

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 658

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO TRESPASS; TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION
2 6-202, IDAHO CODE, TO PROVIDE FOR ACTIONS FOR CIVIL TRESPASS, TO PRO-
3 VIDE DEFINITIONS, TO PROVIDE FOR ACTS CONSTITUTING CIVIL TRESPASS, TO
4 PROVIDE FOR PENALTIES AND TO PROVIDE FOR EXCLUSIONS; REPEALING SECTION
5 6-202A, IDAHO CODE, RELATING TO DEFINITIONS OF TERMS; AMENDING TITLE 6,
6 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 6, IDAHO CODE, TO
7 PROVIDE FOR THE LIABILITY AND DUTY OF A LAND POSSESSOR TO A TRESPASSER
8 AND TO PROVIDE FOR THE APPLICABILITY OF THE ATTRACTIVE NUISANCE COMMON
9 LAW DOCTRINE; REPEALING SECTION 18-7008, IDAHO CODE, RELATING TO TRES-
10 PASS; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW
11 SECTION 18-7008, IDAHO CODE, TO PROVIDE FOR CRIMINAL TRESPASS, TO PRO-
12 VIDE DEFINITIONS, TO PROVIDE FOR ACTS CONSTITUTING CRIMINAL TRESPASS
13 AND CRIMINAL TRESPASS WITH DAMAGE, TO PROVIDE FOR PENALTIES AND TO PRO-
14 VIDE FOR EXCLUSIONS; REPEALING SECTION 18-7011, IDAHO CODE, RELATING
15 TO CRIMINAL TRESPASS; AMENDING SECTION 19-4705, IDAHO CODE, TO PROVIDE
16 FOR THE DISPOSITION OF FINES; AMENDING SECTION 36-1402, IDAHO CODE,
17 TO PROVIDE FOR A VIOLATION OF TRESPASSING FOR THE PURPOSE OF HUNTING,
18 FISHING OR TRAPPING AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SEC-
19 TION 36-1602, IDAHO CODE, RELATING TO HUNTING ON CERTAIN LANDS WITHOUT
20 PERMISSION; AMENDING SECTION 36-1603, IDAHO CODE, TO PROHIBIT TRES-
21 PASSING WHILE HUNTING, FISHING AND TRAPPING, TO PROVIDE REMEDIES AND TO
22 AUTHORIZE PERMