceed by a peace officer or traffic-control signal, every driver of a vehicle approaching a stop sign shall stop:

(a) at a clearly marked stop line, or

(b) before entering the crosswalk on the near side of the intersection, or

(c) at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of highways.

(3) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, or before entering the crosswalk on the near side of the intersection, or at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of highways. Provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction of highways, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right-of-way.

49-808 — Turning movements and required signals

49-808. Turning movements and required signals.

(1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such a signal.

(4) The signals required on vehicles by section 49-809 , Idaho Code, shall not be flashed on one (1) side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one (1) side only of a parked vehicle except as may be necessary for compliance with this section.

49-809 — Signals by hand and arm or signal lamps

49-809. Signals by hand and arm or signal lamps.

(1) Any stop or turn signal when required shall be given either by means of hand and arm, or by signal lamps, except as otherwise provided in subsection (2) of this section.

(2) Any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of the vehicle exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet. The latter measurements shall apply not only to any single vehicle, but also to any combination of vehicles.

49-810 — Method of giving hand and arm signals

49-810. Method of giving hand and arm signals. All signals required to be given by hand and arm shall be given from the left side of the vehicle in the following manner, and the signals shall indicate the following:

(1) Left turn. – Hand and arm extended horizontally.

(2) Right turn. – Hand and arm extended upward. A person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

(3) Stop or decrease speed. Hand and arm extended downward.

49-811 — Use of optical strobe light devices

49-811. Use of optical strobe light devices.

(1) As used in this section "optical strobe light device" shall mean a strobe light device which emits an optical signal at a specific frequency to a traffic control signal enabling police or emergency vehicles to obtain the right-of-way at intersections or enabling transportation department, city, county or highway district maintenance vehicles to perform maintenance tests on traffic control signals.

(2) A person shall be guilty of a misdemeanor if the person uses an optical strobe light device on the highways of this state unless the person is operating or riding in an authorized emergency vehicle, as defined in section 49-123 , Idaho Code, or is operating or riding in a transportation department, city, county or highway district maintenance vehicle and the person is on official emergency duty while operating or riding in the vehicle.

(3) A person found guilty of violating subsection (2) of this section shall be sentenced by imprisonment of not greater than six (6) months, by a fine not in excess of one thousand dollars ($1,000), or by both such fine and imprisonment.

CHAPTER 9

49-901 — Duties of department and director of Idaho state police

49-901. Duties of department and director of Idaho state police.

(1) The director shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow removal equipment when operated on the highways in lieu of the lamps otherwise required on vehicles by this title. Standards and specifications may permit the use of flashing lights for purposes of identification on snow removal equipment when in service upon the highways.

(2) The director may adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses supplemental to but consistent with the provisions of section 49-914 , Idaho Code. Standards and specifications shall correlate with and so far as possible conform to specifications then current as approved by the society of automotive engineers.

(3) The director is authorized to approve or disapprove lighting devices and to issue and enforce rules establishing standards and specifications for the approval of lighting devices, their installation, adjustment, and aiming, and adjustment when in use on motor vehicles. Regulations shall correlate with and, so far as practicable, conform to the then current standards and specifications of the society of automotive engineers applicable to that equipment.

(4) The director shall approve or disapprove any lighting device, of a type on which approval is specifically required in this title, within a reasonable time after the device has been submitted. He is authorized to set up the procedure which shall be followed when any device is submitted for approval, and upon approving any lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by him. The department shall publish lists of all lamps and devices by name and type which have been approved. Any person desiring approval of a device shall notify the director in writing of the person's intention and shall submit the device for testing and approval as directed by the director. The director shall not approve a lighting device on any motorcycle or motor-driven cycle that does not have a self-recovery lighting system such as a generator or alternator to replace the power supply.

(5) The director shall approve and disapprove warning lighting devices on emergency and police vehicles and establish standards and specifications for emergency warning lighting devices.

(6) When the department has reason to believe that an approved device as being sold commercially does not comply with the requirements of this title, the director may, after giving thirty (30) days' previous notice to the person holding the certificate of approval for the device in this state, conduct a hearing upon the question of compliance of the approved device. After the hearing he shall determine whether the approved device meets the requirements of this title. If the device does not meet the requirements of this title, he shall give notice to the person holding the certificate of approval for the device in this state. If at the expiration of ninety (90) days after the notice, the person holding the certificate of approval for the device has failed to satisfy the department that the approved device as thereafter to be sold meets the requirements of this title, the director shall suspend or revoke the approval issued until or unless the device is resubmitted to and retested by an approved testing agency and found to meet the requirements of this title, and may require that all the devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this title. The department may at the time of the retest, purchase in the open market and submit to the testing agency one or more sets of the approved devices, and if the device upon retest fails to meet the requirements of this title, the director may refuse to renew the certificate of approval of the device.

(7) The director shall adopt and enforce safety requirements, rules and specifications applicable to air conditioning equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to air conditioning equipment approved by the society of automotive engineers.

(8) The director in cooperation with the state board of education shall adopt and enforce rules not inconsistent with this title to govern the design and operation of all school buses when owned and operated by any school district or privately owned and operated under contract with any school district in the state, and these rules shall by reference be made a part of any contract with a school district. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to these rules.

49-902 — Scope and effect

49-902. Scope and effect.

(1) It shall be unlawful for any person to drive, or move, or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in an unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with the lamps and other requirements in proper condition and adjustment, as required by the provisions of this chapter, or which is equipped in any manner in violation of the provisions of this chapter.

(2) Nothing contained in the provisions of this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers, farm tractors or slow moving vehicles except as otherwise specifically made applicable.

49-903 — When lighted lamps are required

49-903. When lighted lamps are required. Every vehicle upon a highway at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as here respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as stated herein.

49-904 — Visibility distance and mounted height of lamps

49-904. Visibility distance and mounted height of lamps.

(1) Whenever a requirement is stated as to the distance from which certain lamps and devices shall render objects visible, or within which lamps or devices shall be visible, those provisions shall apply during the times stated in section 49-903 , Idaho Code, in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever a requirement is stated as to the mounted height of lamps or devices, it shall mean from the center of the lamp or device to the level ground upon which the vehicle stands when the vehicle is without a load.

49-905 — Head lamps on motor vehicles

49-905. Head lamps on motor vehicles.

(1) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle. The head lamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this chapter.

(3) Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured as set forth in section 49-904 (2), Idaho Code.

(4) No person shall operate any motor vehicle on the highways with head lamps which are composed of, covered by, or treated with any material, substance, system, or component which, when such head lamps are not in operation, is highly reflective or otherwise opaque and nontransparent.

(5) No person shall have for sale, sell, or offer for sale any motor vehicles with head lamps that are in violation of the provisions of this section.

(6) Nothing in this section shall be construed to make illegal the operation or sale of any motor vehicle, the head lamps of which are composed of, covered by, or treated with any material, substance, system, or component with which the motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment under any United States government statute or regulation governing the sale at the time of manufacture.

(7) Any person convicted of a violation of the provisions of this section shall be guilty of an infraction.

49-906 — Tail lamps

49-906. Tail lamps.

(1) Every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one (1) tail lamp mounted on the rear, which when lighted as required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear. In the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. Every mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after December 31, 1955, shall be equipped with at least two (2) tail lamps mounted on the rear, which when lighted as required, shall comply with the provisions of this section.

(2) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches.

(3) Any tail lamp shall be wired so to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(4) Nothing herein shall prohibit the display on any vehicle thirty (30) years or older of tail lamps containing a blue or purple insert lens not to exceed one (1) inch in diameter, provided the tail lamp or lamps otherwise comply with the

requirements of this section.

49-907 — Motor vehicles to be equipped with reflectors

49-907. Motor vehicles to be equipped with reflectors.

(1) Every motor vehicle sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two (2) red reflectors. Every motorcycle and every motor-driven cycle shall carry at least one (1) reflector meeting the requirements of this section. Vehicles of the type mentioned in section 49-909 , Idaho Code, shall be equipped with reflectors as required in the applicable subsections.

(2) Except as otherwise provided, every reflector shall be mounted on the vehicle at a height of not less than twenty (20) inches nor more than sixty (60) inches measured as set forth in section 49-904 (2), Idaho Code, and shall be of a size and characteristic and mounted so to be visible at night from all distances within three hundred fifty (350) feet to one hundred (100) feet from the vehicle when directly in front of lawful upper beams of head lamps.

49-908 — Stop lamps and turn signals required on motor vehicles

49-908. Stop lamps and turn signals required on motor vehicles.

(1) After December 31, 1986, it shall be unlawful for any person to sell any motor vehicle, including any motorcycle or motor-driven cycle, in this state or for any person to drive a vehicle on the highways unless it is equipped with at least one (1) stop lamp meeting the requirements of section 49-919 , Idaho Code.

(2) No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer, or semitrailer registered in this state and manufactured or assembled after December 31, 1954, unless it is equipped with mechanical or electrical turn signals meeting the requirements of section 49-918 , Idaho Code. This subsection shall not apply to a motorcycle or motor-driven cycle.

49-909 — Additional equipment required on certain vehicles

49-909. Additional equipment required on certain vehicles. In addition to other equipment required in this chapter, the following vehicles shall be equipped as follows:

(1) On every bus or truck, whatever its size, there shall be:

(a) On each side, one (1) reflector, at or near the rear; and

(b) On the rear, two (2) reflectors, one (1) at each side, and one (1) stoplight.

(2) On every bus or truck eighty (80) inches or more in over-all width and less than thirty (30) feet in over-all length, in addition to the requirements in subsection (1):

(a) On the front, two (2) clearance lamps, one (1) at each side; and

(b) On the rear, two (2) clearance lamps, one (1) at each side.

(3) On every bus or truck thirty (30) feet or more in over-all length, regardless of its width, in addition to the requirements in subsection (1), clearance lamps required in subsection (2), plus:

(a) On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear; and

(b) On each side, one (1) reflector at or near the front.

(4) On every truck tractor, the cab of which is as wide as or wider than any vehicle being drawn:

(a) On the front, two (2) clearance lamps, one (1) at each side; and

(b) On each side, one (1) side marker lamp at or near the front.

(5) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds, if wider than the truck or the cab of the truck tractor drawing it, the following:

(a) On the front, two (2) clearance lamps, one (1) at each side;

(b) On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear;

(c) On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear; and

(d) On the rear, two (2) clearance lamps, one (1) at each side, also two (2) reflectors, one (1) at each side, and one (1) stoplight.

(6) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds if of the same width or less than the truck or the cab of the truck drawing it, the following:

(a) On each side, one (1) side marker lamp near the rear;

(b) On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear;

(c) On the rear, two (2) clearance lamps, one (1) at each side; and

(d) On the rear, two (2) reflectors, one (1) at each side and one (1) stoplight.

(7) On every pole trailer in excess of three thousand (3,000) pounds gross weight:

(a) On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show the front, side and rear; and

(b) On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.

(8) On every trailer, semitrailer and pole trailer weighing three thousand (3,000) pounds gross or less:

(a) On the rear, two (2) reflectors, one (1) on each side; and

(b) On the front, two (2) reflectors, one (1) on each side.

(9) If any trailer or semitrailer is so loaded or is of dimensions which obscure the stoplight on the towing vehicle, then the drawn vehicle shall also be equipped with one (1) stoplight.

(10) Reflectors shall be mounted at a height no less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands. If the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches, the reflector at that point shall be mounted as high as that part of the permanent structure will permit. Rear reflectors on a pole trailer may be mounted on each side of the bolster or load. Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but the reflector shall meet all the other reflector requirements of this chapter.

(11) Clearance lamps shall be mounted on the permanent structure of the vehicle in a manner to indicate its extreme width and as near the top as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as prescribed for both.

(12) Lighting devices required shall be mounted, so far as practicable, in a manner to reduce the hazard of their being obscured by mud or dust thrown by the vehicle's wheels.

(13) On every trailer where the connecting tongue is fifteen (15) feet or more in length two (2) amber-colored reflectors shall be mounted on the connecting tongue, one (1) on each side near the center of the connecting tongue.

49-910 — Color of clearance lamps, side marker lamps, and reflectors

49-910. Color of clearance lamps, side marker lamps, and reflectors.

(1) Front clearance lamps and marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stoplight or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp may be white, amber, or red.

49-910A — Color of lamps and globes limited to certain vehicle classes

49-910A. Color of lamps and globes limited to certain vehicle classes. For the purposes of this chapter lighting devices utilizing various colors of lighted globes approved by the director of the Idaho state police for use on vehicles shall be restricted to the following class of vehicles:

(1) Police vehicles. Only police vehicles shall display blue lights, lenses or globes.

(2) Designated emergency vehicles. Fire fighting vehicles, vehicles belonging to personnel of voluntary fire departments, vehicles belonging to, or operated by EMS personnel certified or otherwise recognized by the Idaho military division while in the performance of emergency medical services, ambulances, sheriff's search and rescue vehicles which are under the immediate supervision of the county sheriff, and wreckers, as defined in section 49-124 , Idaho Code, which are engaged

in motor vehicle recovery operations and are blocking part or all of one or more lanes of traffic, are designated emergency vehicles. With the exception of school buses as provided in section 49-915 , Idaho Code, only fire fighting vehicles, vehicles belonging to personnel of voluntary fire departments, vehicles belonging to, or operated by EMS personnel certified or otherwise recognized by the Idaho military division while in the performance of emergency medical services, ambulances, designated emergency vehicles described herein, vehicles authorized by the Idaho transportation board for use in the enforcement of vehicle laws specified in section 40-510 , Idaho Code, and other emergency vehicles designated by the director of the Idaho state police may display red flashing lights or red lenses or globes which are visible from the front of the vehicle.

(3) All vehicles. Any motor vehicle may have attached to it a flashing amber light to warn motorists of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing the vehicle displaying such lighting. The driver of an approaching vehicle shall yield the right-of-way to any stationary vehicle displaying a flashing amber light.

49-911 — Visibility of reflectors, clearance lamps, and marker lamps

49-911. Visibility of reflectors, clearance lamps, and marker lamps.

(1) Every reflector upon any vehicle referred to in section 49-909 , Idaho Code, shall be of a size and characteristic and maintained to be readily visible at nighttime from all distances within six hundred (600) feet to one hundred (100) feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the side of the vehicle on which mounted.

49-912 — Obstructed lights not required

49-912. Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicles required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

49-913 — Lamp or flag on projecting load

49-913. Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in section 49-903 , Idaho Code, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of the load a red or fluorescent orange flag a minimum of eighteen (18) inches by eighteen (18) inches and hung so that the flag is visible to the driver of a vehicle approaching from the rear.

49-914 — Lamps on parked vehicles

49-914. Lamps on parked vehicles.

(1) Whenever a vehicle is lawfully parked upon a highway at the times specified in section 49-903 , Idaho Code, and in the event there is sufficient light to reveal any person or object within a distance of five hundred (500) feet upon the highway, no lights need be displayed upon the parked vehicle.

(2) Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended, at the times specified in section 49-903 , Idaho Code, and there is not sufficient light to reveal any person or object within a distance of five hundred (500) feet upon the highway, the parked or stopped vehicle shall be equipped with one or more lamps meeting the following requirements: at least one (1) lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the vehicle, and the same lamp or at least one (1) other lamp shall display a red light visible from the same distance to the rear of the vehicle. The location of the lamp shall always be such that at least one

(1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. This provision shall not apply to a motor-driven cycle.

(3) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

49-915 — School buses — Visual signal

49-915. School buses — Visual signal.

(1) Every school bus shall, in addition to any other equipment and distinctive markings required by this title, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level. These lights shall be visible at five hundred (500) feet in normal sunlight.

(2) Any school bus shall, in addition to the lights required by subsection (1), be equipped with yellow signal lamps mounted near each of the four (4) red lamps and at the same level, but closer to the vertical centerline of the bus, which shall display two (2) alternately flashing yellow lights to the front and two (2) alternately flashing yellow lights to the rear. These lights shall be visible at five hundred (500) feet in normal sunlight. These lights shall be displayed by the school bus driver at least two hundred (200) feet before every stop at which the alternately flashing red lights required by subsection (1) will be actuated.

(3) Every school bus shall be equipped with a semaphore stop arm which shall be a flat eighteen (18) inch octagon exclusive of brackets for mounting, with reflectorized material on both sides, be red with a silver white border, and have a legend reading "stop" six (6) inches high with three-quarter (3/4) inch wide silver white letters, mounted outside the bus on the left side opposite driver's seat and have a driver-controlled mechanism. Flashing lamps in the stop arm may be connected to the alternating red flashing signal lamp circuits. The stop arm signal may be vacuum, electric, air or manually controlled.

49-916 — Lamps on farm tractors, farm equipment and implements of husbandry

49-916. Lamps on farm tractors, farm equipment and implements of husbandry.

(1) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall at all times specified in section 49-903 , Idaho Code, be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of the vehicle and shall also be equipped with at least one (1) lamp displaying a red light visible from at least the same distance to the rear of the vehicle, and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps. Lights required in this section shall be positioned so that one (1) lamp showing to the front and one (1) lamp or reflector showing to the rear will indicate the further projection of the tractor, unit or implement on the side of the road used in passing the vehicle.

(2) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall at all times specified in section 49-903 , Idaho Code, be equipped with the following:

(a) At least one (1) lamp mounted to indicate as nearly as practicable the extreme left projection of the combination and displaying a white light visible from a distance of not less than five hundred (500) feet to the front of the combination;

(b) Two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear of the combination when illuminated by the upper beams of head lamps. The reflectors shall be mounted in a manner to indicate as nearly as practicable the extreme left and right rear projections of the towed unit or implement on the highway.

(3) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times specified in section 49-903 , Idaho Code, be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of sections 49-922 or 49-924 , Idaho Code, respectively or, as an alternative, section 49-926 , Idaho Code, and two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps. Red lamps or reflectors shall be mounted in the rear of the farm tractor or self-propelled implement of husbandry to indicate as nearly as practicable the extreme left and right projections of the vehicle on the highway.

(4) The farm tractor element of every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall at all times specified in section 49-903 , Idaho Code, be

equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of sections 49-922 , 49-924 , or 49-926 , Idaho Code.

49-917 — Lamps on other vehicles and equipment

49-917. Lamps on other vehicles and equipment. Every vehicle, including animal-drawn vehicles and other vehicles not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, shall at all times specified in section 49-903 , Idaho Code, be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of the vehicle, and shall also be equipped with two (2) lamps displaying a red light visible from the same distance to the rear of the vehicle, or as an alternative, one (1) lamp displaying a red light visible from the same distance to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

49-918 — Spot lamps and auxiliary lamps

49-918. Spot lamps and auxiliary lamps.

(1) Any motor vehicle may be equipped with not more than two (2) spot lamps, and each lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred (100) feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not more than two (2) fog lamps mounted on the front, at a height not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands, and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five (25) feet ahead project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting these requirements may be used with lower head lamp beams as specified in section 49-922 (2), Idaho Code.

(3) Any motor vehicle may be equipped with not more than two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 49-922 , Idaho Code, shall apply to any combination of head lamps and auxiliary passing lamps.

(4) Any motor vehicle may be equipped with not more than two (2) auxiliary driving lamps mounted on the front at a height not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands. The provisions of section 49-922 , Idaho Code, shall apply to any combination of head lamps and auxiliary driving lamps.

49-919 — Signal lamps and signal devices

49-919. Signal lamps and signal devices.

(1) Any motor vehicle may be equipped and when required under this chapter shall be equipped with stop lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not, be incorporated with one or more other rear lamps.

(2) Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps or mechanical signal devices showing to the front and rear for the purposes of indicating an intention to turn either to the right or left. When lamps are used for this purpose, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable, and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable, and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated the lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made. Where mechanical signal devices are used for this purpose, the devices shall be self-illuminated when in use at the times specified in section 49-903 , Idaho Code.

(3) No stop lamp or signal lamp or device shall project a glaring light.

49-920 — Additional lighting equipment

49-920. Additional lighting equipment.

(1) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one (1) running-board courtesy lamp on each side which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with not more than two (2) back-up lamps either separately or in combination with other lamps, but any back-up lamp shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display that warning in addition to any other warning signals required by this title. Lamps used to display the warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white or amber lights, or any shade or color between white and amber. The lamps used to display the warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred (500) feet under normal atmospheric conditions at night.

(5) Any commercial vehicle eighty (80) inches or more in overall width may be equipped with not more than three (3) identification lamps showing to the front which shall emit an amber light without glare, and not more than three (3) identification lamps showing to the rear which shall emit a red light without glare. These lamps shall be placed in a row and may be mounted either horizontally or vertically.

49-921 — Rear mounted acceleration and deceleration lighting system

49-921. Rear mounted acceleration and deceleration lighting system.

(1) Every motor vehicle, trailer, semitrailer, truck tractor, and pole trailer used in the state may be equipped with an auxiliary lighting system consisting of:

(a) One (1) green light to be activated when the accelerator of the motor vehicle is depressed;

(b) Not more than two (2) amber lights to be activated when the motor vehicle is moving forward, or standing and idling, but is not under the power of the engine.

(2) An auxiliary system shall not interfere with the operation of vehicle tail lamps and shall not interfere with the operation of vehicle signal lamps and signal devices. The system may operate in conjunction with tail lamps or signal lamps and signal devices.

(3) Only one (1) color of the system may be illuminated at any one (1) time, and at all times either the green light, or amber light or lights shall be illuminated when the tail lamps of the vehicle are not illuminated.

(4) The green light and the amber light or lights, when illuminated, shall be plainly visible at a distance of five hundred (500) feet to the rear.

(5) Only one (1) system may be mounted on a motor vehicle, trailer, semitrailer, truck tractor, or pole trailer; and the system shall be rear mounted in a horizontal fashion, at a height of not more than seventy-two (72) inches, nor less than twenty (20) inches.

(6) On a combination of vehicles, only the lights of the rearmost vehicle need actually be seen and distinguished as provided in subsection (4) of this section.

(7) Each manufacturer's model of such a system described in this section shall be approved by the board before it may be sold or offered for sale in the state.

49-922 — Multiple-beam road-lighting equipment

49-922. Multiple-beam road-lighting equipment. Except as otherwise provided in this chapter, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or their combinations on motor vehicles other than a motorcycle or motor-driven cycle shall be so arranged that selection may be made between distributions of light projected to different elevations, and the lamps may be so arranged that the selection can be made automatically, subject to the following

requirements and limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of an intensity to reveal persons and vehicles at a distance of at least three hundred fifty (350) feet ahead for all conditions of loading.

(2) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred (100) feet ahead. On a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(3) Every motor vehicle manufactured after December 31, 1954, other than a motorcycle or motor-driven cycle, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

49-923 — Use of multiple-beam road-lighting equipment

49-923. Use of multiple-beam road-lighting equipment.

(1) Whenever a motor vehicle is being operated on a highway during the times specified in section 49-903 , Idaho Code, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle.

(2) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, the driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, shall be deemed to avoid glare at all times, regardless of road contour and loading.

(3) Whenever the driver of a vehicle follows another vehicle within two hundred (200) feet to the rear, except when engaged in the act of overtaking and passing, the driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in section 49-922 , Idaho Code.

49-924 — Single-beam road-lighting equipment

49-924. Single-beam road-lighting equipment. Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured prior to January 1, 1955, in lieu of multiple-beam road-lighting equipment specified in this chapter if the single distribution of light complies with the following requirements and limitations:

(1) The head lamps shall be so aimed that when the vehicle is not loaded, none of the high-intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

49-925 — Lighting equipment on motor-driven cycles

49-925. Lighting equipment on motor-driven cycles. The head lamp upon every motor-driven cycle may be of the single-beam or multiple-beam type, but in either event shall comply with the requirements and limitations as follows:

(1) Every head lamp on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour, and at a distance of three hundred (300) feet when the motor-driven cycle is operated at a speed of thirty-five (35) miles or more per hour.

(2) In the event a motor-driven cycle is equipped with multiple-beam head lamps, the beams shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in section 49-922 , Idaho Code.

(3) In the event a motor-driven cycle is equipped with a single-beam lamp, the lamp shall be so aimed that when the vehicle is loaded, none of the high-intensity portion of light, at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

49-926 — Alternate road-lighting equipment

49-926. Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in section 49-903 , Idaho Code, when equipped with two (2) lighted lamps upon the front capable of revealing persons and objects

seventy-five (75) feet ahead in lieu of lamps required in section 49-922 or section 49-924 , Idaho Code. At no time shall it be operated at a speed in excess of twenty (20) miles per hour.

49-927 — Number of driving lamps required or permitted

49-927. Number of driving lamps required or permitted.

(1) At all times specified in section 49-903 , Idaho Code, at least two (2) lighted lamps shall be displayed, one (1) on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when the vehicle is parked subject to the requirements governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with required head lamps is also equipped with any auxiliary lamps, a spot lamp, or any other lamp on the front projecting a beam of intensity greater than three hundred (300) candlepower, not more than a total of four (4) lamps on the front of a vehicle shall be lighted at any one (1) time when upon a highway.

49-928 — Special restrictions on lamps

49-928. Special restrictions on lamps.

(1) Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high-intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(2) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this title.

(3) As a practical means of determining whether head lamps or auxiliary driving or fog lamps glare the following test shall apply: Any such lamp shall be deemed to be glaring if any part of the main beam strikes the body of a person, vehicle, screen or other object higher than the lamp centers twenty-five (25) feet or more ahead of the vehicle and in no event shall the main bright portion of the beam be higher than forty-two (42) inches at a distance of seventy-five (75) feet ahead of the vehicle.

(4) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow removal equipment, or on any vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing.

49-929 — Lights on snow removal equipment

49-929. Lights on snow removal equipment. It shall be unlawful to operate any snow removal equipment on any highway unless lamps on the equipment comply with and are lighted when and as required by the standards and specifications adopted by the director of the Idaho transportation department.

49-930 — Selling or using lamps or equipment

49-930. Selling or using lamps or equipment.

(1) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any vehicle any head lamp, auxiliary or fog lamp, rear lamp, or reflector which reflector is required in this chapter, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the director and approved by him, and which bears the trademark or name under which it is approved so as to be legible when installed.

(2) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless the lamps are mounted, adjusted and aimed in accordance with instructions of the department.

49-933 — Brakes

49-933. Brakes.

(1) Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If the two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one (1)

part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.

(2) Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one (1) brake, which may be operated by hand or foot.

(3) Every trailer or semitrailer of an unladen weight of one thousand five hundred (1,500) pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle and be designed to be applied by the driver of the towing motor vehicle from its cab. The brakes shall be designed and so connected that in case of an accidental breakaway of the towed vehicle, the brakes shall be automatically applied.

(4) Every new motor vehicle, trailer, or semitrailer sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of the vehicle, except that any motorcycle or motor-driven cycle, trucks and truck tractors having three (3) or more axles need not have brakes on the front wheels. Vehicles equipped with at least two (2) steerable axles need not be equipped with brakes on the wheels of one (1) axle, and any trailer or semitrailer of less than one thousand five hundred (1,500) pounds unladen weight need not be equipped with brakes. Every farm trailer while being used hauling agricultural products from farm to storage, marketing or processing plant, or returning therefrom, and used within a radius of fifty (50) miles, shall be exempt from these braking requirements.

(5) One (1) of the means of brake operation shall consist of a mechanical connection from the operating lever, or by equivalent means to the brake shoes or bands, and this brake shall be capable of holding the vehicle, or combination of vehicles, stationary under any condition of loading on any upgrade or downgrade upon which it is operated.

(6) Brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(7) Every motor vehicle or combination of vehicles, at all times and under all conditions of loading, shall, upon application of the service (foot) brake, be capable of decelerating and developing a braking force equivalent to minimum required deceleration, and stopping within the requirements set forth in this subsection: Equivalent breaking force in Stopping Deceleration percentage of distance in feet vehicle or in feet per second combination weight Passenger vehicles, not including buses 25 17 53.0% Single-unit vehicles with a manufacturer’s gross vehicle weight rating of less than 10,000 pounds 30 14 43.5% Single-unit, 2-axle vehicles with a manufacturer’s gross vehicle weight rating of 10,000 or more pounds 40 14 43.5% All other vehicles and combinations with a manufacturer’s gross vehicle weight rating of 10,000 or more pounds 50 14 43.5% Compliance with these standards shall be determined either by actual road tests conducted on a substantially level, not to exceed a plus or minus one per cent (1%) grade, dry, smooth, hard-surfaced road that is free from loose material, with stopping distances measured from the actual instant braking controls are moved and from an initial speed of twenty (20) miles per hour; or else by suitable mechanical tests in a testing lane which recreates the same conditions; or by a combination of both methods.

(8) All brakes shall be maintained in good working order and shall be adjusted to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

49-934 — Brakes on motor-driven cycles

49-934. Brakes on motor-driven cycles.

(1) The director is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any brake which he finds will not comply with the performance standard set forth in section 49-933 , Idaho Code, or which in his opinion is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(2) The director may request the department to refuse registration for, or suspend or revoke the registration of any vehicle referred to in this section when he determines that the brake on the vehicle does not comply with the provisions of this section.

(3) No person shall operate on any highway any vehicle referred to in this section in the event the director has disapproved the brake equipment upon that vehicle or type of vehicle.

49-937 — Mufflers — prevention of noise

49-937. Mufflers — prevention of noise.

(1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, bypass, or similar device on a motor vehicle on a highway. When any motor vehicle was originally equipped with a noise-suppressing

system or when any motor vehicle is required by law or regulation of this state or the federal government to have a noise-suppressing system, that system shall be maintained in good working order. No person shall disconnect any part of that system except temporarily in order to make repairs, replacements or adjustments, and no person shall modify or alter that system or its operation in any manner, except to conform to the manufacturer's specifications. No person shall knowingly operate and no owner shall knowingly cause or permit to be operated any motor vehicle originally equipped or required by any law or regulation of the state or the federal government to be equipped with a noise-suppressing system while any part of that system is disconnected or while that system or its operation is modified or altered in any manner, except to conform to the manufacturer's specifications.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(3) No person shall modify the exhaust system of a motor vehicle or a motorcycle in a manner that will amplify or increase the noise of the vehicle or motorcycle above that emitted by the muffler originally installed on the vehicle by the manufacturer.

(4) A showing that the sound made by a passenger motor vehicle or motorcycle exceeds the maximum allowable decibel level shall be prima facie evidence of a violation of subsection (1) of this section.

(5) No person shall sell, offer for sale, or install any noise-suppressing system or device that will produce excessive or unusual noise.

(6) The driver of a commercial vehicle that is in compliance with the provisions of subsection (1) of this section may allow such vehicle to idle for the purpose of using the vehicle's heating or air conditioning system as long as the driver is parked for the purposes of resting or sleeping. The provisions of this subsection shall include the use of auxiliary power units to provide heating or air conditioning to the vehicle.

(7) A commercial vehicle that is in compliance with the provisions of subsection (1) of this section and that is refrigerated while parked shall not be prohibited to operate while laden with perishable commodities, pharmaceuticals, or both.

49-940 — Mirrors

49-940. Mirrors.

(1) Every motor vehicle shall be equipped with a mirror so located as to reflect to the operator a view of the highway for a distance of at least two hundred (200) feet to the rear of the vehicle.

(2) When a motor vehicle is so loaded or constructed, or is towing a vehicle or trailer which is so loaded or constructed as to obstruct the driver's view straight to the rear, then the motor vehicle shall be equipped with a mirror on the left side and a mirror on the right side so located as to reflect to the operator a view of the highway for a distance of at least two hundred (200) feet to the rear of the vehicle.

(3) When an operator of a motor vehicle is transporting under special permit authority an oversize load which makes mirrors impractical devices for reflecting to the operator a view of the highway to the rear, a following escort vehicle equipped with proper mirrors meeting the requirements herein may be substituted for the required mirrors on the hauling motor vehicle. The escort vehicle must be a car or light truck and it must be equipped with an oversize load sign, flashing or rotating lights, and a two (2) way radio which provides full-time communication with the escorted vehicle.

49-943 — Windshields to be unobstructed and equipped with wipers

49-943. Windshields to be unobstructed and equipped with wipers.

(1) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(2) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be constructed as to be controlled or operated by the driver of the vehicle.

(3) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

49-944 — Standards for windshields and windows of motor vehicles — Prohibited acts — Penalty

49-944. Standards for windshields and windows of motor vehicles — Prohibited acts — Penalty.

(1) It is unlawful for any person to place, install, affix, or apply any window tinting film or sunscreening device to the windows of any motor vehicle, except as follows:

(a) Nonreflective window tinting film or sunscreening devices shall not be applied to the windshield below the AS-1 line; if no AS-1 line is identifiable on the windshield, nonreflective window tinting film or sunscreening devices shall not be applied to the windshield below a line extending six (6) inches below and parallel to the exposed windshield;

(b) Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the front side vents, front side windows to the immediate right and left of the driver, and the rear window;

(c) Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than twenty percent (20%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the side windows to the rear of the driver;

(d) Window tinting films or sunscreening devices are materials or devices that are designed to be used in conjunction with approved vehicle glazing materials for the purpose of reducing the effects of the sun;

(e) Light transmission is the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the product or material to the amount of total light falling on the product or material;

(f) Luminous reflectance is the ratio of the amount of total light, expressed in percentages, that is reflected outward by the product or material to the amount of total light falling on the product or material.

(2) No person shall operate on the public highways, sell, or offer to sell any motor vehicle with a windshield or windows that are not in compliance with the provisions of this section.

(3) The Idaho state police may promulgate rules in order to implement the provisions of this section.

(4) Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than seventy percent (70%) plus or minus three percent (3%) for the front windshield and not less than twenty percent (20%) plus or minus three percent (3%) for the windows, with a luminous reflectance of no more than thirty-five percent (35%) plus or minus three percent (3%) in each instance, is permitted for a motor vehicle operated by, or carrying as a passenger, a person who possesses written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight or heat for medical reasons associated with past or current treatment; such written verification shall be carried in the vehicle.

(5) Nothing in this section shall be construed to make illegal the operation or sale of any motor vehicle, the windshield or windows of which are composed of, covered by, or treated with any material, substance, system, or component with which the motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment from the manufacturer or authorized dealer under any United States government statute or regulation governing such sale at the time of manufacture.

(6) Any person convicted of a violation of the provisions of this section shall be guilty of an infraction.

49-945 — Safety glazing material in motor vehicles

49-945. Safety glazing material in motor vehicles. No person shall sell any new motor vehicle, nor shall any new motor vehicle be registered unless the vehicle is equipped with safety glazing material of a type approved by the director wherever glazing material is used in doors, windows, and windshields. This provision shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of the vehicles.

49-948 — Restrictions as to tire equipment

49-948. Restrictions as to tire equipment.

(1) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(2) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the highway.

(3) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except as allowed herein. It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and it shall be permissible to use tire chains. Tires with built-in lugs of tungsten carbide or other suitable material, hereinafter called studs, may be used upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid, that will not unduly damage the highway. Motor vehicles, trailers and semitrailers with tires having built-in studs are prohibited on public highways between the dates of May 1 and September 30, annually, except as provided in paragraphs (a), (b) and (c) of this subsection:

(a) Fire pumper/tanker trucks and ladder trucks belonging to fire departments and firefighting agencies are exempt from the prohibited dates.

(b) A vehicle may be equipped year-round with tires that have retractable studs if the studs retract pneumatically or mechanically to at or below the wear bar of the tire when not in use and the retractable studs protrude beyond the wear bar of the tire only between October 1 and April 30. Retractable studs may be made of metal or other material and are not subject to the stud weight requirements of subsection (4) of this section.

(c) Special exemptions from the prohibited dates may be granted by the Idaho transportation board if it is found by the board that enhancements to public safety outweigh the increased pavement wear.

(4) Commercial tire retailers shall not sell studded tires with studs exceeding the following weight and protrusion limitations after July 1, 2005. Commercial tire retailers and tire shops shall not manually install studs exceeding the following weight and protrusion limitations after July 1, 2005.

(a) Studs shall not protrude more than six-hundredths (.06) of an inch from the surface of the tire tread when originally installed.

(b) Stud size shall be as recommended by the manufacturer of the tire for the type and size of the tire.

(c) Studs shall individually weigh no more than one and one-half (1.5) grams if the stud is size 14 or less.

(d) Studs shall individually weigh no more than two and three-tenths (2.3) grams if the stud size is 15 or 16.

(e) Studs shall individually weigh no more than three (3) grams if the stud size is 17 or larger.

(5) If the Idaho transportation department determines, at any time, that Lookout Pass or Fourth of July Pass on interstate 90 or Lolo Pass on state highway 12 is of an unsafe condition so as to require chains, as defined in section 49-104 , Idaho Code, in addition to pneumatic tires, the Idaho transportation department may establish requirements for the use of chains on all commercial vehicles as defined in section 49-123 (2)(d)(i) and (ii), Idaho Code, traveling on interstate 90 or state highway 12. If the Idaho transportation department establishes that chains are so required, the Idaho transportation department shall:

(a) Provide multiple advance notices of the chain requirement;

(b) Provide adequate opportunities for pull out;

(c) Provide notification at a point at which the commercial vehicle can safely pull out of the normal flow of traffic, prior to the point at which chains are required; and

(d) In no case post requirements for chains on bare pavement.

(6) Provided that the conditions in subsection (5) of this section are met, the chain requirement shall be met by chaining a minimum of one (1) tire on each side of:

(a) One (1) drive axle, regardless of the number of drive axles; and

(b) One (1) axle at or near the rear of each towed vehicle. Such axle shall not include a variable load suspension axle or an axle of a converter dolly.

(7) Chains as required in subsection (6)(a) and (b) of this section mean "chains" as defined in section 49-104 , Idaho Code. Any other traction device differing from chains in construction, material or design but capable of providing traction equal to or exceeding that of chains under similar conditions may be used.

(8) The Idaho transportation department shall place and maintain signs and other traffic control devices on the interstate and state highway passes as designated in subsection (5) of this section that indicate the chain requirements under subsection (6) of this section.

(9) Exempt from the chaining requirements provided for in subsections (5) and (6) of this section are:

(a) Motor vehicles operated by the Idaho transportation department when used in the maintenance of the interstate or state highway system; and

(b) The following:

(i) Motor vehicles employed solely in transporting school children and teachers to or from school or to or from approved school activities, when the motor vehicle is either: 1. Wholly owned and operated by such school; or 2. Leased or contracted by such school and the motor vehicle is not used in furtherance of any other commercial enterprise; (ii) Motor vehicles controlled and operated by any farmer when used in the transportation of the farmer's farm equipment or in the transportation of supplies to the farmer's farm; (iii) The transportation of agricultural products at any time of the year; (iv) Motor propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States;

(v) Motor carriers transporting products of the forest at any time of the year, including chip trucks; (vi) Motor carriers transporting products of the mine including sand, gravel and aggregates thereof, excepting petroleum products; and (vii) Vehicles properly equipped, designed and customarily used for the transportation of disabled or abandoned vehicles by means of a crane, hoist, tow bar, dolly or roll bed, commonly known as a "wrecker truck" or "tow truck."

49-949 — Requirement as to fender or covers over all wheels on motor vehicles

49-949. Requirement as to fender or covers over all wheels on motor vehicles.

(1) It shall be unlawful for any person to operate or move or any owner to permit to be operated or moved, any motor vehicle, truck, bus, semitrailer or trailer, upon any highway without having the vehicle equipped with fenders or covers which may include flaps or splash aprons, over and to the rear of wheels, as follows:

(a) On the rear wheels of every truck equipped with a body, bus, trailer or semitrailer the fenders or covers shall extend in full width from a point above and forward of the center of the tires over and to the rear of the wheels to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty;

(b) Behind the rear wheels of every truck not equipped with a body the fenders or covers shall extend downward in full width from a point not lower than halfway between the center of the wheels and the top of the tires on the wheels to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty;

(c) Behind all wheels of every motor vehicle other than trucks, buses, semitrailers, or trailers, the fenders or covers shall extend in full width from a point above and forward of the center of the tire over and to the rear of the wheel to a point that is not more than twenty (20) inches above the surface of the highway, unless the bumper is a factory built bumper fastened directly to the frame of the vehicle pursuant to factory installation requirements;

(d) Fenders or covers are not required on any modified American-made pre-1935 vehicle, or any identifiable vintage or replica thereof that is titled as a later assembled vehicle or replica and is used for show and pleasure use when such vehicle is used and driven only during fair weather on well-maintained hard-surfaced roads.

(2) Fenders or covers, as used in subsection (1) of this section, shall be deemed to be of sufficient size and construction as to comply with those requirements if constructed as follows:

(a) When measured on the cross sections of the tread of the wheel or on the combined cross sections of the treads of multiple wheels, the fender or cover extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be;

(b) The fender or cover is constructed as to be capable at all times of arresting and deflecting dirt, mud, water, or other substance as may be picked up and carried by wheels;

(c) For school buses if the body extension behind the rear wheels exceeds five (5) feet.

49-952 — Certain vehicles to carry flares or other warning devices

49-952. Certain vehicles to carry flares or other warning devices.

(1) No person shall operate any truck, bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time specified in section 49-903 , Idaho Code, unless there shall be carried in the vehicle the following equipment, except as provided in subsection (2):

(a) At least three (3) flares, or three (3) red electric lanterns, or three (3) portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

(b) At least two (2) red-cloth flags, not less than twelve (12) inches square, with standards to support the flags.

(c) No flare, fusee, electric lantern or cloth warning flag shall be used for the purpose of compliance with the requirements of this section unless the equipment is of a type which has been submitted to the board and approved by it. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is designed and constructed to include two (2) reflecting elements one above the other, each of which shall be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful upper beams of head lamps, and unless it is of a type which has been submitted to the board and approved by it.

(2) No person shall operate at the time and under conditions stated in subsection (1) any motor vehicle used in the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using a compressed gas as a fuel unless there shall be carried in the vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of subsection (1) of this section, and there shall not be carried in any compressed gas propelled vehicle any flares, fusees, or signal produced by flame.

49-953 — Display of warning devices when vehicle disabled

49-953. Display of warning devices when vehicle disabled.

(1) Whenever any truck, bus, truck tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion or the shoulder of any highway outside of any municipality at any time when lighted lamps are required on vehicles, the driver of the vehicle shall display the following warning devices upon the highway during the time the vehicle is disabled on the highway except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall be immediately placed at the traffic side of the motor vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible, but in any event within the burning period of the fusee (15 minutes), the driver shall place three (3) liquid-burning flares (pot torches), or three (3) lighted red electric lanterns, or three (3) portable red emergency reflectors on the traveled portion of the highway in the following order: 1. One, approximately two hundred (200) feet from the disabled vehicle in the center of the lane occupied by the vehicle and toward traffic approaching in that lane. 2. One, approximately two hundred (200) feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by the vehicle. 3. One at the traffic side of the disabled vehicle not less than ten (10) feet rearward or forward in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph 1. of this subsection, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within five hundred (500) feet of a curve, hill crest, or other obstruction to view, the warning signal in that direction shall be placed to afford ample warning to other users of the highway, but in no case less than five hundred (500) feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any portion of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) of this section shall be placed one (1) at a distance of approximately two hundred (200) feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one (1) at a distance of approximately one hundred (100) feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; and one (1) at the traffic side of the vehicle and approximately ten (10) feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion or the shoulder of a highway outside any municipality at any time when the display of fusees, flares, red electric lanterns or portable red emergency reflectors is not required, the driver of the vehicle shall display two (2) red flags upon the highway in the lane of traffic occupied by the disabled vehicle, one (1) at a distance of approximately two hundred (200) feet in advance of the vehicle, and one (1) at a distance of approximately two hundred (200) feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway at any time or place mentioned in subsection (1) of this section, the driver of the vehicle shall immediately display one (1) red electric lantern or portable red emergency reflector placed on the highway at the traffic side of the vehicle, and two (2) red electric lanterns or portable red reflectors, one (1) placed approximately two

hundred (200) feet to the front and one (1) placed approximately two hundred (200) feet to the rear of the disabled vehicle in the center of the traffic lane occupied by the vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(6) Flares, fusees, red electric lanterns, portable red emergency reflectors, and flags to be displayed as required in this section shall conform with the requirements of section 49-952 , Idaho Code.

49-956 — Horns and warning devices

49-956. Horns and warning devices.

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn, but shall not otherwise use the horn when upon a highway.

(2) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible, but not required for any vehicle to be equipped with a theft alarm signal device, so arranged that it cannot be used by the driver as an ordinary warning signal.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the director, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which the latter events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the approach.

49-959 — Air-conditioning equipment

49-959. Air-conditioning equipment.

(1) Air-conditioning equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable at or below one thousand degrees (1000°) Fahrenheit, unless the refrigerant is included in the list published by the United States environmental protection agency as an approved alternative motor vehicle air-conditioning substitute for chlorofluorocarbon-12 under 42 U.S.C. section 7671k(c).

(2) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any air-conditioning equipment unless it complies with the requirements of this section.

(3) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless the equipment complies with the requirements of this section.

49-962 — Footrests on motorcycles and motor driven cycles

49-962. Footrests on motorcycles and motor driven cycles. It shall be unlawful for the operator of any motorcycle or motor driven cycle to carry a passenger on the vehicle unless it is equipped with footrests designed exclusively for the use of a passenger on the vehicle.

49-965 — Modification of vehicle to reduce road clearance beyond certain limits unlawful

49-965. Modification of vehicle to reduce road clearance beyond certain limits unlawful. It shall be unlawful to operate any passenger motor vehicle which has been modified from the original design so that any portion of the vehicle other than the wheels has less clearance from the surface of a level highway than the clearance between the highway and the lowermost portion of any rim of any wheel in contact with the highway.

49-966 — Motor vehicle bumper height requirements

49-966. Motor vehicle bumper height requirements.

(1) With the exception of motor vehicles registered pursuant to section 49-406 , 49-406A , 49-407 or 49-408 , Idaho Code, or motor vehicles where the original or predominant body configuration of the motor vehicle, provided by a recognized manufacturer, did not include a front or rear bumper or bumpers for vehicles meeting the original specifications of a recognized manufacturer, a motor vehicle shall be equipped with a bumper on both the front and rear of the vehicle.

(2) Bumpers, unless specifically exempt in subsection (1) of this section, shall be at least four and one-half (4 1/2) inches in vertical height centered on the vehicle's centerline by bolting or welding to the vehicle frame as originally installed by the vehicle manufacturer. Bumpers shall be horizontal load bearing and attach to the vehicle to effectively transfer energy when impacted and shall extend in width to the originally manufactured tread width for the vehicle.

(3) The maximum bumper heights for a vehicle shall be determined by vehicle class and the vehicle's gross vehicle weight rating (GVWR). Maximum bumper height is the vertical distance between the ground and the highest point on the bottom of the bumper and shall be measured when the vehicle is laden on a level surface with the vehicle's tires inflated to the manufacturer's recommended pressure. For vehicles exempted from the bumper requirements for reasons stated in subsection (1) of this section, a maximum frame elevation measurement shall be made to the bottom of the frame rail. Maximum heights are as follows: Vehicle Class Maximum Height Front Rear Passenger Cars 22 inches 22 inches Trucks and MPVs 4,500 or less lbs. GVWR 24 inches 26 inches 4,501 to 7,500 lbs. GVWR 27 inches 29 inches 7,501 to 10,000 lbs. GVWR 28 inches 30 inches Four-wheel drive or dual wheel with a 10,000 or less lbs. GVWR 30 inches 31 inches

(4) Vehicles which do not meet the requirements of this section on July 1, 1997, must be brought into compliance by July 1, 1998.

49-967 — Air bags and air bag systems — prohibited acts — penalty

49-967. Air bags and air bag systems — prohibited acts — penalty.

(1) It shall be unlawful for any person to knowingly or intentionally:

(a) Manufacture, import, distribute, offer for sale, sell, or lease, or install or reinstall into any motor vehicle, a counterfeit automobile supplemental restraint system, a nonfunctional air bag, or other object that replaces an automobile supplemental restraining component that fails to meet the federal motor vehicle safety standards as provided in 49 CFR 571.208, for the make, model, and year of the motor vehicle;

(b) Offer for sale, sell, lease, or otherwise transfer ownership of a motor vehicle with a counterfeit automobile supplemental restraint system, a nonfunctional air bag, or other object that replaces an automobile supplemental restraining component that fails to meet the federal motor vehicle safety standards as provided in 49 CFR 571.208, for the make, model, and year of the motor vehicle; or

(c) Install or reinstall any object, component, part, or device as part of an automobile supplemental restraint system that causes a motor vehicle's diagnostic system to fail to warn the motor vehicle operator that an air bag is not installed, a nonfunctional air bag is installed, or a counterfeit automobile supplemental restraint system component is installed that does not comply with 49 CFR 571.208, for the make, model, and year of the motor vehicle. A violation of this paragraph shall not occur until the installation work is complete and one of the following conditions occurs:

(i) The motor vehicle is returned to the operator; or (ii) The title to the motor vehicle is transferred.

(2) Any person convicted of a violation of the provisions of this section shall be guilty of a misdemeanor.

(3) As used in this section:

(a) "Air bag" means an inflatable restraint device for occupants of a motor vehicle that is part of an automobile supplemental restraint system.

(b) "Automobile supplemental restraint system" means a passive inflatable crash protection system that a vehicle manufacturer designs to protect occupants of a motor vehicle in conjunction with a seat belt assembly, as defined in 49 CFR 571.209, that has one (1) or more air bags and all components required to ensure that each air bag:

(i) Operates as designed in a motor vehicle crash; and (ii) Meets federal motor vehicle safety standards for the specific make, model, and year of manufacture of the vehicle in which the air bag is installed.

(c) "Counterfeit automobile supplemental restraint system component" means a replacement component, including an air bag, that displays a trademark that is identical to or substantially similar to the manufacturer's or supplier's trademark without authorization from a manufacturer or a person that supplies parts to the manufacturer. (d)(i) "Nonfunctional air bag" means a replacement air bag that: 1. Was previously deployed or damaged; 2. Has a fault that a motor vehicle's diagnostic system detects once the air bag is installed; 3. May not be sold or leased pursuant to 49 U.S.C. 30120(j); or 4. Includes a counterfeit automobile supplemental restraint system component or other part or object that is installed for the purpose of misleading a motor vehicle owner or operator into believing that a functional air bag is installed.
(ii) "Nonfunctional air bag" does not include a deployed air bag that has not been repaired or an air bag that is installed in a motor vehicle when: 1. Such vehicle has been declared a total loss or is otherwise a totaled vehicle; 2. The owner was

issued a salvage title certificate in Idaho or a similar title from another state; or 3. The air bag is visible in its deployed condition.

CHAPTER 10

49-1001 — ALLOWABLE GROSS LOADS

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004 , Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula: W=500((LN/N-1)+12N+36) Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration. The formula is modified as illustrated in the following table: Distance in feet between the extremes of any group of 2 or more consecutive Maximum load in pounds carried on any group of 2 or more consecutive axles axles 2 axles 3 axles 4 axles 5 axles 6 axles 7 axles 8 axles 9 axles 10 axles 11 axles 12 axles 13 axles 4 34,000 5 34,000 WHEN NO ALLOWABLE WEIGHT IS 6 34,000 LISTED FOR ANY AXLE SPACING, 7 34,000 APPLY THE ALLOWABLE WEIGHT 8 34,000 AS LISTED IN THE FIRST COLUMN 8+ 38,000 42,000 TO THE LEFT 9 39,000 42,500 10 40,000 43,500 11 44,000 12 45,000 50,000 13 45,500 50,500 14 46,500 51,500 15 47,000 52,000 16 48,000 52,500 58,000 17 48,500 53,500 58,500 18 49,500 54,000 59,000 19 50,000 54,500 60,000 20 51,000 55,500 60,500 66,000 21 51,500 56,000 61,000 66,500 22 52,500 56,500 61,500 67,000 23 53,000 57,500 62,500 68,000 24 54,000 58,000 63,000 68,500 74,000 25 54,500 58,500 63,500 69,000 74,500 26 55,500 59,500 64,000 69,500 75,000 27 56,000 60,000 65,000 70,000 75,500 28 57,000 60,500 65,500 71,000 76,500 82,000 29 57,500 61,500 66,000 71,500 77,000 82,500 30 58,500 62,000 66,500 72,000 77,500 83,000 31 59,000 62,500 67,500 72,500 78,000 83,500 32 60,000 63,500 68,000 73,000 78,500 84,500 90,000 33 64,000 68,500 74,000 79,000 85,000 90,500 34 64,500 69,000 74,500 80,000 85,500 91,000 35 65,500 70,000 75,000 80,500 86,000 91,500 36 66,000 70,500 75,500 81,000 86,500 92,000 98,000 37 66,500 71,000 76,000 81,500 87,000 93,000 98,500 38 67,500 71,500 77,000 82,000 87,500 93,500 99,000 39 68,000 72,500 77,500 82,500 88,500 94,000 99,500 40 68,500 73,000 78,000 83,500 89,000 94,500 100,000 106,000 41 69,500 73,500 78,500 84,000 89,500 95,000 100,500 106,500 42 70,000 74,000 79,000 84,500 90,000 95,500 101,000 107,000 43 70,500 75,000 80,000 85,000 90,500 96,000 102,000 107,500 44 71,500 75,500 80,500 85,500 91,000 96,500 102,500 108,000 114,000 45 72,000 76,000 81,000 86,000 91,500 97,500 103,000 108,500 114,500 46 72,500 76,500 81,500 87,000 92,500 98,000 103,500 109,000 115,000 47 73,500 77,500 82,000 87,500 93,000 98,500 104,000 110,000 115,500 48 74,000 78,000 83,000 88,000 93,500 99,000 104,500 110,500 116,000 122,000 49 74,500 78,500 83,500 88,500 94,000 99,500 105,000 111,000 116,500 122,500 50 75,500 79,000 84,000 89,000 94,500 100,000 105,500 111,500 117,000 123,000 51 76,000 80,000 84,500 89,500 95,000 100,500 106,000 112,000 118,000 123,500 52 76,500 80,500 85,000 90,500 95,500 101,000 107,000 112,500 118,500 124,000 53 77,500 81,000 86,000 91,000 96,500 102,000 107,500 113,000 119,000 124,500 54 78,000 81,500 86,500 91,500 97,000 102,500 108,000 113,500 119,500 125,000 55 78,500 82,500 87,000 92,000 97,500 103,000 108,500 114,000 120,000 125,500 56 79,500 83,000 87,500 92,500 98,000 103,500 109,000 115,000 120,500 126,000 57 80,000 83,500 88,000 93,000 98,500 104,000 109,500 115,500 121,000 127,000 58 84,000 89,000 94,000 99,000 104,500 110,000 116,000 121,500 127,500 59 85,000 89,500 94,500 99,500 105,000 110,500 116,500 122,000 128,000 60 85,500 90,000 95,000 100,500 105,500 111,000 117,000 122,500 128,500 61 86,000 90,500 95,500 101,000 106,000 112,000 117,500 123,000 129,000 62 87,000 91,000 96,000 101,500 107,000 112,500 118,000 124,000 63 87,500 92,000 96,500 102,000 107,500 113,000 118,500 124,500 64 88,000 92,500 97,500 102,500 108,000 113,500 119,000 125,000 65 88,500 93,000 98,000 103,000 108,500 114,000 119,500 125,500 66 89,500 93,500 98,500 103,500 109,000 114,500 120,000 126,000 67 90,000 94,000 99,000 104,500 109,500 115,000 121,000 126,500 68 90,500 95,000 99,500 105,000 110,000 115,500 121,500 127,000 69 91,000 95,500 100,000 105,500 111,000 116,000 122,000 127,500 70 92,000 96,000 101,000 106,000 111,500 117,000 122,500 128,000 71 92,500 96,500 101,500 106,500 112,000 117,500 123,000 128,500 72 93,000 97,000 102,000 107,000 112,500 118,000 123,500 129,000 73 93,500 98,000 102,500 107,500 113,000 118,500 124,000 74 94,500 98,500 103,000 108,000

113,500 119,000 124,500 75 95,000 99,000 103,500 109,000 114,000 119,500 125,000 76 95,500 99,500 104,500 109,500 114,500 120,000 126,000 77 96,000 100,000 105,000 110,000 115,000 120,500 126,500 78 97,000 101,000 105,500 110,500 116,000 121,000 127,000 79 97,500 101,500 106,000 111,000 116,500 122,000 127,500 80 98,000 102,000 106,500 111,500 117,000 122,500 128,000 81 98,500 102,500 107,000 112,000 117,500 123,000 128,500 82 99,000 103,000 108,000 113,000 118,000 123,500 129,000 83 100,000 104,000 108,500 113,500 118,500 124,000 84 104,500 109,000 114,000 119,000 124,500 85 105,000 109,500 114,500 120,000 125,000 86 105,500 110,000 115,000 120,500 125,500 87 106,000 111,000 115,500 121,000 126,000 88 107,000 111,500 116,000 121,500 127,000 89 107,500 112,000 117,000 122,000 127,500 90 108,000 112,500 117,500 122,500 128,000 91 108,500 113,000 118,000 123,000 128,500 92 109,000 113,500 118,500 123,500 129,000 93 110,000 114,000 119,000 124,000 94 110,500 115,000 119,500 125,000 95 111,000 115,500 120,000 125,500 96 111,500 116,000 121,000 126,000 97 112,000 116,500 121,500 126,500 98 113,000 117,000 122,000 127,000 99 113,500 118,000 122,500 127,500 100 114,000 118,500 123,000 128,000 101 114,500 119,000 123,500 129,000

(a) A public highway agency may limit the application of the weights authorized in this section as to certain highways within its jurisdiction which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7) through thirteen (13) axles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the table in this subsection (1), two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(c) Vehicles may operate with reducible loads at gross weights greater than one hundred five thousand five hundred (105,500) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds on noninterstate highways in accordance with the provisions of section 49-1004 , Idaho Code, provided such vehicles are in compliance with the weight formula specified in this subsection (1) of this section, have registered and have paid the registration fees as specified in section 49-434 , Idaho Code, and are in compliance with the length restrictions set forth in section 49-1010 (7), Idaho Code.

(2) The weight limitations set forth in the table in subsection (1) of this section shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock: Distance in feet between Allowed Load in Pounds the extremes of any group Vehicles with Vehicles with of 2 or more consecutive Three or Four Five or more axles axles axles 3 through 12 37,800 37,800 13 56,470 56,470 14 57,940 57,940 15 59,400 59,400 16 60,610 60,610 17 61,820 61,820 18 63,140 63,140 19 64,350 64,350 20 65,450 65,450 21 66,000 66,330 22 66,000 67,250 23 66,000 67,880 24 66,000 68,510 25 66,000 69,150 26 66,000 69,770 27 66,000 70,400 28 66,000 70,950 29 66,000 71,500 30 66,000 72,050 31 72,600 32 73,150 33 73,700 34 74,250 35 74,800 36 75,350 37 75,900 38 76,450 39 77,000 40 77,550 41 78,100 42 78,650 43 and over 79,000 The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed seventy-nine thousand (79,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsection (1) or (2) or (9) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights. For the purposes of this chapter the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles may be determined by accumulatively adding the separate weights of individual axles and tandem axles or groups of axles to determine gross weight. The results of any weighing at a temporary or permanent port of entry and the records relating to the calibration and accuracy of any scale at a temporary or permanent port of entry shall be admissible in any proceeding in this state. In order to prove a violation of the provisions of this section the state must show that:

(a) The sum of the axle weights exceeds what is allowable under the provisions of subsection (1) or (2) or (9) of this section;

(b) The scale involved in the weighing was at the time of weighing calibrated in conformity with and met the accuracy requirements of the standards for the enforcement of traffic and highway laws as set forth in the latest edition of handbook 44 of the national institute of standards and technology;

(c) Weights of individual axles or axles within a commonly suspended group of axles supported by a mechanical system designed to distribute equal wheel loads to individual axles in the group were utilized only to determine gross weights of that group of axles, and that any further evaluation of gross weights of combinations of axles considered only the accumulated gross weight of each such commonly suspended group of axles.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) or (9) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles. Further, single axles within groups of axles are subject to the provisions and limitations of this chapter. Single axles within groups of axles may be weighed and evaluated separately.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing, and except those vehicles which do not exceed fifteen percent (15%) over maximum axle and axle group weights set forth in this section. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001 (8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars ($50.00) and shall be on a form prescribed by the board or other proper authorities, and shall not be construed as contributing to a reduction in the penalties prescribed in section 49-1013 , Idaho Code.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules as may be necessary to carry out the provisions of this section.

(9) For vehicles on all highways except the United States federal interstate and defense highways of this state, the following table shall apply: Distance in feet between Allowed Load in Pounds the extremes of any group Vehicles with Vehicles with of 2 or more consecutive Three or Four Five or more axles axles axles 3 through 12 37,800 37,800 13 56,470 56,470 14 57,940 57,940 15 59,400 59,400 16 60,610 60,610 17 61,820 61,820 18 63,140 63,140 19 64,350 64,350 20 65,450 65,450 21 66,000 66,330 22 66,000 67,250 23 66,000 67,880 24 66,000 68,510 25 66,000 69,150 26 66,000 69,770 27 66,000 70,400 28 66,000 70,950 29 66,000 71,500 30 66,000 72,050 31 72,600 32 73,150 33 73,700 34 74,250 35 74,800 36 75,350 37 75,900 38 76,450 39 77,000 40 77,550 41 78,100 42 78,650 43 and over 80,000 The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed eighty thousand (80,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection

if that vehicle or combination of vehicles exceeds the weights specified in this table.

(10) Variable load suspension axles shall meet the following criteria in order to be included in the computation of gross vehicle or axle weight limits for vehicles under the provisions of this section:

(a) The deployment control switch for such axles may be located inside of the driver's compartment but the pressure regulator valve for the operation of pressure on the pavement shall be located outside of and inaccessible to the driver's compartment.

(b) The manufacturer's gross axle weight rating of each such axle must not be less than the actual loading of the axle.

(c) All variable load suspension axles shall be designed to be self-steering; provided however, variable load suspension axles that are within sixty (60) inches of a drive axle or are within sixty (60) inches of a trailer axle, need not be self-steering.

(d) The manufacturer's gross tire weight rating of each tire must not be less than the actual loading of the tire.

(e) Variable load suspension axles must be fully deployed or fully raised. For applicable definitions, see sections 49-117 and 49-123 , Idaho Code.

(11) Any person who operates a motor vehicle with a variable load suspension axle in violation of the provisions of this section shall be subject to the penalties provided in section 49-1013 , Idaho Code.

49-1002 — Allowable load per inch width of tire

49-1002. Allowable load per inch width of tire.

(1) Load for inch width of tire for the front steer axle may not exceed the manufacturer's load rating per tire or the load rating of the axle or twenty thousand (20,000) pounds per axle whichever is less. The maximum allowable load for all other vehicle tires operated on any public highway shall not exceed six hundred (600) pounds per inch width of tire and shall not exceed the manufacturer's load rating, whichever is less. The width of a tire shall be determined by the manufacturer's description marked on the sidewall of the tire. Tires on vehicles manufactured prior to July 1, 1987, may exceed the six hundred (600) pounds per inch width of tire limit subject to a maximum of eight hundred (800) pounds per inch width of tire. This section shall not apply to nonreducible overweight and/or oversize vehicles and/or loads as authorized under section 49-1004 , Idaho Code.

(2) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when the weight carried on a single tire, as determined by dividing the weight carried on an axle or group of axles by the number of wheels on the axle or group of axles, exceeds on a single axle the allowable weight above by two thousand (2,000) pounds or more or the weight of a combination of axles exceeds the allowable weight above by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with the applicable weight per inch width of tire contained within this subsection prior to continuing except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001 (8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars ($50.00) and shall be on a form prescribed by the board or other proper authorities.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules as may be necessary to carry out the provisions of this section.

49-1003 — Speed limits for vehicles regulated according to weight and tire equipment

49-1003. Speed limits for vehicles regulated according to weight and tire equipment. It shall be unlawful to operate any vehicle equipped with other than pneumatic tires on a highway at a rate of speed in excess of twenty (20) miles per hour for vehicles having a gross weight of not more than ten thousand (10,000) pounds, and twelve (12) miles per hour for vehicles having a gross weight of more than ten thousand (10,000) pounds.

49-1004 — Permits for overweight or oversize loads — Special routes and annual permits

49-1004. Permits for overweight or oversize loads — Special routes and annual permits.

(1) Upon application in writing to the department or local authorities in charge of or having jurisdiction over a highway, the department or local authorities may in their discretion issue a special permit to the owner or operator of any vehicle allowing vehicles or loads having a greater weight or size than permitted by law to be moved or carried over and on the highways and bridges.

(a) Special permits shall be in either hard copy or digital format and may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain any special conditions and require any undertaking or other security as the department or local authority shall deem to be necessary to protect the highways and bridges from injury, or provide indemnity for any injury to highways and bridges or to persons or property resulting from such operation.

(b) The owner or operator of an overweight or oversize vehicle shall obtain a permit or shall establish intent to obtain a permit by contacting a permit office and receiving a permit number before moving the vehicle on the highways.

(c) All special permits or evidence of intent to obtain a permit, whether in hard copy or digital format, shall be carried in the vehicles to which they refer and shall upon demand be delivered for inspection to any peace officer, authorized agent of the board or local authority, or any officer or employee charged with the care or protection of the highways.

(2) Nonreducible vehicles or combinations of vehicles hauling nonreducible loads at weights in excess of those set forth in section 49-1001 , Idaho Code, shall pay fees as set forth in this subsection. Such fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight. Column 1 Column 2 Gross weight of vehicle Gross weight of vehicle and load in and load in Number of axles pounds pounds 2 40,001 – 3 54,001 – 4 68,001 – 5 80,001 131,001 6 97,001 148,001 7 114,001 165,001

(a) To determine the maximum allowable permit fee for vehicles with more than seven (7) axles, the table can be extended by adding seventeen thousand (17,000) pounds to the last listed weight in both columns 1 and 2 for each added axle.

(b) Permit fees for column 1 shall start at four cents (4¢) per mile and increase four cents (4¢) per mile for each additional two thousand (2,000) pound increment up to the weight indicated in column 2. Permit fees for column 2 shall start at one dollar and two cents ($1.02) per mile and increase seven cents (7¢) per mile for each additional two thousand (2,000) pound increment.

(c) Vehicles operating at weights less than the starting weights per axle configuration listed in column 1 shall be charged four cents (4¢) per mile.

(d) For vehicles operating with axles wider than eight (8) feet six (6) inches or axles with more than four (4) tires per axle, the fee may be reduced by the board or other proper authority having jurisdiction over a highway.

(3) It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of special permits, and any violation shall be deemed for all purposes to be a violation of the provisions of this chapter.

(4) An annual special route permit authorizing travel on designated routes shall be issued by the department or may, in its discretion, be issued by a local authority for operation of vehicles with a legal maximum gross weight of at least one hundred five thousand five hundred one (105,501) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds. Such routes on nonstate and noninterstate highways shall be determined by the local authority for those roads under its jurisdiction. No local public highway agency shall approve a route which provides a thoroughfare for interstate carriers to pass through the state. State routes designated by the department and local authorities shall be identified on a map entitled "Designated Routes up to 129K."

(5) An annual administrative permit fee for operating on designated routes at the weights specified in subsection (4) of this section shall be set by the department for travel on state routes. Effective July 1, 2019, until June 30, 2021, the annual administrative permit fee shall not exceed fifty-five dollars ($55.00) per vehicle and such fee shall be used to defray the costs of the department to issue permits, provided however that five dollars ($5.00) of each permit fee shall be submitted to the local authority technical analysis fund. Local authorities are authorized to issue special permits and such permits shall be in either hard copy or digital format. Administrative permit fees for permits issued by a local authority shall be retained by the local authority to cover administrative costs, and administrative permit fees for permits issued by the department shall be retained by the department to cover administrative costs. In addition to the annual administrative

permit fee and the appropriate registration fee for weights up to one hundred five thousand five hundred (105,500) pounds, the appropriate vehicle registration fees for weights over one hundred five thousand five hundred (105,500) pounds shall be calculated and collected in accordance with the fee schedules set forth in section 49-432 or 49-434 , Idaho Code.

(6) (a) In any action or proceeding brought for the purpose of setting aside a special permit issued pursuant to this section, in which any party seeks a stay or seeks a temporary restraining order or preliminary injunction against the department, local authority, the state of Idaho or any party requesting the permit, the court may require bond as provided in rule 65(c) of the Idaho rules of civil procedure, in an amount not to exceed ten percent (10%) of the shipper's or transporter's insured value of the product or material to be transported under the provisions of the permit. If any attorney's fees and/or costs are awarded to the department or other state actor, such bond may be used to satisfy that award and all awarded amounts shall be paid to the state highway account established in section 40-702 , Idaho Code.

(b) Where there is a final judgment in an action or proceeding brought for the purpose of setting aside a special permit issued pursuant to this section against the party or parties who brought such action or proceeding, the court may determine the actual damages resulting from the action or proceeding caused to the department or other state actor and may award up to that amount to the party or parties.

49-1004A — new special route designations by the department

49-1004A. new special route designations by the department.

(1) Notwithstanding the provision on the addition or deletion of approved routes in section 49-1004 (4), Idaho Code, the department may designate routes within its jurisdiction for operation of vehicle combinations with a legal maximum gross weight of at least one hundred five thousand five hundred one (105,501) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds, utilizing criteria established by the department based upon road and bridge structural integrity engineering standards, as well as public safety engineering standards. Any routes approved by the department shall be included in the statewide route map provided for in section 49-1004 (4), Idaho Code, entitled "Designated Routes up to 129K."

(2) For all requests that new routes be designated for travel by vehicle combinations with a maximum gross weight of up to one hundred twenty-nine thousand (129,000) pounds, the department shall analyze the safety and feasibility of adding such routes within the department's jurisdiction.

(3) Prior to designating, modifying, or deleting a designation of a route under this section, the department shall publish notice and conduct a public hearing concerning the proposed designation.

49-1004B — special route designations and permits by local authorities

49-1004B. special route designations and permits by local authorities.

(1) Local authorities may, by resolution on their own initiative or pursuant to written request, designate routes and revoke previously authorized routes within their respective jurisdictions for the operation of vehicle combinations with a legal maximum gross weight between one hundred five thousand five hundred one (105,501) pounds and one hundred twenty-nine thousand (129,000) pounds. A local authority that designates routes under this section shall do so pursuant to the requirements of this section. Nothing in this section shall limit the exclusive jurisdiction of local authorities to authorize or decline to designate such routes. All routes authorized by this section that are effective on July 1, 2019, shall remain in effect unless subsequently revoked pursuant to the procedures set forth in this section.

(a) Within one hundred fifty (150) days after receipt of a written request to designate a route under this section, the governing board of a local authority shall issue a determination as to:

(i) Whether it designates routes under this section; and (ii) If it designates routes under this section, whether to approve the specific route at issue.

(b) In exercising jurisdiction to designate a route under this section, a local authority shall analyze the long-term physical and safety consequences of allowing vehicles covered by this section to use the route at issue. In conducting such analysis, the local authority shall use Idaho transportation department standards or the Idaho standards for public works construction, or a successor publication.

(c) A local authority that designates routes under this section shall authorize a map of designated routes by resolution of its governing board and shall update the route map within thirty (30) days after authorization or revocation of a route under this section. Upon designation or update of a route map as set forth in this subsection, a local authority shall submit

such designation or update to the department for inclusion in the statewide route map entitled "Designated Routes up to 129K."

(2) A local authority that designates routes under this section may issue permits for travel upon such routes and may use such permits to designate conditions for travel, including possible seasonal restrictions or other time, place, or manner limitations. A local authority shall indicate on its route map, or within the provisions of its authorizing resolution, whether a permit is required upon a designated route. Issuance of permits for use of designated routes shall be deemed an administrative action that can be carried out by the primary administrative officer of the jurisdiction, or his designee.

(a) Within thirty (30) days after receipt of a written request for a permit for travel upon a designated route, a local authority shall either issue a permit or issue a written denial of the permit requested. The denial shall explain why the permit was denied.

(b) A written permit issued under this section shall clearly state all conditions for travel upon the designated route.

(c) An annual administrative permit fee, not to exceed a maximum of fifty-five dollars ($55.00) per vehicle, shall be set by the local authority for travel on designated routes. A local authority shall submit five dollars ($5.00) from each administrative permit fee to the local authority technical analysis fund.

(3) After the issuance of the written decision, or in the event that the local authority has not acted pursuant to subsection (2) of this section within the time required, an applicant for a permit may request the opportunity to be heard by the governing body of the local authority. A local authority shall provide for the opportunity to be heard by its governing body at a public meeting within forty-five (45) days of filing such request. No fewer than fifteen (15) days after the conclusion of the public meeting at which the appeal by a permit applicant has first been heard, a local governing board shall render the final decision of the local jurisdiction, setting forth the factual and legal reasons therefor, regarding such permit request.

(4) There is hereby created a grant fund to be known as the local authority technical analysis fund within the state treasury. The grant fund shall be used to provide additional funding to local authorities to cover additional costs related to the technical review of applications as described in paragraph (b) of subsection (1) of this section. Such grants shall not exceed ten thousand dollars ($10,000) per route and shall be awarded under such terms and conditions as determined by the department or its designee. The department will maintain the local authority technical analysis fund in the state treasury in a separate sub-fund to ensure funds are not commingled with department funds until the money is requested by a local authority, after approval by the department or its designee. The funds will be disbursed to a local authority after approval of the request. All moneys in the fund are to be continuously appropriated. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund.

(5) Notwithstanding any other law to the contrary, the department shall perform its obligations pursuant to this section.

49-1004C — special permits — interstate system

49-1004C. special permits — interstate system. Exclusively for the purposes of section 49-1001 (1)(c), Idaho Code, the interstate system, which shall be considered to consist of I-15, I-84, I-86, I-90 and I-184, in Idaho is deemed a noninterstate highway. Exclusively for the purposes of section 49-1004 (4), Idaho Code, the interstate system, which shall be considered to consist of I-15, I-84, I-86, I-90 and I-184, in Idaho is deemed a designated state route.

49-1005 — Special regulations and notice

49-1005. Special regulations and notice. Whenever in the judgment of the board or authorities in charge of, or having jurisdiction over a highway, the operation on any highway or section of highway of vehicles of sizes and weights at rates of speed permissible by law which will cause damage to the highway by reason of climatic or other conditions, or will interfere with the safe and efficient use of the highway by the traveling public, the board or other authorities in charge of, or having jurisdiction over a highway have authority to make regulations reducing the permissible sizes, weights or speeds of vehicles operated on that highway for any periods as may be necessary for the protection of the highway or for public safety. Signs designating those regulations shall be erected and maintained at each end of the highway or section and at intersections with main traveled highways.

49-1006 — Responsibility for damage to highway or bridge

49-1006. Responsibility for damage to highway or bridge. The owner and the operator, driver or mover of any vehicle, object or contrivance over a highway or bridge, shall be jointly and severally responsible for all damages which the highway or bridge may sustain as the result of illegally operating or driving or moving any vehicle, object or contrivance, or as the result of driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight specified

in this chapter, but authorized by a temporary permit. The amount of the damages may be recovered in an action at law by the authorities in control of the highway or bridge[;]. It shall be unlawful for more than one (1) vehicle, motor vehicle, trailer and/or semitrailer, or combination of vehicles with gross weights in excess of those specified in section 49-1001

(1) and (2), Idaho Code, to pass at the same time on any bridge with a span of nineteen (19) feet or more posted by the board for single lane traffic by those trucks.

49-1007 — Limiting liability of authorities

49-1007. Limiting liability of authorities. No action or proceedings of any nature or description shall lie against the board, its authorized agents, or any other authorities charged with the administration of this chapter because of their compliance with any of the terms of this chapter, the exercise of any authority, or the performance of any duties granted or prescribed by this chapter.

49-1008 — Granting permission for transportation of loads of logs, poles, piling and material from mines which has not been finally processed

49-1008. Granting permission for transportation of loads of logs, poles, piling and material from mines which has not been finally processed. With respect to transportation of logs, poles or piling by motor vehicle, the board or other proper authorities in charge of, or having jurisdiction over a highway, are authorized to designate and post a highway or section of highway or bridge over which loads of logs, poles, or piling may be transported in continuous operation by motor vehicles in excess of width and length provided by section 49-1010 , Idaho Code, and to designate and post a highway or section of highway or bridge over which loads of logs, poles, piling or material from mines which has not been finally processed may be transported in continuous operation by motor vehicles in excess of weight provided by section 49-1001 , Idaho Code. The designation and posting of a highway or section of highway or bridge by the board or other proper authorities shall state width, length, gross weight and maximum speed of loads that may be transported. Any motor vehicle complying with width, length and weight allowed by posting of a highway under authority of this title shall not be required to obtain a permit under section 49-1004 , Idaho Code.

49-1009 — Contract for building and maintaining roads

49-1009. Contract for building and maintaining roads. The board, the governing board of a county, city or highway district is authorized to contract with any individual, firm or corporation, state or federal agency or any combination of parties, to build, rebuild or maintain or contribute financial aid to the building, rebuilding or maintenance of any section or sections of a highway to any standard necessary for the transportation by private or contract trucks principally engaged in the transportation of products originating or produced in Idaho, to permit the hauling of heavier gross weights and wider loads than now provided by law, to an extent necessary to accomplish that maintenance or construction. Upon application of any of the above mentioned parties for permission to use and operate private or contract trucks for hauling greater gross weights and wider loads than provided by law, the board, county, city or district may make and enter into an agreement with the applicant permitting the overload and providing for payment of an additional financial contribution or an agreement to maintain, build or rebuild the highway for the additional or extraordinary use, specifically providing where necessary, for reasonable protective restrictions. If in the opinion of the negotiating officials, a bond should be required, then a surety bond shall be furnished. Nothing in this chapter shall be construed to require any public agency to enter into these contracts or agreements.

49-1010 — Size of vehicles and loads

49-1010. Size of vehicles and loads. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, or any trailer not wider than the implement of husbandry used in the transportation of implements of husbandry for agricultural operations, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one farm operation to another during daylight hours.

(b) The limitations as to size of vehicles shall not apply to farmers or their designated agents, or equipment dealers transporting implements of husbandry and equipment listed in paragraph (a) of this subsection for the purpose of:

(i) The repair or maintenance of such implements of husbandry and equipment when traveling to or from a farm to a repair or maintenance facility during daylight hours; or (ii) The purchase, sale, lease or rental of such implements of husbandry and equipment when traveling to or from a farm to a dealership, auction house or other facility during daylight hours.

(c) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state, except as permitted by section 49-1004 , Idaho Code, shall not exceed

(d) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (c) of this subsection, must display one (1) red or fluorescent orange flag a minimum of eighteen (18) by eighteen (18) inches on the outermost left projection of the tractor or implement being transported.

(2) The height of a vehicle, including the load thereon, shall not exceed

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle

(b) When a trailer or semitrailer, except as noted in this subsection 1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination length not to exceed 2. The length of a trailer tongue, or the length of the tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length. 3. Semitrailers operating on routes which are a part of the national network as set forth in 23 CFR 658, on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network and state highways as set forth by policy and approved by the transportation board, shall not exceed a length of

(c) When a motor vehicle and one (1) or more trailers, except as noted in subsection (3)(b), (3)(d) and (3)(e) of this section

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted in this subsection When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set forth in 23 CFR 658 and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s)

(g) When a dromedary combination transporting class 1 explosive materials and/or any munitions-related security material as specified by the U.S. department of defense in compliance with 49 CFR 177.835, not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section, up to

(h) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in paragraph (f) of this subsection

(i) When a boat transporter, stinger-steered as defined in subsection (3)(f) of this section, excluding front and rear overhang of load

(j) When an auto transporter, stinger-steered as defined in subsection (3)(f) of this section, excluding front and rear overhang of load .

(k) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in paragraph (f) of this subsection, excluding front and rear overhang of load

(l) When a truck tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than

(b) Beyond the end of a vehicle, more than

(c) Beyond the left fender of a passenger vehicle, more than

(d) Beyond the right fender of a passenger vehicle, more than .

(e) To the front of a boat transporter, more than

(f) To the rear of a boat transporter, more than

(g) To the front of an auto transporter, more than

(h) To the rear of an auto transporter, more than

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination and the overall length allowed is:

(a) On the national network

(b) Other than the national network

(7) Vehicle combinations consisting of not more than four (4) vehicle units with an overall length in excess of the limits of subsection (3) of this section and with an overall combination length not to exceed one hundred fifteen (115) feet, may be operated by permit on routes designated for such operations by the public highway agency having jurisdiction over that highway system, subject to the following restrictions as to lengths of cargo-carrying units:

(a) Truck tractor and two (2) trailing units

(b) Truck tractor and three (3) trailing units

(c) Truck and two (2) trailing units

49-1011 — Exception to weight and size limitations

49-1011. Exception to weight and size limitations.

(1) If federal law permits the several states to establish size and weight limits in excess of those prescribed in sections 49-1001 and 49-1010 , Idaho Code, the board, as provided in subsection (2) of this section, may authorize the movement on highways under its jurisdiction of vehicles, motor vehicles, trailers and/or semitrailers, or combinations thereof, of a size or weight in excess of the limits prescribed in sections 49-1001 and 49-1010 , Idaho Code, but within the limits necessary to qualify for federal-aid highway funds.

(2) The authority granted the board by the provisions of this section shall be exercised by adoption of rules or regulations pursuant to section 40-312 , Idaho Code, or by issuance of permits pursuant to section 49-1004 , Idaho Code, except that the maximum size and weight limits authorized in this section apply.

(3) The following vehicles may be operated on any highway that is not part of the federal-aid interstate system, up to two thousand (2,000) pounds in excess of any axle, bridge or gross vehicle weight limit established in section 49-1001 , Idaho Code, as determined by the vehicle operator:

(a) Farm vehicles;

(b) Vehicles that are operated to transport forest products; and

(c) Refuse or sanitation trucks that are operated by a city, county or state agency, or by a designated agent of the agency, to transport refuse. Such extra weight shall not apply to posted bridge weights or other seasonal or temporary weight limit postings.

49-1012 — Temporary movement of harvesting machinery after darkness

49-1012. Temporary movement of harvesting machinery after darkness. Notwithstanding any other provision of law, harvesting machinery may be moved during hours of darkness when that machinery is equipped, in addition to those requirements set forth in chapter 9, title 49 , Idaho Code, with a flashing amber-colored light at least four (4) inches in diameter clearly visible from in front of the machinery, a flashing red-colored light at least four (4) inches in diameter clearly visible from the back of the machinery, and the machinery is preceded by a well-lighted pilot vehicle or flagman at least three hundred (300) feet in advance of the vehicle to give warning of the approach of the equipment and followed by

a well-lighted pilot vehicle or flagman at least three hundred (300) feet behind the vehicle to give warning of the presence of the equipment on the highway.

49-1013 — Penalties for violations

49-1013. Penalties for violations.

(1) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter, except that violations of law as specified in paragraphs (a), (b) and (c) of subsection (3) of this section shall constitute an infraction.

(2) Persons convicted of violations of the provisions of sections 49-434A , 49-1003 and 49-1006 through 49-1012 , Idaho Code, shall be subject to punishment by a fine of not to exceed three hundred dollars ($300) or by imprisonment in the county jail for not more than thirty (30) days or by a combination of such fine and imprisonment.

(3) Persons convicted of violations of the provisions of sections 49-438 , 49-1001 , 49-1002 , 49-1004 and 49-1005 , Idaho Code, shall be subject to a penalty as prescribed herein:

(a) One (1) pound through one thousand (1,000) pounds overweight shall be five dollars ($5.00) and shall constitute an infraction.

(b) One thousand one (1,001) pounds through two thousand (2,000) pounds overweight shall be fifteen dollars ($15.00) and shall constitute an infraction.

(c) Two thousand one (2,001) pounds through four thousand (4,000) pounds overweight shall be twenty-five dollars ($25.00) and shall constitute an infraction.

(d) Four thousand one (4,001) pounds through fifteen thousand (15,000) pounds overweight shall be twenty-five dollars ($25.00) plus $.1341 per pound for each additional pound over four thousand (4,000) pounds overweight.

(e) Fifteen thousand one (15,001) pounds through twenty thousand (20,000) pounds overweight shall be one thousand five hundred dollars ($1,500) plus twenty cents ($.20) per pound for each additional pound over fifteen thousand (15,000) pounds overweight.

(f) Twenty thousand one (20,001) pounds and greater shall be two thousand five hundred dollars ($2,500) plus thirty cents ($.30) per pound for each additional pound over twenty thousand (20,000) pounds overweight.

(g) In addition to the penalties specified in this subsection, one hundred fifty dollars ($150) for failure to deploy a variable load suspension axle which results in adjacent axles exceeding allowable weight by two thousand one (2,001) pounds or more.

(4) Persons convicted of an infraction or misdemeanor for violating two (2) or more of the provisions of section 49-1001 , 49-1002 or 49-1004 , Idaho Code, at any one (1) time shall be assessed the full amount of the penalty for the primary violation. In addition to the assessment of the penalty for the primary violation, the person convicted of an infraction or misdemeanor shall be assessed a penalty of ten dollars ($10.00) for each additional misdemeanor conviction or five dollars ($5.00) for each additional infraction for violations of section 49-1001 , 49-1002 or 49-1004 , Idaho Code, committed at the same time.

(5) All moneys collected as a result of the penalties prescribed in subsections (3) and (4) of this section, shall be deposited into the highway distribution account.

49-1014 — indemnity agreement in motor carrier transportation contracts void

49-1014. indemnity agreement in motor carrier transportation contracts void. As used in this section:

(1) "Motor carrier transportation contract" means a contract, agreement or understanding covering:

(a) The transportation of property for compensation or hire by the motor carrier;

(b) Entrance on property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(c) A service incidental to activity described in this subsection including, but not limited to, storage of property.

(2) "Promisee" means the promisee and any agents, employees, servants or independent contractors who are directly responsible to the promisee except for motor carriers party to a motor carrier transportation contract with the promisee and such motor carrier’s agents, employees, servants or independent contractors directly responsible to such motor carrier.

(3) Notwithstanding any other provision of law to the contrary, a provision, clause, covenant or agreement contained in, collateral to or affecting a motor carrier transportation contract that purports to indemnify, defend or hold harmless, or has the effect of indemnifying, defending or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

CHAPTER 12

49-1201 — Department to administer — Court review

49-1201. Department to administer — Court review.

(1) The department shall administer and enforce the provisions of this chapter.

(2) Any person aggrieved by an order or an act of the department, may, within ten (10) days after notice file a petition in the district court for Ada County for a review. The filing of such a petition shall not suspend the order or act unless a stay shall be allowed by a judge of the court pending final determination of the review. The court shall summarily hear the petition and may make any appropriate order or decree.

49-1202 — Department to furnish operating record

49-1202. Department to furnish operating record. The department shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter providing fees have been paid pursuant to section 49-202 , Idaho Code. Personal information contained in the operating record shall be exempt from disclosure as provided in chapter 2, title 49 , Idaho Code. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of any conviction of the person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by that person, the department shall so certify. These abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

49-1203 — Courts to report nonpayment of judgments — Nonresidents

49-1203. Courts to report nonpayment of judgments — Nonresidents.

(1) Whenever any person fails within sixty (60) days to satisfy a judgment, it shall be the duty of the clerk of the court, or of the judge of a court, which has no clerk, in which a judgment is rendered within this state, to forward to the department immediately after the expiration of the sixty (60) days, a certified copy of the judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of drivers' licenses of the state of which the defendant is a resident.

49-1204 — Suspension for nonpayment of judgments

49-1204. Suspension for nonpayment of judgments.

(1) Upon receipt of a certified copy of a judgment, the department shall suspend, except as provided in section 49-1207 , Idaho Code, the driver's license or the nonresident's driving privilege of any person against whom the judgment was rendered.

(2) If the judgment creditor consents in writing, in a form as the department may prescribe, that the judgment debtor be allowed a driver's license or nonresident's driving privilege, he may so be allowed by the department, in its discretion, for six (6) months from the date of consent and thereafter until consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments prescribed in section 49-1207 , Idaho Code, provided the judgment debtor furnishes proof of financial responsibility.

49-1205 — Suspension to continue until judgments paid and proof given

49-1205. Suspension to continue until judgments paid and proof given. The driver's license and nonresident's driving privilege shall, except as provided in section 49-1207 , Idaho Code, remain suspended and shall not be renewed, nor shall any driver's license be issued in the name of that person, including any person not previously licensed, unless and until every judgment is stayed, satisfied or discharged and proof of financial responsibility is given. A discharge in bankruptcy shall not be deemed a satisfaction of judgment unless the person gives proof of financial responsibility.

49-1206 — Payments sufficient to satisfy requirements

49-1206. Payments sufficient to satisfy requirements. Judgments in excess of the amounts specified in section 49-117 , Idaho Code, shall, for the purpose of this chapter only, be deemed satisfied when payments in the amounts specified have been credited. Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amount specified.

49-1207 — Installment payment of judgments — Default

49-1207. Installment payment of judgments — Default.

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which judgment was rendered for the privilege of paying the judgment in installments and the court may, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a driver's license or a nonresident's driving privilege, and shall restore any driver's license or nonresident's driving privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of default, the department shall suspend the driver's license or nonresident's driving privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter.

49-1208 — Proof required upon certain convictions

49-1208. Proof required upon certain convictions.

(1) If a person is not licensed, but by final order or judgment is convicted of, or forfeits any bail or collateral deposited to secure an appearance for trial, or has entered a plea of guilty for, any offense requiring the suspension or revocation of the driver's license, or for operating a motor vehicle upon the highways without being licensed to do so, no driver's license shall be issued to that person and his driving privilege shall remain suspended or revoked until he gives and maintains proof of financial responsibility. Such person shall be required to verify proof of financial responsibility for a three (3) year period commencing with the last day of the suspension or revocation.

(2) Whenever the department or a court suspends, or the department revokes a resident's driver's license or nonresident's driving privilege by reason of a conviction, forfeiture of bail, or upon a plea or finding of guilty, the license or privilege shall remain suspended or revoked unless the person shall have previously given or shall immediately give and maintain proof of financial responsibility. Such person shall be required to verify proof of financial responsibility for a three (3) year period commencing with the last day of the suspension or revocation.

(3) Any person who is convicted of violating the provisions of either section 49-1229 , 49-1232 or 49-1428 , Idaho Code, for the first time shall give and maintain proof of financial responsibility throughout the one (1) year period following the conviction. Any person convicted for a second or any subsequent time of violating the provisions of section 49-1229 , 49-1232 or 49-1428 , Idaho Code, within a five (5) year period, shall give and maintain proof of financial responsibility throughout the three (3) year period following such conviction. The department shall notify any person subject to this subsection of the requirements for maintaining proof of financial responsibility for a second and any subsequent conviction. The driver's license and driving privileges shall remain suspended unless the person gives and maintains proof of financial responsibility throughout either the one (1) year or the three (3) year period following such conviction.

(4) Whenever a person is required to maintain proof of financial responsibility, and who is not a resident of Idaho, files and maintains proof of financial responsibility in his home state the department shall reinstate the person's driving privileges as long as proof of financial responsibility is maintained in the person's home state.

49-1212 — Expressed, permitted and implied provisions of motor vehicle liability policy

49-1212. Expressed, permitted and implied provisions of motor vehicle liability policy.

(1) An owner's policy of liability insurance shall:

(a) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is to be granted; and

(b) Insure the person named therein and any other person, as insured, using any such described motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as provided in section 49-117 , Idaho Code.

(2) An operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth in subsection (1) of this section with respect to an owner's policy of liability insurance.

(3) A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) A motor vehicle liability policy shall not insure any liability under any worker's compensation law as provided in title 72 , Idaho Code, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any described motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to any liability by any agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by the motor vehicle liability policy.

(b) Satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount shall be deductible from the limits of liability referenced in subsection (1)(b) of this section.

(d) The policy and its written application, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(6) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and any excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants an excess of additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(7) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(8) Any motor vehicle liability policy may provide for the prorating of the insurance with other valid and collectible insurance.

(9) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one (1) or more insurance carriers, which policies together meet the requirements of this chapter.

(10) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(11) Notwithstanding any other provisions of this section or section 49-2417 , Idaho Code, when the negligent operation of a loaned vehicle results in the death or injury to a person or damage to personal property and at the time of the negligent operation of the loaned vehicle the operator is insured under a motor vehicle liability policy complying with the financial responsibility law of this state, then primary coverage for the death of or injury to a person or damage to personal property shall be provided by the operator's motor vehicle liability policy. When an operator's policy provides liability or physical damage coverage for damage to the loaned vehicle, that coverage shall be primary and shall be limited to the lower of the reasonable cost to repair or the owner's actual cost to replace the loaned vehicle. The insurance policy of the owner of the loaned vehicle shall provide secondary or excess coverage for the death of or injury to a person or personal property.

(a) For the purpose of this subsection, "loaned vehicle" means a motor vehicle which is provided for temporary use without charge to the operator by an entity licensed under chapter 16, title 49 , Idaho Code, for the purpose of demonstrating the vehicle to the operator as a prospective purchaser, or as a convenience to the operator during the repairing or servicing of a motor vehicle for the operator, regardless of whether such repair or service is performed by the owner of the loaned vehicle or by some other person or business.

(b) Should the owner of a motor vehicle receive any compensation from or on behalf of the operator for the temporary use of the motor vehicle, excluding any compensation provided to the owner as a result of the repairing or servicing of a motor vehicle for the operator, the owner's insurance coverage shall be primary and the operator's motor vehicle insurance shall be secondary or excess.

(12) No motor vehicle liability policy providing coverage beyond state mandated minimum limits shall provide a reduced level of coverage to any insured's family or household member or other authorized user except as provided in section 41-2510 , Idaho Code.

49-1213 — Notice of cancellation or termination of certified policy

49-1213. Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under section 49-1210 , Idaho Code, the insurance so certified shall not be cancelled or terminated until at least ten (10) days after a notice of cancellation or termination of the insurance so certified shall be filed with the department. A policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

49-1214 — Not to affect other policies

49-1214. Not to affect other policies.

(1) This chapter shall not be held to apply to or affect policies of motor vehicle insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are indorsed to conform to the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

49-1217 — Owner may give proof for others

49-1217. Owner may give proof for others. Whenever any person required to give proof of financial responsibility is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by the owner in lieu of proof by the other person to permit that other person to operate a motor vehicle.

49-1220 — Duration of proof — When proof may be canceled or returned

49-1220. Duration of proof — When proof may be canceled or returned.

(1) The department shall upon request consent to the immediate cancellation of any certificate of insurance, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after one (1) year or three (3) years from the date the proof was required, as provided in section 49-1208 , Idaho Code, when, during the one (1) year or three (3) year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the driver's license or nonresident's operating privilege of the person by or for whom the proof was furnished; or

(b) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his driver's license to the department.

(2) Whenever any person whose proof has been canceled or returned applies for a driver's license within a period of one (1) year or within a period of three (3) years from the date proof was originally required, as provided in section 49-1208 , Idaho Code, the application shall be refused unless the applicant shall reestablish proof for the remainder of the one (1) year or three (3) year period.

49-1221 — Transfer of registration to defeat purpose — Prohibited

49-1221. Transfer of registration to defeat purpose — Prohibited. If an owner's registration has been suspended under the provisions of this chapter, that registration shall not be transferred nor the motor vehicle in respect of which the registration was issued registered in any other name until the director is satisfied that the transfer of registration is

proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter. Nothing in this section shall be construed to apply to or affect the registration of any motor vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised that right and has repossessed that motor vehicle from a person whose registration has been suspended under the provisions of this chapter.

49-1223 — Exceptions from chapter

49-1223. Exceptions from chapter.

(1) This chapter shall not apply with respect to any motor vehicle owned by the United States, the state, any municipality or other political subdivision.

(2) Sections 49-1212 , 49-1229 , 49-1230 and 49-1232 , Idaho Code, shall not apply to vehicles defined in section 67-7101 , Idaho Code, provided that the owner or operator of such vehicle has procured other liability insurance applicable to the use of the vehicle upon public roads consistent with section 49-1428 , Idaho Code. Such other liability insurance coverage is not required to meet the policy requirements stated in sections 49-1212 and 49-1229 , Idaho Code.

49-1224 — Self-insurers

49-1224. Self-insurers.

(1) Any person in whose name more than twenty-five (25) motor vehicles are registered and titled in Idaho, or engaged in the operation of a railroad, street railway system or public utility subject to the regulation of the public utilities commission irrespective of the number of vehicles registered, may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department.

(2) The department may, in its discretion, issue a certificate of self-insurance and certificate of liability insurance in a form as the department prescribes when the department is satisfied that the person is possessed and will continue to be possessed of ability to pay judgments obtained against that person upon application, and providing a statement by a certified public accountant attesting the applicant's net worth is five hundred thousand dollars ($500,000), a list of vehicles and an application fee of seventy dollars ($70.00) which shall be deposited in the state highway account.

(3) The self-insurer will be required to submit an annual financial statement showing net worth of five hundred thousand dollars ($500,000), a list of vehicles and a seventy dollar ($70.00) issue fee to be deposited in the state highway account.

(4) Upon not less than five (5) days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty (30) days after a judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

49-1225 — Assigned risk plans

49-1225. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the director of insurance shall approve reasonable plans for the equitable apportionment among those companies of applicants for policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure policies through ordinary methods. When a plan has been approved, all those insurance companies shall subscribe to and participate in the plan. Any applicant for a policy, any person insured under such a plan, and any insurance company affected, may appeal to the director of insurance from any ruling or decision of the manager or committee designated to operate the plan. Any person aggrieved hereunder by any order or act of the director of insurance may, within ten (10) days after notice of it, file a petition in the district court of Ada County, Idaho, for a review. The court shall summarily hear the petition and may make an appropriate order or decree.

49-1226 — Chapter not to prevent other process

49-1226. Chapter not to prevent other process. Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon other processes provided by law.

49-1229 — Required motor vehicle insurance

49-1229. Required motor vehicle insurance.

(1) Every owner of a motor vehicle which is registered and operated in Idaho by the owner or with his permission shall continuously, except as provided in section 41-2516 , Idaho Code, provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of motor vehicles described therein in an amount not less than that required by section 49-117 , Idaho Code, and shall

demonstrate the existence of any other coverage required by this title or a certificate of self-insurance issued by the department pursuant to section 49-1224 , Idaho Code, for each motor vehicle to be registered.

(2) A motor vehicle owner who prefers to post an indemnity bond with the director of the department of insurance in lieu of obtaining a policy of liability insurance may do so. Such bond shall guarantee that any loss resulting from liability imposed by law for bodily injury, death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance and use of the motor vehicle sought to be registered shall be paid within thirty (30) days. The indemnity bonds shall guarantee payment in an amount no less than fifty thousand dollars ($50,000) for any one (1) accident of which fifteen thousand dollars ($15,000) is for property damage, for each vehicle registered up to a maximum of one hundred twenty thousand dollars ($120,000) for five (5) or more vehicles.

(3) Any bond given in connection with this chapter shall be, and shall be construed to be, a continuing instrument and shall cover the period for which the motor vehicle is to be registered and operated. Such bond shall be on a form approved by the director of insurance with a surety company authorized to do business in the state.

(4) A motor carrier shall continuously provide insurance against loss resulting from liability imposed by law or by rule of the department and shall comply with the insurance requirements of section 49-1233 , Idaho Code.

(5) It is an infraction punishable by a fine of seventy-five dollars ($75.00) for any person to violate the provisions of this section for the first time. A second and any subsequent conviction for a violation of the provisions of this section or the provisions of section 49-1232 or 49-1428 , Idaho Code, within a period of five (5) years shall be a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both. The department shall notify any person convicted of a violation of this section of the penalties which may be imposed for a second and any subsequent conviction.

49-1230 — Proof of compliance

49-1230. Proof of compliance. Before any applicant required to register his motor vehicle may do so the applicant shall certify the existence of automobile liability insurance covering the motor vehicle on a form prescribed by the department. The department may immediately cancel the registration card and license plates of the vehicle upon notification that the insurance certification was not correctly represented. An owner of a motor vehicle who ceases to maintain the insurance required in accordance with this chapter shall immediately surrender the registration card and license plates for the vehicle to the department and may not operate or permit operation of the vehicle in Idaho until insurance has again been furnished as required in accordance with this chapter and the vehicle is again registered and licensed.

49-1231 — Certificate of liability insurance — How acquired

49-1231. Certificate of liability insurance — How acquired.

(1) A certificate of liability insurance to be effective must be issued by an insurance or surety company authorized to do business in this state, by an authorized agent of such a company, or by the director of the department of insurance. The certificate of liability insurance shall be in a form prescribed by the director of the department of insurance. Upon purchase or renewal of a policy of insurance or upon request of its insured, an insurance or surety company or its authorized agent shall issue a certificate of liability insurance and present it to its insured. An insurance or surety company or its authorized agent shall not charge a fee for a certificate of liability insurance.

(2) When to the satisfaction of the director of the department of insurance it appears that a bond or cash deposit complying with the requirements of this chapter has been deposited with him, he shall issue to the motor vehicle owner a certificate of liability insurance.

49-1232 — Certificate or proof of liability insurance to be carried in motor vehicle

49-1232. Certificate or proof of liability insurance to be carried in motor vehicle.

(1) A certificate or proof of liability insurance shall be in the possession of the operator of every motor vehicle or present in every motor vehicle at all times when the vehicle is operated within this state. The certificate or proof of liability insurance shall be provided for inspection to any peace officer upon request to the operator of any motor vehicle. No person shall be convicted of violating this section if that person produces at any time prior to conviction the certificate or proof of liability insurance covering the motor vehicle that person is accused of operating in violation of this section, where the certificate or proof of liability insurance demonstrates the existence of liability insurance described in section 49-1212 , Idaho Code, which was in effect at the time of occurrence of the violation. The certificate or proof of liability insurance required by this section may be produced in either paper or electronic format. Acceptable electronic formats include display of electronic

images on a cellular phone or any other type of portable electronic device.

(2) If the court has not ordered the department to suspend the driving privileges of any person convicted of a violation of the provisions of this section, the department may rescind the suspension action, only if the driver can prove by sufficient evidence that the legally required motor vehicle insurance or other required evidence of financial responsibility was in force and effect at the time of the issuance of the citation. No reinstatement fee will be assessed for rescinding the suspension action under this section.

(3) It is an infraction punishable by a fine of seventy-five dollars ($75.00) for any person to violate the provisions of this section for the first time. A second and any subsequent conviction for a violation of the provisions of this section or the provisions of section 49-1229 or 49-1428 , Idaho Code, within five (5) years shall be a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both. The department shall notify any person convicted of a violation of this section of the penalties which may be imposed for a second and any subsequent conviction.

49-1233 — Motor carrier financial responsibility — Exemptions — Board rules

49-1233. Motor carrier financial responsibility — Exemptions — Board rules.

(1) Before registering any motor carrier for transporting persons or property, the department shall require verification from the motor carrier that it has obtained and has in effect liability and property damage insurance, or has a surety bond written by an insurer licensed to furnish such insurance in this state or by a surety company authorized to write surety bonds in this state, or who qualifies as a self-insurer pursuant to the provisions of section 49-1224 , Idaho Code.

(2) A motor carrier, unless exempted under the provisions of subsection (4) of this section, shall file with the department proof of liability and property damage insurance, surety bond, or proof of self-insurance in such form as the board shall prescribe. It shall be kept in full force and effect, and failure to do so shall be cause for revocation of the registration of the motor carrier.

(3) Insurance carriers shall file a notice with the department at least thirty (30) days before the effective date of any termination of insurance or surety bond or of a reduction in insurance below the amounts set by the board.

(4) Exemptions. The following intrastate motor carriers shall not be exempt from coverage in the amounts required by the provisions of section 49-117 , Idaho Code, but shall be exempt from the motor carrier liability and property damage insurance coverage required herein by rule of the board:

(a) Motor vehicles employed solely in transporting school children and teachers to or from school or to and from approved school activities, when the motor vehicles are either:

(i) Wholly owned and operated by such school, or (ii) Leased or contracted by such school and the motor vehicle is not used in the furtherance of any other commercial enterprise; or

(b) Taxicabs or other motor vehicles performing a licensed or franchised taxicab service, having a seating capacity of not more than seven (7) passengers within twenty-five (25) miles of the boundaries of the licensing or franchising jurisdiction; or

(c) Motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroads or airports or other common carrier stations; or

(d) Motor vehicles controlled and operated by any farmer when used in the transportation of his farm equipment or in the transportation of supplies to his farm; or

(e) Motor vehicles used exclusively in the distribution of newspapers; or

(f) Transportation of persons or property by motor vehicle at an airport when incidental to transportation by aircraft or other transportation in substitution for scheduled airline service when the carrier cannot provide the scheduled service because of weather and/or mechanical conditions and the transportation is arranged for and paid by the affected airlines; or

(g) Transportation of persons and/or property, including mobile and modular houses manufactured with wheels and undercarriage as part of the substructure, but not transportation of other houses, buildings or structures within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of a service maintained within the limits of the municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare; or

(h) The transportation of agricultural products including fresh fruits and vegetables, livestock, livestock feed or manure; or

(i) Motor propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States; or

(j) Motor carriers transporting products of the forest; or

(k) Motor carriers transporting products of the mine including sand, gravel and aggregates thereof, except petroleum products; or

(l) Motor carriers transporting household goods as defined by the federal surface transportation board; or

(m) Vehicles properly equipped, designed and customarily used for the transportation of disabled or abandoned vehicles by means of a crane, hoist, tow bar, dolly or roll bed, which vehicle shall be known as a "wrecker (tow truck)."

(5) The board shall promulgate rules to implement the provisions of this section, establishing by rule the amount of liability coverage to be carried for personal injury suffered by one (1) person while being transported in any vehicle, any additional amounts for all persons receiving personal injury, and such amount for damage to the property of any person other than the insured. The board is further authorized to adopt temporary rules as necessary.

49-1234 — online insurance verification system — peace officer duties — rulemaking

49-1234. online insurance verification system — peace officer duties — rulemaking.

(1) The department shall establish and maintain an online insurance verification system for motor vehicle insurance coverage required by the provisions of this chapter, subject to the following:

(a) The department shall consult with representatives of the insurance industry to determine the objectives, details and deadlines relating to the verification system;

(b) The verification system shall be accessible through the internet, world wide web or a similar proprietary or common carrier electronic system by authorized personnel of the department, department of insurance, courts, law enforcement entities and of any other entity authorized by the department;

(c) The verification system shall provide for direct inquiry and response between the department and insurance carriers, or such other method of inquiry and response as agreed to by the department and individual insurance carriers;

(d) The verification system shall be capable of sending inquiries to and receiving responses from insurers for the purpose of verifying current motor vehicle insurance coverage via web services established by insurers through the internet, world wide web or a similar proprietary or common carrier electronic system, in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration (IICMVA), provided that the department shall promulgate rules to provide insurers an alternative method for verifying motor vehicle insurance policy data rather than establishing web services or utilizing IICMVA’s insurance data transfer guide;

(e) With the exception of unplanned system outages, the verification system shall be available twenty-four (24) hours a day to verify the insurance status of any motor vehicle registered in this state through the vehicle’s identification number, policy number, national association of insurance commissioners’ (NAIC) code or registered owner’s name; provided that a reasonable amount of downtime may be allotted for planned system outages;

(f) The verification system shall include appropriate provisions, consistent with IICMVA standards, to secure its data against unauthorized access and to maintain a record of all information requests; and

(g) All information exchanged between the department and insurance companies, any database created, all information contained in the verification system and all reports, responses or other information generated for the purposes of the verification system shall be exempt from disclosure as provided in section 74-106 , Idaho Code.

(2) As a condition for writing motor vehicle liability insurance policies in this state, insurance carriers shall cooperate with the department in establishing and maintaining the insurance verification system and shall provide access to motor vehicle insurance policy status information as may be provided in rules promulgated by the department.

(3) Insurers that make good faith efforts to comply with the provisions of this section shall be immune from civil or administrative liability related to this section.

(4) The department shall establish a program to match information from the online insurance verification system with motor vehicle registrations to determine whether owners of motor vehicles have established financial responsibility. The department shall suspend the registration of any motor vehicle identified by the department as having failed to comply with the financial responsibility requirements. The program shall include:

(a) Insurers reporting data to the verification system at least weekly;

(b) The department performing a periodic match at least monthly of the information from the online insurance verification system with motor vehicle registrations to determine whether owners of motor vehicles have established financial responsibility;

(c) An initial notice to an owner of a motor vehicle who is shown to not have established or maintained financial responsibility for two (2) consecutive months. Such notice shall provide sixty (60) days for an owner to comply with the financial responsibility requirements or to notify the department of exemption;

(d) A final notice to an owner of a motor vehicle who is shown not to have established or maintained financial responsibility subsequent to the notice issued pursuant to paragraph (c) of this subsection. Such notice shall provide ten (10) days for an owner to comply with the financial responsibility requirements or to notify the department of exemption before suspension of an owner's registration will be effective;

(e) That the department may offer, and that an owner may consent to, the sending of all eligible notices by e-mail in lieu of sending such notices through the mail;

(f) The opportunity for an owner to provide a certificate or proof of liability insurance prior to any action taken against the registration;

(g) That a registration may not be reinstated unless evidence of insurance is provided to the department and a reinstatement fee of seventy-five dollars ($75.00) is paid to the department. These fees shall be deposited into the state highway account. These fees are in addition to any other applicable fines, penalties, and fees;

(h) That an owner may lawfully suspend vehicle insurance pursuant to section 41-2516 , Idaho Code;

(i) That an insurance company shall, if it has such capability, report data indicating that a vehicle's insurance has been lawfully suspended because such vehicle has been placed into storage by the owner; and

(j) That an owner may notify the department when exempt from the requirement to possess proof of vehicle financial responsibility for reasons allowed by Idaho Code or pursuant to rules promulgated by the department. If an exemption applies, the department shall mark the registration record as exempt and such registration shall not be suspended.

(5) Peace officers shall access information from the online insurance verification system to verify the current validity of motor vehicle liability insurance. If insurance is verified, then the peace officer shall not issue a citation for an infraction violation of the provisions of section 49-1232 , Idaho Code.

(6) If an Idaho uniform citation is issued to a person for an infraction violation of the provisions of section 49-1232 , Idaho Code, and it is subsequently found that the legally required motor vehicle insurance coverage was in force at the time of the issuance of the citation, then the court shall dismiss the citation without penalty and such citation shall not appear on the person's record.

(7) This section shall not apply to any vehicle insured under commercial motor vehicle coverage and shall not apply to implements of husbandry and golf carts. As used in this section, "commercial motor vehicle coverage" means an insurance policy that covers a business's vehicles and employees.

(8) The department may promulgate rules in accordance with the provisions of chapter 52, title 67 , Idaho Code, to carry out the provisions of this section.

CHAPTER 13

49-1301 — Accidents involving damage to vehicle

49-1301. Accidents involving damage to vehicle.

(1) The driver of any vehicle involved in an accident, either on public or private property open to the public, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of law.

(2) For any accident which occurs on a divided, controlled-access highway or interstate highway of the state highway system, a stop as required by subsection (1) of this section shall be made by moving the vehicle into a safe refuge on the shoulder, emergency lane or median whenever such moving of a vehicle may be done safely and the vehicle is capable of being normally and safely driven, does not require towing, and may be operated under its own power in its customary

manner without further damage or hazard to itself, to the traffic elements or to the roadway.

(a) For any other highway, a stop as required by subsection (1) of this section shall be made without obstructing traffic more than is necessary.

(b) The driver or any other person who has removed a motor vehicle from the main-traveled part of the road as provided in this subsection before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this subsection.

(3) Any person failing to stop or to comply with the requirements under these circumstances shall be guilty of a misdemeanor.

(4) The department shall revoke for a period of one (1) year the driver's license, privileges or permit to drive, or the nonresident operating privilege, of any person convicted of a violation of the provisions of subsection (1) of this section.

(5) Nothing herein shall be construed to interfere with the duty of any city, county or state police officer to investigate and detect crime and enforce the penal, traffic or highway laws of this state or any political subdivision.

49-1302 — Duty to give information in accident involving damage to a vehicle

49-1302. Duty to give information in accident involving damage to a vehicle.

(1) The driver of any vehicle involved in an accident resulting in damage to any vehicle which is driven or attended by any person shall, at the scene of the accident, give his name, address and, if available, at the scene of the accident, he shall exhibit his driver's license, proof of registration and certificate or proof of liability insurance to the person struck or to the driver or person attending any vehicle collided with.

(2) If a police officer is present, that officer shall make all reasonable efforts to facilitate the exchange of the required information provided by subsection (1) of this section between the parties involved.

(3) Any person who willfully fails to provide the information required to be given by subsection (1) of this section or who knowingly provides false information of the type required by this section shall be guilty of a misdemeanor.

49-1303 — Duty upon striking unattended vehicle

49-1303. Duty upon striking unattended vehicle. The driver of any vehicle which collides with any unattended vehicle shall immediately stop, and then and there either locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, or shall leave in a conspicuous place in or on the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking, along with a statement of the circumstances.

49-1304 — Duty upon striking fixtures upon or adjacent to a highway

49-1304. Duty upon striking fixtures upon or adjacent to a highway. The driver of any vehicle involved in an accident resulting in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact, of his name and address, the name of his insurance agent or company if he has automobile liability insurance, the motor vehicle registration number of the vehicle he is driving, and upon request and if available exhibit his driver's license.

49-1305 — Immediate notice of accidents

49-1305. Immediate notice of accidents.

(1) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or damage to the property of any one (1) person in excess of one thousand five hundred dollars ($1,500) shall immediately, by the quickest means of communication, give notice of the accident to the local police department if the accident occurs within a city, otherwise to the office of the county sheriff or the nearest office of the state police.

(2) Whenever the driver of a vehicle is physically incapable of giving immediate notice of an accident as required herein, and there was another occupant in the vehicle at the time of the accident capable of doing so, the occupant shall give or cause to be given the notice not given by the driver.

49-1306 — Written reports of accidents

49-1306. Written reports of accidents.

(1) Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident, either at the time of and at the scene of the accident, or thereafter by interviewing participants or witnesses, shall within twenty-four (24) hours after completing the investigation forward a written report of the accident to the department.

(2) Written reports required to be forwarded by law enforcement officers and the information contained in them shall not be privileged or held confidential.

49-1307 — Accident report forms

49-1307. Accident report forms.

(1) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for written accident reports required by this chapter, appropriate with respect to the persons required to make those reports and the purposes to be served. Written reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the department, and shall contain all of the information required on the form unless not available.

49-1308 — Filing false accident reports

49-1308. Filing false accident reports. It is unlawful for any person to file an accident report knowing the same to be false.

49-1309 — Coroners to report

49-1309. Coroners to report. Every coroner or other official performing like functions shall, on or before the 10th day of each month, report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident, giving the time and place of the accident and the circumstances relating to it.

49-1310 — Garages to report

49-1310. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which a report is required as provided in section 49-1306 , Idaho Code, or struck by any bullet, shall report to the local police department if the garage is located within a city, otherwise to the office of the county sheriff or the nearest office of the state police within forty-eight (48) hours after the motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of the vehicle.

49-1311 — Accident reports

49-1311. Accident reports. All accident reports made by garages shall be without prejudice to the individual reporting and shall be subject to disclosure according to chapter 1, title 74 , Idaho Code, and shall be used for accident prevention purposes.

49-1312 — Department to tabulate and analyze accident reports

49-1312. Department to tabulate and analyze accident reports. The department shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number of circumstances of traffic accidents.

49-1313 — Any incorporated city may require accident reports

49-1313. Any incorporated city may require accident reports. Any incorporated city may by ordinance require that the driver of a vehicle involved in an accident also file with a designated city department a report of an accident or a copy of any report required to be filed with the department. All such reports shall be subject to disclosure according to chapter 1, title 74 , Idaho Code.

49-1314 — Testing blood of persons killed in accidents

49-1314. Testing blood of persons killed in accidents.

(1) The director of the Idaho state police, jointly with the various county coroners, shall provide a system and procedure whereby all coroners in Idaho shall obtain blood samples from all pedestrians and motor vehicle operators who have died as a result of and contemporaneously with an accident involving a motor vehicle.

(2) All investigating peace officers shall report traffic fatalities to the county coroner or follow the procedure established by the joint action of the director of the Idaho state police and the various coroners.

(3) The blood sample, or result of blood testing, with any information as may be required, shall be delivered to the director of the Idaho state police or his designee. Upon receipt of the sample the director will cause all tests as may be required to determine the amount of alcohol, narcotics and dangerous drugs that may be contained in the sample.

(4) The results of such tests shall be used for statistical purposes and shall be subject to disclosure according to chapter 1, title 74 , Idaho Code.

49-1315 — Report and investigation of traffic hazard causing accident

49-1315. Report and investigation of traffic hazard causing accident. Whenever any investigation or judicial action stemming from a traffic accident which resulted in death or injury to any person or damage to any property in an apparent extent of five hundred dollars ($500) or more results in a finding that a physical traffic hazard caused or was responsible for the traffic accident, the investigating traffic enforcement officer or presiding judicial officer shall submit a written statement of his finding to the safety engineer of the department and to the board of county commissioners of the county in which the accident occurred. Within sixty (60) days, the department shall examine and report on the alleged traffic hazard. Copies of the report shall be sent to the reporting traffic enforcement officer or presiding judicial officer who originated the action and the board of county commissioners of the county in which the accident occurred. The report by the department shall contain the engineer's explanation of the hazard and shall propose what can be done to alleviate the hazard or what has been done to alleviate the hazard, or information to fully explain why no action has been taken or is anticipated.

49-1316 — Erection of memorials to persons killed in traffic accidents

49-1316. Erection of memorials to persons killed in traffic accidents. As a means of promoting safety upon the highways of this state, the transportation department, the state police and other law enforcement officers shall permit relatives or friends of a person killed in a traffic accident upon a highway of the state, with the consent of the next of kin of the deceased, to erect a traffic accident memorial in memory of the decedent. The traffic accident memorial shall be erected adjacent to the portion of the highway where the accident occurred so that the traffic accident memorial serves as a reminder that a fatality occurred on that stretch of highway and that public safety will thereby be enhanced. The transportation department shall promulgate rules to implement the provisions of this section, to provide size limitations the traffic accident memorial must conform to and to retain jurisdiction over areas where traffic accident memorials are placed.

CHAPTER 14

49-1401 — Reckless driving

49-1401. Reckless driving.

(1) Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property; who passes when there is a line in his lane indicating a sight distance restriction; or who drives a vehicle at a speed greater than twenty (20) miles per hour over the posted speed limit in an active school zone when children are present and visible or an active construction zone when workers are present and visible shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

(2) Every person who pleads guilty to or is found guilty of reckless driving for the first time is guilty of a misdemeanor and may be sentenced to jail for not more than six (6) months or may be fined not more than one thousand dollars ($1,000), or may be punished by both fine and imprisonment. Every person who pleads guilty to or is found guilty of reckless driving, who has previously been found guilty of or has pled guilty to reckless driving, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor and may be sentenced to jail for not more than one (1) year or may be fined not more than two thousand dollars ($2,000), or may be punished by both fine and imprisonment. The department shall suspend the driver's license or privileges of any such person as provided in section 49-326 , Idaho Code.

(3) Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight. Every person convicted of inattentive driving under this section shall be guilty of a misdemeanor and may be sentenced to jail for not more than ninety (90) days or may be fined not more than three hundred dollars ($300), or may be punished by both fine and imprisonment.

49-1401A — distracted driving

49-1401A. distracted driving.

(1) As used in this section:

(a) "Mobile electronic device" means a cellular telephone; broadband personal communication device; two-way messaging device; text messaging device; pager; personal digital assistant; laptop computer; computer tablet; stand-alone computer; portable computing device; mobile device with a touchscreen display that is designed to be worn; electronic games; equipment that is capable of playing a video or recording or transmitting video; or any similar electronic device that is used to initiate, receive, or display communication or information. "Mobile electronic device" does not include a radio designed for the citizens band radio service or the amateur radio service of the federal communications commission or a commercial two-way radio communications device, an information or communication system installed within a vehicle, a subscription-based emergency communication device, or a prescribed medical device.

(b) "Operate" means to drive or assume physical control of a motor vehicle upon a public way, street, road, or highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. "Operate" does not include a motor vehicle that is lawfully parked or that has pulled to the side of or off the road at a location where it is legal to do so and where the vehicle remains stationary.

(2) Except as provided in this subsection, a person shall not operate a motor vehicle while using a mobile electronic device. The provisions of this subsection shall not apply to:

(a) A law enforcement officer, firefighter, emergency medical technician, paramedic, operator of an authorized emergency vehicle, or similarly engaged paid or volunteer public safety first responder during the performance of that person's official duties, and a public or consumer-owned utility employee or contractor acting within the scope of that person's employment when responding to a utility emergency;

(b) The use of a mobile electronic device for emergency purposes, including a text messaging device to contact a 911 system; an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity; reporting a fire, traffic accident, serious road hazard, or medical or hazardous materials emergency to appropriate authorities; reporting the operator of another motor vehicle who is driving in a reckless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs; or reporting a crime;

(c) The hands-free use of a global positioning or navigation system feature of a mobile electronic device, provided that the operator of the vehicle is not manually entering information into the global positioning or navigation system feature of the device;

(d) The selection of a telephone number or name for the purpose of making or receiving a telephone call, provided that the action is performed through one-touch access or by voice command;

(e) The use of a mobile electronic device in a voice-operated or hands-free mode if the operator of the motor vehicle does not use his hands to operate the device, except through one-touch activation or deactivation of a feature or function of the device;

(f) The use of a mobile electronic device by a governmental or commercial user during the performance of that person's official duties, as long as the mobile electronic device is being used in a similar manner as a commercial two-way radio communication device; or

(g) The use of a mobile electronic device in a farming or ranching operation to assist in the movement of farm tractors, farm equipment, and implements of husbandry from one farm operation to another.

(3) No person shall operate a motor vehicle while watching motion upon the screen of a mobile electronic device, other than motion related to the functioning or navigation of the vehicle.

(4) A violation of this section shall be a moving violation and shall be an infraction punishable by a fine of seventy-five dollars ($75.00) for a first offense and one hundred fifty dollars ($150) for a second offense within a three (3) year period.

For each subsequent offense within a three (3) year period, the offender shall be punished by a fine of three hundred dollars ($300).

(5) A court may suspend a person's driver's license for up to ninety (90) days if the person has three (3) or more convictions for violations of this section within a three (3) year period.

(6) Nothing contained in this section shall be construed to authorize seizure of a mobile electronic device by any law enforcement agency.

(7) A conviction under this section for a first offense shall not result in violation point counts as prescribed in section 49-326 , Idaho Code.

(8) A conviction under this section for a first offense that does not involve an accident may not be used to make an adverse eligibility decision by an insurer or for the purpose of establishing rates of motor vehicle insurance charged by an insurer.

(9) A law enforcement officer enforcing the provisions of this section is hereby authorized to utilize a violation of this section as the primary or sole reason for initiating a traffic stop or issuing a citation to a driver.

(10) The state preempts the field of regulating the use of mobile electronic devices in motor vehicles while driving, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by any political subdivision or municipality to regulate the use of a mobile electronic device by the operator of a motor vehicle.

(11) This section shall be effective July 1, 2020, provided that only warnings and no infractions shall be issued under this section prior to January 1, 2021.

49-1402 — Parties to a crime

49-1402. Parties to a crime. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of that offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this title is likewise guilty of that offense.

49-1403 — Offenses by persons owning or controlling vehicles

49-1403. Offenses by persons owning or controlling vehicles. It shall be unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle, to require or knowingly permit the operation of the vehicle upon a highway in any manner contrary to law.

49-1404 — Fleeing or attempting to elude a peace officer — Penalty

49-1404. Fleeing or attempting to elude a peace officer — Penalty.

(1) Any driver of a motor vehicle who wilfully flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by a peace officer may be by emergency lights or siren. The signal given by a peace officer by emergency lights or siren need not conform to the standards for decibel ratings or light visibility specified in section 49-623 (3), Idaho Code. It is sufficient proof that a reasonable person knew or should have known that the visual or audible signal given by a peace officer was intended to bring the pursued vehicle to a stop.

(2) An operator who violates the provisions of subsection (1) and while so doing:

(a) Travels in excess of thirty (30) miles per hour above the posted speed limit;

(b) Causes damage to the property of another or bodily injury to another;

(c) Drives his vehicle in a manner as to endanger or likely to endanger the property of another or the person of another; or

(d) Leaves the state; is guilty of a felony.

(3) The department shall suspend the driver's license or privileges of a person who has pled guilty or is found guilty of a misdemeanor violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, as provided in section 49-326 , Idaho Code. Any person who has pled guilty or is found guilty of a felony violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, shall have his driving privileges suspended by the court for a minimum of one (1) year, which may extend to three (3) years, at the discretion of the court,

during which time he shall have absolutely no driving privileges of any kind.

49-1405 — Arrests for serious offenses

49-1405. Arrests for serious offenses.

(1) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

(a) Negligent homicide.

(b) Driving, or being in actual physical control, of a vehicle or operating a vessel while under the influence of alcohol or other intoxicating beverage.

(c) Driving a vehicle or operating a vessel while under the influence of any narcotic drug, or driving a vehicle or operating a vessel while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle.

(d) Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries.

(e) Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or vessel or to fixtures or other property legally upon or adjacent to a highway or waterway.

(f) Reckless driving.

(g) Fleeing or attempting to elude a peace officer.

(2) Whenever any person is arrested as authorized in this section, he shall be taken without unnecessary delay before the proper magistrate as provided by law, except that in the case of either of the offenses designated in paragraphs (1)(e), (f) and (g) of this section, a peace officer shall have the same discretion as is provided by law.

(3) As used in this section, the term "vessel" shall be as defined in section 67-7003 , Idaho Code.

49-1406 — When person must be taken immediately before a magistrate

49-1406. When person must be taken immediately before a magistrate. Whenever any person is halted by a peace officer for any violation of the provisions of this title not amounting to a misdemeanor and demands an immediate appearance before a magistrate, he shall be taken without unnecessary delay before the proper magistrate as specified in section 49-1411 , Idaho Code.

49-1407 — When peace officer has option to take person before a magistrate

49-1407. When peace officer has option to take person before a magistrate. Whenever any person is halted by a peace officer for any misdemeanor violation of the provisions of this title and is not required to be taken before a magistrate, the person shall, in the discretion of the officer, either be given a traffic citation or be taken without unnecessary delay before the proper magistrate as specified in section 49-1411 , Idaho Code, in the following cases:

(1) When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

(2) When the person is charged with a violation relating to the refusal of a driver of a vehicle to submit a vehicle to an inspection and test.

(3) When the person is charged with a violation relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom.

49-1408 — Arrest of nonresident

49-1408. Arrest of nonresident.

(1) All of the provisions of this title apply both to residents and nonresidents of Idaho, except the special provisions in this section which shall govern misdemeanor violations in respect to nonresidents under the circumstances stated.

(2) A peace officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this title in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

(3) Whenever any person is arrested under the provisions of this section, he shall be taken without unnecessary delay before the proper magistrate as specified in section 49-1411 , Idaho Code.

49-1409 — Issuance of traffic citation

49-1409. Issuance of traffic citation. Whenever a person is halted by a peace officer for a misdemeanor traffic violation and is not taken before a magistrate as required or permitted by this title, the officer shall issue a citation as provided by section 19-3901 , Idaho Code, and by rule of the supreme court.

49-1410 — Authority of officer to issue citation at scene of accident

49-1410. Authority of officer to issue citation at scene of accident. A peace officer at the scene of a traffic accident may issue a written traffic citation, as provided in section 19-3901 , Idaho Code, to any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person had committed any offense under the provisions of this title in connection with the accident.

49-1411 — Appearance before magistrate — Procedure

49-1411. Appearance before magistrate — Procedure. A person shall be taken before a magistrate or given a traffic citation and the charge subsequently processed, as provided by rule of the supreme court.

49-1412 — Release of defendant when magistrate not available

49-1412. Release of defendant when magistrate not available. Whenever any person is taken into custody by an officer for the purpose of taking him before a magistrate as authorized or required in this chapter upon any charge other than a felony or the offenses enumerated in subsections (1)(a) through (d) of section 49-1405 , Idaho Code, and no magistrate is available at the time of arrest, and there is no bail schedule established by any magistrate or court and no lawfully designated court clerk or other public officer who is available and authorized to accept bail upon behalf of the magistrate or court, the person shall be released from custody upon the issuance to him of a written traffic citation and his signing a promise to appear.

49-1413 — Procedure prescribed not exclusive

49-1413. Procedure prescribed not exclusive. The provisions of this chapter shall govern all peace officers in making arrests without a warrant for misdemeanor violations of the provisions of this title, but the procedure prescribed shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

49-1414 — Conviction for traffic violation not to affect credibility of witness

49-1414. Conviction for traffic violation not to affect credibility of witness. The conviction of a person upon a charge of violating any provision of this title less than a felony shall not affect or impair the credibility of that person as a witness in any civil or criminal proceeding.

49-1415 — Illegal cancellation of traffic citation — Audit of citation records

49-1415. Illegal cancellation of traffic citation — Audit of citation records.

(1) Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this chapter, shall be guilty of a misdemeanor.

(2) Every record of traffic citations required in this chapter shall be audited at least biennially by the appropriate fiscal officer of the governmental agency to which the traffic-enforcement agency is responsible.

(3) The fiscal officer shall publish or cause to be published at least biennially a summary of all traffic violation notices issued by the traffic-enforcement agency and their dispositions in at least one (1) local newspaper of general circulation.

49-1416 — Record of traffic cases — Report of convictions to department

49-1416. Record of traffic cases — Report of convictions to department.

(1) Every magistrate or judge of a court shall keep or cause to be kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to the court, and shall keep a record of every official action by the court in reference thereto, including a record of every conviction, forfeiture resulting from every traffic complaint or citation deposited with or presented to the court.

(2) Within ten (10) days after a conviction or forfeiture of bail of a person upon a charge of violating any provision of this title or other law regulating the operation of vehicles on highways, the magistrate of the court or clerk of the court of record in which the conviction was had or bail was forfeited shall prepare and immediately forward to the department, either by paper or electronically, an abstract of the record of the court covering the case in which the person was convicted or forfeited bail. The abstract shall be certified by the person required to prepare the abstract to be true and correct. A report need not be made of any conviction involving the illegal parking or standing of a vehicle.

(3) The abstract, whether paper or electronic, shall be made upon a form as prescribed by the supreme court and shall include the name and address of the party charged, the number if any of his driver's license, the registration number of the motor vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail was forfeited, and the amount of the fine or forfeiture as applicable.

(4) Every court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

(5) Courts shall not mask, defer imposition of judgment, or allow the holder of a commercial driver's license or a person cited while operating a commercial motor vehicle, to enter into a diversion program that would prevent a conviction in any jurisdiction of a violation of a state or local traffic control law, excluding a parking violation, from appearing on the driver's record.

(6) The failure, refusal, or neglect of any judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal.

(7) The department shall keep all abstracts received in either electronic format or on microfilm, and abstracts shall be open to public inspection during reasonable business hours with the exception of personal information which may be exempt from disclosure as otherwise provided by law.

49-1417 — Provisions of sections uniform throughout state

49-1417. Provisions of sections uniform throughout state. The provisions of sections 49-1401 and 49-1402 , Idaho Code, shall be applicable and uniform throughout the state and in all political subdivisions and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of those sections.

49-1418 — Authorizing seizure of vessels, motor and other vehicles — Prohibiting defacing, altering or obliterating numbers — Sales prohibited

49-1418. Authorizing seizure of vessels, motor and other vehicles — Prohibiting defacing, altering or obliterating numbers — Sales prohibited.

(1) Any peace officer or authorized transportation department employee, with or without a warrant, may seize and take possession of any vehicle, trailer, semitrailer, vessel, vessel motor or implement of husbandry, or any part or parts thereof, which the peace officer or authorized employee has probable cause to believe is stolen, or on which any motor number, manufacturer's number, or identification number has been defaced, altered, removed, covered, destroyed or obliterated. Any peace officer or authorized transportation department employee so seizing a vehicle, vessel, equipment or parts thereof immediately shall notify the department and shall make every reasonable effort to determine ownership of the vehicle, vessel or equipment and to notify the rightful owner that the vehicle has been seized.

(2) It shall be unlawful for any person owning, conducting, managing or operating a service station, public garage, paint shop, or other repair shop for vehicles, vessels, or equipment described in subsection (1) of this section, to fail to notify local law enforcement agencies or the department, of any vehicle, vessel, equipment or parts thereof on which any numbers described in subsection (1) of this section, have been defaced, altered, removed, covered, destroyed or obliterated.

(3) Any person who shall deface, alter, remove, cover, destroy or obliterate the motor number, manufacturer's number, or identification number of any vehicle, vessel, equipment or parts thereof described in subsection (1) of this section, or places or stamps any serial number, engine number, or any other number upon a vehicle, vessel, equipment or parts thereof unless the number is assigned by the department is guilty of a felony and is punishable as provided by section 18-112 , Idaho Code.

(4) Any person who knowingly disposes of, sells or offers for sale any vehicle, engine or parts removed from a vehicle, vessel, equipment or parts thereof described in subsection (1) of this section from which the manufacturer's number, motor number, identification number or any assigned or replacement number issued by the department has been

defaced, altered, removed, covered, destroyed or obliterated is guilty of a felony.

49-1419 — Obedience to traffic direction

49-1419. Obedience to traffic direction. No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer, fireman or uniformed adult school crossing guard invested by law with authority to direct, control or regulate traffic.

49-1420 — Interference with official traffic control devices or railroad signs or signals

49-1420. Interference with official traffic control devices or railroad signs or signals. No person shall, without lawful authority, attempt to or in fact alter, twist, deface, injure, knock down, remove or interfere with the effective operation of any traffic control device or any railroad sign or signal or any inscription, shield or insignia, or any other part.

49-1421 — Driving on divided highways — Restricted access

49-1421. Driving on divided highways — Restricted access.

(1) Whenever any highway has been divided into two (2) or more traffic lanes by leaving an intervening space or by a physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand traffic lane unless directed or permitted to use another traffic lane by traffic control devices or peace officers. No vehicle shall be driven over, across or within any dividing space, barrier or section, except through an opening in the physical barrier, dividing section or space or at a crossover or intersection as established, unless specifically prohibited by public authority.

(2) No person shall drive a vehicle onto or from any controlled access highway except at entrances and exits as are established by proper authority.

49-1421A — high occupancy vehicle lanes — penalties — definitions

49-1421A. high occupancy vehicle lanes — penalties — definitions.

(1) Except as provided in subsections (2) and (3) of this section, a person shall not drive a vehicle carrying fewer than two (2) persons, including the driver, in a high occupancy vehicle lane at any time the use of the high occupancy vehicle lane is restricted to vehicles carrying two (2) or more persons, including the driver.

(2) A person may drive a motorcycle in a high occupancy vehicle lane at any time regardless of the number of passengers, without penalty.

(3) A person may drive a public transportation vehicle in a high occupancy vehicle lane at any time regardless of the number of passengers, without penalty.

(4) A person may drive an emergency vehicle in a high occupancy vehicle lane regardless of the number of passengers, without penalty, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or when performing normal patrol duties.

(5) A person may drive an authorized maintenance vehicle in a high occupancy vehicle lane regardless of the number of passengers, without penalty, when necessary to perform maintenance of that lane.

(6) Any violation of the provisions of this section shall be an infraction punishable by a fixed penalty of one hundred dollars ($100).

(7) For the purposes of this section, the following terms have the following meanings:

(a) "High occupancy vehicle lane" means a designated lane of laned roadway where the use of such designated lane is restricted to vehicles carrying at least the minimum number of persons as provided for in this section and as designated by the director of the Idaho transportation department as indicated on official signs and other official traffic-control devices.

(b) "Public transportation vehicle" means a vehicle that:

(i) Provides a designated public transportation as defined in section 221 of the Americans with disabilities act of 1990 or provides public school transportation (that is, to and from public or private primary, secondary or tertiary schools); and
(ii) Is owned or operated by a public entity, or is operated under a contract with a public entity, or is operated pursuant to a license by the secretary of the United States department of transportation or an agency of the state of Idaho, to provide motorbus or school vehicle transportation services to the public.

(8) The provisions of this section shall apply only in counties with a population less than twenty-five thousand (25,000), according to the most recent census within the state of Idaho, and where such county includes a resort city authorized to approve certain nonproperty taxes pursuant to section 50-1044 , Idaho Code.

49-1422 — Overtaking and passing school bus

49-1422. Overtaking and passing school bus.

(1) The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching the school bus when there is in operation on a school bus the visual signals specified in section 49-915 , Idaho Code, and the driver of a vehicle shall not proceed until the school bus resumes motion or the visual signals are no longer actuated. Oncoming traffic on a highway of more than three (3) lanes is not required to stop upon meeting a school bus when visual signals are actuated. Any person found guilty of violating the provisions of this subsection for the first time shall be guilty of an infraction punishable by a fine of three hundred dollars ($300). A person convicted of a second offense or any subsequent offense under this subsection within five (5) years shall be guilty of a misdemeanor punishable by a fine of no less than six hundred dollars ($600) or more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. The department shall notify any person convicted of a violation of this section of the penalties that may be imposed for a second conviction and any subsequent conviction. Notwithstanding the provisions of section 19-4705 , Idaho Code, the fines imposed under this subsection in excess of one hundred dollars ($100) shall be paid into the school bus camera fund, which is hereby created in the state treasury. Moneys in the fund may be appropriated only for the purpose of school bus stop arm software, equipment, and training to enforce the provisions of this section. Administration of the school bus camera fund shall be overseen by the state department of education.

(2) Every school bus shall be equipped with visual signals meeting the requirements of section 49-915 , Idaho Code, which shall be actuated by the driver of the school bus whenever, but only whenever, the vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate the special visual signals:

(a) In business districts designated by the department or local authorities;

(b) At intersections or other places where traffic is controlled by traffic control signals or peace officers; or

(c) In designated school bus loading areas where the bus is entirely off the roadway.

(3) Every school bus shall bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "school bus" shall be covered or concealed.

(4) When any school bus is sold and is no longer to be used for the transportation of pupils, before it may again be used on the highways of this state, it shall be painted a color other than national school bus glossy yellow, federal standard 595a, color number 13432, and all school bus markings shall be obliterated.

49-1423 — Investigation of reported violation of failing to obey school bus warning devices

49-1423. Investigation of reported violation of failing to obey school bus warning devices.

(1) The driver of a school bus who observes a violation of section 49-1422 , Idaho Code, shall prepare a written report on a form provided by the department of education indicating that a violation has occurred. The school bus driver or a school official shall deliver the report no more than seventy-two (72) hours after the alleged violation occurred to a peace officer of the state or a peace officer of the county or municipality in which the alleged violation occurred. The report shall state the time and the location at which the alleged violation occurred and shall include the motor vehicle license plate number and a description of the vehicle involved in the alleged violation.

(2) Not more than seven (7) calendar days after receiving a report of an alleged violation of section 49-1422 , Idaho Code, from a school bus driver or a school official, the peace officer shall initiate an investigation of the reported violation and contact the registered owner of the motor vehicle involved in the reported violation and request that the owner supply information identifying the driver if the registered owner claims he was not the driver at the time the alleged violation occurred. If, from the investigation, the peace officer is able to identify the driver and has reasonable cause to believe a violation of section 49-1422 , Idaho Code, has occurred, the peace officer shall prepare a uniform traffic citation for the violation and shall serve it personally or by certified mail to the driver of the vehicle.

49-1424 — Racing on public highways

49-1424. Racing on public highways.

(1) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test or exhibition.

(2) The provisions of this section shall not prohibit the use of the highways for organized motoring activities where speed or acceleration is not the objective of the contest but rather the prime objective is the precise measurement of time and distance within the posted legal speed limits.

(3) The provisions of this section shall not prohibit organized motoring activities upon the highways where speed is a primary objective of the contest when prior written permission is obtained from the authority having jurisdiction over the area to be used, and prior notification is given to law enforcement agencies in the area to be used.

49-1425 — Railroad trains not to unnecessarily block crossings

49-1425. Railroad trains not to unnecessarily block crossings. No person or government agency shall operate any train in a manner as to prevent vehicular use of any highway for a period of time in excess of fifteen (15) consecutive minutes except:

(1) When necessary to comply with signals affecting the safety of the movement of trains;

(2) When necessary to avoid striking any object or person on the track;

(3) When the train is stopped to comply with a governmental safety regulation;

(4) When the train is disabled;

(5) When the train is in motion except while engaged in switching operations;

(6) When there is no vehicular traffic waiting to use the crossing.

49-1426 — Pedestrians under influence of alcohol or drugs

49-1426. Pedestrians under influence of alcohol or drugs. A pedestrian who is under the influence of alcohol or any drug to a degree which renders him a hazard shall not walk or be upon a highway except on a sidewalk.

49-1427 — Vehicles transporting explosives

49-1427. Vehicles transporting explosives. Any person operating a vehicle transporting any explosive as a cargo or part of a cargo, upon a highway, shall at all times comply with the provisions of this section.

(1) The vehicle shall be marked or placarded on each side and the rear with the word "explosives" in letters not less than eight (8) inches high, and there shall be displayed on the rear of the vehicle a red flag not less than twenty-four (24) inches square, marked with the word "danger" in white letters six (6) inches high.

(2) The vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle.

49-1428 — Financial responsibility

49-1428. Financial responsibility.

(1) It shall be unlawful for any person to operate a motor vehicle upon highways without a valid policy of liability insurance in full force and effect in an amount not less than that provided in section 49-117 , Idaho Code, or unless the person has been issued a certificate of self-insurance pursuant to section 49-1224 , Idaho Code, or has previously posted an indemnity bond with the director of insurance as provided in section 49-1229 , Idaho Code.

(2) It is an infraction punishable by a fine of seventy-five dollars ($75.00) for any person to violate the provisions of this section for the first time. A second and any subsequent conviction of a violation of the provisions of this section or the provisions of section 49-1229 or 49-1232 , Idaho Code, within five (5) years shall be a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both. The department shall notify any person convicted of a violation of this section of the penalties which may be imposed for a second and any subsequent conviction.

49-1429 — False certificate

49-1429. False certificate. It shall be unlawful for anyone to alter, falsify, forge, counterfeit, or issue or make any certificate of liability insurance except as provided for in this title.

49-1430 — Forged certificate

49-1430. Forged certificate. Any person who shall forge or, without authority, sign any declaration that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any evidence of proof knowing or having reason to believe it is forged or signed without authority, shall be deemed guilty of a misdemeanor and be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year, or both.

49-1431 — motorcycle profiling

49-1431. motorcycle profiling.

(1) No state or local law enforcement agent or law enforcement agency shall engage in motorcycle profiling.

(2) For purposes of this section, "motorcycle profiling" means the arbitrary use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest, or search a person or vehicle under the constitution of the United States or the constitution of the state of Idaho.

(3) Nothing in this section shall be construed to create a cause of action against any individual, the state of Idaho, any counties or cities of the state, or any law enforcement entity within the state.

49-1432 — automated license plate readers — data access and control

49-1432. automated license plate readers — data access and control.

(1) For the purposes of this section:

(a) "Agency" means the state of Idaho, any political subdivision of the state of Idaho, or any agency thereof.

(b) "Automated license plate reader" means a device that passively records license plates of vehicles on a roadway or any similar device.

(c) "Traffic flow analysis" means the study and real-time use of data regarding vehicles moving through a transportation network in order to improve traffic flow, reduce congestion, and increase safety.

(2) An agency may use an automated license plate reader and its data for law enforcement purposes, traffic flow analysis purposes, or both. An agency that uses an automated license plate reader for law enforcement purposes shall do so pursuant to the following requirements:

(a) The device and its data shall not be used for any purpose other than the investigation of felony or misdemeanor crimes or traffic accidents or to search for missing or endangered persons; and

(b) The device and its data shall not be used to enforce traffic infractions other than those associated with a traffic accident.

(3) Access to automated license plate reader data shall be limited to an agency’s authorized personnel. Agencies shall implement access controls to ensure that only individuals with appropriate clearance are able to retrieve automated license plate reader data.

(4) Except as expressly allowed pursuant to this section, automated license plate reader data shall not be used for any non-law enforcement purpose, including but not limited to personal use, political activity, or surveillance unrelated to the purposes described in subsection (2)(a) of this section.

(5) A person who misuses automated license plate reader data pursuant to subsection (4) of this section shall be subject to discipline, administrative penalties, and criminal prosecution, if applicable.

(6) Each agency that uses automated license plate readers shall conduct mandatory training for all authorized users regarding data privacy, legal compliance, and ethical use of automated license plate reader systems.

(7) All access to and queries of automated license plate reader data shall be logged in a secure audit system to include user identity, date, time, and the purpose of access.

(8) Agencies shall conduct semiannual audits of automated license plate reader data access logs to detect and address any unauthorized or suspicious activity.

CHAPTER 15

49-1501 — Infraction citation — Issuance

49-1501. Infraction citation — Issuance. A peace officer or authorized employee of the Idaho transportation department may issue an Idaho uniform citation for any infraction violation of the provisions of chapters 3, 4 and 6 through 9 of this title, or any other section of this title for which an infraction penalty is specifically provided, in which he shall certify that he has reasonable grounds to believe and does believe, that the person cited committed the infraction contrary to law.

49-1502 — Procedure for processing infraction citations

49-1502. Procedure for processing infraction citations.

(1) The procedure for processing an infraction citation and the trial thereon, if any, shall be the same as provided for the processing of a misdemeanor citation under rules promulgated by the supreme court, except there shall be no right to a trial by jury. An infraction is a civil public offense, but in order to insure the maximum protection of the laws to the citizens charged with having committed an infraction, the burden of proof and the rules of evidence applied to an infraction proceeding shall be those provided in a criminal trial.

(2) In the event the defendant of an infraction citation admits the offense, pays the penalty prescribed in the rules of the supreme court pursuant to section 49-1503 (2), Idaho Code, or is found to have committed the infraction after trial before the court, a judgment shall be entered and reported to the department within ten (10) days of entry of the judgment.

49-1503 — Penalties for violations of statutes and ordinances

49-1503. Penalties for violations of statutes and ordinances.

(1) No local authority may, by ordinance, regulation or otherwise make any act a misdemeanor which, but for that ordinance or regulation, would constitute an infraction under any provision of this chapter and all such acts made a misdemeanor or for which a misdemeanor penalty has been established by any local authority through ordinance, regulation or otherwise are hereby declared to be infractions as defined in section 49-110 , Idaho Code.

(2) The penalty for an infraction citation and the judgment entered for the commission of an infraction shall be the amount provided in section 18-113A , Idaho Code.

49-1504 — Appeals — Procedures

49-1504. Appeals — Procedures.

(1) Any person found to have committed an infraction after a hearing by a court may appeal the findings to the district court in the same manner prescribed by law and rule for any criminal appeal from the magistrate's division of the district court.

(2) An appeal under this section shall not operate to stay the reporting requirements of section 49-1502 (2), Idaho Code.

49-1506 — Provisions uniform throughout state

49-1506. Provisions uniform throughout state. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions.

CHAPTER 16

49-1601 — Unlicensed dealers and salesmen prohibited

49-1601. Unlicensed dealers and salesmen prohibited. It shall be unlawful for any person to act as a dealer or salesman, wholesaler, manufacturer of vehicles or a manufacturer, distributor, factory branch, or distributor branch representative, without first having procured a license from the department. It shall be unlawful for any person other than a licensed dealer to display a vehicle for sale unless the title is in the name of the displayer. It shall be unlawful to solicit sales of vehicles without a dealer's license, unless the title is in the name of the seller. The provisions of this section shall not apply to the sale or solicitation of specialty vehicles to governmental entities within the state. Specialty vehicles shall be defined as fire trucks, fire engines, urban transit buses, ambulances, street sweepers and hazardous material response vehicles.

49-1601A — LEGISLATIVE FINDINGS AND INTENT

49-1601A. LEGISLATIVE FINDINGS AND INTENT.

(1) The legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare.

(2) In order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state.

(3) The provisions of this chapter shall be construed and applied to accomplish the purposes provided for in this section.

49-1602 — Administration — Powers and duties

49-1602. Administration — Powers and duties. The department shall:

(1) Issue, and for reasonable cause shown, refuse to issue an applicant any license authorized under the provisions of this chapter. The department may refuse to issue all license types to any applicant, other than a partnership or corporation, if the applicant fails to comply with the terms and provisions of this chapter or the rules of the board, or if the applicant has been convicted of a violation of any of the provisions of this chapter, chapter 5, title 49 , Idaho Code, section 49-1418 , Idaho Code, chapter 6, title 48 , Idaho Code, any felony committed in conjunction with a dealership or of any federal odometer law or regulation. Should the applicant be a partnership or a corporation, the department may refuse to issue a license to the applicant where it determines that one (1) or more of the partners of a partnership, or one (1) or more of the stockholders or officers of a corporation, was previously the holder of a license which was revoked or suspended, and the license revoked never reissued or the suspended license never reinstated, or that one (1) or more of the partners, stockholders, or officers, though not previously the holder of a license, has violated any of the provisions of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards.

(2) For just cause shown, revoke or suspend, on terms, conditions, and for a period of time as the department shall consider fair and just, any license or licenses issued pursuant to the provisions of this chapter. No license shall be revoked or suspended unless it shall be shown that the licensee has violated a provision of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards. An Idaho licensed motor vehicle dealer or licensed motor vehicle salesman who is convicted of one (1) or more of the offenses set forth in subsection (1) of this section shall not be eligible to reapply for a motor vehicle dealer's or salesman's license until all outstanding customer complaints have been resolved to the department's satisfaction and for the following time periods from the date of conviction: misdemeanor convictions: three (3) years for the first conviction and seven (7) years for every subsequent conviction; felony convictions: ten (10) years for the first conviction and ten (10) years for every subsequent conviction. The holder of a motor vehicle dealer's license shall not be eligible to apply for a motor vehicle salesman's license within the same time periods set forth in this subsection when convicted of one (1) or more of the offenses set forth in subsection (1) of this section.

(3) On its own motion, upon the sworn complaint of any person, investigate any suspected or alleged violation by a licensee of any of the provisions of this chapter or of an applicable rule or regulation.

(4) Prescribe forms for applications for licenses and qualifications for an applicant for licensure. Every application for a license shall contain, in addition to other information required by the department, the following:

(a) The name and residence address of the applicant and the trade name, if any, under which he intends to conduct his business. If the applicant is a copartnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted. If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors.

(b) A complete description, including the city with the street number, of the principal place of business and any other and additional places of business operated and maintained by the applicant in conjunction with the principal place of business.

(c) Copies of any letters of franchise for new vehicles that the applicant has been enfranchised to sell or exchange, and the name or names and addresses of the manufacturer or distributor who has enfranchised the applicant.

(d) Names and addresses of the persons who shall act as salesmen under the authority of the license, if issued.

(e) A copy of the certificate of assumed business name, if required, shall be filed with the secretary of state.

(f) For a manufacturer's license, the name or names and addresses of each and every distributor, factory branch, and factory representative.

(g) For a salesman's license, certification by the dealer by whom the salesman will be employed, that he has examined the background of the applicant, and to the best of the dealer's knowledge, is qualified to be licensed under the sponsorship of the licensed dealer.

(h) Before a dealer who is not exempted from the continuing education requirements as provided in section 49-1637 (2), Idaho Code, may apply for a renewal of a vehicle dealer's license, he shall provide to the department a certification from an accredited educational system, private vocational school, correspondence school or trade association approved by the department stating that the vehicle dealer has satisfied the four (4) hour continuing education requirements as specified in section 49-1637 (1), Idaho Code.

(i) Before any vehicle dealer's license is issued by the department to an applicant who is not licensed with the department as a dealer within the previous twelve (12) calendar months and who is not exempted from the continuing education requirements as provided in section 49-1637 (2), Idaho Code, the applicant shall provide to the department a certification from an accredited educational institution, private vocational school, correspondence school or trade association approved by the department stating that the applicant has satisfactorily completed the prelicensing class or program requirements, including a written examination of material presented, specified in section 49-1637 (1), Idaho Code.

(5) Refuse to issue any license under the provisions of this chapter if, upon investigation, the department finds that any information contained in the application is incomplete, incorrect or fictitious.

(6) Require that a dealer's principal place of business, and other locations operated and maintained by him in conjunction with his principal place of business, have erected or posted signs or devices providing information relating to the dealer's name, location and address of the principal place of business, and the number of the license held by the dealer.

(7) Provide for regular meetings of the dealer advisory board, to be held not less frequently than semiannually. Notices of meetings of the advisory board shall be mailed to all members not less than five (5) days prior to the date on which the meeting is to be held.

(8) Inspect, prior to licensing, the principal place of business and other sites or locations as may be operated and maintained by the applicant.

(9) Seek and consider the advisory board's recommendations and comments regarding proposed rules promulgated for the administration of the provisions of this chapter.

(10) Require the attendance of not less than one (1) or more than three (3) advisory board members at all hearings held relating to this chapter.

49-1603 — Dealer advisory board — duties

49-1603. Dealer advisory board — duties.

(1) There shall be a dealer advisory board to consist of eleven (11) members to assist and advise the department in the administration of the provisions of this chapter. Five (5) members shall be appointed from licensed dealers selling new vehicles, four (4) members appointed from licensed dealers selling used vehicles, one (1) member shall be appointed from licensed dealers selling new recreational vehicles and one (1) member shall be appointed to represent new and used motorcycle and ATV dealers. The governor shall appoint the board with consideration to recommendations of the board of directors of the Idaho automobile dealers association, recommendations of the board of directors of the recreational vehicle dealers association of Idaho and recommendations of the independent dealer association representing used vehicle dealers. The term of office of each member shall be three (3) years. Vacancies occurring on the board other than by expiration of the term shall be filled for the unexpired term only, and each member of the board shall serve until his successor is appointed and qualified. Members of the advisory board shall be compensated as provided by section 59-509 (b), Idaho Code, and payments of compensation shall be paid from the state highway account as part of the expenses of administering the provisions of this chapter. A majority of the members of the advisory board shall constitute a quorum, the presence of which at any meeting duly called by the department shall have full and complete power to act upon and resolve in the name of the advisory board any matter, thing or question referred to it by the department, or which by reason of any provisions of this chapter, it has power to determine.

(2) The advisory board on the first day of each July, or as soon thereafter as practicable, shall elect a chairman, vice-chairman and secretary from among its members, who shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the department. The chairman

shall preside at all meetings of the advisory board and the secretary shall make a record of their proceedings. All members of the advisory board shall be entitled to vote on any question, matter, or thing which properly comes before it.

49-1604 — Records as evidence

49-1604. Records as evidence. Copies of all records and papers in the office of the director, authenticated under the hand and seal of the director, shall be received in evidence in all cases equally and with like effect as the original.

49-1605 — Change of franchise status

49-1605. Change of franchise status. Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he shall immediately notify the department.

49-1606 — Classes of licenses — Nonresident dealers

49-1606. Classes of licenses — Nonresident dealers. Licenses issued under the provisions of this chapter shall be as follows:

(1) A dealer's license shall permit the licensee to engage in the business of selling or exchanging new and used vehicles, new and used motorcycles, motor-driven cycles and motorbikes, new and used all-terrain vehicles, utility type vehicles, snow machines and travel trailers, truck campers, and new and used motor homes. This form of license shall permit licensees who are owners or part owners of the business of the licensee to act as vehicle salesmen.

(2) A vehicle salesman's license shall permit the licensee to engage in the activities of a vehicle salesman.

(3) A wholesale dealer's license shall permit the licensee to engage in the business of wholesaling used vehicles to Idaho vehicle dealers. The holder of this license must meet all the requirements for a principal place of business, except for the requirement of display area and adequate room to repair vehicles.

(4) A vehicle manufacturer's license shall permit the licensee to engage in the business of constructing or assembling vehicles, of the type subject to registration under this title at an established place of business within Idaho.

(5) A distributor, factory branch, or distributor branch license shall permit the licensee to engage in the business of selling and distributing vehicles, parts, and accessories to their franchised dealers.

(6) A representative (factory branch or distributor, etc.) license shall permit the licensee to engage in the business of contacting his respective authorized dealers, for the purpose of making or promoting the sale of his, its, or their vehicles, parts, and accessories.

(7) Pending the satisfaction of the department that the applicant has met the requirements for licensure, it may issue a temporary permit to any applicant for a license. A temporary permit shall not exceed a period of ninety (90) days while the department is completing its investigation and determination of facts relative to the qualifications of the applicant for a license. A temporary permit shall terminate when the applicant's license has been issued or refused.

(8) The department may issue a probationary vehicle salesman's license, subject to conditions to be observed in the exercise of the privilege granted either upon application for issuance of a license or upon application for renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department.

(9) A nonresident dealer who is currently authorized to do business as, and has an established place of business as a vehicle dealer in another state, is not subject to licensure under the provisions of this chapter as long as the sales are limited to the exportation of vehicles for sale to, and the importation of vehicles purchased from, licensed Idaho vehicle dealers.

49-1607 — Fees — Funds — Expenses — Expiration of licenses

49-1607. Fees — Funds — Expenses — Expiration of licenses.

(1) The department shall collect with each application for licensure the following fees:

(a) Dealer's, wholesale dealer's and vehicle manufacturer's license, initial application, two hundred dollars ($200). Ten dollars ($10.00) of such fee shall be either retained by the department or authorized agent, if collected and processed by the department or authorized agent, or deposited in the county current expense fund. Renewal application, one hundred seventy-five dollars ($175).

(b) Vehicle salesman's license, thirty-six dollars ($36.00). Ten dollars ($10.00) of such fee shall be either retained by the department or authorized agent, if collected and processed by the department or authorized agent, or deposited in the county current expense fund.

(c) Distributor-factory branch-distributor branch license, one hundred seventy-five dollars ($175).

(d) Representative's license, forty-four dollars ($44.00).

(e) To reissue a license, salesman and dealer identification cards or other licensing documents at a dealer's request, not resulting from an error by the department, a fee of eighteen dollars ($18.00) per document.

(f) Supplemental lot license or relocated principal place of business, and temporary supplemental lot, forty-four dollars ($44.00) for license issued to a single dealer. A fee of eighty-eight dollars ($88.00) for a license issued to a group of dealers for a temporary supplemental lot.

(2) All fees shall be paid over to the state treasurer for credit to the state highway account, out of which shall be paid the expenses of the department and the expenses incurred in enforcing the provisions of this chapter.

(3) Dealer licenses, if not suspended or revoked, may be renewed from year to year upon the payment of the fees specified in this section to accompany applications, and renewals shall be made in accordance with the provisions of section 49-1634 , Idaho Code.

(a) There shall be twelve (12) licensing periods, starting with January and ending in December. A dealer's license shall be in effect from the month of initial licensing through the last day of the next year's calendar month that precedes the month of the initial licensing.

(b) Any renewal license application received or postmarked after thirty (30) days from the end of the previous year's license period shall be processed as an initial application and initial fees shall be paid.

(4) Salesman licenses, if not suspended or revoked, shall be valid for three (3) years from the date of issue and may be renewed upon application and payment of the fees specified in this section provided that:

(a) Employment remains with the sponsoring dealership; and

(b) The sponsoring dealership has a valid license issued by the department.

49-1608 — License bond

49-1608. License bond.

(1) Before any dealer's license shall be issued by the department to any applicant, the applicant shall procure and file with the department good and sufficient bond in the amount shown, conditioned that the applicant shall not practice any fraud, make any fraudulent representation or violate any of the provisions of this chapter, rules of the department, or the provisions of chapter 5, title 49 , section 49-1418 , or chapter 6, title 48 , Idaho Code, or federal motor vehicle safety standards, or odometer fraud in the conduct of the business for which he is licensed.

(a) A dealer exclusively in the business of motorcycle, motor-driven cycle and motorbike sales, all-terrain vehicles, utility type vehicles, truck campers and snow machine sales, ten thousand dollars ($10,000).

(b) Any wholesale dealer in the business of wholesaling used vehicles of all types, forty thousand dollars ($40,000). Such wholesale dealer licensees shall be exempt from participating in the Idaho consumer asset recovery fund as provided in sections 49-1608B through 49-1608F , Idaho Code.

(c) All other dealers, twenty thousand dollars ($20,000).

(2) The bond required in this section may be continuous in form and the total aggregate liability on the bond shall be limited to the payment of the amounts set forth in this section. The bond shall be in the following form:

(a) A corporate surety bond, by a surety licensed to do business in this state; or

(b) A certificate of deposit, in a form prescribed by the director; or

(c) A cash deposit with the director.

(3) If a bond is canceled or otherwise becomes invalid, upon receiving notice of the cancellation or invalidity, the department shall immediately suspend the dealer's license and take possession of the license itself, all vehicle plates used in the business and all unused title applications of the licensee. The licensee is entitled to a hearing which shall be held within twenty (20) days of the suspension. Upon receiving notice that a valid bond is in force, the department shall immediately reinstate the license.

(4) The bond requirements of this section shall be satisfied if the applicant is a duly licensed manufactured home dealer in accordance with chapter 21, title 44 , Idaho Code, and the bond required by section 44-2103 , Idaho Code, otherwise meets the requirements of this section. The amount of the bond shall be in the amount as required in this section or that required in section 44-2103 , Idaho Code, whichever is greater. The applicant shall furnish a certified copy of the bond as required in section 44-2103 , Idaho Code, to the department.

49-1608A — Dealer and manufacturer liability insurance

49-1608A. Dealer and manufacturer liability insurance. Every dealer and vehicle manufacturer shall, as a condition of issuance or renewal of a dealer or vehicle manufacturer license by the department, continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person arising out of the ownership, maintenance or use of vehicles owned by or under the control of the licensee and used in conduct of the business of the dealer or vehicle manufacturer. Such insurance shall be in an amount not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to the limit for one (1) person, in the amount of fifty thousand dollars ($50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one (1) accident. The applicant for a dealer or vehicle manufacturer license shall maintain on file with the department a certificate of liability insurance, issued by an insurance or surety company authorized to do business in this state or by an authorized agent of such company, in such form as may be prescribed by the director of the department of insurance as set forth in section 49-1231 , Idaho Code.

49-1608B — Idaho consumer asset recovery fund established — Expenditures authorized

49-1608B. Idaho consumer asset recovery fund established — Expenditures authorized.

(1) There is hereby created in the state treasury an account to be known as the "Idaho consumer asset recovery fund" (ICAR), hereinafter referred to as the "fund." Moneys in the fund are hereby continuously appropriated to the department and shall be used exclusively to satisfy unpaid judgments as provided for in section 49-1608C , Idaho Code. The fund shall consist of moneys appropriated by the legislature and other moneys as provided for in law. All interest earned on investment by the department of moneys in the fund shall be returned to the fund.

(2) Except as provided for in subsection (3) of this section, moneys paid out of the fund shall be known as expenditures and shall be limited to awards based upon claims or final judgments of fraud, fraudulent representation or any violation of: provisions of this chapter; provisions of chapter 6, title 48 , Idaho Code; provisions of chapter 5, title 49 , Idaho Code; provisions of section 49-1418 , Idaho Code; or provisions of federal motor vehicle safety standards or odometer fraud as provided for in this chapter. All expenditures from the fund by the board pursuant to the provisions of this act, including expenditures provided for in subsection (3) of this section, shall be paid out on warrants drawn by the department upon presentation of proper vouchers approved by the Idaho consumer asset recovery control board as established in section 49-1608C , Idaho Code.

(3) Notwithstanding any other provision of this act, no expenditures shall be made from the fund until the fund has accumulated one (1) full year of fees. When the fund reaches or exceeds two million dollars ($2,000,000), the fee provided for in section 49-1608C , Idaho Code, shall be temporarily suspended upon approval of the Idaho consumer asset recovery control board.

(4) Claims made against a dealer with an existing bond, pursuant to section 49-1608 , Idaho Code, shall first be paid by the bond before claims may be approved for payment by the board from the fund. From July 1, 2013, through June 30, 2014, all dealers shall be required to maintain the surety bond required pursuant to the provisions of 49-1608 , Idaho Code.

49-1608C — creation of board and fees

49-1608C. creation of board and fees.

(1) The Idaho consumer asset recovery fund (ICAR) shall be administered by the Idaho consumer asset recovery control board, hereinafter referred to as the "board." The board shall be comprised of the director of the Idaho transportation department or his designee and the dealer advisory board or their designee(s), as established by section 49-1603 , Idaho Code.

(2) In addition to fees authorized pursuant to section 49-1607 , Idaho Code, and in addition to any fees authorized elsewhere in this chapter, the Idaho consumer asset recovery control board shall establish a fee to be collected from each

applicant for a new or renewing license issued pursuant to this chapter. The fee provided for in this section shall be charged for each applicant for a motor vehicle dealer's license and the amount of such fee shall be set annually by the board. In setting the amount of the fee, the board shall take into consideration the balance of the fund and expenditures of moneys from the fund by all required participants. All fees collected pursuant to the provisions of this section shall be paid into the Idaho consumer asset recovery fund as established in section 49-1608B , Idaho Code. The department shall maintain an accurate record of all transactions involving the fund and report to the board at each meeting.

49-1608D — new applicants and suspension of fees

49-1608D. new applicants and suspension of fees. In addition to the fees collected pursuant to section 49-1608C , Idaho Code, applicants for an initial motor vehicle dealer's license shall maintain a license bond pursuant to section 49-1608 , Idaho Code, for three (3) consecutive years. If the fee has been temporarily suspended pursuant to section 49-1608B (3), Idaho Code, the new dealer shall pay the last set fee into the fund during the initial three (3) year licensing period. Only those renewing licensees who have not been the subject of a claim against their bond or against the fund for three (3) consecutive years shall be exempt from the requirement to maintain such bond as required pursuant to the provisions of section 49-1608 , Idaho Code.

49-1608E — submission of claims

49-1608E. submission of claims.

(1) Except as otherwise provided in this section, whenever an Idaho resident or a person who was an Idaho resident at the time of purchase is awarded a final judgment certified in a court of competent jurisdiction in the state of Idaho for:

(a) Any actual loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed motor vehicle dealer; or

(b) Any actual loss or damage by reason of a violation by a dealer of any of the provisions of chapter 6, title 48 , Idaho Code, chapter 5, title 49 , Idaho Code, or section 49-1418 , Idaho Code, in connection with the purchase or lease of a motor vehicle on or after July 1, 2014; the judgment creditor may file a verified claim with the board requesting payment from the fund of the amount unpaid on the judgment.

(2) Verified claims filed pursuant to subsection (1) of this section shall be subject to the following conditions:

(a) Unless the judgment has been appealed, the claim shall be filed with the department, acting on behalf of the board, no sooner than forty-five (45) days and no later than one (1) year after the judgment becomes final.

(b) The board shall not consider claims submitted by motor vehicle dealers, financial institutions or institutions providing floorplans for motor vehicle dealers.

(3) For a person to be eligible to receive any payment from the fund, such person must be an Idaho resident or an Idaho resident at the time of the purchase of the motor vehicle. Any action instituted by a person against a licensee that may become a claim against the fund shall be served to the board in a manner consistent with the provisions of section 48-613 , Idaho Code.

49-1608F — payment of claims — maximum

49-1608F. payment of claims — maximum.

(1) The maximum claim of one (1) judgment creditor against the fund, based on an unpaid certified judgment arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E , Idaho Code, involving a single transaction, shall be limited to fifty thousand dollars ($50,000), regardless of the amount of the unpaid certified final judgment of one (1) judgment creditor.

(2) The aggregate of claims against the fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E , Idaho Code, involving more than one (1) transaction shall be limited to one hundred twenty thousand dollars ($120,000) per licensee, regardless of the total amounts of the unpaid certified judgments of judgment creditors.

(3) If a claim has been made against the fund, and the board has reason to believe that there may be additional claims against the fund from other transactions involving the same licensee, the board may withhold any payment from the fund involving the licensee for a period not to exceed the end of the relevant license period. After this period, if the aggregate of claims against the licensee exceeds one hundred twenty thousand dollars ($120,000), a total of one hundred twenty thousand dollars ($120,000) shall be prorated among the claimants and paid from the fund in proportion to the amounts of

their unpaid certified judgments against the licensee.

(4) (a) Claims against motor vehicle dealers or their salespersons participating in the Idaho consumer asset recovery fund pursuant to section 49-1608E , Idaho Code, shall be prorated when the aggregate exceeds one hundred twenty thousand dollars ($120,000) against one (1) dealer.

(b) Claims shall be prorated only after the dealer's twenty thousand dollar ($20,000) bond has been exhausted and utilized first. Such additional claims shall be prorated when the aggregate exceeds one hundred thousand dollars ($100,000) against one (1) dealer.

(5) Upon receipt of a certified judgment filed in support of a claim against the fund, the board shall send written notice to the licensee who is the subject of the unpaid judgment that a claim has been filed and that the licensee should satisfy the unpaid judgment. If the unpaid judgment is not fully satisfied within thirty (30) days following the date of the written notice by the board, the board shall make payment from the fund subject to the other limitations provided for in this act.

(6) If at any time the fund is insufficient to fully satisfy any claims or claim filed with the board and authorized by this act, the board shall pay such claim, claims or portion thereof to the claimants in the order that the claims were filed with the board.

(7) On payment by the board to a claimant from the fund, the board shall, within five (5) business days, notify the licensee in writing of the board's payment to the claimant and request full reimbursement be made to the board within thirty (30) days of the notification. Failure to reimburse the fund in full within the specified period shall be grounds for suspension or revocation of the license pursuant to title 49 , chapter 16, Idaho Code. Any person whose license is revoked shall not be eligible to apply for a license as a motor vehicle dealer or for a license as a salesperson until the person has repaid in full the amount paid from the fund on his account, plus interest to be calculated pursuant to the provisions of section 28-22-104 , Idaho Code.

(8) Nothing contained in this article shall limit the authority of the department to take disciplinary action against any licensee for any violation of this chapter or any rule promulgated thereunder, nor shall full repayment of the amount paid from the fund on a licensee's account nullify or modify the effect of any disciplinary action against that licensee for any violation.

(9) The department is authorized to promulgate reasonable rules not inconsistent with this chapter for the purpose of carrying out the provisions of this section.

49-1609 — Manufacturer or dealer to give notice of sale or transfer

49-1609. Manufacturer or dealer to give notice of sale or transfer. Every manufacturer or dealer, upon transferring a vehicle, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall within thirty (30) calendar days, give written notice of the transfer to the department or the assessor upon the official form provided by the department. Every notice shall contain the date of transfer, the time of transfer, the names and addresses of the transferor and transferee, any liens, a current odometer reading and a description of the vehicle as may be called for in the official form.

49-1609A — Satisfaction of liens prior to resale of vehicle

49-1609A. Satisfaction of liens prior to resale of vehicle.

(1) When a motor vehicle dealer licensed pursuant to this chapter takes possession of a vehicle for purposes of resale, the dealer shall have ten (10) business days from the date of possession to satisfy in full any and all lienholders who are perfected at the time of taking possession, unless the owner relinquishing possession of the vehicle agrees in writing to directly pay the perfected lienholder.

(2) No such vehicle shall be resold or transferred to any retail purchaser until all perfected liens have been satisfied in full.

(3) It shall be a misdemeanor punishable as provided in section 49-236 , Idaho Code, for any person or licensee to violate the provisions of this section.

49-1610 — Right of action for loss by fraud — Process

49-1610. Right of action for loss by fraud — Process.

(1) If any person shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one (1) of the dealer's salesmen acting for the dealer, in his behalf or within the

scope of the employment of salesman, or shall suffer any loss or damage by reason of the violation by the dealer or salesman of any of the provisions of this chapter, or chapter 5, title 49 , Idaho Code, or section 49-1418 , Idaho Code, or chapter 6, title 48 , Idaho Code, or any applicable rule or regulation of the board, or federal odometer law or regulation, that person shall have a right of action against the dealer and his salesman.

(2) Notwithstanding the terms, provisions or conditions of any agreement or franchise, or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this chapter, or any party to a franchise who is so injured in his business or property by a violation of a provision of this chapter relating to that franchise, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of the provisions of this chapter, may bring an action for damages and equitable relief, including injunctive relief.

(3) A license or a renewal shall not be issued to any applicant unless and until the applicant shall file with the director a good and sufficient instrument in writing in which he shall appoint the director as the true and lawful agent of the applicant upon whom all process may be served in any action or actions which may subsequently be commenced against the applicant arising out of any claim for damages suffered by any person by reason of the violation of the applicant of any of the terms and provisions of this chapter or provisions of chapter 5, title 49 , section 49-1418 , or chapter 6, title 48 , Idaho Code, or of federal motor vehicle safety standards, or federal odometer laws and regulations. The applicant shall stipulate and agree in the appointment that any process directed to the applicant in such a case which is served upon the director, or in his absence his designee, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree in writing that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of the provisions of this chapter. The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before an officer authorized to take and certify acknowledgments under the laws of this state. In any case wherein the licensee be served with process by service upon the director, two (2) copies of the process shall be left with the director. Not later than two (2) days after the service of the process upon him, the director shall mail one (1) copy to the licensee at his principal place of business, as the same appears of record in the office of the director, postpaid, by certified mail with request for return receipt. The remaining copy shall be retained on file with the director. The licensee shall then have and be allowed thirty (30) days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. For the purpose of venue where the licensee is served with process upon the director, the service shall be deemed to have been made upon the licensee in the county in which he has or last had his principal place of business.

(4) Whenever any person is awarded a final judgment in a court of competent jurisdiction in the state of Idaho for any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of this chapter, chapter 5, title 49 , section 49-1418 , or chapter 6, title 48 , Idaho Code, or any rule or regulation of the department in connection with the purchase of a vehicle, or federal motor vehicle safety standards, or in connection with the purchase of a vehicle if the loss or damage is a result of odometer tampering, or odometer fraud, the judgment creditor may file a verified claim with the corporate surety who has provided the dealer's surety bond, or with the chairman of the dealer advisory board where the dealer has deposited with the director a cash bond or certificate of deposit.

(a) The claim shall be filed no sooner than thirty (30) days and no later than one (1) year after the judgment has become final.

(b) The claim shall: 1. Be accompanied by a certified copy of the judgment; 2. State the amount of the claim if different from the judgment amount; and 3. State that demand has been made upon the dealer for payment of the judgment, and the dealer has failed to pay the judgment in full within thirty (30) days.

(5) Where a dealer has satisfied the bonding requirement with cash or a certificate of deposit, the chairman shall make written notification to the dealer against whom the judgment was obtained, that a claim has been made. The dealer may, within ten (10) days from the date of receipt of the notice, submit written objections to the dealer advisory board as to why the judgment should not be satisfied from the cash deposit or certificate of deposit.

(6) Within sixty (60) days from the date the claim was filed with the dealer advisory board, if it has found the claimant complied with the provisions of subsection (4) of this section, the board shall authorize the director to satisfy the judgment from the dealer's deposited funds in so far as he is able. Upon receipt of any payment, the claimant shall deliver a properly executed satisfaction of judgment or a partial satisfaction of judgment to the director. If additional claims have been filed prior to payment, or the chairman of the dealer advisory board has knowledge that additional claims are

pending which may exceed the amount of the bond, the chairman may delay any payments until all claims are finalized. If the claims exceed the amount of the bond, the deposited funds shall be prorated among the claimants based on the amount of their judgments.

(7) A judgment against a dealer or salesman for violation of the provisions of this chapter, rules and regulations of the department, the provisions of chapter 5, title 49 , section 49-1418 , or chapter 6, title 48 , Idaho Code, the federal motor vehicle safety standards or odometer fraud, shall be grounds for revocation of the dealer and the salesman's licenses.

(8) The Idaho transportation board is authorized to promulgate reasonable rules and regulations not inconsistent with this chapter for the purpose of carrying out the provisions of section 49-1610 , Idaho Code [this section].

(9) Should a dealer's license be revoked, voluntarily surrendered or not renewed, leaving funds on deposit with the department, those funds shall be refunded within thirty (30) days after the expiration of a five (5) year period from the date of revocation, surrender, or nonrenewal of the license unless the dealer advisory board has been notified in writing that a claim or cause of action is pending. In that case, the refund, if any, will be made upon the resolution of the claim or claims. In no case shall the dealer advisory board, the department, the state of Idaho, or any of their employees or agents be liable to any claimant for any amounts other than the funds deposited by the dealer.

49-1611 — Display, form and custody of dealer's and salesman's license

49-1611. Display, form and custody of dealer's and salesman's license. The department shall prescribe each form of the vehicle dealer's and salesman's license. It shall be the duty of each dealer to display conspicuously his own license in his place of business. The department shall prepare and deliver a pocket identification card, which shall certify that the person whose name appears on the card is a licensed vehicle dealer or vehicle salesman, as the case may be, and each vehicle dealer's or vehicle salesman's card shall contain a current photograph of the applicant and the date of expiration of the license. Each and every vehicle dealer and vehicle salesman shall, upon request, display his card.

49-1612 — Notice of change of address

49-1612. Notice of change of address.

(1) The department shall not issue a dealer's license to any applicant who does not have a principal place of business. Should the dealer change the site or location of his principal place of business, he shall immediately upon making the change notify the department, and a new license shall be granted for the unexpired portion of the term of the license, providing the new location meets all the requirements for a principal place of business. Should a dealer cease to be in possession of a principal place of business from and on which he conducts the business for which he is licensed, he shall immediately notify the department and upon demand by the department shall deliver the dealer's license, which shall be held and retained until it shall be made to appear to the department that the licensee has again come into possession of a principal place of business, whereupon the dealer's license shall be reissued to him, without charge. Nothing in the provisions of this chapter shall be construed to prevent a dealer from conducting the business for which the dealer is licensed at one (1) or more licensed supplemental lots or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction with it.

(2) The department shall not issue a vehicle manufacturer's license to any applicant who does not have an established place of business within Idaho. Should the vehicle manufacturer change his established place of business within Idaho, the licensee shall immediately upon making the change, notify the department of the location and address of the new established place of business, and a new license shall be granted for the unexpired portion of the term of the license.

49-1613 — Unlawful acts by licensee

49-1613. Unlawful acts by licensee.

(1) It shall be unlawful for the holder of any license issued under the provisions of this chapter to:

(a) Intentionally publish or circulate any advertising that is misleading or inaccurate in any material particular or that misrepresents any of the products sold or furnished by a licensed dealer;

(b) Violate any of the provisions of this chapter or any of the applicable rules;

(c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen vehicle;

(d) Violate any law respecting commerce in vehicles or any lawful rule respecting commerce in vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the state;

(e) Engage in the business for which the dealer is licensed without at all times maintaining a principal place of business;

(f) Engage in a type of business respecting the selling or exchanging of vehicles for which he is not licensed;

(g) Knowingly purchase a vehicle that has an altered or removed vehicle identification number plate or alter or remove a vehicle identification number plate;

(h) Violate any provision of this title or any rules promulgated;

(i) Violate any provision of the federal motor vehicle safety standards, federal odometer laws or regulations;

(j) Display for sale, exchange, or sell any vehicle for which the vehicle dealer does not hold title or consignment agreement or other documentary evidence of his right to the possession of every vehicle in his possession; or

(k) Issue more than one (1) temporary permit per vehicle sale pursuant to the provisions set forth in section 49-504 (6), Idaho Code.

(2) It shall be unlawful for any manufacturer or distributor licensed under this chapter to require, attempt to require, coerce, or attempt to coerce, any new vehicle dealer in this state to:

(a) Order or accept delivery of any new vehicle, part or accessory, equipment or any other commodity not required by law that shall not have been voluntarily ordered by the new vehicle dealer. This paragraph is not intended to modify or supersede any terms or provisions of a franchise requiring dealers to market a representative line of vehicles that the manufacturer or distributor is publicly advertising.

(b) Order or accept delivery of any new vehicle with special features, accessories or equipment not included in the list price of such vehicles as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(d) Enter into any agreement with the manufacturer or distributor or to do any other act prejudicial to the dealer by threatening to terminate or cancel a franchise or any contractual agreement existing between the dealer and the manufacturer or distributor. This paragraph is not intended to preclude the manufacturer or distributor from insisting on compliance with reasonable terms or provisions of the franchise or other contractual agreement, and notice in good faith to any dealer of the dealer's violation of those terms or provisions shall not constitute a violation of the provisions of this chapter.

(e) Change the capital structure of the dealer or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards determined by the manufacturer or distributor in accordance with uniformly applied criteria. No change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor. Consent shall not be unreasonably withheld.

(f) Refrain from participation in the management of, investment in, or the acquisition of any other line of new vehicle or related products. This paragraph does not apply unless the dealer maintains a reasonable line of credit for each make or line of new vehicle, and the dealer remains in compliance with any reasonable facilities requirements of the manufacturer or distributor, and no change is made in the principal management of the dealership.

(g) Prospectively assent to a release, assignment, novation, waiver or estoppel that would relieve any person from liability to be imposed by this chapter or to require any controversy between a dealer and a manufacturer, distributor, or representatives, to be referred to any person other than the duly constituted courts of the state or the United States, or to the director, if that referral would be binding upon the dealer.

(h) Either establish or maintain exclusive facilities, personnel, or display space.

(i) Expand facilities without a written guarantee of a sufficient supply of new vehicles so as to justify an expansion, in light of the market and economic conditions.

(j) Make significant modifications to an existing dealership or to construct a new vehicle dealership facility without providing a written guarantee of a sufficient supply of new vehicles so as to justify modification or construction, in light of the market and economic conditions.

(3) It shall be unlawful for any manufacturer or distributor licensed under this chapter to:

(a) Delay, refuse, or fail to deliver new vehicles or new vehicle parts or accessories in a reasonable time, and in reasonable quantity, relative to the dealer's facilities and sales potential in the dealer's relevant market area, after acceptance of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the

manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. These provisions are not violated, however, if failure is caused by acts or causes beyond the control of the manufacturer or distributor.

(b) Refuse to disclose to any dealer handling the same line, the manner and mode of distribution of that line within this state.

(c) Obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and other person, other than for compensation for services rendered, unless the benefit is promptly accounted for and transmitted to the dealer.

(d) Increase prices of new vehicles that the dealer had ordered for consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a consumer shall constitute evidence of each such order, provided that the vehicle is in fact delivered to that customer. In the event of manufacturer or distributor price reductions or cash rebates paid to the dealer, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Price reductions shall apply to all vehicles in the dealer's inventory that were subject to the price reduction. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by the addition to a vehicle of required or optional equipment, or revaluation of the United States dollar, in the case of foreign-make vehicles or components, or an increase in transportation charges due to increased rates imposed by a carrier, shall not be subject to the provisions of this subsection.

(e) Release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or distributor or dealer, any business, financial, or personal information which may be provided from time to time by the dealer to the manufacturer or distributor without the express written consent of the dealer.

(f) Deny any dealer the right of free association with any other dealer for any lawful purpose.

(g) Compete with their franchised dealers in this state in the sale, lease, or warranty service of new motor vehicles to retail consumers. However, nothing in this section shall limit or apply to a manufacturer's or a distributor's fleet sales or leases with a fleet customer that has a designation as such by the manufacturer or distributor as long as such sales or leases are conducted with the involvement of a dealer of the same line make. Nothing in this section shall limit or prohibit a manufacturer or distributor from authorizing or assisting a fleet customer that has a designation as such by the manufacturer or distributor to perform warranty service on vehicles owned or operated by such fleet customer. It is not a violation of this paragraph for a manufacturer or distributor, or an affiliate of a manufacturer or distributor, to directly provide an update to or repair of motor vehicle software if such update or repair is provided over-the-air at no cost or when creating a new line of motor vehicles and using franchised dealers to sell and service those vehicles. A manufacturer or distributor may operate a dealership for a reasonable period not to exceed one (1) year without violating this paragraph if such dealership is for sale to any qualified independent person at a fair and reasonable price, or in a relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of that dealership on reasonable terms and conditions. Upon a showing of good cause by the manufacturer or distributor to the department, the period of temporary ownership may be extended up to one (1) additional year, resulting in a maximum temporary ownership period of two (2) years.

(h) Unfairly discriminate among its dealers with respect to warranty reimbursement.

(i) Unreasonably withhold consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a dealer in this state or to condition the sale, transfer, or exchange of a franchise agreement upon site control or an agreement to renovate or make improvements to a facility, unless required by the technology of a motor vehicle being sold at the facility. Provided however, that a voluntary acceptance of such conditions by the dealer in writing including but not limited to a written agreement for which the dealer has accepted separate and valuable consideration, shall not constitute a violation.

(j) Fail to respond in writing to a request for consent as specified in paragraph (i) of this subsection within sixty (60) days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for those purposes and containing the required information. Failure to respond shall be deemed to be consent to the request.

(k) Prevent or attempt to prevent, by contract or otherwise, any dealer from changing the executive management control of the dealership unless the manufacturer or distributor, having the burden of proof, can show that the change of

executive management will result in executive management or control by a person or persons who are not of good moral character or who do not meet reasonable, preexisting and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards. Where the manufacturer or distributor rejects a proposed change in executive management control, the manufacturer or distributor shall give written notice of his reasons to the dealer within sixty (60) days of notice to the manufacturer or distributor by the dealer of the proposed change; otherwise, the change in the executive management of the dealership shall be presumptively considered approved.

(l) Terminate, cancel or fail to renew any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer or distributor relied in the granting of the franchise.

(m) Prevent or attempt to prevent the dealer, by written instrument or otherwise, from either receiving the fair market value of the dealership in a sale transaction or from transferring the dealership to a spouse or legal heir, as specified in this chapter.

(n) Engage in any predatory practice or discrimination against any dealer.

(o) Resort to or to use any false or misleading advertisement in the conducting of his business as a manufacturer or distributor in this state.

(p) Make any false or misleading statement, either directly or through any agent or employee, in order to induce any dealer to enter into any agreement or franchise or to take any action that is prejudicial to that dealer or his business.

(q) Require or coerce dealers to participate in local or national advertising campaigns or contests or to require or coerce dealers to purchase promotional or display materials.

(r) Charge back, deny motor vehicle allocation, withhold payments, or take other actions against a dealer, or to condition a franchise agreement, or renewal of a franchise agreement, or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make improvements to a facility unless required by the technology of a motor vehicle being sold at the facility. Provided however, that a voluntary acceptance of such conditions by the dealer in writing including but not limited to a written agreement for which the dealer has accepted separate and valuable consideration, shall not constitute a violation.

(s) Charge back, deny motor vehicle allocation, withhold payments, or take other actions against a motor vehicle dealer if a motor vehicle sold by the motor vehicle dealer is exported from Idaho or the dealer's assigned area of responsibility unless the manufacturer, distributor, or manufacturer representative proves that the motor vehicle dealer knew or reasonably should have known a motor vehicle was intended to be exported, which shall operate as a rebuttable presumption that the motor vehicle dealer did not have such knowledge. This paragraph does not apply if exporting of motor vehicles outside of the state of Idaho is provided for by the manufacturer or distributor.

(t) Withhold or threaten to withhold consent or approval of the sale, transfer, exchange, or issuance of a dealer sales and service agreement to an otherwise qualified buyer capable of being licensed as a dealer in this state or to condition approval of such buyer upon the selling dealer executing a release of all claims or similar instrument releasing or waiving any and all claims the selling dealer has or may have arising from the franchise relationship with the manufacturer unless separate material consideration is paid contemporaneously by the manufacturer to the dealer for such release. Nothing in this section shall preclude the application of a manufacturer's reasonable and uniform standards and policies.

(4) It is unlawful for any manufacturer or distributor or any officer, agent or representative to coerce, or attempt to coerce, any dealer in this state to offer to sell or sell any extended service contract or extended maintenance plan that is offered, sold, backed by or sponsored by the manufacturer or distributor or to sell, assign or transfer any retail installment sales contract, obtained by the dealer in connection with the sale by him in this state of new vehicles, manufactured or sold by the manufacturer or distributor, to a specified finance company or class of such companies, or to any other specified person, by any of the acts or means set forth, namely by:

(a) Any statement, suggestion, promise or threat that the manufacturer or distributor will, in any manner, benefit or injure the dealer, whether the statement, suggestion, threat or promise is express or implied or made directly or indirectly;

(b) Any act that will benefit or injure the dealer;

(c) Any contract, or any express or implied offer of contract, made directly or indirectly to a dealer for handling new vehicles, on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance

plan that is offered, sold, backed by, or sponsored by the manufacturer or distributor or sell, assign or transfer his retail installment sales contract in this state to a specified finance company or class of such companies, or to any other specified person; or

(d) Any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan that is offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign or transfer any of his retail sales contracts, in this state, on new vehicles manufactured or sold by that manufacturer or distributor to a finance company or class of companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and a finance company or companies, or a specified person or persons.

(e) Nothing contained in this subsection shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer in this state who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by or sponsored by the manufacturer or distributor to sell, assign or transfer any retail installment sale or lease by him in this state of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company controlled by or affiliated with the manufacturer or distributor. Any statement, threats, promises, acts, contracts or offers of contracts, when the effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition, against the policy of this state, and are unlawful.

(5) It is unlawful for any manufacturer or distributor or agent or employee of a manufacturer or distributor to use a written instrument, agreement, or waiver to attempt to nullify any of the provisions of this section, and such agreement, written instrument or waiver shall be null and void.

(6) It shall be unlawful, directly or indirectly, to impose unreasonable restrictions on the dealer relative to the sale, transfer, right to renew, termination discipline, noncompetition covenants, site control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

(7) The provisions of this chapter shall apply to all written franchise agreements between a manufacturer or distributor and a dealer, including the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contract, advertising contract, construction or installation contract, servicing contracts and all other agreements where the manufacturer or distributor has any direct or indirect interest. (8)(a) It shall be unlawful for any manufacturer or distributor, whether by agreement, program, incentive provision, or provision for loss of incentive payments or other benefits, to establish or implement a franchise agreement for the sales and leasing of new motor vehicles under which the manufacturer or distributor reserves the right to:

(i) Maintain a website or other electronic or digital means of communication for the manufacturer or distributor to negotiate binding terms of sale or leasing of new motor vehicles directly with the retail buyer or lessee without the involvement of a dealer on prices or other substantive terms of sale or leasing of new vehicles; (ii) Retain ownership of new motor vehicles until they are sold or leased to the retail buyer or lessee; (iii) Except for the sale or lease of a vehicle to a bona fide employee or relative of such manufacturer or distributor or in connection with a replacement or buyback, or to a bona fide employee or relative of a dealer under an employee pricing or similar program, consign new motor vehicles to dealers for dealer inventory or for sale or lease to a retail buyer or lessee; (iv) Negotiate binding terms of sale directly with retail buyers or lessees of new motor vehicles without the involvement of a dealer, provided that displaying on a website or other electronic or digital means of communication conditional prices, available financing sources, or conditional trade-in values that are not binding on a dealer shall not be considered negotiating;

(v) Enforce or seek to enforce a right in any franchise agreement for the manufacturer or distributor to unilaterally amend or modify the franchise agreement; or (vi) Amend or modify or attempt to amend or modify any dealer sales and service agreement, including but not limited to the dealer's relevant market area if the amendment or modification substantially and adversely affects the dealer's rights, obligations, investment or return on investment, without giving sixty (60) days advance written notice of the proposed amendment or modification to the dealer.

(b) Nothing in this subsection shall prevent a manufacturer or distributor from:

(i) Participating in fleet sales or leasing with a fleet customer that has a designation as such by the manufacturer or distributor as long as such sales or leases are conducted with the involvement of a dealer of the same line make; (ii) Authorizing or assisting a fleet customer that has a designation as such by the manufacturer or distributor to perform warranty service on vehicles owned or operated by such fleet customers; (iii) Offering, providing, and applying the terms of an employee pricing or similar program with participating dealers; (iv) Negotiating binding terms of sale relating to the sale or lease of a vehicle to a bona fide employee or relative of such manufacturer or distributor;

(v) Negotiating binding terms of sale relating to the sale or lease of a vehicle to a bona fide employee or relative of a franchised dealer under an employee pricing program or similar program; (vi) Negotiating binding terms of sale relating to the sale or lease of a vehicle in connection with a vehicle replacement or buyback; (vii) Purchasing from a consumer a vehicle in connection with a vehicle replacement or buyback; (viii) Maintaining a website or other electronic or digital means of communication if the final selling or leasing price of the new vehicle is determined by eligible dealers; or (ix) Setting or advertising a manufacturer's suggested retail price or lease example pricing based on a manufacturer's suggested retail price, special financing, or lease offers. (9)(a) Within the sixty (60) day notice period provided for in subsection (8)(a)(vi) of this section, the dealer may pursue remedies under section 49-1617 , Idaho Code, and file with the department and serve upon the respondent a petition to determine whether good cause exists for permitting the proposed modification. Multiple complaints pertaining to the same proposed modification may be consolidated for hearing. The proposed modification may not take effect pending the determination of any protest filed by a dealer. In making a determination of whether there is good cause for permitting a proposed modification of a dealer sales and service agreement, including but not limited to a dealer's relevant market area, the burden of proof shall be on the manufacturer or distributor, except that the burden of proof with regard to the factor set forth in subparagraph (iii) of this paragraph shall be on the dealer. The department shall consider any relevant factor, including:

(i) The reasons for the proposed modification; (ii) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner; (iii) The degree to which the proposed modification will have a substantial and adverse effect on the motor vehicle dealer's rights, investment, or return on investment; and (iv) Whether the proposed modification is in the public interest.

(b) With respect to a proposed modification of a dealer's relevant market area the department shall also consider:

(i) The traffic patterns between consumers and the same line-make franchised dealers of the affected manufacturer or distributor who are located within the market; (ii) The pattern of new vehicle sales and registrations of the affected manufacturer or distributor within various portions of the relevant market area and within the market as a whole; (iii) The growth or decline in population, density of population, and new car registrations in the market; (iv) The presence or absence of natural geographical obstacles or boundaries;

(v) The proximity of census tracts or other geographic units used by the affected manufacturer or distributor in determining the same line-make dealers' respective relevant market area; and (vi) The reasonableness of the change or proposed change to the dealer's relevant market area, considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the manufacturer or distributor.

(10) It shall be unlawful for any manufacturer or distributor to implement a program or policy that coerces or requires the franchisee to install direct current fast charging stations for public access or use or any similar public-facing infrastructure relating to charging, fueling, or powering a vehicle. For purposes of this section, the term "coerce" means the use of force or threats to compel a dealer to take a specific action. "Coerce" includes threatening to withhold vehicles or parts from a franchisee or charging a franchisee a higher price for vehicles or parts on the basis of the franchisee refusing, declining, or failing to perform a specific behavior. Provided, however, that nothing contained in this subsection shall be deemed to prohibit or prevent a manufacturer or distributor from requiring a franchisee to purchase special tools or equipment, install reasonable charging infrastructure, stock reasonable quantities of certain parts, or participate in training, reasonable sales and service programs, or policies that are reasonably necessary for such franchisee to sell or service any model or series of vehicles.

49-1614 — Termination, cancellation or nonrenewal

49-1614. Termination, cancellation or nonrenewal.

(1) Notwithstanding the terms, provisions or conditions of any franchise agreement, or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the notice requirement of subsection (2) of this section and has good cause for cancellation, termination or nonrenewal.

(2) Notwithstanding the terms, provisions or conditions of any franchise agreement prior to the termination, cancellation or nonrenewal of any franchise agreement, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the department and the dealer:

(a) In the manner described in subsection (3) of this section; and

(b) Not less than ninety (90) days prior to the effective date of termination, cancellation or nonrenewal; or

(c) Not less than fifteen (15) days prior to the effective date of termination, cancellation or nonrenewal with respect to any of the following:

(i) Insolvency of the dealership or filing of any petition by or against the dealership under any bankruptcy or receivership law; (ii) Failure of the dealership to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer; (iii) Conviction of the dealer, or any owner or his operator, resulting in imprisonment exceeding thirty (30) days; (iv) Revocation of any license that the dealer is required to have to operate a dealership; and

(d) Not less than one hundred eighty (180) days prior to the effective date of termination or cancellation, where the manufacturer is discontinuing the sale of the product line.

(3) Notification under this section shall be in writing, by certified mail or personally delivered to the dealer, and shall contain a statement of intention to terminate, cancel or not to renew the franchise agreement and a statement of the reasons for and the date on which termination, cancellation or nonrenewal takes effect.

(4) Notwithstanding the terms, provisions, or conditions of any franchise agreement or of any waiver, good cause for a termination, cancellation, or nonrenewal shall be determined in accordance with the standards set forth in section 49-1617 (5)(a), Idaho Code, provided that the dealer has been notified in writing of the reasons for the intended termination, cancellation, or nonrenewal one hundred eighty (180) days prior to termination, cancellation, or nonrenewal. A protest may be filed in accordance with the provisions of section 49-1617 , Idaho Code.

(5) Notwithstanding the terms, provisions, or conditions of any franchise agreement, the factors set forth in section 49-1617 (5)(b), Idaho Code, do not constitute good cause for a termination, cancellation, or nonrenewal of a franchise agreement.

(6) The manufacturer shall have the burden of proof under this section concerning the issue of good cause, which shall include, but not be limited to, termination, nonrenewal or cancellation of any franchise agreement by the manufacturer for insolvency, license revocation, conviction of a felony, fraud by a dealer or failure by a dealer to comply with a provision of the franchise agreement, where the provision is both reasonable and of material significance to the franchise agreement relationship.

(7) Notwithstanding the terms, provisions or conditions of any franchise agreement, other written contract or agreement or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise agreement with a dealer unless the manufacturer has satisfied the requirements of this section.

(8) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer any new, undamaged and unused motor vehicles of the current model year and previous model year. Any new and unused motor vehicle repurchased by the manufacturer shall be repurchased at the net cost to the dealer. Net cost means the dealer's cost for a new, undamaged, unsold, and complete motor vehicle of the current model year or any previous model year acquired by the dealer within twelve (12) months of the date of termination and in a dealer's inventory purchased from the manufacturer or acquired from another dealer of the same line make in the ordinary course of business:

(a) Plus any charges by the manufacturer, distributor, or representative for distribution, delivery and taxes;

(b) Plus the dealer's cost of any manufacturer-approved accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the manufacturer's wholesale product literature as options for that vehicle shall be repurchased; and

(c) Less all allowances paid to the dealer by the manufacturer, distributor or representative. (9)(a) Upon the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer or dealer, the manufacturer shall repurchase from the dealer the following:

(i) Any unused, undamaged, and unsold parts that have been acquired from the manufacturer, provided such parts are currently offered for sale by the manufacturer in its current parts catalog and are in salable condition. Such parts shall be

repurchased by the manufacturer at the current catalog price, less any applicable discount; (ii) Any supplies, equipment, and furnishings, including manufacturer or line make signs, required by and purchased from the manufacturer or its approved source within three (3) years of the date of termination, cancellation, or nonrenewal; and (iii) Any special tools or other equipment purchased from the manufacturer within three (3) years of the date of termination, cancellation, or nonrenewal.

(b) Except as provided in paragraph (a)(i) of this subsection, compensation shall be the fair market value on the effective date of the termination, cancellation, or nonrenewal.

(10) The repurchase of any item under this section shall be accomplished within ninety (90) days of the effective date of the termination, cancellation, or nonrenewal, provided the dealer has clear title to the inventory and other items or is able to convey such title to the manufacturer and does convey or transfer title and possession of the inventory and other items to the manufacturer.

(11) If the repurchase of any item under this section is subject to a security interest, the manufacturer may make payment jointly to the dealer and to the holder of the security interest.

(12) This section shall not apply to a nonrenewal or termination that is implemented as a result of the sale of the assets or stock of the motor vehicle dealer.

(13) In the event the manufacturer does not pay the dealer the amounts due under this section and a court of competent jurisdiction finds the manufacturer in violation of this section, the manufacturer shall, in addition to any amounts due, pay the dealer:

(a) Interest on the amount due computed at the rate applicable to a judgment of a court; and

(b) Reasonable attorney's fees and costs.

(14) Within ninety (90) days of the termination, cancellation, or nonrenewal of any franchise agreement by the manufacturer for the failure of a dealer to meet sales and service performance obligations or due to elimination, cessation or termination of a line make, the manufacturer shall commence to reimburse the dealer for one (1) year of the dealer's cost to rent or lease the dealership's facility or location or for the unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the facility or location, for the equivalent of one (1) year of the reasonable rental value of the facilities or location as determined by an Idaho licensed commercial real estate appraiser. If more than one (1) franchise agreement is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers. However, if a franchise agreement is terminated, canceled, or not renewed but the dealer continues in business at the same location under a different franchise agreement, the reimbursement required by this subsection shall not be required to be paid. In addition, any reimbursement due under this subsection shall be reduced by any amount received by the dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during the year immediately following the termination, cancellation, or nonrenewal.

(15) All procedures and protections afforded to a motor vehicle dealer under this section shall be available to a recreational vehicle dealer. However, the remedies afforded under this section shall only apply to recreational vehicle dealers where the manufacturer of recreational vehicles as defined in section 49-119 , Idaho Code, terminates or fails to renew any franchise agreement without good cause.

49-1615 — Succession to ownership

49-1615. Succession to ownership. Notwithstanding the terms, provisions or conditions of any franchise:

(1) A licensee may appoint by will, or any other written instrument, a designated family member to succeed in the ownership interest in the dealership.

(2) Unless there exists good cause for refusal to honor succession on the part of the manufacturer, any designated family member of a deceased or incapacitated owner of a dealership may succeed to the ownership under the existing franchise, provided the designated family member gives the manufacturer written notice of his intention to succeed to the ownership of the dealership within one hundred twenty (120) days of the owner's death or incapacity, and the designated family member agrees to be bound by all the terms and conditions of the franchise.

(3) The manufacturer may request, and the designated family member shall provide, promptly upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

(4) If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a dealership by a family member of a deceased or incapacitated owner of a dealership under the existing franchise

agreement, the manufacturer may, not more than sixty (60) days following receipt of notice of the designated family member's intent to succeed to the ownership of the dealership, or any personal or financial data which it has requested, serve upon the designated family member and the department, notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than ninety (90) days from the date notice is served. The notice must state the specific grounds for a refusal to honor the succession. A protest may be filed in accordance with the provisions of section 49-1617 , Idaho Code.

(5) If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted under this chapter.

(6) This chapter does not preclude the owner of a dealership from designating any person as his successor by written instrument filed with the manufacturer and, in the event there is a conflict between that written instrument and the provisions of this section, and that written instrument has not been revoked by the owner of the dealership, in writing, to the manufacturer, then the written instrument shall govern.

49-1616 — Limitations on establishing or relocating dealers

49-1616. Limitations on establishing or relocating dealers.

(1) In the event that a manufacturer seeks to enter into a franchise establishing an additional dealership or relocating an existing dealership within a radius of ten (10) miles from where the same line is represented, the manufacturer shall in writing, first notify the department and each dealer for the line within the ten (10) mile radius, at least sixty (60) days prior to the addition or relocation, of the intention to establish an additional dealership or to relocate an existing dealership within the ten (10) mile radius.

(2) This section shall not apply to the relocation of an existing dealer within that dealer's relevant market area, provided that the relocation not be at a site within a radius of seven (7) miles of a licensed franchise for the same line make of vehicle, or if the proposed franchise is to be established at or within a radius of two (2) miles of a location at which a former franchise for the same line make of new vehicle had ceased operating within the previous two (2) years. If the seven (7) and two (2) mile exceptions are not applicable, the relocation may still be possible upon notice and resolution of protest under subsections (1) and (3) of this section.

(3) A protest may be filed in accordance with the provisions of section 49-1617 , Idaho Code.

49-1617 — Protests — Hearings — Costs

49-1617. Protests — Hearings — Costs.

(1) Within twenty (20) days of the completion of mediation, a dealer may file with the department to protest:

(a) The termination, cancellation, or nonrenewal of a franchise;

(b) The establishment or relocation of a dealership;

(c) A refusal to honor the appointment of a designated family member pursuant to section 49-1615 , Idaho Code;

(d) A refusal to honor a proposed modification of a dealer sales and service agreement; or

(e) For the resolution of any other dispute between a manufacturer or distributor and a new vehicle dealer alleged to arise from a violation of Idaho law.

(2) When a protest is filed, the department shall inform the manufacturer or distributor that a timely protest has been filed and the manufacturer or distributor shall have twenty (20) days to respond to the protest.

(3) All costs of the department, including the cost of the hearing officer and the cost of preparing the record, shall be apportioned by the hearing officer. The hearing officer may in his discretion award costs to the prevailing party. A dealer suffering pecuniary loss because of a violation of this chapter, upon prevailing in a protest action for such violation, shall be entitled to costs and reasonable attorney's fees to be determined by the hearing officer. In the event of a willful violation, a dealer shall be entitled to damages equal to three (3) times the pecuniary loss suffered to be awarded by the hearing officer or by the court.

(4) The office of administrative hearings shall appoint a hearing officer to preside over and conduct the protest as a contested case hearing under the provisions of chapter 52, title 67 , Idaho Code. In such a hearing:

(a) The manufacturer or distributor has the burden of proof to establish good cause as provided in subsection (5) of this section. This shall include but not be limited to termination, cancellation, or nonrenewal of any franchise agreement by the

manufacturer or distributor for insolvency, license revocation, conviction of a felony, fraud by a dealer, or failure by a dealer to comply with a provision of the franchise agreement where the provision is both reasonable and of material significance to the franchise agreement relationship.

(b) The rules of evidence for a protest hearing are the same as those found in chapter 52, title 67 , Idaho Code.

(c) The hearing officer may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence and may apply to the district court of the county in which the hearing is held for a court order enforcing this section.

(d) The hearing shall be conducted pursuant to chapter 52, title 67 , Idaho Code.

(e) A transcript of the testimony of each witness taken at the hearing must be made and preserved.

(f) Within sixty (60) days after the hearing, the hearing officer shall issue a preliminary order pursuant to section 67-5245 , Idaho Code. The preliminary order shall be deemed a final order upon issuance.

(g) Any party to a hearing before the department may appeal pursuant to the applicable provisions of chapter 52, title 67 , Idaho Code.

(h) The manufacturer or distributor shall not terminate a dealership, establish a new dealership, relocate a dealership, discontinue an existing franchise, or take any other proposed action described in this chapter until a final decision has been rendered and all appellate remedies available to the dealer have been exhausted. The manufacturer or distributor and the dealer shall abide by the terms of the franchise agreement and Idaho law during the appeals process. (5)(a) In determining whether good cause has been established for terminating or not continuing a franchise agreement, all existing circumstances shall be taken into account, including but not limited to:

(i) The dealer's sales in relation to the Idaho market that are essential, reasonable, and not discriminatory and that take into account the dealer's local market variations beyond adjusting for the local popularity of general vehicle types and whether the manufacturer or distributor has supplied the dealer with new vehicles or new vehicle parts or accessories in a reasonable time and in sufficient quantity to permit the dealer to meet the manufacturer's or distributor's minimum sales requirements; (ii) Investment necessarily made and obligations incurred by the dealer in the performance of the dealer's part of the franchise; (iii) The permanency of the investment; (iv) Whether it is injurious to the public welfare for the business of the dealer to be discontinued;

(v) Whether the dealer has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the dealer and any other new motor vehicle of the same line make; (vi) Whether the dealer refuses to honor warranties of the manufacturer or distributor to be performed by the dealer if the manufacturer or distributor reimburses the dealer for warranty work performed by the dealer pursuant to this section; and (vii) Actions by the dealer, which shall include but not be limited to: insolvency, license revocation, conviction of a felony, or fraud by a dealer that result in a material breach of the written and uniformly applied requirements of the franchise agreement that are reasonable and material.

(b) Notwithstanding the terms, provisions, or conditions of the franchise agreement, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(i) A change in ownership arising from the retirement, death, or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer or distributor relied in the granting of the franchise; (ii) The fact that the dealer: 1. Owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of motor vehicles; or 2. Has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor that existed prior to January 1, 1997, or is approved in writing by the manufacturer or distributor; (iii) The fact that the dealer refused to order, purchase, or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the dealer or refused to order, purchase, or accept delivery of any new vehicle with special features, accessories, or equipment not included in the list price of such vehicles as publicly advertised by the manufacturer or distributor; (iv) The failure of a dealer to: 1. Establish or maintain exclusive facilities, personnel, or display space; 2. Expand facilities without a written guarantee of a sufficient supply of new vehicles so as to justify an expansion, in light of the market and economic conditions; 3. Make significant modifications to an existing dealership or to construct a new vehicle dealership facility without providing a written guarantee of a sufficient supply of new vehicles so as to justify modification or construction, in light of the market and economic conditions; or

(v) The desire of a manufacturer or distributor or a manufacturer's or distributor's representative for greater market penetration or to alter the number of the manufacturer's or distributor's or manufacturer's or distributor's representative's franchises or dealer locations.

(c) In making a determination of whether there is good cause for permitting a proposed modification of a dealer sales and service agreement or a dealer's relevant market area, the burden of proof shall be on the manufacturer or distributor, except that the burden of proof with regard to the factors set forth in this subsection shall be on the dealer, and the department shall consider any relevant factors, including:

(i) The reasons for the proposed modification; (ii) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner; (iii) The degree to which the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's rights, investment, or return on investment; (iv) Whether the proposed modification is in the public interest;

(v) The traffic patterns between consumers and the same line make franchised dealers of the affected manufacturer, distributor, or factory branch who are located within the market; (vi) The pattern of new vehicle sales and registrations of the affected manufacturer, distributor, or factory branch within various portions of the area of sales effectiveness and within the market as a whole; (vii) The growth or decline in population, density of population, and new car registrations in the market; (viii) The presence or absence of natural geographical obstacles or boundaries, such as rivers; (ix) The proximity of census tracts or other geographic units used by the affected manufacturer or distributor in determining the same line make dealer's respective relevant market area; and

(x) The reasonableness of the change or proposed change to the dealer's area of sales effectiveness, considering the benefits and harm to the petitioning dealer, other same line make dealers, and the manufacturer, distributor, or factory branch.

(d) In determining whether good cause exists for a refusal to accept a dealer successor appointed pursuant to section 49-1615 , Idaho Code, the manufacturer or distributor has the burden of proving that the appointed successor is not of good moral character or does not meet the manufacturer's or distributor's existing, reasonable, and uniformly applied standards and, considering the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the consumer consumption channel.

(e) In determining whether good cause was established for not entering into an agreement or relocating an additional franchise for the same line make, the department shall take into consideration the existing circumstances within the existing franchise's relevant market area, including:

(i) Permanency of the investment of both the existing and proposed franchises; (ii) Investment necessarily made and obligations incurred by other existing franchisees of the same line make in that relevant market area in the performance of their part of their franchise agreements and the date of such investment made and obligations incurred by such franchisees in relation to the date of appointment of the additional franchisee; (iii) Growth or decline in population and new car registrations in the consumer consumption area and whether the population and demographic characteristics of that relevant market area have changed since appointment of the other existing franchisees sufficiently to support the economic viability of both the other existing franchisees and the additional franchisee; (iv) Effect on the consuming public in the relevant market area and whether the other existing franchisees of the same line make in that relevant market area are substantially compliant with reasonable manufacturer or distributor requirements in providing adequate consumer care, including satisfactory new vehicle dealer sales and service facilities, special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line make and whether sufficient qualified management, sales, and trained service personnel to satisfy the reasonable requirements of the manufacturer or distributor for the other existing franchisees and the additional franchisee are available in that relevant market area;

(v) Whether it is injurious or beneficial to the public welfare for an additional franchise to be established; (vi) Whether the franchises for the same line make in that relevant consumption area are providing adequate competition and convenient customer care for the vehicles of the line make in the market area, which shall include the adequacy of vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; (vii) Whether the establishment of an additional franchise would increase competition and be in the public interest; and (viii) Whether the manufacturer's or distributor's action is in good faith.

49-1617A — MEDIATION of disputes

49-1617A. MEDIATION of disputes.

(1) All disputes between a manufacturer or a distributor and a new vehicle dealer alleging a violation of any provision of this chapter or any other provision of Idaho law are subject to mediation as provided for in this section. A demand for mediation must be served on the adverse party before the filing of the objection, protest, complaint, or petition or the bringing of the action. A demand for mediation must be in writing and served on the adverse party by certified mail, return receipt requested, or by overnight delivery service that provides proof of delivery at an address designated for the party in the records of the complainant. The demand for mediation must contain a brief statement of the dispute and the relief sought by the complainant filing the demand.

(2) Within twenty (20) days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. If the parties are unable to agree on a mediator, a party may apply to a district judge of the district court for the county in which the dealership is located for appointment of a mediator. The meeting place must be within this state in a location selected by the mediator in proximity to the place of business of a party domiciled in this state. The mediator may extend the date of the meeting for good cause shown by either party or on the stipulation of both parties.

(3) The service of a demand for mediation under subsection (1) stays the time for the filing of any objection, protest, complaint, or petition with the department or for bringing an action until the representatives of both parties have met with a mutually selected or appointed mediator for the purpose of attempting to resolve the dispute. If an objection, protest, complaint, or petition is filed before the meeting, the department or the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, on the written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the department or court considers to be appropriate. A suspension order issued under this subsection may be revoked on motion of any party or on motion of the department or the court.

(4) The department shall encourage dealers, manufacturers, and distributors to establish a panel of mediators who have the character, ability, and training to serve as mediators and who have knowledge of the motor vehicle industry.

(5) A mediator shall be immune from civil liability for any good faith act or omission within the scope of the mediator's performance of the mediator's powers and duties under this chapter. An act or omission of a mediator is presumed to be a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

49-1617B — Standing to bring an action

49-1617B. Standing to bring an action.

(1) The following entities have standing to seek redress for violations of this chapter or of any other provision of Idaho law relating to or affecting the relationship between a manufacturer or a distributor and a new vehicle dealer:

(a) A new vehicle dealer; and

(b) Any corporation or association that is primarily owned by or composed of new vehicle dealers and that primarily represents the interests of new vehicle dealers if at least one (1) of the corporation or association members would have standing on its own, the interests that the action seeks to protect are germane to the corporation's or association's purpose, and the claim asserted or the relief requested does not require the participation of individual members in the action.

(2) Entities that have standing pursuant to this section may:

(a) File a petition and request the department handle the matter as an administrative proceeding;

(b) File a demand for mediation pursuant to section 49-1617A , Idaho Code; or

(c) Bring a civil action in a court of competent jurisdiction.

(3) An action filed pursuant to this section may seek:

(a) Recovery of actual damages;

(b) Declaratory or injunctive relief; or

(c) Reasonable costs of the suit and attorney's fees to a prevailing party.

49-1618 — Denial or revocation of license requires hearing

49-1618. Denial or revocation of license requires hearing.

(1) Before the department shall refuse to issue to any applicant a license provided for in this chapter, and before revoking or suspending any license, it shall give the applicant or licensee written notice of the action which the department contemplates taking with respect to the application or license, which shall provide that on or before a day certain, not less than twenty (20) days from the date on which written notice shall be served, the applicant or licensee shall show cause, if any, in writing duly verified and filed with the department, why the contemplated action should not be taken. Upon receipt of the written showing, the department shall fix a day certain, not less than fifteen (15) days nor more than thirty (30) days from the date on which it received the showing, when it will hear evidence and argument in support of it. Written notice of the date and place of hearing shall be given to the applicant or licensee, not less than ten (10) days prior to the date fixed for hearing. All hearings shall be held in Ada County, Idaho. A record or tape or other recording device of all proceedings had at the hearing shall be made and preserved, pending final disposition of the matter.

(2) Notice to the applicant or licensee that the department contemplates refusing to issue the license applied for or contemplates revoking or suspending a license duly issued by it, shall have attached to it a complete statement of the facts upon which the department bases its contemplated action. In any proceeding under this section, the department shall have the burden of proving that the applicant is not qualified, or that the licensee has violated a provision of this chapter or a rule or regulation of the department.

(3) The notices provided to be given to an applicant or a licensee shall be served by the department or its employees delivering the notice to the applicant or licensee personally, or by the department mailing the notice by certified mail to:

(a) The applicant for a license at the residence address given in his application for license;

(b) A licensed dealer or at the last known address of the principal place of business of the dealer; and

(c) A licensed salesman at his last known residence address.

(4) The date on which the notice shall be considered to have been served for purposes of computing time shall be the date on which the notice is delivered to the applicant or licensee personally, or the date on which the notice is mailed.

(5) The director or his designee shall preside at all hearings and the department shall request the attendance of the advisory board at hearings. At the conclusion of the hearing, the hearing officer shall make written findings of fact and recommendations to the director. The findings of fact shall be conclusive unless clearly erroneous and unsupported by the record. The director shall issue a written order which shall be the final administrative action of the department.

(6) If a dealer's license is suspended as a result of an order of the director, the department shall conspicuously post two (2) notices of such suspension at each licensed location. The notices shall remain posted for the duration of the suspension and removal of the notice prior to that time shall be deemed a violation of the provisions of this chapter.

49-1619 — Production of witnesses and documents

49-1619. Production of witnesses and documents. In the preparation and conduct of hearings, the department has the power to require the attendance and testimony of any witness, the production of any papers or books, may sign and issue subpoenas, administer oaths and examine witnesses, and take any evidence it considers pertinent to the determination of the matter, and any witnesses so subpoenaed shall be entitled to the same fees and mileage as prescribed by law in judicial proceedings in the district court of this state in civil action, but the payment of fees and mileage must be out of, and kept within the limits of, the funds created from license fees authorized in this chapter. The party against whom the matter may be pending shall have the right to obtain a subpoena from the department for any witnesses he may desire at the hearing, and depositions may be taken as in civil court cases in the district court. Any information obtained from the books and records of the person complained against may not be used against him as the basis for a criminal prosecution under the laws of this state.

49-1620 — Report of findings

49-1620. Report of findings. The director shall state in writing his decision after the hearing. If the director determines that an applicant is not qualified to receive a license, no license shall be granted, and if the director determines that a license holder has violated any of the provisions of this chapter or of a rule or regulation promulgated by the department, the director may suspend the license on terms and conditions and for a period of time as to the director appears fair, reasonable and just, or the director may revoke the license.

49-1621 — Judicial review

49-1621. Judicial review. Any party to a hearing before the department, or any party to a hearing has the right to judicial review in the district court. Appeals shall be as provided in chapter 52, title 67 , Idaho Code.

49-1622 — Product liability responsibility

49-1622. Product liability responsibility. A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only, as between the manufacturer and the dealer. The provisions of this section shall not affect the obligation of dealers to perform warranty repair and maintenance as may be required by law or contract.

49-1623 — Product liability indemnification

49-1623. Product liability indemnification. Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement for damages, including court costs and reasonable attorney fees of the dealer, arising out of complaints, claims or lawsuits including strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale, to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer.

49-1624 — Disclosure of damage required

49-1624. Disclosure of damage required. On any new vehicle, any uncorrected damage or any corrected damage exceeding six percent (6%) of the manufacturer's suggested retail price, as measured by retail repair costs, must be disclosed in writing prior to delivery. Damage to glass, tire and bumpers is excluded from the six percent (6%) requirement when replaced by identical manufacturer's original equipment.

49-1625 — Repaired damage not grounds for rejection

49-1625. Repaired damage not grounds for rejection. Repaired damage to a customer-ordered new vehicle, not exceeding the six percent (6%) requirement, shall not constitute grounds for rejection of the customer order. The customer's right of rejection ceases upon his acceptance of delivery of the vehicle, provided disclosure as required in section 49-1624 , Idaho Code, is made prior to delivery.

49-1626 — Payment for delivery preparation and warranty service

49-1626. Payment for delivery preparation and warranty service.

(1) Each manufacturer or distributor shall specify in writing to each of its dealers licensed in this state, the dealer's obligations for predelivery preparation and warranty service on its products, compensate the dealer for service required of the dealer by the manufacturer or distributor, provide the dealer a schedule of compensation to be paid the dealer for parts, work and service in connection with its products, and the time allowance for the performance of that work and service.

(2) In no event shall a schedule of compensation fail to include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(3) It is unlawful for a new vehicle manufacturer or distributor to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new vehicle owners and dealers, the expected date by which necessary parts and equipment will be available to dealers for the correction of those defects, or to fail to compensate any of the dealers in this state for repairs affected by recall.

(4) A vehicle dealer may submit a warranty claim to a manufacturer or distributor if a warranty defect is identified and documented prior to the expiration of a manufacturer's or distributor's warranty:

(a) While a franchise agreement is in effect; or

(b) After the termination of a franchise agreement if the claim is for work performed while the franchise agreement was in effect.

(5) All claims made by dealers pursuant to this section for labor and parts shall be paid within thirty (30) days following their approval. All claims shall be either approved or disapproved within thirty (30) days after their receipt, on forms and in the manner specified by the manufacturer or distributor, and any claim not specifically disapproved in writing within thirty (30) days after receipt shall be construed to be approved and payment must follow within thirty (30) days.

(6) A dealer whose claim has been denied due to failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim, may resubmit the corrected claim as provided for in subsection (7) of this section.

(7) A dealer shall have thirty (30) days from the date of notification by a manufacturer or distributor of a denial of a claim or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for any of the reasons described in subsection (6) of this section, whether the charge-back was a direct or an indirect transaction, unless a longer period of time is provided for by the manufacturer or distributor.

(8) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (9) of this section, after the expiration of one (1) year after the date of payment of the warranty claim, a manufacturer or distributor shall not audit the records of a motor vehicle dealer to determine compliance with the terms of a warranty claim. Provided however, that the manufacturer or distributor may audit the dealer for fraudulent claims during any period for which an action for fraud may be commenced.

(9) A manufacturer or distributor may make charge backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that:

(a) With respect to a warranty claim, the repair work was improperly performed in a substandard manner or was unnecessary; or

(b) The claim is unsubstantiated in accordance with the manufacturer or distributor's requirements.

(10) Nothing in subsection (8) or (9) of this section shall prevent a manufacturer or distributor from instituting a legal action for fraud as provided for in section 5-218 , Idaho Code.

(11) The schedule of compensation for warranty parts and labor shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty parts and labor; provided that such dealer's retail rate is not unreasonable when compared with other motor vehicle franchises from the same or competitive lines for similar merchandise or services in the geographic area in which the dealer is engaged in business.

(a) For purposes of determining the schedule of compensation paid to a dealer by the manufacturer or distributor, the following shall not be considered in determining amounts charged by the dealer to retail customers:

(i) Menu-priced parts or services; (ii) Repairs for manufacturer or distributor special events; (iii) Repairs covered by any insurance or service contract; (iv) Vehicle emission or safety inspections required by federal, state or local governments;

(v) Parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; (vi) Engine assemblies and transmission assemblies; (vii) Routine maintenance not covered under any retail customer warranty including, but not necessarily limited to, maintenance involving fluids, filters and belts not provided in the course of repairs; (viii) Nuts, bolts, fasteners and similar items that do not have an individual part number; (ix) Tires; or

(x) Vehicle reconditioning.

(b) The dealer shall establish their schedule of compensation under the provisions of this section by submitting to the manufacturer or distributor one hundred (100) sequential customer paid service repair orders or ninety (90) days of customer paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within ninety (90) days after the initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, within thirty (30) days following receipt of the declared schedule of compensation from the dealer, the manufacturer or distributor may make reasonable requests for additional information supporting the declared schedule of compensation. The ninety (90) day time frame in which the manufacturer or distributor shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer or distributor shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction

calculations. The dealer shall not request a change in the schedule of compensation more than once every twelve (12) months.

(12) It is unlawful for a manufacturer or distributor or subsidiary to own, operate or control, either directly or indirectly, a motor vehicle warranty or service facility located in this state except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a motor vehicle dealer of that manufacturer or distributor's line make except as provided for in section 49-1613 (3)(g), Idaho Code.

(13) A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and labor either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition; provided however, a manufacturer or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business.

(14) All procedures and protections afforded to a motor vehicle dealer under the provisions of this section shall be available to a recreational vehicle dealer. However, the schedule of compensation afforded under subsection (11) of this section shall not apply to compensation for parts, systems, fixtures, appliances, furnishings, accessories and features of a recreational vehicle that are designed, used and maintained primarily for nonvehicular residential purposes.

49-1627 — Use of dealer and manufacturer license plate

49-1627. Use of dealer and manufacturer license plate.

(1) Any dealer or manufacturer license plate issued may, during the calendar year for which issued, be transferred from one (1) vehicle to another owned or operated by such manufacturer or dealer, in pursuance of his business as a manufacturer or dealer.

(2) Dealer plates shall not be used on vehicles under the following circumstances:

(a) On work or service vehicles not held in stock for sale;

(b) On leased or rented vehicles owned by the licensed manufacturer or dealer;

(c) On a laden vehicle designed for transportation of cargo, unless the manufacturer or dealer has complied with section 49-434 , Idaho Code, except as provided in subsection (3) of this section;

(d) On vehicles which have been sold;

(e) On vehicles used by the licensee for furtherance of another business;

(f) On vehicles owned by a licensed wholesaler used for personal use;

(g) On vehicles owned by a licensed wholesaler, operated by their licensed salesmen, used for personal use.

(3) Dealer and manufacturer plates may be used on laden vehicles operated by the manufacturer, dealer or his licensed vehicle salesman, in connection with the manufacturer's or dealer's business. A dealer plate may be used on a laden trailer in connection with a manufacturer's or dealer's business to move vehicles or trailers from a manufacturer to a dealer, from dealership to dealership or from a dealership to off-site locations in promotion of the dealer's business as long as the power unit is properly licensed under chapter 4, title 49 , Idaho Code. A dealer plate may be used on a vehicle assigned for personal use on a full-time basis to the dealer, or licensed full-time vehicle salesman. This personal use exception applies only to the manufacturer, dealer, or licensed full-time vehicle salesman personally, and any other persons, including members of their families, are excluded. A prospective purchaser of a vehicle may have possession of the vehicle with a dealer plate for not more than ninety-six (96) hours or may operate the vehicle when accompanied by the manufacturer, dealer or a licensed vehicle salesman.

(4) Licensed part-time vehicle salesmen may use a dealer plate on a vehicle that is offered for sale only to demonstrate the vehicle to a purchaser, but not for personal use. Other employees or authorized persons, not licensed as a vehicle salesman, may use a dealer plate when testing the mechanical operation of a vehicle or for the necessary operation in pursuance of the dealer's business, including the delivery and pickup of vehicles owned or purchased by that manufacturer or dealer.

(5) Laden dealer and manufacturer plates may be displayed on any power unit in the dealer's or manufacturer's inventory to operate vehicles laden with vehicles that are in the dealer's or manufacturer's inventory in pursuance of the dealer's or manufacturer's business. Such use shall be limited to moving vehicles from a manufacturer to a dealer, from dealership to dealership, or from a dealership to off-site locations in furtherance of the dealer's business. Such uses may include travel to licensed temporary supplemental lot locations, to and from auctions or to a new licensed location.

(a) Laden dealer and manufacturer plates shall not be used for personal use by the dealer or manufacturer or a licensed full—time or part—time salesman of the dealership.

(b) Laden dealer and manufacturer plates shall be valid up to a maximum of twenty–six thousand (26,000) pounds combined gross vehicle weight.

(c) Fees will be as provided in section 49-434 (1), Idaho Code, for commercial vehicles at a weight limit of twenty–six thousand (26,000) pounds combined gross vehicle weight.

(d) The dealer or manufacturer may increase the weight limit through the purchase of a temporary weight increase permit, as provided for in section 49-432 (2), Idaho Code.

(6) Vehicle manufacturers and dealers shall keep a written record of the vehicles upon which dealer's number plates are used for personal use on a full-time basis, and the time during which each plate is used. The record shall be open to inspection by any peace officer or any officer or employee of the department.

(7) No manufacturer or dealer shall cause or permit any vehicle owned by them to be operated or moved upon a public highway without displaying upon the vehicle a license plate issued to that person, either under the provisions of this section or section 49-428 , Idaho Code, except as otherwise authorized in section 49-431 , Idaho Code.

49-1628 — Use of vehicle dealer loaner plate

49-1628. Use of vehicle dealer loaner plate.

(1) A dealer shall maintain a log showing the vehicle identification number, date, reason for use, and the name of the person authorized to use the plate.

(2) The user of a loaner plate shall carry identification showing dealer name, number on plate, signature of dealer and year for which the plate is valid.

(3) Loaner plates may be used on vehicles held in stock for sale which are loaned to a customer of a dealership while the customer vehicle is being repaired, and, on vehicles held in stock for sale and operated by the dealer or his family for personal use or for furtherance of dealership business.

(4) Loaner plates may not be used on:

(a) Work or service vehicles not held in stock for sale;

(b) Leased or rented vehicles owned by the licensed dealer;

(c) A laden vehicle designed for transportation of cargo, unless the dealer has complied with the provisions of section 49-434 , Idaho Code;

(d) Vehicles which have been sold;

(e) Vehicles used by licensee for furtherance of another business;

(f) Vehicles used for personal use by licensed salesman or other nonlicensed employees of the dealership;

(g) Vehicles of which the dealer does not have legal ownership;

(h) Vehicles being operated by an actual purchaser.

49-1629 — Odometers

49-1629. Odometers.

(1) Nothing in this chapter shall prevent the service, repair or replacement of an odometer, provided the mileage as defined in section 49-114 , Idaho Code, indicated remains the same as before the service, repair or replacement. Where the odometer is incapable of registering the same mileage as before service, repair or replacement, the odometer shall be adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Provided however, the notice shall not be required if the odometer reading is converted from registering in kilometers to miles, and the mileage on the vehicle after the conversion of the odometer is equivalent to its mileage before the conversion. No person shall:

(a) Fail to adjust an odometer or affix a notice regarding adjustment, as required under this section.

(b) With intent to defraud, remove or alter any notice affixed to a vehicle pursuant to the provisions of this section.

(2) It shall be unlawful for any person to:

(a) Disconnect, turn back, or reset the odometer of any vehicle with the intent to reduce the number of miles indicated on the odometer gauge.

(b) Sell a vehicle in this state if that person has knowledge that the odometer on the vehicle has been turned back or replaced, and if the person fails to notify the buyer prior to the time of the sale, that the odometer has been turned back or replaced, or that he has reason to believe that the odometer has been turned back or replaced.

(c) Advertise for sale, to sell, to use, or to install on any part of a vehicle or on an odometer in a vehicle, any device which causes the odometer to register any mileage other than the true mileage driven.

49-1630 — Purchaser plaintiff to recover costs and attorney's fees

49-1630. Purchaser plaintiff to recover costs and attorney's fees. In any suit brought by the purchaser of a vehicle against the seller of that vehicle, the purchaser shall be entitled to recover his court costs and a reasonable attorney's fee fixed by the court, if:

(1) The suit or claim is based substantially upon the purchaser's allegation that the odometer on the vehicle has been tampered with or replaced contrary to this chapter; and

(2) It is found in the suit that the seller of the vehicle or any of his employees or agents knew or had reason to know that the odometer on the vehicle had been tampered with or replaced, and failed to disclose that knowledge to the purchaser prior to the time of sale.

49-1632 — Applicability of chapter

49-1632. Applicability of chapter.

(1) Any person who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising for sale, or has business dealings with respect to a new vehicle sale within this state, shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this state.

(2) The applicability of this chapter shall not be affected by a choice of law clause in any franchise, agreement, waiver, novation, or any other written instrument.

(3) Any provision of any agreement, franchise, waiver, novation or any other written instrument which is in violation of any section of this chapter shall be considered null and void and without force and effect.

(4) It shall be unlawful for a manufacturer to use any subsidiary corporation, affiliate corporation, or any other controlled corporation, partnership, entity, association, or person to accomplish what would otherwise be unlawful conduct under this chapter on the part of the manufacturer.

(5) Nothing in this chapter shall be construed to impair the obligations of a contract entered into prior to January 1, 1989, or to prevent a manufacturer, distributor, representative or any other person, whether or not licensed under this chapter, from requiring performance of a prior written contract entered into with any dealer, nor shall the requirement of performance constitute a violation of any of the provisions of this chapter. Any contract, or the terms of it, requiring performance, shall have been freely entered into and executed between the contracting parties. This chapter shall apply to any amendments, novations, records or modifications of prior contracts and to any contracts entered into subsequent to March 31, 1989.

49-1633 — Limitations

49-1633. Limitations.

(1) Actions arising out of any provision of this chapter shall be commenced within a four (4) year period of the accrual of the cause of action. If a person liable under this chapter conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person entitled shall be excluded in determining the time limited for the commencement of the action.

(2) If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies under the antitrust laws, the federal trade commission act, or any other federal act, or the laws or to franchising, such actions may be commenced within one (1) year after the final disposition of the civil, criminal or administrative proceeding.

49-1634 — Dealer sales — Minimum sales required for license renewal

49-1634. Dealer sales — Minimum sales required for license renewal.

(1) A vehicle dealer shall certify upon application for renewal of his dealer's license that during the preceding licensing year he sold at least five (5) vehicles, either at retail or wholesale.

(2) Failure to sell or to verify the sale of a minimum of five (5) vehicles shall be grounds for the department to deny renewal of the dealer's license.

(3) Any vehicle dealer who has had his license denied or has failed to meet the requirement to sell a minimum of five (5) vehicles during the preceding licensing year is entitled to a hearing as provided in section 49-1618 , Idaho Code.

49-1636 — Consignment sales

49-1636. Consignment sales.

(1) An owner who consigns a vehicle to a vehicle dealer to be offered for sale or exchange on behalf of the owner to a third party purchaser, shall provide the dealer with either the certificate of title to the vehicle along with a power of attorney designating the dealer as an agent of the owner, or a duly executed consignment agreement between the dealer and the owner, along with a copy of the certificate of title of the vehicle being consigned.

(2) A consignment agreement shall contain at the least, the following:

(a) The name and current address of the owner of the vehicle as shown on the certificate of title;

(b) The name and current address of any person holding a lien on the vehicle;

(c) The name of the consignee;

(d) A description of the vehicle including the vehicle's make, model, vehicle identification number and odometer reading; and

(e) A statement that the owner has appointed the vehicle dealer as his agent for the purpose of offering the vehicle for sale.

49-1637 — Education requirements for vehicle dealers

49-1637. Education requirements for vehicle dealers.

(1) Except as provided in subsection (2) of this section, the following continuing education requirements shall apply to a vehicle dealer for an initial dealer's license and for the annual renewal, as provided in sections 49-1607

(3) and 49-1634 , Idaho Code, of a dealer's license:

(a) An applicant for an annual renewal of a dealer's license must complete a four (4) hour education program as described in subsection (3) of this section prior to submitting a renewal application for a vehicle or vessel dealer license.

(b) An applicant requesting an initial vehicle or vessel dealer's license shall be required to provide certification that he has completed a department approved prelicensing class or program, including an examination on the materials that were presented prior to submitting a license application.

(2) The education requirements of subsection (1) of this section do not apply to an applicant for a full-time or part-time vehicle salesman's license, manufacturer's license or distributor's license. The following applicants are also exempt from the provisions of subsection (1) of this section:

(a) A vehicle dealer of nationally advertised and recognized new motor vehicles or vessels; and

(b) A franchise dealer of new recreational vehicles, new motorcycles, new all-terrain vehicles, new snowmobiles or new vessels.

(3) The continuing education programs and prelicensing class requirements required in subsection (1) of this section shall be developed with input from motor vehicle industry organizations including, but not limited to, the Idaho independent automobile dealers association, and shall be approved by the department:

(a) Prelicensing classes shall consist of eight (8) hours of instruction or as otherwise approved by the department, which shall include the written examination.

(b) Fees applicable to the prelicensing class shall not exceed three hundred fifty dollars ($350).

(c) Fees applicable to the dealer education program shall not exceed two hundred dollars ($200).

(d) Any provider as approved by the department shall make the dealer education programs and prelicensing classes available on a monthly basis, at a minimum.

(4) The continuing education programs and the prelicensing class/programs required in subsection (1) of this section may be provided by accredited educational institutions, private vocational schools, correspondence schools or trade associations, provided that the continuing education program and prelicensing class/programs have been approved by the department as required in subsection (3) of this section.

(5) The department may promulgate rules as necessary to implement the provisions of this section.

49-1638 — Manufacturer incentive programs for motor vehicle dealers

49-1638. Manufacturer incentive programs for motor vehicle dealers.

(1) A manufacturer or distributor shall pay a motor vehicle dealer's claim for payment or other compensation due under a manufacturer incentive program within thirty (30) business days after receiving the claim, unless the claim is disapproved by written notice, with reasons stated, within thirty (30) business days of receipt of the dealer's claim. A claim that is not disapproved or disallowed in writing within thirty (30) business days after the manufacturer or distributor receives the claim is deemed automatically approved.

(2) A manufacturer shall not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(3) A dealer shall have sixty (60) days from the date of notification by a manufacturer or distributor of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in subsection (2) of this section, whether the charge-back was a direct or an indirect transaction.

(4) A motor vehicle dealer has ninety (90) days after the expiration of a manufacturer or distributor incentive program, or such longer time as provided by the franchise agreement, whichever is greater, to submit a claim for payment or compensation under the program.

(5) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (6) of this section, after the expiration of one (1) year after the date of payment of the vehicle claim, a manufacturer or distributor shall not:

(a) Charge back to a motor vehicle dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the manufacturer or distributor under an incentive program;

(b) Charge back to a motor vehicle dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) Audit the records of a motor vehicle dealer to determine compliance with the terms of an incentive program.

(6) A manufacturer or distributor may make charge-backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that:

(a) With respect to a claim under a service incentive program, the repair work was improperly performed in a substandard manner or was unnecessary; or

(b) The claim is unsubstantiated in accordance with the manufacturer's or distributor's reasonable requirements.

(7) Notwithstanding subsections (5) and (6) of this section, a manufacturer or distributor may make charge-backs to a motor vehicle dealer for fraud at any time permitted by section 5-218 , Idaho Code.

CHAPTER 17

49-1701 — Labor and material liens on motor vehicles

49-1701. Labor and material liens on motor vehicles. Every person has a lien, dependent upon possession, for the compensation to which he is legally entitled for making repairs or performing labor upon, and/or for the furnishing supplies or materials for, and/or for the towing, storage, repair or safekeeping of, and/or for the rental of parking space for any vehicle of a type subject to registration under the motor vehicle code, and upon the contents thereof.

49-1702 — Form for notice of lien

49-1702. Form for notice of lien. To claim the benefits of the provisions of this chapter a lien claimant shall, prior to making any repairs, provide notice to the registered and legal owner of a motor vehicle of intended repairs, service, or

storage at the request of a person in possession of the vehicle. The notice shall be substantially in the following form: To: …….. (Name of registered and legal owner and addresses) Notice is hereby given, in accordance with the provisions of …….., Idaho Code, that the undersigned, …….. of …., (address) has been requested by …., of …., …….. (address) …., …. (the registered owner, or agent thereof) …., to …….. (repair or as the case may be) the following described motor vehicle of which you are designated the registered or legal owner on the title: …….. (specify year, make and model) …., ……. (vehicle identification no.) …., …….. (license no.) ….. If appropriate, add: The repairs requested are as follows: …… The undersigned intends to begin such …….. (repairs or as the case may be) on approximately …….., ….. The approximate charges for the services requested will be $……., and the undersigned will claim a lien on the vehicle for the actual amount of such charges. In accordance with the provisions of sections …….. and …….., Idaho Code, the undersigned requests that you consent to the performance of …… (such repairs or as the case may be) by signing and returning the enclosed copy of this notice. Dated …….., ….. Consent I hereby consent to the performance of the above described …….. (repairs or as the case may be.) Dated …….., …..

49-1703 — Assignment of lien

49-1703. Assignment of lien. Any lien provided for in this chapter may be assigned by written instrument accompanied by delivery of possession of the vehicle subject to the lien, and the assignee may exercise the rights of a lien holder. Any lien holder assigning a lien, as authorized herein, shall at the time of assigning the lien give written notice of the assignment by certified mail to the registered and legal owner, including the name and address of the person to whom the lien is assigned.

49-1704 — Revival of lost liens

49-1704. Revival of lost liens. Whenever the lien upon any vehicle is lost by reason of the loss of possession through trick, fraud, or device, the repossession of the vehicle by the lien holder revives the lien, but any lien so revived is subordinate to any right, title or interest of any person under any sale, transfer, encumbrance, lien or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.

49-1705 — Sale to satisfy liens

49-1705. Sale to satisfy liens.

(1) When a possessory lienholder is not paid the amount of the lien due, within ten (10) days after the same becomes due, the lienholder may proceed to conduct a sale as provided by this section to satisfy the lien and costs of sale, if an authorization to conduct a lien sale has been issued by the department, or a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle.

(2) A possessory lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application shall include all of the following information:

(a) A description of the vehicle, including make, vehicle identification number, and license number;

(b) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from registration certificates within the vehicle, and the names and addresses of other persons whom the lienholder knows or reasonably should know to claim an interest in the vehicle;

(c) A statement of the amount of the lien and the facts concerning the claim which give rise to the lien; and

(d) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(3) Upon receipt of an application, the department shall send a copy of the application to the registered and legal owners at their addresses of record with the department and to any other interested persons listed in the application. The department shall also send a notice which shall include the following information:

(a) That an application has been made with the department for the issuance of an authorization to conduct a lien sale;

(b) That the person has a legal right to a hearing in court;

(c) That if a hearing in court is desired, an enclosed declaration of opposition must be signed and returned;

(d) That if the declaration is signed and returned, the possessory lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the registered and legal owners;

(e) That the department will issue the authorization to conduct a lien sale unless the person signs and returns the declaration of opposition within ten (10) days after the date the notice was mailed; and

(f) That the person may be liable for costs if the lienholder brings an action and if a judgment is entered in favor of the lienholder.

(4) If the department receives a timely mailed declaration of opposition, it shall notify the possessory lienholder that he may not conduct a lien sale unless:

(a) A judgment has been entered in his favor on the claim which gives rise to the lien; or

(b) The registered and legal owners of the vehicle have signed a release of any interest in the vehicle.

(5) An applicant shall include with his application for lien sale a fee of ten dollars ($10.00) which shall be deposited in the abandoned vehicle trust account. The fee shall be recoverable as a cost by the lienholder.

49-1706 — Release of owner's interest in vehicle

49-1706. Release of owner's interest in vehicle.

(1) A registered or legal owner of a vehicle in the possession of a person holding a lien under the provisions of this chapter may release any interest in the vehicle after the lien has attached.

(2) The release shall contain the following information:

(a) A description of the vehicle, including the year and make, the engine or vehicle identification number, and the license number;

(b) The names and addresses of the registered and legal owners of record;

(c) A statement of the amount of the lien and the facts concerning the claim which give rise to the lien; and

(d) A statement that the person releasing the interest understands that he has a legal right to a hearing in court prior to the sale of the vehicle and that he waives the right to contest the claim.

(3) A copy of the release shall be filed with the department in connection with the transfer of interest in a vehicle under the provisions of this section.

49-1707 — Notice of sale

49-1707. Notice of sale. Prior to any sale the possessory lienholder shall give at least ten (10) days' notice of the sale by advertising in one (1) issue of a newspaper of general circulation in the county in which the vehicle is located. Prior to the sale of any vehicle to satisfy a lien, twenty (20) days' notice by certified mail shall be given to the legal owner and to the registered owner of the vehicle, if registered in this state, as the same appear in the registration certificate, and to the department. All notices specify the make, the vehicle identification number, and license number, and the date, time, and place of the sale.

49-1708 — Inspection prior to sale

49-1708. Inspection prior to sale. No lien sale conducted pursuant to this chapter shall be undertaken unless the vehicle has been available for public inspection, at a location easily accessible to the public, for at least one (1) hour before sale. Sealed bids shall not be accepted. The possessory lien holder shall conduct the sale in a commercially reasonable manner.

49-1709 — Disposition of proceeds

49-1709. Disposition of proceeds.

(1) The proceeds of a lien sale shall be disbursed as follows:

(a) To discharge the lien; then to actual costs of selling the property. The cost of selling shall be the actual cost, not to exceed seventy-five dollars ($75.00), for each vehicle;

(b) The balance, if any, shall be forwarded to the department within five (5) days of the sale for payment to the legal owner of any unpaid obligation or for deposit in the abandoned vehicle trust account.

(2) Any person claiming an interest in the vehicle may file a claim with the department for any portion of the funds from the lien 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 not filed within two (2)

years of the sale.

49-1710 — Unlawful removal or obtaining of vehicle subject to lien

49-1710. Unlawful removal or obtaining of vehicle subject to lien. No person shall obtain possession of any vehicle or any part of that vehicle, subject to a lien under the provisions of this chapter, through surreptitious removal or by trick, fraud, or device perpetrated upon the lien holder.

CHAPTER 18

49-1801 — ABANDONMENT PROHIBITED

49-1801. ABANDONMENT PROHIBITED.

(1) No person shall abandon a vehicle upon any highway.

(2) No person shall abandon a vehicle upon public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

49-1802 — PRESUMED RESPONSIBILITY

49-1802. PRESUMED RESPONSIBILITY.

(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 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 pursuant to this chapter 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 found 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 pursuant to section 49-526 , Idaho Code, in which case the transferee shown on the release of liability shall be guilty of a traffic infraction.

(4) Vehicles towed under the provisions of this chapter cannot be disposed of without a title or a junk certificate.

(5) If a law enforcement agency places a call or requests a tow company to remove a vehicle, it shall be classified as a law enforcement-directed tow and the provisions of this chapter shall apply.

49-1803 — REMOVAL OF STOLEN VEHICLES

49-1803. REMOVAL OF STOLEN VEHICLES.

(1) Any authorized officer, upon discovery of a vehicle reported as stolen and not recovered, may cause it to be taken to and stored in an authorized impound yard in the custody of a tow company.

(2) Within forty-eight (48) hours, excluding weekends and holidays, of the time that the vehicle is taken into custody and is stored pursuant to this section, the agency of which the officer is an agent shall make a reasonable effort to obtain the vehicle owner information from the agency that the stolen vehicle report was filed with and contact the owner by email or phone. If contact is made and no action is taken by the owner or insurance company within seven (7) days or no contact is made within forty-eight (48) hours, the agency shall give written notice by certified mail to the registered and legal owners of the vehicle, if known. The notice shall state:

(a) That the vehicle has been taken into custody and stored;

(b) The location of storage of the vehicle;

(c) The identification of the officer;

(d) A description of the vehicle, including make, year, model, identification number, license number, and state of registration; and

(e) The statutory authority for storage.

(3) If the vehicle is not claimed within thirty (30) days, it shall be considered stolen and not recovered and treated as an abandoned vehicle, subject to the provisions of section 49-1807 , Idaho Code. The storage time accrued under this section may be added to the storage time required through the abandoned vehicle process, pursuant to section 49-1814 (3), Idaho Code, if the vehicle was stored at a tow company facility during the stolen vehicle investigation and notification process.

49-1804 — REMOVAL OF ACCIDENTS — DRIVER ARRESTS — VEHICLES FOUND UNDER EXTRAORDINARY CIRCUMSTANCES

49-1804. REMOVAL OF ACCIDENTS — DRIVER ARRESTS — VEHICLES FOUND UNDER EXTRAORDINARY CIRCUMSTANCES. Any authorized officer who dispatches a call to request the removal of a vehicle under the authority of this chapter or the provisions of section 49-662 , Idaho Code, as the result of an accident, the driver being arrested, or other extraordinary circumstances may immediately cause the vehicle to be placed in the custody of a tow company.

49-1805 — REMOVAL OF roadside ABANDONED VEHICLES

49-1805. REMOVAL OF roadside ABANDONED VEHICLES.

(1) Upon discovery of an abandoned vehicle other than under extraordinary circumstances, an authorized officer shall attach on the vehicle, in plain view, a notice that the vehicle will be towed away after forty-eight (48) hours. The notice shall contain:

(a) The name of the officer who prepared the notice;

(b) The name of the agency employing the officer;

(c) The time and date of attaching the notice;

(d) The time and date after which the vehicle will be removed; and

(e) The telephone number and address of the agency where further information can be obtained.

(2) A reasonable attempt shall be made to notify the owner of any vehicle that has current license plates and registration as shown on the records of the department prior to the expiration of the forty-eight (48) hour notice period. Such notice shall include the location of the vehicle and the time and date of intent to remove the vehicle. The inability of an officer to notify the owner shall not preclude the removal of the vehicle at the expiration of the forty-eight (48) hour period provided for in this section.

49-1806 — REMOVAL or BOOTING OF UNAUTHORIZED AND ABANDONED VEHICLEs FROM REAL PROPERTY

49-1806. REMOVAL or BOOTING OF UNAUTHORIZED AND ABANDONED VEHICLEs FROM REAL PROPERTY.

(1) Any person having possession or control of real property, including commercial property, who finds an unauthorized vehicle standing on his property is permitted to have the vehicle removed or booted if there is posted on or near the property in a clearly conspicuous location, in large print, a sign or notice that unauthorized vehicles will be removed or booted at the owner's expense and designating the name of the towing firm. Unauthorized vehicles need not meet the provisions of section 49-102 (2), Idaho Code, in this instance.

(2) Any person having possession or control of real property, excluding commercial property, who finds an abandoned vehicle standing on his property when the property is not posted as set out in subsection (1) of this section may contact a tow company to remove the vehicle. The tow company shall have the person having possession or control of the property sign a release form to the tow company identifying himself as the person having possession or control of real property, identifying the vehicle being removed, and taking responsibility for the removal of the vehicle.

(3) No vehicle shall be considered unauthorized and subject to removal or booting pursuant to the provisions of this subsection solely on the basis of the vehicle having expired or improper vehicle registration. All other provisions of this chapter shall be complied with.

49-1807 — TOWED VEHICLE REMOVAL AND NOTIFICATION REQUIREMENTS

49-1807. TOWED VEHICLE REMOVAL AND NOTIFICATION REQUIREMENTS.

(1) Whenever a vehicle is towed pursuant to sections 49-1803 through 49-1806 , Idaho Code, the following procedures shall be followed:

(a) Law enforcement shall:

(i) At the time of tow, except for vehicles towed under section 49-1806 , Idaho Code, complete a notice form containing at least the following information: 1. A complete vehicle description, including license plate number, if available, and vehicle identification number; 2. The time, date, and reason for the tow; 3. The name of the law enforcement agency directing the tow and the case number assigned; 4. The name and badge number of the authorized officer; 5. The name, address, and telephone number of the tow company; 6. The storage location of the vehicle; and 7. The signature of the tow truck operator taking receipt of the vehicle and contents; (ii) Provide a copy of the notice pursuant to subparagraph (i) of this paragraph to the tow company to authorize towing of the vehicle. A copy shall be provided to the legal or registered owner at the scene, if applicable. The notification provided pursuant to subparagraph (i) of this paragraph shall be in addition to all notices required for vehicle disposal procedures contained in this chapter; (iii) Not delegate authorization of the towing of vehicles as described in this chapter to a nongovernmental entity; and (iv) Report the tow in the Idaho public safety and security information system;

(b) The tow company shall:

(i) Report the tow in the department's towed vehicle portal within one (1) business day of the tow, excluding weekends and holidays, pursuant to applicable procedures; and (ii) Apply to the department for a title or junk certificate after thirty (30) days from the date of first notification as long as the following conditions have been met: 1. The vehicle has not been claimed; 2. No declaration of opposition was received or the declaration of opposition timeline has elapsed; or 3. If a tow procedure hearing was conducted, it was determined in the favor of the agency; and

(c) The department shall:

(i) Provide the title and insurance information the department has on record when the tow company enters the tow record into the portal; (ii) Notify the vehicle's owners and lienholders on record using: 1. If the owner or lienholder signed up for electronic notifications: (A) Within one (1) business day of the tow company reporting a tow in the portal, an electronic notification; (B) If the vehicle is not claimed within five (5) business days after being reported in the portal, a second notice by first class mail; and (C) If the vehicle is not claimed within fifteen (15) business days after being reported in the portal, a third notice by first class mail; or 2. If the owner or lienholder has not signed up for electronic notifications: (A) Within one (1) business day after a tow company reports a tow in the portal, notification by first class mail; and (B) If the vehicle is not claimed within ten (10) business days after being reported in the portal, a second notice by first class mail; and (iii) Issue a title or junk certificate to the towing company clear of any liens after thirty (30) days from the date of first notification if all applicable procedures of this chapter were followed and the conditions of paragraph (b)(ii) of this subsection have been met.

(2) The notifications in subsection (1)(c) of this section shall include the following information:

(a) A description of the vehicle that includes, if available, the make, model, year, vehicle identification number, and license plate number;

(b) The name, address, and telephone number of the tow company;

(c) The date, time, and reason for tow;

(d) The location of the place of storage;

(e) The amount owed for towing;

(f) The daily rate for storage;

(g) The right to a tow procedure hearing pursuant to section 49-1809 , Idaho Code;

(h) The right to claim personal property; and

(i) The right to file a declaration of opposition pursuant to section 49-1808 , Idaho Code.

49-1808 — declaration of opposition

49-1808. declaration of opposition.

(1) In the event that the legal or registered owner of a vehicle towed under the provisions of this chapter wishes to dispute the fees, claim, disposition, or other issues related to the possessory lienholder, the owner may file a declaration of opposition with the department.

(2) The declaration of opposition must be received by the department within twenty (20) calendar days after the date of the first notification sent by the department pursuant to section 49-1807 (1)(c), Idaho Code.

(3) The declaration of opposition shall give the declarant ten (10) calendar days after the date the declaration was filed with the department to file legal action against the possessory lienholder.

(4) If the declarant files a legal action against the possessory lienholder, the disposition of the vehicle shall be paused pending the outcome of the court proceedings.

(5) The declarant may be liable for court costs if a judgment is entered in favor of the possessory lienholder.

49-1809 — TOW PROCEDURE HEARING

49-1809. TOW PROCEDURE HEARING.

(1) Whenever an authorized officer initiates the tow or storage of a vehicle pursuant to the provisions of sections 49-1804 and 49-1805 , Idaho Code, the agency authorizing the tow or storage shall provide the vehicle's registered and legal owners of record or their agents with the opportunity for a tow procedure hearing to determine the validity of the storage.

(2) In order to receive a tow procedure hearing, the owners or their agents must send a request for hearing in writing, to the department, within ten (10) calendar days of the date of the initial notice, pursuant to section 49-1807 (1)(c), Idaho Code. Any such hearing shall be conducted within forty-eight (48) hours of the request, excluding weekends and holidays. The public agency may authorize its own officer or employee to conduct the hearing, as long as the hearing officer is not the same person who directed the storage of the vehicle.

(3) Failure of either the titled or legal owner or his agent to request or to attend a scheduled hearing shall satisfy the tow procedure hearing requirement as to that person.

(4) The provisions of this section shall not apply to vehicles removed from posted property pursuant to section 49-1806 , Idaho Code.

(5) The agency employing the person who authorized the tow shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable cause for the tow and storage cannot be established.

49-1810 — CHARGES NOT OTHERWISE PROVIDED FOR

49-1810. CHARGES NOT OTHERWISE PROVIDED FOR. Every tow company in the process of towing, removing, or impounding a vehicle as directed by an authorized officer, except vehicles towed as part of an investigation or that are suspected stolen, shall upon request of the owner or his authorized agent release the vehicle at the scene. If the vehicle is attached to the tow truck, or otherwise in tow, the regular, scheduled tow fee may be charged. When the vehicle is not yet in tow at the time of request, the release must be made, and no charge may be assessed except a customary and reasonable charge for mileage one way from the towing company's place of storage to the scene plus the usual fee for the tow truck operator. If the authorized fee is not tendered by the owner or his agent, the towing operator may complete the impoundment, towing, or removal, as authorized.

49-1811 — CLAIMING OF VEHICLE — REFUSAL TO RELEASE VEHICLE

49-1811. CLAIMING OF VEHICLE — REFUSAL TO RELEASE VEHICLE.

(1) The owner or lienholder of any vehicle removed or booted under the provisions of this chapter, except those vehicles impounded for investigation or suspected stolen, may take possession of the vehicle at any time prior to disposition by proving ownership and paying the costs relative to towing and storing or booting the vehicle.

(2) Unauthorized removal of any vehicle towed or booted under the provisions of this chapter without payment in full of all charges and costs that have been incurred under the provisions of this chapter shall be a misdemeanor, and the vehicle may be recovered and returned to the place of storage.

(3) Nothing in this chapter shall be construed to abate any cause of action that a lienholder has against the owner of an abandoned vehicle.

(4) Any insurer having a claim made against it pertaining to any vehicle removed or booted under the provisions of this chapter, except those vehicles impounded for investigation or suspected stolen, may take possession of the vehicle at any time prior to the settlement of such claim following determination by such insurer that the vehicle has been determined by such insurer to be a total loss, obtaining verbal consent of the owner and by paying the lawfully entitled costs relative to towing and storing the vehicle. The insurer holding facility shall allow the vehicle owner or his representative access to the vehicle upon the vehicle owner or his representative providing evidence of ownership. Personal property, including items not attached or related to the vehicle, must be returned to the vehicle owner pursuant to section 49-1814 (4), Idaho Code. If no total loss settlement is reached, the insurer shall return the vehicle to a mutually

agreed upon location. Any holding facility that releases a vehicle pursuant to the provisions of this subsection shall be held harmless for the release of such vehicle. The insurer shall provide the location and telephone number of the insurer holding facility to the vehicle owner or his representative.

(5) Any towing company that tows a vehicle pursuant to this chapter shall take the vehicle to such place as the owner or his authorized agent with a power of attorney may reasonably request. If such a request is not received, the towing company shall take the vehicle to its nearest place of safe storage. The towing company shall not be entitled to recover any storage fees, impound fees, unauthorized repair fees, or other fees, except the scheduled tow fee, if the towing company:

(a) Removes the vehicle to a place other than as directed by the officer or as reasonably requested by the owner or his authorized agent with a power of attorney;

(b) After removing the vehicle, refuses to release the vehicle to the owner, his authorized agent, insurance representative, or lienholder for any reason other than the refusal of the owner, authorized agent, insurance representative, or lienholder to pay the fees to which the towing company is lawfully entitled. The refusal of the owner, his authorized agent, insurance representative, or lienholder to pay fees to which the towing company is not entitled pursuant to this subsection shall not be cause for the tow company to refuse to release the vehicle; or

(c) Performs repairs or makes improvements, for any reason, without a signed work order or recorded verbal consent from the owner, his authorized agent, insurance representative, or lienholder.

(6) Upon release of the vehicle to the legal or registered owner, authorized agent, or insurance representative, the towing company shall provide an itemized statement containing the following:

(a) The location from which the vehicle was towed;

(b) The storage location of the vehicle;

(c) The name, address, and telephone number of the tow company;

(d) The year, make, and model of the vehicle towed;

(e) The license plate number of the vehicle towed;

(f) The itemized cost of towing and recovery charges; and

(g) The daily storage charge and number of days stored.

49-1812 — IDAHO STATE POLICE AUTHORIZED TOW LIST — BACKGROUND CHECKS

49-1812. IDAHO STATE POLICE AUTHORIZED TOW LIST — BACKGROUND CHECKS. The Idaho state police shall establish and maintain an authorized tow list. To determine the suitability of applicants for inclusion on the Idaho state police-authorized tow list, the Idaho state police shall require every applicant towing firm owner, driver, and operator to provide information and fingerprints necessary to obtain criminal history information from the Idaho state police bureau of criminal identification and the federal bureau of investigation. The cost of taking and processing such fingerprints shall be the responsibility of the applicant. Pursuant to section 67-3008 , Idaho Code, the Idaho state police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho state police bureau of criminal identification for a criminal records check of state and national databases. The Idaho state police may receive criminal history information from the Idaho state police bureau of criminal identification and from the federal bureau of investigation for the purpose of evaluating the fitness of applicants for inclusion on the Idaho state police-authorized tow list.

49-1813 — local government TOW LISTS

49-1813. local government TOW LISTS. Any county or city, including any law enforcement agency of a county or city, that maintains an authorized tow list shall document and make publicly available the qualifications to be added to or removed from such tow list.

49-1814 — FEES, STORAGE, AND ACCESS TO VEHICLE

49-1814. FEES, STORAGE, AND ACCESS TO VEHICLE.

(1) Whenever a vehicle has been towed under the provisions of this chapter, reasonable efforts shall be made to secure and prevent further damage to the vehicle being stored.

(2) A towing company shall furnish its rate sheet to the department for law enforcement-directed tows. The department shall make the rate sheet available to the public and the rate sheet shall also be posted at the towing company's place of

business and be made available upon request to consumers. Tow fees shall not vary based on the value of the vehicle and a charge more than what is reflected on the rate sheet for any service shall be deemed excessive.

(3) The maximum storage limit shall not exceed sixty (60) days from the date of tow. If the tow was reported in the portal within one (1) business day, excluding weekends and holidays, storage fees may begin from the date of tow. If the tow was not reported in the portal within one (1) business day, excluding weekends and holidays, storage fees shall not begin accumulating until the tow is reported in the portal by the towing company.

(4) Any vehicle stored under the provisions of this chapter, except vehicles being stored as part of a law enforcement investigation, shall:

(a) Be made available for physical inspection by the legal or registered owner, authorized agent with a valid power of attorney, or insurance representative during reasonable business hours at no additional charge; and

(b) Have no lien attached to any personal property in or on the vehicle. Personal property in or on the vehicle shall be given to the registered owner or the owner's authorized agent, if such agent has a valid power of attorney, during reasonable business hours at no additional charge, upon demand. The possessory lienholder shall not be responsible for personal property not attached to the vehicle after any vehicle has been disposed of pursuant to this chapter.

49-1815 — FEE TO ACCOMPANY INFORMATION REQUEST

49-1815. FEE TO ACCOMPANY INFORMATION REQUEST. Upon entering the towed vehicle information into the portal, the department shall receive a fee in accordance with section 49-202 (2)(g), Idaho Code.

49-1816 — ABANDONED VEHICLE TRUST ACCOUNT — APPROPRIATION AND USE

49-1816. ABANDONED VEHICLE TRUST ACCOUNT — APPROPRIATION AND USE.

(1) There is hereby established in the state treasury the abandoned vehicle trust account. There shall be set aside, paid into, and credited to the fund the fees authorized under section 31-3201F , Idaho Code, collected by the district courts.

(2) Moneys 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) Each fee collected by the district courts pursuant to section 31-3201F , Idaho Code, shall be distributed as follows:

(a) Seventy-five dollars ($75.00) to the law enforcement agency that directed the tow of the vehicle involved in the infraction; and

(b) Seventy-five dollars ($75.00) to the towing company that towed the vehicle involved in the infraction.

(4) Fees shall be distributed to law enforcement agencies and towing companies on a monthly basis.

49-1817 — PROVISIONS OF SECTIONS UNIFORM THROUGHOUT STATE

49-1817. PROVISIONS OF SECTIONS UNIFORM THROUGHOUT STATE. The provisions of this chapter shall be applicable and uniform throughout the state and in all political subdivisions. No local or state authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter.

CHAPTER 19

49-1901 — Enactment of western states transportation agreement

49-1901. Enactment of western states transportation agreement. The Western States Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein as follows: WESTERN STATES TRANSPORTATION AGREEMENT Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows: ARTICLE I Findings and Purposes SECTION 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the west of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states have already, to the fullest extent possible, adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards; and

(e) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety. SECTION 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(b) Establish a system authorizing the operation of vehicles traveling between two (2) or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

(f) Facilitate communication between legislators, state transportation administrators and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions. ARTICLE II Definitions SECTION 1. As used in this agreement:

(a) "Cooperating committee" means a body composed of the designated representatives from the participating jurisdictions.

(b) "Designated representative" means a legislator or other person authorized under article X to represent the jurisdiction.

(c) "Jurisdiction" means a state of the United States or the District of Columbia.

(d) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two (2) or more participating jurisdictions. ARTICLE III General Provisions SECTION 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes and objectives of this agreement and will seek legislation necessary to accomplish these objectives. SECTION 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority. SECTION 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof. SECTION 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof. SECTION 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing. SECTION 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof. SECTION 7. Restrictions, Conditions or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any. SECTION 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement. ARTICLE IV Cooperating Committee SECTION 1. Each participating jurisdiction shall have two (2) designated representatives. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute the cooperating committee which shall have the power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

(d) Recommend improvements in highway operations, in vehicular safety, and in state administration of highway transportation laws.

(e) Perform functions necessary to facilitate the purposes of this agreement. SECTION 2. Each designated representative of a participating jurisdiction shall be entitled to one (1) vote only. No action of the committee shall be approved unless a majority of the total number of votes cast by the designated representatives of participating jurisdictions are in favor thereof. SECTION 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice chairman and a secretary. SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. ARTICLE V Objectives of the Participating Jurisdictions SECTION 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation of a vehicle or combination of vehicles in regular operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula: W = 500 ((LN/N-1) + 12N + 36) where W = maximum weight in pounds carried on any group of two or more axles computed to nearest 500 pounds. L = distance in feet between the extremes of any group of two or more consecutive axles. N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that the operation of a vehicle or combination of vehicles in interstate commerce according to the provisions of subsection (a) of this section be authorized under special permit authority by each participating jurisdiction for vehicle combinations in excess of statutory weight of 80,000 pounds and/or statutory lengths.

(c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(d) The cooperating committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional needs and to promote an efficient, safe and compatible transportation network;

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety;

(3) Establish programs to increase productivity and reduce congestion, fuel consumption and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws. ARTICLE VI Entry Into Force and Withdrawal SECTION 1. This agreement shall enter into force when enacted into law by any two (2) or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 7, article III. SECTION 2. Any participating jurisdiction may withdraw from this agreement by cancelling the same but no such withdrawal shall take effect until thirty (30) days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions. ARTICLE VII Construction and Severability SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof. SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution

of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters. ARTICLE VIII Filing of Documents SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties. ARTICLE IX Funding SECTION 1. Funds for the administration of this agreement, including participation in the cooperating committee and the actual expenses of the designated representatives, shall be budgeted or expensed as determined appropriate. ARTICLE X Selection of Designated Representatives SECTION 1. The process for selecting the designated representatives to the cooperating committee shall be established by law under this section. SECTION 2. The persons authorized to represent the state of Idaho as the designated representatives to the committee shall be the chairman of the senate transportation committee and the chairman of the house transportation and defense committee, or a legislator or a state agency official that the chairman may assign. SECTION 3. The transportation chairman in each house shall also designate one (1) alternate designated representative who shall also be a legislator or state agency official to serve in his absence.

49-1902 — Existing statutes not repealed

49-1902. Existing statutes not repealed. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

49-1903 — State government departments authorized to cooperate with cooperating committee

49-1903. State government departments authorized to cooperate with cooperating committee. Within appropriations available therefor, the departments, agencies and officers of the government of this state may cooperate with and assist the cooperating committee within the scope contemplated by article IV, section 1(a) and (b) of the agreement. The departments, agencies and officers of the government of this state are authorized generally to cooperate with that cooperating committee.

49-1904 — Filing of reports

49-1904. Filing of reports. Filing of reports as required by article IV, section 4, of the agreement shall be with the department. Any and all notices required by the cooperating committee by-laws shall be given to the designated representative of this state or his alternate, if any.

CHAPTER 20

49-2001 — Enactment of compact

49-2001. Enactment of compact. The driver license compact is hereby enacted into law and entered into with all other jurisdictions legally joined therein in the form substantially as follows: DRIVER LICENSE COMPACT ARTICLE I Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a driver's license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of drivers' licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any driver's license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states. ARTICLE II Definitions As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home State" means the state which has issued and has the power to suspend, disqualify or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority. ARTICLE III Reports of Conviction The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith. ARTICLE IV Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, disqualification, revocation or limitation of the driver's license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article. ARTICLE V Applications for New Driver's Licenses Upon application for a driver's license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held driving privileges, or is the holder of a driver's license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a driver's license to drive to the applicant if:

(1) The applicant has held such a driver's license, but the same or driving privileges have been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a driver's license, but the same or driving privileges have been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated.

(3) The applicant is the holder of a driver's license to drive issued by another party state and currently in force unless the applicant surrenders such driver's license. ARTICLE VI Applicability of Other Laws Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to driver's licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state. ARTICLE VII Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact. ARTICLE VIII Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of convictions occurring prior to the withdrawal. ARTICLE IX Construction and Severability This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

49-2002 — Expenses of compact administrator

49-2002. Expenses of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as the administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

49-2003 — Judicial review of compact enforcement

49-2003. Judicial review of compact enforcement. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the driver license compact shall be subject to review by the district court of Ada County or of any other county in which the person aggrieved shall reside, upon a petition therefor filed within thirty (30) days thereafter, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

CHAPTER 22

49-2201 — Legislative findings and purposes

49-2201. Legislative findings and purposes.

(1) The legislature of the state of Idaho finds:

(a) That the amount and number of vehicles involved in the transportation of hazardous materials/hazardous waste on the highways of this state are on the increase;

(b) That the public health and safety and the environment are jeopardized when hazardous materials/hazardous waste are transported in unsafe vehicles or in an unsafe manner;

(c) That since the state police are most likely to be in the position to enforce safety laws and also to be first responders in the event of hazardous materials/hazardous waste incidents; and

(d) That the problem of safe transportation of hazardous materials/hazardous waste has become a matter of statewide concern.

(2) Therefore, it is hereby declared that the purposes of this chapter are:

(a) To protect the health and safety of the public and the environment by reducing the risk of accidents through an adequately funded safety inspection program aimed at vehicles which transport hazardous materials/hazardous waste;

(b) To provide for specialized training and equipment for state police officers to enable them to respond to hazardous materials/hazardous waste incidents on an emergency basis;

(c) To assure the safe transportation of hazardous materials/hazardous waste within this state.

49-2202 — Permit requirements for transporters of hazardous wastes

49-2202. Permit requirements for transporters of hazardous wastes.

(1) Every person, including a private carrier or a common or contract carrier, who operates a vehicle on any highway of this state transporting hazardous waste shall first procure from the department an annual or single trip permit for each vehicle so driven in which the shipment meets any one of the following qualifiers:

(a) Is required to be placarded pursuant to title 49 , code of federal regulations, part 172;

(b) Is manifested on a United States environmental protection agency uniform hazardous waste manifest form 8700-22 and 8700-22A, or its equivalent;

(c) Is any waste material containing polychlorinated biphenyls (PCB) which is regulated by title 40 , code of federal regulations, part 761; but in the event waste material is being transported to a disposal facility approved in compliance with 40 CFR 761.70 or 40 CFR 761.75 and is accompanied by a hazardous waste manifest form 8700-22 or 8700-22A, or its equivalent, then a permit shall be required regardless of the polychlorinated biphenyl concentration. This permit shall be available for examination and shall be displayed in accordance with rules adopted by the department. The provisions of this section shall not apply to vehicles owned by any city, county, state or federal governmental department or agency, special purpose district created pursuant to law or rural electric cooperatives.

(2) The fee for a single trip permit for the transportation of hazardous waste shall be twenty dollars ($20.00).

(3) The fee for an annual permit for the transportation of hazardous waste shall be two hundred fifty dollars ($250).

(4) Any carrier required to pay the fees assessed pursuant to this section is authorized to pass along such fees to the shipping party. No portion of the fees shall be prorated, reduced or transferred to another vehicle.

(5) The department may select vendors to serve as agents on state highways for the purpose of selling hazardous waste permits where fixed ports of entry do not adequately serve a respective highway entering the state. The vendor shall be remunerated at the rate determined by contract between the vendor and the department per permit sold, and the vendor shall collect the fees provided in this section, and pay the fees to the department. The vendor shall guarantee payment by giving a bond to the state of Idaho in a sum as shall be fixed by the department, the premium on the bond to be paid by the department.

(6) The operation of a vehicle, which is subject to the permit requirements of this section in a negligent manner is a violation of the provisions of this chapter.

49-2203 — Endorsement requirements for transporters of hazardous materials

49-2203. Endorsement requirements for transporters of hazardous materials.

(1) Every person, including a private carrier or a common or contract carrier, who operates a vehicle on any highway of this state transporting hazardous material in such quantity and under such conditions that such vehicle is required to be placarded pursuant to 49 CFR part 172 or such vehicle's cargo is regulated by 49 CFR part 171 or is required to meet the manifest requirements as set forth under the rules of the department of environmental quality, shall first procure from the department an annual vehicle registration endorsement. This registration endorsement shall be available for examination, unless procured via the state web portal, and shall be displayed in accordance with rules adopted by the department. The provisions of this section shall not apply to vehicles owned by any city, county, state or federal governmental department or agency or special purpose district created pursuant to law.

(2) The fee for an annual vehicle registration endorsement for the transportation of hazardous materials shall be fifteen dollars ($15.00). Any carrier required to pay the fee assessed pursuant to this section is authorized to pass along such fee to the shipping party. Vendors selling endorsements on behalf of the board shall be reimbursed at the rate of forty cents (40¢) per endorsement. No portion of the annual endorsement fee shall be prorated, reduced or transferred to another vehicle.

(3) The operation of a vehicle, which is subject to the endorsement requirements of this section, in a negligent manner is a violation of the provisions of this chapter.

49-2204 — Notice of federal insurance requirements

49-2204. Notice of federal insurance requirements. A transporter granted a transporter permit or endorsement under this section shall have and maintain financial responsibility for sudden and accidental occurrences in an amount equal to the federal requirements as specified in title 49 , code of federal regulations. Coverage must provide for claims arising out of injury to persons, property, or the environment, including the spillage of hazardous material or waste while such materials are transported, and including the costs of cleaning up any spillage. Such liability coverage must be maintained at all times while the permit is in force. The liability requirements may be met by liability insurance, bonding, self insurance or any other method as may be provided by department rule. Failure to maintain the insurance required by federal law shall not constitute a civil or criminal violation of the provisions of this chapter.

49-2205 — Hazardous material/hazardous waste transportation enforcement fund

49-2205. Hazardous material/hazardous waste transportation enforcement fund.

(1) For the purposes of the Idaho state police, there is hereby created a fund in the state treasury, to be designated the hazardous material/hazardous waste transportation enforcement fund.

(2) The fund shall consist of:

(a) Moneys appropriated to the fund;

(b) Moneys as provided in sections 49-2202 and 49-2203 , Idaho Code, and in subsections (1) and (2) of section 49-2209 , 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 fund may be used by the director for reasonable costs incident to enforcement of the laws and rules related to the transportation of hazardous material or hazardous waste. Such costs include expenditures for inspection and monitoring programs, training of law enforcement personnel to meet specialized needs of hazardous materials/hazardous waste enforcement, and other reasonable expenses necessary for the enforcement of such programs.

(4) All moneys placed in the fund shall be appropriated annually by the legislature for the purposes described in subsection (3) of this section. All expenditures from the fund shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers.

(5) Pending use, surplus moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210 , Idaho Code.

(6) An amount of money equal to the actual and reasonable cost of issuing the permits and endorsements, collecting the moneys for them, and the direct administrative costs as determined by the department and certified by the state controller, shall be paid to the state highway fund established in section 40-702 , Idaho Code.

49-2206 — Enforcement

49-2206. Enforcement.

(1) The provisions of this chapter and any rules adopted under it shall be enforced anywhere in the state by an authorized agent of the director or by any peace officer, except for conservation officers of the department of fish and game. Such authorized officers may detain and inspect any sealed or unsealed vehicle, container, or shipment which contains or which they have reason to believe contains hazardous material or wastes while in transit or in maintenance facilities or terminals, or on other public or private property to which the public has access, to ascertain if hazardous materials or wastes are being loaded, unloaded, stored or transported, and to inspect the contents, take samples thereof, and to otherwise insure compliance with the provisions of this chapter and of all rules adopted under section 67-2901A , Idaho Code, or chapter 44, title 39 , Idaho Code. If a seal is opened for inspection, the inspecting officer shall reseal any vehicle, container or shipment prior to further transportation. Property used in violation of the laws may be seized and used as evidence.

(2) For the purposes of this chapter and chapter 44, title 39 , Idaho Code, the transporter is responsible for the cleanup of any hazardous material/hazardous waste discharge in, on and outside the vehicle, or any one (1) or more of such locations, that occurs during transportation and must take such action as may be required so that the discharge no longer presents a hazard to public health, safety, or the environment.

(3) The board is authorized to suspend or revoke any permit or endorsement issued pursuant to this chapter if it is determined that any material provision of the permit or endorsement has been violated or if the driver, owner, lessee, or custodian of a permitted vehicle has been convicted of two (2) or more violations within a calendar year of any combination of statutes or rules relative to hazardous materials or hazardous waste. In any action to suspend or revoke, the board shall comply with the procedures specified in chapter 52, title 67 , Idaho Code. Should the board have reasonable cause to believe that there exists any immediate danger to the public health, safety or environment, it may issue an emergency order suspending any permit or endorsement granted under this chapter for a reasonable period not to exceed fourteen (14) days.

49-2207 — Civil enforcement action

49-2207. Civil enforcement action. The attorney general or any prosecuting attorney may commence and prosecute in district court a civil enforcement action against any person who is alleged to have violated this chapter or any permit, endorsement, standard, regulation, condition, or requirement which has become effective pursuant to this chapter. Such actions may be for appropriate relief or remedies specified in this chapter or any other applicable law. The director or department shall not be required to initiate or prosecute an administrative action before the attorney general or prosecuting attorney may commence and prosecute a civil enforcement action, but no such civil enforcement action shall be filed while an administrative action is still pending.

49-2208 — Subpoena authority

49-2208. Subpoena authority. The attorney general or any prosecuting attorney, for the purposes contemplated by this chapter, upon probable cause to believe that a violation of any of the provisions of this chapter has occurred, may, after notice to the persons to whom the subpoena is to be directed, apply to any judge of the district court for the county in which such violation is believed to have occurred for a subpoena to compel the attendance of witnesses, and to compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. Such judge shall issue a subpoena upon a finding of probable cause and shall enforce refusals to testify or to produce subpoenaed items with contempt sanctions. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

49-2209 — Civil remedies

49-2209. Civil remedies. The remedies specified in this section are cumulative and nonexclusive.

(1) Monetary penalties.

(a) Any person who makes a materially false statement or representation in any application, label, manifest, record, report, permit, endorsement or other document filed, maintained, or used for the purpose of complying with the provisions of this chapter shall be liable for a civil penalty not less than fifty dollars ($50.00) nor to exceed ten thousand dollars ($10,000) for each separate violation.

(b) Any person who violates this chapter or any permit, standard, regulation, condition, or requirement issued or promulgated pursuant to this chapter shall be liable for a civil penalty not less than fifty dollars ($50.00) nor to exceed ten thousand dollars ($10,000) for each separate violation.

(c) The imposition or computation of monetary penalties shall take into account the seriousness of the violation and good faith efforts to comply with the law.

(2) Assessment of costs. Any person who violates any of the provisions of this chapter or any permit, standard, regulation, condition, or requirement issued or promulgated pursuant to this chapter may be assessed for:

(a) The state's cost for any nonroutine investigations, inspections, monitoring, or surveys which lead to evidence of the violation;

(b) The state's costs, and the costs of any political subdivision including city, county and fire protection districts, including the reasonable value of attorneys' services, for preparing and litigating the case;

(c) The state's cost, and the costs of any political subdivision including city, county and fire protection districts, for impounding, storing, and disposing of contaminated property and for the cleanup of a hazardous material or hazardous waste discharge;

(d) Compensation for damages to publicly held resources including, but not limited to land, water, recreational uses, wildlife, fish and aquatic life to restore the resource to its highest immediately previous uses. Any such suit for damages to publicly held resources may be brought only by the attorney general or prosecuting attorney for the county in which the violation occurred;

(e) Compensation for damages to privately held resources including, but not limited to livestock, land, water, or other personal property, and compensation for court costs allowed by law, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;

(3) Payment to hazardous materials/hazardous waste transportation enforcement account. Moneys recovered pursuant to subsections (1) and (2) (a), (c) and (d) of this section shall be paid into the hazardous material/hazardous waste transportation enforcement account created in section 49-2205 , Idaho Code. Moneys recovered under subsection (2)(b) of this section shall not be paid into this account but shall be paid to those who rendered services and incurred costs in

litigating the case.

(4) Restraining orders, injunctions and other relief. Any person who violates any provision of this chapter or any permit, standard, regulation, or requirement issued or promulgated pursuant to this chapter shall be subject to injunctive relief or other relief deemed appropriate. Upon a showing to the court that a violation is causing an imminent hazard to the public health, the public safety, or to the environment, the attorney general or prosecuting attorney need not allege or prove at any stage of the proceeding that long term irreparable damage will occur should the injunction or order not be issued or that the remedy at law is inadequate.

49-2210 — Immunities

49-2210. Immunities.

(1) (a) Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous material, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, shall be subject to civil liabilities or penalties of any type.

(b) The immunities provided in subsection (3) of section 49-2209 , Idaho Code, shall not apply to any person: 1. Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and would otherwise be liable therefor; or 2. Who receives compensation, or is an employee of a person who receives compensation for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(c) Nothing in subsection (3) of section 49-2209 , Idaho Code, shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence, or from such person's reckless, wanton, or intentional misconduct.

(2) Governmental immunity. No cause of action shall accrue against the state of Idaho or any of its political subdivisions or any agency thereof based on negligence in a performance of any of the duties or responsibilities provided under this chapter.

49-2211 — Criminal enforcement and penalties

49-2211. Criminal enforcement and penalties.

(1) Any person who knowingly makes any materially false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained or used for the purpose of complying with the provisions of this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars ($10,000) or to imprisonment not to exceed one (1) year, or to both, for each violation.

(2) Any person who knowingly violates any provision of this chapter or any permit, standard, regulation, condition, or requirement issued or promulgated pursuant to this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars ($10,000) or to imprisonment not to exceed one (1) year, or to both, for each violation.

(3) Any person found guilty of a second offense under this chapter within a period of five (5) years shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars ($25,000).

(4) An action may be commenced and prosecuted by the attorney general. The director or board shall not be required to initiate or prosecute an administrative action before the attorney general or prosecuting attorney may commence and prosecute a civil action.

49-2212 — Change of federal rules and regulations

49-2212. Change of federal rules and regulations. Whenever any federal rule or regulation is cited in this chapter and is amended, modified, repealed or recodified, its successor rule or regulation shall govern and be operative.

CHAPTER 24

49-2401 — Manufacturers or distributors — Financing agreements involving retail sales prohibited

49-2401. Manufacturers or distributors — Financing agreements involving retail sales prohibited. It shall be unlawful for any person who is engaged, either directly or indirectly, in the manufacture or wholesale distribution only of motor

vehicles to sell or enter into a contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling those motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that a person engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or a number of motor vehicles only with or through a designated person or class of persons, or shall sell and assign the conditional sales contracts, chattel mortgages or leases arising from the sale of motor vehicles or any one or a number of motor vehicles only to a designated person or class of persons, when the effect of the condition, agreement or understanding entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated by virtue of that condition, agreement, or understanding to finance the purchase or sale of motor vehicles, or to purchase conditional sales contracts, chattel mortgages or leases. Any such condition, agreement or understanding is hereby declared to be void and against the public policy of this state.

49-2402 — Threats to withdraw agency prohibited

49-2402. Threats to withdraw agency prohibited. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly in the manufacture or wholesale distribution only of motor vehicles, that the person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to a person who is engaged in the business of selling motor vehicles at retail, unless that person finances the purchase or sale of any one or a number of motor vehicles only with or through a designated person or class of persons, or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sales of motor vehicles, or any one or a number of motor vehicles only to a designated person or class of persons, shall be prima facie evidence of the fact that a person engaged in the manufacture or wholesale distribution only of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 49-2401 , Idaho Code.

49-2403 — Threats on part of financing company affiliated with manufacturer or dealer

49-2403. Threats on part of financing company affiliated with manufacturer or dealer. Any threat, expressed or implied, made directly or indirectly, to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this state, and is affiliated with or controlled by any person engaged, directly or indirectly in the manufacture or wholesale distribution only of motor vehicles, that the person engaged in the manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to a person engaged in the sale of motor vehicles at retail in this state unless that person finances the purchase or sale of any one or any number of vehicles only with or through a designated person or class of persons, or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sale of motor vehicles, or any one or any number thereof only to a person engaged in financing the purchase or sale of motor vehicles, or in buying conditional sales contracts, chattel mortgages or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of the person engaged in the manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that the person engaged in the manufacture or wholesale distribution only of motor vehicles has sold or intends to sell them on the condition or with the agreement or understanding prohibited in section 49-2401 , Idaho Code.

49-2404 — Practices of manufacturer or distributor lessening or eliminating competition prohibited

49-2404. Practices of manufacturer or distributor lessening or eliminating competition prohibited. It shall be unlawful for any person who is engaged, directly or indirectly in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, to pay or give, or contract to pay or give any thing or service of value to any person who is engaged in the business of financing the purchase or sale of motor vehicles, or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this state, if the effect of the payment or the giving of a thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the person or class of persons who receive or accept such thing or service of value.

49-2405 — Practices of finance company lessening or eliminating competition prohibited

49-2405. Practices of finance company lessening or eliminating competition prohibited. It shall be unlawful for any person who is engaged in the business of financing the purchase or sale of motor vehicles, or of buying conditional sales

contracts, chattel mortgages or leases on motor vehicles sold at retail within this state, to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing, or service of value from any person who is engaged, either directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, if the effect of the acceptance or receipt of a payment, thing, or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives the payment, thing, or service of value, or contracts or agrees to accept or receive that thing or service of value.

49-2406 — Acceptance or payment of thing or service of value prohibited

49-2406. Acceptance or payment of thing or service of value prohibited. It shall be unlawful for any person to accept or receive, either directly or indirectly, any payment, thing or service of value, as set forth in section 49-2405 , Idaho Code, or contracts, either directly or indirectly, to receive a payment or thing or service of value to finance or attempt to finance the purchase or sale of any motor vehicles, or buy or attempt to buy any conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail in this state.

49-2407 — Violation — Quo warranto proceedings

49-2407. Violation — Quo warranto proceedings. For a violation of any of the provisions of sections 49-2401 through 49-2406 , Idaho Code, by any corporation or association, it shall be the duty of the attorney general of Idaho to institute proper suits of quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by the corporation or association, and for the dissolution of them under the general statutes of this state.

49-2408 — Foreign corporations amenable — Duty of secretary of state

49-2408. Foreign corporations amenable — Duty of secretary of state. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in Idaho, violating any of the provisions of sections 49-2401 through 49-2406 , Idaho Code, is hereby denied the right and prohibited from doing any business in Idaho, and it shall be the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state is authorized to revoke the license of any corporation or association previously authorized by him to do business in Idaho.

49-2409 — Criminal liability

49-2409. Criminal liability. Any person who shall violate any of the provisions of sections 49-2401 through 49-2406 , Idaho Code, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by law and any employee, agent or officer of any person who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding, or abetting in the performance of such a contract, condition, agreement or understanding, and any person who shall pay or give or contract to pay or give any thing or service of value prohibited by law, and any person who shall receive or accept or contract to receive or accept any thing or service of value prohibited by law, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

49-2410 — Certain contracts void

49-2410. Certain contracts void. Any contract or agreement in violation of the provisions of sections 49-2401 through 49-2406 , Idaho Code, shall be absolutely void and shall not be enforceable either in law or equity.

49-2411 — Provisions cumulative

49-2411. Provisions cumulative. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

49-2412 — Persons injured in business by trust may sue

49-2412. Persons injured in business by trust may sue. In addition to the criminal and civil penalties provided, any person who shall be injured in his business or property by any other person by reason of anything forbidden or declared to be unlawful by the provisions of sections 49-2401 through 49-2406 , Idaho Code, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may

be obtained, without respect to the amount in controversy, and to recover twice the damages sustained, and the costs of the suit. Whenever it shall appear to the court before which proceedings may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where the action is pending, or not.

49-2416 — Owner liable for negligence of minor under sixteen

49-2416. Owner liable for negligence of minor under sixteen. Every owner of a motor vehicle causing or knowingly permitting a minor under the age of sixteen (16) years to drive the vehicle upon a highway, and any person who gives or furnishes a motor vehicle to a minor under the age of sixteen (16) years, shall be jointly and severally liable with the minor for any damage caused by the negligence of the minor in driving the vehicle.

49-2417 — Owner's tort liability for negligence of another — Subrogation

49-2417. Owner's tort liability for negligence of another — Subrogation.

(1) Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his motor vehicle, in the business of the owner or otherwise, by any person using or operating the vehicle with the permission, expressed or implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages.

(2) The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amounts set forth under "proof of financial responsibility" in section 49-117 , Idaho Code, or the limits of the liability insurance maintained by the owner, whichever is greater.

(3) In any action against an owner for imputed negligence as imposed by the provisions of this section the operator of the vehicle whose negligence is imputed to the owner shall be made a defendant party if personal service of process can be had upon that operator within Idaho. Upon recovery of a judgment, recourse shall first be had against the property of the operator so served.

(4) In the event a recovery is had under the provisions of this section against an owner for imputed negligence the owner is subrogated to all the rights of the person injured and may recover from the operator the total amount of any judgment and costs recovered against the owner. If the bailee of an owner with the permission, expressed or implied, of the owner, permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner, within the meaning of subsections (3) and (4) of this section.

(5) Where two (2) or more persons are injured or killed in one (1) accident, the owner may settle or pay any bona fide claim for damages arising out of personal injuries or death, whether reduced to a judgment or not, and the payments shall diminish to the extent of the owners' total liability on account of the accident. Payments so made, aggregating the full sum of fifty thousand dollars ($50,000), shall extinguish all liability of the owner hereunder to the claimants and all other persons on account of the accident. Liability may exist by reason of imputed negligence, pursuant to this section, and not arising through the negligence of the owner nor through the relationship of principal and agent nor master and servant.

(6) If a motor vehicle is sold under a contract of conditional sale whereby the title to the motor vehicle remains in the vendor, the vendor or his assignee shall be deemed an owner within the provisions of this section.

(7) An owner that rents or leases a motor vehicle to a person shall not be liable under the laws of the state of Idaho or a political subdivision thereof, by reason of being the owner of the vehicle, for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if:

(a) The owner is engaged in the trade or business of renting or leasing motor vehicles; and

(b) There is no negligence or criminal wrongdoing on the part of the owner.

49-2420 — Grant of privilege of using highways

49-2420. Grant of privilege of using highways. Subject to compliance with the motor vehicle laws of Idaho, nonresident owners, operators of, and persons riding in motor vehicles hereby are granted the privilege of using the highways of Idaho.

49-2421 — Service of process on resident and nonresident motor vehicle operators

49-2421. Service of process on resident and nonresident motor vehicle operators. The operation by any person, either as principal, master, agent, servant or otherwise, of any motor vehicle, whether registered or unregistered, and with or without a license to operate, on any highway in this state, shall be deemed equivalent to an appointment by that person of the secretary of state to be his true and lawful attorney, upon whom may be served all lawful summons and processes in any action or proceeding against him, growing out of any accident or collision in which he, either as principal, master, agent, servant, or otherwise, may be involved while operating, causing or permitting the operation of a motor vehicle upon a highway. The operation shall be signification of an agreement by the person that any summons or process against him which is so served shall be of the same legal force and validity as if served on him personally within Idaho. Service of the processes shall be made by leaving a copy of the process, with a fee of five dollars ($5.00), in the hands of the secretary of state or in his office. The service shall be a sufficient and valid personal service upon that person; provided, notice of the service and a copy of the process is sent by registered mail by the plaintiff to the defendant, and the defendant's return receipt and plaintiff's affidavit of compliance are appended to the process and entered as a part of the return. Personal service outside of the state in accordance with the provisions of the laws of Idaho relating to personal service of summons outside of the state shall relieve a plaintiff from mailing copies of the summons or process by registered mail as provided in this section. Service of the process upon a defendant shall not be complete until it is either made by registered mail or by personal service outside of the state. The court in which the action is brought may order continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

49-2422 — Service fee taxed as costs

49-2422. Service fee taxed as costs. The fee of five dollars ($5.00) paid by the plaintiff to the secretary of state and the service shall be taxed in his costs if he prevails in the action.

49-2423 — Record of process kept by secretary of state

49-2423. Record of process kept by secretary of state. The secretary of state shall keep a record of all processes, which shall show the day and hour of service.

49-2426 — Marking of vehicles — Certain vehicles excepted

49-2426. Marking of vehicles — Certain vehicles excepted.

(1) Every motor vehicle owned by or under control and custody of the state of Idaho, except as provided in subsections (2) and (3) of this section, or in section 49-2427 , Idaho Code, shall be indelibly and conspicuously lettered on each side, in plain letters not less than one and one-half (1 1/2) inches high, with the words "State of Idaho" or "Idaho" with the name of the proper department, as defined in section 67-2402 , Idaho Code, in each case inserted following either of these words. The words shall be kept clear, distinct and visible at all times. The provisions of this section shall not be applicable to any motor vehicle in the personal service of the governor, except that upon the front doors of any motor vehicle in his personal service there shall be placed the Great Seal of the state of Idaho.

(2) Motor vehicles under the custody and control of the director of the Idaho state police and used for confidential investigative purposes when necessary to enforce the laws of this state or motor vehicles under the custody and control of the director of the department of health and welfare and used for official state business need not be marked as provided in subsection (1) of this section. Any other department, agency, or entity of the state shall apply in writing to the director for permission to use one (1) or more unmarked vehicles for confidential investigative purposes. Permission shall be granted only in writing and upon a finding of good cause.

(3) Motor vehicles under the custody and control of the director of the Idaho department of juvenile corrections, when used for official state business and to enforce laws of the juvenile corrections system, including investigation of juveniles under its purview, need not be marked as provided in subsection (1) of this section.

49-2427 — Identification of state police vehicles used for highway patrol

49-2427. Identification of state police vehicles used for highway patrol. Every motor vehicle other than motorcycles, owned by the state of Idaho and used as a state police highway patrol vehicle shall be marked as provided by section 49-2426 , Idaho Code, and shall in addition, be painted with a black body and shall be identified in one (1) of the following manners:

(1) By having a white stripe, at least six (6) inches in width, applied completely around the vehicle;

(2) By having a blue light mounted on the top of the vehicle which must be visible from any direction; or

(3) By having two (2) white stripes at least one and one-half (1 1/2) inches in width applied from the center point of the hood across the hood on each side and extending diagonally down to the bottom of the doors on each side of the vehicle. No other state agency, person, or local unit of government shall have any vehicle with a stripe or stripes from the center point of the hood across the hood on each side and extending diagonally down to the bottom of the doors on each side of the vehicles.

49-2431 — Ridesharing exempt from motor carrier laws

49-2431. Ridesharing exempt from motor carrier laws. The following laws and regulations shall not apply to any ridesharing arrangement using a motor vehicle with a seating capacity for not more than fifteen (15) persons, including the driver:

(1) Title 49 , Idaho Code, pertaining to the regulation of motor carriers of any kind or description;

(2) Laws and regulations containing insurance requirements that are specifically applicable to motor carriers or commercial vehicles;

(3) Laws imposing a greater standard of care on motor carriers or commercial vehicles than that imposed on other drivers or owners of motor vehicles;

(4) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to motor carriers or commercial vehicles; and

(5) Laws imposing a tax on fuel purchased in another state by a motor carrier or highway use fees on commercial buses.

49-2432 — Ridesharing exempt from workmen's compensation law

49-2432. Ridesharing exempt from workmen's compensation law. Title 72 , Idaho Code, providing compensation for workers injured during the course of their employment, shall not apply to a person injured while participating in a ridesharing arrangement between his place of residence and place of employment or termini near those places, provided that if the employer owns, leases or contracts for the motor vehicle used in the arrangement, the provisions of title 72 , Idaho Code, shall apply.

49-2433 — No liability of employer

49-2433. No liability of employer.

(1) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(2) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

49-2434 — Insurance availability — Rates — Policy exclusions

49-2434. Insurance availability — Rates — Policy exclusions.

(1) Insurers shall not increase any premium, cancel any policy, nor refuse to insure a vehicle solely because it is used in a ridesharing arrangement.

(2) Provisions in an insurance policy which deny coverage for any motor vehicle used for commercial purposes or as a public or livery conveyance shall not apply to a vehicle used in a ridesharing arrangement.

49-2435 — Ridesharing arrangements are nonprofit

49-2435. Ridesharing arrangements are nonprofit. Ridesharing arrangements using a motor vehicle with a seating capacity for not more than fifteen (15) persons, including the driver, shall be deemed nonprofit even though the driver, owner or lessee receives compensation for operating and maintaining the vehicle and a reasonable amount of compensation for the driver's services. No household shall operate more than one (1) vehicle with a capacity of seven (7) to fifteen (15) persons in a ridesharing arrangement at one (1) time.

49-2436 — Sales tax not applicable

49-2436. Sales tax not applicable. Laws imposing a tax on the sale of goods and services shall not apply to money received by a driver as part of a ridesharing arrangement.

49-2437 — Municipal licenses — Tax

49-2437. Municipal licenses — Tax. No county, city, or other municipal corporation may impose a tax on, or require a municipal license for a ridesharing arrangement.

49-2438 — Overtime compensation — Minimum wage laws

49-2438. Overtime compensation — Minimum wage laws. The mere fact that an employee participates in any kind of ridesharing arrangement shall not result in the application of chapter 15, title 44 , Idaho Code, laws requiring payment of a minimum wage, overtime pay or otherwise regulating the hours a person may work.

49-2439 — Use of public motor vehicles

49-2439. Use of public motor vehicles. Motor vehicles owned or operated by any state or local agency may be used in ridesharing arrangements. Participants in any such ridesharing arrangement shall pay the actual total costs of using the vehicle in that arrangement.

49-2442 — Identification cards authorized

49-2442. Identification cards authorized. Any Idaho resident may apply to an authorized agent of the department for an identification card. It is prima facie evidence of age when the authorized holder of an identification card exhibits a card that contains information indicating that the person has attained a certain age.

49-2443 — Application

49-2443. Application. Application for an identification card must be made in person before an authorized agent of the department. The authorized agent shall obtain the following from the applicant:

(1) The true and full name and Idaho residence address and mailing address, if different, of the applicant;

(2) The identity and date of birth of the applicant pursuant to section 49-2444 (6), Idaho Code, and, subject to subsection (6) of this section, other satisfactory evidence of identity acceptable to the authorized agent or the department;

(3) The height and weight of the applicant;

(4) The color of eyes and hair of the applicant;

(5) The applicant's signature; and

(6) The applicant's social security number as verified by the social security administration.

(a) The requirement that an applicant provide a social security number as verified 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.

49-2444 — Identification card issued — Four-year or eight-year

49-2444. Identification card issued — Four-year or eight-year.

(1) The department shall issue a distinguishing identification card that sets forth the information contained in the application in a form as prescribed by the department. All identification cards issued on or after January 1, 1993, shall not contain the applicant's social security number. An applicant's social security number shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers, or from jury commissioners. Each card shall have printed on it the applicant's full name, date of birth, Idaho residence address, sex, weight, height, eye color, and hair color and shall include a distinguishing number assigned to the applicant. If an applicant has submitted an application pursuant to the provisions of chapter 58, title 19 , Idaho Code, then the applicant's identification card shall contain his or her alternative Idaho mailing address in place of his or her Idaho residence address. Each card shall also have printed on it the name of this state, the date of issuance, and the date of expiration. An identification card shall not be valid until it has been signed on the signature line by the applicant. Each card shall include a color photograph of the applicant, which shall be taken by the examiner at the time of application. The photograph shall be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant. A waiver may be granted by the department allowing the applicant to wear

headgear or other head covering for medical, religious or safety purposes as long as the face is not disguised or otherwise concealed. At the request of the applicant, an identification card may contain a statement or indication of the medical condition of the applicant.

(2) No person shall receive an identification card unless and until he surrenders to the department all identification cards in his possession issued to him by Idaho or any other jurisdiction, or any driver's license issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess an identification card or any driver's license.

(3) Identification cards issued to persons under eighteen (18) years of age shall include a notation "under 18 until (month, day, year)," and identification cards issued to persons eighteen (18) years of age to twenty-one (21) years of age shall include a notation "under 21 until (month, day, year)." The nonrefundable fee for a four (4) year identification card issued to persons twenty-one (21) years of age or older shall be fifteen dollars ($15.00), of which ten dollars ($10.00) shall be retained by the county and credited to the current expense fund and five dollars ($5.00) shall be deposited in the state treasury to the credit of the highway distribution account. The nonrefundable fee for identification cards issued to persons under twenty-one (21) years of age shall be ten dollars ($10.00), of which five dollars ($5.00) shall be retained by the authorized issuing agent or, if issued by the county, shall be credited to the current expense fund and five dollars ($5.00) shall be deposited in the state treasury to the credit of the highway distribution account. The nonrefundable fee for an eight (8) year identification card shall be twenty-five dollars ($25.00), of which fifteen dollars ($15.00) shall be retained by the authorized issuing agent or, if issued by the county, shall be credited to the current expense fund and ten dollars ($10.00) shall be deposited in the state treasury to the credit of the highway distribution account. At the option of the applicant, the identification card issued to a person twenty-one (21) years of age or older shall expire either on the card holder's birthday in the fourth year or the eighth year following issuance of the card, except as otherwise provided in subsection (7) of this section. Every identification card issued to a person under eighteen (18) years of age shall expire five (5) days after the person's eighteenth birthday, except as otherwise provided in subsection (7) of this section. Every identification card issued to a person eighteen (18) years of age but under twenty-one (21) years of age shall expire five (5) days after the person's twenty-first birthday, except as otherwise provided in subsection (7) of this section.

(4) Individuals required to register in compliance with section 3 of the federal military selective service act, 50 U.S.C. 451 et seq., as amended, shall be provided an opportunity to fulfill such registration requirements in conjunction with an application for an identification card. Any registration information so supplied shall be transmitted by the department to the selective service system.

(5) Every identification card, except those issued to persons under twenty-one (21) years of age, shall be renewable on or before its expiration, but not more than twenty-five (25) months before, and upon application and payment of the required fee.

(6) The applicant for an identification card must submit proof of identity and citizenship status acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate or a valid, unexpired passport. If the applicant does not possess a certified copy of his birth certificate or a delayed birth certificate and does not possess a valid, unexpired passport, another government-issued document may be submitted that provides satisfactory evidence of a person's full legal name and date of birth acceptable to the examiner or the department.

(7) Every identification card issued to a person who is a citizen of the United States shall, where possible, include the notation "USA." Every identification card issued to a person who is not a citizen or permanent legal resident of the United States shall have an expiration date that is the same date as the end of lawful stay in the United States as indicated on documents issued and verified by the department of homeland security; however, the expiration date shall not extend beyond the expiration date for the same category of identification card issued to citizens. Persons whose department of homeland security documents do not state an expiration date shall be issued an identification card with an expiration date of one (1) year from the date of issuance.

(8) When an identification card has been expired for less than twenty-five (25) months, the renewal of the identification card shall start from the original date of expiration, regardless of the year in which the application for renewal is made. If the identification card is expired for more than twenty-five (25) months, the application shall expire, at the option of the applicant, on the applicant's birthday in the fourth year or the eighth year following reissuance of the identification card, except as otherwise provided in subsection (7) of this section. (9)(a) If an Idaho identification card has expired or will expire and the identification card holder is temporarily out of state, except on active military duty, the identification card holder may request in writing on a form prescribed by the department an extension of the identification card. The request

shall be accompanied by the fee fixed in section 49-306 , Idaho Code, and the extension shall be no more than a twelve (12) month period. If the department determines that an extension of the identification card is necessary, it may issue an identification card showing the date to which the expired identification card is extended. Identification card extensions are limited to two (2) consecutive extensions per identification card holder.

(b) Upon returning to the state of Idaho, the identification card holder shall, within ten (10) days, apply for a renewal of the expired identification card and surrender the extended identification card and the expired identification card.

(10) An Idaho identification card issued to any person prior to serving on active duty in the armed forces of the United States, or a member of the immediate family accompanying such a person, if valid and in full force and effect upon entering active duty, shall remain in full force and effect and shall, upon application, be extended for a period of four (4) years as long as active duty continues, and the identification card shall remain in full force and effect sixty (60) days following the date the card holder is released from active duty.

(11) A person possessing an identification card who desires to donate any or all organs or tissue in the event of death, and who has completed a document of gift pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39 , Idaho Code, may, at the option of the donor, indicate this desire on the identification card by the imprinting of the word "donor" on the identification card. The provisions of this subsection shall apply to persons possessing an identification card who are fifteen (15) years of age or older but less than eighteen (18) years of age if the requirements provided in chapter 34, title 39 , Idaho Code, have been complied with.

(12) A person possessing an identification card or an applicant for an identification card who is a person with a permanent disability may request that the notation "permanently disabled" be imprinted on the identification card, provided the person presents written certification from a licensed physician verifying that the person’s stated impairment qualifies as a permanent disability according to the provisions of section 49-117 , Idaho Code.

(13) A person who is a veteran may request that his or her status as such be designated on an identification card at no additional cost. Any such request shall be accompanied by proof of being a current or former member of the United States armed forces. Upon request and submission of satisfactory proof, the department shall indicate such person’s status as a veteran on any identification card issued pursuant to the provisions of this section. Such designation shall be made upon original issuance or renewal of an identification card. Designation shall also be made on any duplicate identification card issued, provided that the fee for such duplicate card is paid in accordance with this section.

(14) Satisfactory proof of being a current or former member of the United States armed forces must be furnished by an applicant to the department before a designation of veteran status will be indicated on any identification card. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs that identifies a character of service upon separation as "honorable" or "general under honorable conditions."

(15) In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(16) Whenever any person, after applying for or receiving an identification card, moves from the address shown on the application or on the identification card issued, that person shall, within thirty (30) days, notify the transportation department in writing of the old and new addresses.

(17) The department shall cancel any identification card upon determining that the person was not entitled to the issuance of the identification card or that the person failed to give the required and correct information in his application or committed fraud in making the application. Upon cancellation, the person shall surrender the canceled identification card to the department.

(18) If any person shall fail to return to the department the identification card as required, the department may direct any peace officer to secure its possession and return the identification card to the department.

(19) The department may issue a no-fee identification card to an individual whose driver’s license has been canceled and voluntarily surrendered as provided in section 49-322 (5), Idaho Code. The identification card may be renewed at no cost to the applicant as long as the driver’s license remains canceled.

(20) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (16) of this section.

(21) The department may issue an initial four (4) year no-fee identification card to an individual who is homeless. The department shall establish a form for verification of homelessness pursuant to this section. Such form shall require the

signature of an outreach worker or service worker verifying that the individual is homeless and attesting to the individual's residency at an Idaho relief agency or shelter. An applicant issued an identification card under the provisions of this subsection shall be entitled to one (1) free replacement. Subsequent replacements and renewals of this identification card will be subject to the fees imposed in this section.

(22) The department shall issue a four (4) year no-fee identification card to any individual eighteen (18) years of age or older who indicates on the application that an identification card is needed to comply with voter registration or voting requirements. An applicant issued an identification card under this subsection shall be entitled to one (1) free replacement. Such applicants are entitled to no-fee renewals as long as the applicant meets the requirements of this subsection at the time of renewal.

49-2445 — Lost, stolen or mutilated cards

49-2445. Lost, stolen or mutilated cards. Application for a duplicate identification card shall be made in the same manner as required in section 49-2443 , Idaho Code, and the fee for a duplicate shall be the same as provided for the original card.

49-2446 — Fraudulent misrepresentation

49-2446. Fraudulent misrepresentation. It is unlawful for any person to fraudulently misrepresent his age to any dispenser of intoxicating or alcoholic beverages or to falsely procure an identification card, or to alter any of the statements contained in the identification card, or to manufacture, produce, sell, offer for sale, or transfer to another person any document purporting to be a certificate of birth or identification card. In addition to the misdemeanor penalties that may be imposed for violation of the provisions of this section, the court upon conviction may enter an order directing the department to suspend the driver's license, a permit to drive, or any nonresident's driving privileges for a period of ninety (90) days. A conviction under this section shall not be used as a factor or considered in any manner for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer, nor shall such conviction be grounds for nonrenewal of any insurance policy as provided in section 41-2507 , Idaho Code.

49-2447 — organ donation contribution fund

49-2447. organ donation contribution fund.

(1) There is hereby created in the state treasury the organ donation contribution fund, the moneys of which shall be continuously appropriated.

(2) The Idaho transportation department through the division of motor vehicles shall:

(a) Administer the moneys deposited in the organ donation contribution fund;

(b) Distribute moneys in accordance with subsection (5) of this section;

(c) Make an annual report to the house of representatives and senate health and welfare committees on revenue collected for the fund and contributions made to the fund; and

(d) Promulgate rules for the distribution of moneys from the fund that are consistent with the purposes of this section.

(3) The organ donation contribution fund shall consist of:

(a) Private contributions;

(b) Donations or grants from public or private entities;

(c) Voluntary donations collected under the provisions of this title; and

(d) Any other moneys approved for the fund by law.

(4) Idle moneys in the fund shall be invested by the treasurer pursuant to section 67-1210 , Idaho Code, and moneys earned from such investment shall be credited to the fund.

(5) The moneys in the organ donation contribution fund shall be distributed to intermountain donor services located in Salt Lake City, Utah, and shall be used to assist in maintaining and operating a statewide organ donation registry and provide organ donor awareness education in Idaho.

49-2448 — autocycles

49-2448. autocycles.

(1) The following provisions of law shall apply to autocycles:

(a) Motorcycle plate and registration tag requirements;

(b) Motorcycle registration requirements. Certification from the national highway traffic safety administration and a manufacturer's certificate of origin stating that the vehicle meets the federal specifications for a motorcycle shall be required for all autocycles prior to registration;

(c) Motorcycle insurance requirements.

(2) All persons operating autocycles shall be in compliance with the provisions of section 49-301 , Idaho Code.

CHAPTER 25

49-2501 — Enactment of compact

49-2501. Enactment of compact. The nonresident violator compact hereinafter called "the compact" is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows: NONRESIDENT VIOLATOR COMPACT ARTICLE I Findings and Declaration of Policy

(1) The party jurisdictions find that:

(a) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction must post collateral or bond to secure appearance for trial at a later date; or if unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or is taken directly to court for his trial to be held. In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation. The purpose of the practices described is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(b) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(c) The practice described in paragraph (a) of this subsection causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(d) The deposit of a driver's license as a bail bond, as described in paragraph (a) of this subsection, is viewed with disfavor.

(e) The practices described herein consume an undue amount of law enforcement time.

(2) It is the policy of the party jurisdictions to:

(a) Seek compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(b) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(c) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(d) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(3) The purpose of this compact is to:

(a) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in subsection (2) hereof in a uniform and orderly manner.

(b) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction. ARTICLE II Definitions As used in this compact, the following words have the meaning indicated, unless the context requires otherwise:

(1) "Citation" means any summons, ticket or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Compliance" means to appear in court or pay the fine and costs specified in the citation or to fulfill an obligation arising from any other option expressly stated upon the citation.

(4) "Court" means a court of law or traffic tribunal.

(5) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(6) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(7) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(8) "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, provinces of Canada or other countries.

(9) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(10) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(11) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(12) "Terms of the citation" mean those options expressly stated upon the citation. ARTICLE III Procedure for Issuing Jurisdiction

(1) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in subsection (2) hereof, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he will comply with the terms of the citation.

(2) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it should take place immediately following issuance of the citation.

(3) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report to the licensing authority of the jurisdiction in which the traffic citation was issued of the failure to comply.

(4) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist, the information in a form and content as contained in the compact manual.

(5) The licensing authority of the issuing jurisdiction need not suspend the privilege of a motorist for whom a report has been transmitted.

(6) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six (6) months after the date on which the traffic citation was issued.

(7) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two (2) jurisdictions affected. ARTICLE IV Procedure for Home Jurisdiction

(1) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority.

(2) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual. ARTICLE V Applicability of Other Laws Except as expressly required by the provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangements between a party jurisdiction and a nonparty jurisdiction. ARTICLE VI Compact Administrator Procedures

(1) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one (1) representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with

the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(2) Each member of the board of compact administrators shall be entitled to one (1) vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(3) The board shall elect annually, from its membership, a chairman and vice chairman.

(4) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact, any and all donations, grants of money, equipment, supplies, materials and services, conditional or otherwise, from any jurisdiction, the United States or any other governmental agency, and may receive, utilize and dispose of the same.

(6) The board may contract with, or accept services or personnel from any governmental or intergovernmental agency, person, firm or corporation, or any private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual. ARTICLE VII Entry Into Compact and Withdrawal

(1) This compact shall become effective when it has been adopted by at least two (2) jurisdictions.

(a) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(b) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows: 1. A citation of the authority by which the jurisdiction is empowered to become a party to this compact. 2. Agreement to comply with the terms and provisions of the compact. 3. That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(c) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty (60) days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(2) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety (90) days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions. ARTICLE VIII Exceptions The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations or violations of law governing the transportation of hazardous materials. ARTICLE IX Amendments to the Compact

(1) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one (1) or more party jurisdictions.

(2) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty (30) days after the date of the last endorsement.

(3) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty (120) days after receipt of the proposed amendment shall constitute endorsement. ARTICLE X Construction and Severability This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government agency, person or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

CHAPTER 27

49-2701 — Funeral procession right-of-way — Funeral escort vehicles — Funeral lead vehicles

49-2701. Funeral procession right-of-way — Funeral escort vehicles — Funeral lead vehicles.

(1) "Funeral procession" means two (2) or more vehicles accompanying the body of a deceased person, in the daylight hours, including a funeral lead vehicle or a funeral escort vehicle.

(2) "Funeral lead vehicle" means a motor vehicle, including a funeral hearse, properly equipped, pursuant to section 49-2702 , Idaho Code, leading and facilitating the movement of a funeral procession.

(3) "Funeral escort vehicle" means any motor vehicle properly equipped pursuant to section 49-2702 , Idaho Code, and which escort facilitates the funeral procession and serves to direct traffic as provided in this section.

(4) Pedestrians and operators of all vehicles, except as stated in subsection (7) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.

(5) Whenever the funeral escort vehicle or funeral lead vehicle in a funeral procession enters an intersection, the remainder of the vehicles in such funeral procession may continue to follow the funeral lead vehicle through the intersection, notwithstanding any traffic control device or right-of-way provisions prescribed by statute or local ordinance, provided the operator of each vehicle exercises reasonable care toward any other vehicle or pedestrian on the roadway.

(6) Except as provided in subsection (7) of this section, the driver of a funeral escort vehicle may direct the drivers of other vehicles in a funeral procession to proceed through an intersection or to make turns or other movements despite any official traffic control device. The driver of a funeral escort vehicle may direct and control the drivers of vehicles not in a funeral procession, including those in or approaching an intersection, to stop, proceed, or make turns or other movements without regard to an official traffic control device. Funeral escort vehicles may exceed the speed limit by fifteen (15) miles per hour when overtaking the funeral procession to direct traffic at the next intersection.

(7) Funeral processions shall have the right-of-way at intersections regardless of traffic control devices, subject to the following conditions and exceptions:

(a) Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal; and

(b) Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer.

49-2702 — Equipment

49-2702. Equipment. A funeral escort vehicle or a funeral lead vehicle must be equipped with at least one (1) lighted rotating or oscillating lamp exhibiting a red light or lens visible under normal atmospheric conditions for a distance of five hundred (500) feet from the front of the vehicle. The turn signals must be flashing simultaneously on the first vehicle in procession, but only when such vehicle is in use in the funeral procession.

49-2703 — Driving in procession

49-2703. Driving in procession.

(1) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practicable and safe.

(2) Any ordinance, law or regulation requiring that motor vehicles be operated to allow sufficient space between them to enable another vehicle to enter and occupy that space without danger shall not be applicable to vehicles in a funeral procession.

(3) The driver of a motor vehicle in a funeral procession may not drive the vehicle at a speed greater than:

(a) Fifty-five (55) miles per hour on a highway where the posted speed limit is fifty-five (55) miles per hour or more; or

(b) Five (5) miles per hour below the posted speed limit on other streets or roads.

(4) A vehicle being operated in a funeral procession must have its headlights and tail lights illuminated. The turn signals must be flashing simultaneously as warning lights on the vehicle which is the first vehicle in a funeral procession and/or which the driver has reason to believe is the last vehicle in the funeral procession.

49-2704 — Other vehicles

49-2704. Other vehicles. The driver of a vehicle that is not part of a funeral procession may not:

(1) Drive between the vehicles forming a funeral procession while they are in motion except when authorized to do so by a police officer or when driving an authorized emergency vehicle emitting an audible or visible signal;

(2) Join a funeral procession to secure the right-of-way as granted in section 49-2701 , Idaho Code;

(3) Pass a funeral procession on a multiple lane highway on the procession's right side unless the funeral procession is in the farthest left lane;

(4) Enter an intersection, even if the driver is facing a green traffic control signal, when a funeral procession is proceeding through a red traffic control signal at that intersection as permitted under section 49-2701 , Idaho Code, unless the driver can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is within the intersection, the driver of a vehicle facing a green signal may proceed subject to the right-of-way of the vehicles participating in a funeral procession.

49-2705 — Liability

49-2705. Liability.

(1) Liability for any death, personal injury, or property damage suffered by any person in a funeral procession shall not be imposed upon the funeral home and/or duly authorized escort vehicle in charge of the funeral procession, its employees or agents, unless such death, personal injury, or property damage is proximately caused by the negligent or intentional act or omission of an employee or agent of the funeral home and/or duly authorized escort vehicle.

(2) Liability for any death, personal injury, or property damage that results from, is caused by, or arising out of any action or inaction of any operator of a vehicle in a funeral procession under the control of a funeral home and/or duly authorized escort vehicle shall not be imposed upon such funeral home and/or duly authorized escort vehicle, its employees or agents, unless the death, personal injury, or property damage is proximately caused by the negligent or intentional act or omission of an employee or agent of the funeral home and/or duly authorized escort vehicle.

(3) The operator of a vehicle in a funeral procession shall not be deemed to be an agent of the funeral home and/or duly authorized escort vehicle unless such operator is an employee of the funeral home and/or duly authorized escort vehicle and acting in the course of his employment, or unless such operator was retained as in independent contractor of the funeral home and is performing services pursuant thereto.

49-2706 — Penalty

49-2706. Penalty. Any person who intentionally and knowingly violates the provisions of section 49-2701

(4) or 49-2704 , Idaho Code, shall be guilty of a misdemeanor. Any other violation of the provisions of this chapter shall be an infraction.

CHAPTER 29

49-2901 — Rural economic development and integrated freight transportation program

49-2901. Rural economic development and integrated freight transportation program.

(1) The Idaho rural economic development and integrated freight transportation program is hereby established. The Idaho department of agriculture is designated and authorized to administer the rural economic development and integrated freight transportation program.

(2) State funding for rural freight transportation service projects shall benefit the state's interest by assisting businesses and industries to develop and expand their operations in shipping freight and products to market. The state's interest is served by maintaining competitive transportation services for Idaho freight shippers, reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, creating and preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate private sector partnerships with state and local governments, participation and cooperation. Before recommending the spending of these dedicated state moneys on intermodal projects, the Idaho department of agriculture shall seek federal, local and private funding and participation to the greatest extent possible. Whenever possible, the department shall seek to assist a private sector solution for the implementation of this chapter.

49-2902 — Interagency working group created

49-2902. Interagency working group created.

(1) An interagency working group is hereby created to advise the department of agriculture on issues and policies in support of the department of agriculture's administration of the rural economic development and integrated freight

transportation program established in section 49-2901 , Idaho Code. The interagency working group shall participate in planning and identifying program needs and shall carry out its duties specified in section 49-2903 , Idaho Code. Before recommending state funding, using state dedicated funds, and recommending priorities, the interagency working group shall seek pertinent information, facts and data from state and local governments, and agencies regarding rural freight transportation issues.

(2) The interagency working group shall be composed of eight (8) members:

(a) Four (4) members shall be appointed by the director of the Idaho transportation department, two (2) of whom shall be employees of the Idaho transportation department with a working knowledge of rail and truck freight transportation and intermodal entities, one (1) member, not a state employee, shall represent freight shipping interests, and one (1) member shall be a representative from the local highway technical assistance council;

(b) Three (3) members shall be appointed by the director of the department of agriculture, two (2) of whom shall be employees of the department of agriculture with a working knowledge of economic development issues, and one (1) member, not a state employee, shall represent business development and financing interests; and

(c) One (1) member shall be appointed by the director of the department of commerce and shall be an employee with knowledge of rural economic development issues.

(d) At the beginning of each state fiscal year, the director of the Idaho transportation department shall designate one (1) of his appointees as cochairman, and the director of the department of agriculture shall designate one (1) of his appointees as cochairman.

(e) Each member appointed shall serve at the pleasure of the appointing authority, provided however, the service of state employee members shall run concurrently with their state employment. Nonstate employee members shall serve one (1) term of five (5) years, but may be appointed to serve nonconsecutive terms, and shall be reimbursed according to the provisions of section 59-509 (b), Idaho Code.

(f) The interagency working group shall meet at such times as necessary and appropriate to review applications for funds distributed pursuant to the provisions of this chapter, but not less frequently than annually.

(3) The department of agriculture shall determine and provide for amounts appropriated to the fund, from interest only an annual amount not to exceed three percent (3%) of total assets for planning and operating expenses and staff assistance and support from the department of agriculture and the Idaho transportation department in order to administer the program, and to administer the fund established in section 49-2904 , Idaho Code.

49-2903 — Duties of the interagency working group

49-2903. Duties of the interagency working group.

(1) The interagency working group shall provide recommendations to the department of agriculture in order for that department to establish criteria for evaluating intermodal projects of significance to the state, and the interagency working group shall continue to monitor projects for which it provides assistance to the department of agriculture.

(2) The interagency working group shall provide recommendations to the department of agriculture in order for the department to develop criteria for prioritizing freight rail and intermodal projects that meet the minimum eligibility requirements for state financial support from the revolving loan fund created in section 49-2904 , Idaho Code. Project criteria should consider the level of local financial commitment to the project as well as the cost/benefit ratio. Railroads, shippers, intermodal commerce authorities as defined in chapter 22, title 70 , Idaho Code, and others who benefit from the project should participate financially to the greatest extent practicable.

(3) The interagency working group shall provide the assistance necessary for the department to ensure that the state maintains a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner of a qualified line as defined in section 49-2904 , Idaho Code, shall not use the line as collateral, remove track, bridges or associated elements for salvage, or use it in any other manner subordinating the state's interest until any loan made to the owner pursuant to this chapter has been repaid in full. As the state is not a primary lender of money, it is understood the state may need to take a subordinate position for its contingent interest.

49-2904 — Rural economic development and integrated freight transportation revolving loan fund

49-2904. Rural economic development and integrated freight transportation revolving loan fund.

(1) The rural economic development and integrated freight transportation revolving loan fund is hereby created in the state treasury. The department of agriculture is authorized to administer the rural economic development and integrated freight transportation revolving loan fund. Moneys in the fund shall be used only for the purposes specified in this chapter. Surplus moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210 , Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the rural economic development and integrated freight transportation revolving loan fund.

(2) Moneys in the fund are subject to appropriation and may consist of appropriations, grants, repayment of loans and other revenues from any other sources.

(3) Moneys in the fund may be used for loans or grants for qualified rural projects for the development and preservation of intermodal rail and truck services and facilities upon terms and conditions to be determined by the department of agriculture with the assistance and advice of the interagency working group as appropriate, for the purpose of:

(a) Rehabilitating, or improving rail lines to preserve essential local rail service;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Construction of loading or reloading facilities or other capital improvements including building or improving local transportation infrastructure, to increase business and commerce, and to improve shipping service; or

(d) Coordinating intermodal truck and rail traffic for integrated rural freight transportation.

(4) For the purposes of this chapter, "qualified lines" means class III short lines, branch lines of class I railroads leased or operated by a class III railroad, branch lines of class II railroads, and lines owned by public entities including port districts and intermodal commerce authorities. Definitions of class I, II and III railroads shall be as defined by the federal railroad administration.

(5) Moneys received by the department of agriculture from loan payments or other revenues shall be redeposited in the rural economic development and integrated freight transportation fund. Repayment of loans made under this chapter shall occur within a period as set by the department, but no repayment which exceeds fifteen (15) years shall be allowed. The repayment schedule and rate of interest shall be determined before the moneys are distributed.

(6) Moneys distributed under the provisions of this chapter shall be provided as loans to qualified lines or shippers.

(7) As interest funds allow, authorize matching grants not to exceed one hundred thousand dollars ($100,000) per grant for planning and development of intermodal commerce authorities as provided in chapter 22, title 70 , Idaho Code, upon conditions established in subsection (3) of this section.

49-2905 — State rail and intermodal facility system plan

49-2905. State rail and intermodal facility system plan.

(1) The Idaho transportation department shall prepare and periodically update a state rail and intermodal facility system plan, a primary objective of which is to identify, evaluate and encourage the development and preservation of essential rail and truck intermodal services. The plan shall:

(a) Identify and describe the state’s rail system;

(b) Prepare state rail system maps;

(c) Identify and evaluate mainline capacity issues in cooperation with the railroads;

(d) Identify and evaluate rail access and congestion issues;

(e) Identify and evaluate rail commodity flows and traffic types;

(f) Identify lines and corridors that have been rail banked or preserved;

(g) Identify and evaluate other rail and intermodal issues affecting the state’s freight transportation system and regional and local economies;

(h) Identify and evaluate those rail freight lines that are potentially subject to abandonment in the future because of unmet capital needs or other reasons, or have recently been approved for abandonment but the track improvements are still in place;

(i) Whenever possible provide priorities for determining which rail lines or intermodal commerce authorities should receive state support, and provide to the interagency working group supporting information used in establishing such priorities for use by the interagency working group. The priorities should include:

(i) The anticipated benefits to the state and local economy; (ii) Coordinated freight transportation system including the anticipated cost of road and highway improvements necessitated by the proposed project; (iii) Establishment of an intermodal facility, if indicated; (iv) The likelihood the qualified line receiving funding can meet operating costs from freight charges, surcharges on rail traffic and other funds; and

(v) The impact of abandonment or capacity constraints if the project does not obtain state support; and

(j) Identify and describe the state's intermodal rural rail and truck freight system by:

(i) Preparing state intermodal and regional freight transfer station system maps; (ii) Identifying and evaluating intermodal and truck and rail freight transfer capacity and coordination issues in cooperation with local government and the railroad and truck interests; (iii) Identifying and evaluating intermodal and freight transfer access and highway capacity issues; and (iv) Identifying and evaluating major freight commodity origins, destinations and traffic flows by mode and corridor.

(2) The Idaho transportation department shall provide information to the interagency working group related to the status of the state's mainline, short line and branch line common carrier railroads through the state rail planning process and various analyses. In addition, the Idaho transportation department shall submit to the interagency working group, its evaluation of alternatives to abandonment prior to federal surface transportation board proceedings, where feasible.

(3) The state rail and intermodal facility system plan may be prepared in conjunction with any rail plan currently prepared by the Idaho transportation department pursuant to other federal rail assistance programs, or which may be enacted, including if applicable, the federal local rail freight assistance program.

(4) The Idaho transportation department shall determine the amount of moneys necessary to prepare and periodically update the state rail plan required by subsection (1) of this section, and communicate that amount to the department of agriculture who shall annually provide to the transportation department moneys in an amount not to exceed one percent (1%) of the total assets in the fund established by section 49-2904 , Idaho Code, to prepare and periodically update the state rail plan. The Idaho transportation department is hereby authorized to accumulate these funds not to exceed an aggregate amount of seventy-five thousand dollars ($75,000) for preparing and periodically updating the state rail plan.

CHAPTER 37

49-3701 — SHORT TITLE

49-3701. SHORT TITLE. This chapter shall be cited as the "Transportation Network Company Services Act."

49-3702 — legislative purpose and intent

49-3702. legislative purpose and intent. It is the intent of the Idaho legislature to regulate the use of transportation network company (TNC) services within the state of Idaho and to promote the safety, reliability and cost-effectiveness of transportation network company (TNC) services, as well as preserve and enhance access to these important transportation options for residents and visitors.

49-3703 — DEFinitions

49-3703. DEFinitions. As used in this chapter, the following terms have the meanings as stated:

(1) "Transportation network company" or "TNC" shall mean an entity operating in Idaho that meets the requirements of this chapter and uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by TNC drivers, and is not a taxicab association or a for-hire vehicle owner.

(2) "Transportation network company (TNC) driver" shall mean an individual who operates a motor vehicle that is:

(a) Owned, leased or otherwise authorized for use by the individual;

(b) Used by an individual who receives, in exchange for providing the passenger a ride, compensation that exceeds the individual's cost to provide the ride;

(c) Not a taxicab or for-hire vehicle; and

(d) Used to provide transportation network company services.

(3) "Transportation network company (TNC) services" shall mean transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application.

TNC services shall begin when a TNC driver accepts a request for transportation received through the TNC's digital network or software application service, continue while the TNC driver transports the passenger in the TNC driver's vehicle, and end when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab, for-hire vehicle or street hail service.

(4) The definitions set forth in this section apply only to this chapter and not to the law of insurance contained in title 41 , Idaho Code.

49-3704 — NOT OTHER CARRIERS

49-3704. NOT OTHER CARRIERS. TNCs or TNC drivers are not common carriers as defined in section 61-113 , Idaho Code; they are not motor carriers, nor do they provide taxicab or for-hire vehicle service. In addition, a TNC driver shall not be required to register the vehicle such driver uses for TNC services as a commercial or for-hire vehicle or to obtain a commercial driver's license.

49-3705 — AGENT

49-3705. AGENT. The TNC must maintain an agent for service of process in the state of Idaho.

49-3706 — FARE CHARGED For SERViCES

49-3706. FARE CHARGED For SERViCES. A TNC may charge a fare for the services provided to passengers; provided that, if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC driver's vehicle.

49-3707 — IDENTIFICATION OF TNC VEHICLES AND DRIVERS

49-3707. IDENTIFICATION OF TNC VEHICLES AND DRIVERS. The TNC's software application or website shall display a picture of the TNC driver, and the license plate number of the motor vehicle utilized for providing the TNC service before the passenger enters the TNC driver's vehicle.

49-3708 — TNC and TNC Driver insurance requirements

49-3708. TNC and TNC Driver insurance requirements. TNCs and TNC drivers shall comply with all applicable requirements for insurance imposed by Idaho statutes pertaining to automobile liability insurance in this title and title 41 , Idaho Code.

49-3709 — zero tolerance for drug or alcohol use

49-3709. zero tolerance for drug or alcohol use.

(1) The TNC shall implement a zero tolerance policy on the illegal use of drugs or the use of alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services, and shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(2) Upon receipt of such passenger complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend such TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(3) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two (2) years from the date that a passenger complaint is received by the TNC.

49-3710 — TNC DRIVER REQUIREMENTS

49-3710. TNC DRIVER REQUIREMENTS.

(1) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(a) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;

(b) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

(i) Multistate/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and (ii) National sex offender registry database.

(c) Obtain and review a driving history research report for such individual.

(2) The TNC shall not permit an individual to act as a TNC driver on its digital platform who:

(a) Has had more than three (3) moving violations in the prior three (3) year period, or one (1) major violation in the prior three (3) year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);

(b) Has been convicted, within the past seven (7) years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of terror;

(c) Is a match in the national sex offender registry database;

(d) Does not possess a valid driver's license;

(e) Does not possess proof of registration for the motor vehicle(s) used to provide TNC services;

(f) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide TNC services; or

(g) Is not at least nineteen (19) years of age.

49-3711 — no street hails

49-3711. no street hails. A TNC driver shall exclusively accept rides booked through a TNC's digital network or software application service and shall not solicit or accept street hails.

49-3712 — no cash trips

49-3712. no cash trips. The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of such policy. TNC drivers shall not solicit or accept cash payments from passengers. Any payment for TNC services shall be made only electronically using the TNC's digital network or software application.

49-3713 — no discrimination — accessibility

49-3713. no discrimination — accessibility.

(1) The TNC shall adopt a policy of nondiscrimination with respect to passengers and potential passengers and notify TNC drivers of such policy;

(2) TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers;

(3) TNC drivers shall comply with all applicable laws relating to accommodation of service animals;

(4) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities; and

(5) A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

49-3714 — records

49-3714. records. A TNC shall maintain:

(1) Individual trip records for at least two (2) years from the date each trip was provided; and

(2) TNC driver records at least until the one (1) year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended.

49-3715 — controlling authority

49-3715. controlling authority. Notwithstanding any other provision of law, except as provided in section 49-3708 , Idaho Code, TNCs and TNC drivers are governed exclusively by this chapter. No municipality or other local entity may impose a tax on, or require a license for, a TNC, a TNC driver, or a vehicle used by a TNC driver where such tax or licenses relates to providing TNC services, or subject a TNC to the municipality or other local entity's rate, entry, operational or other requirements.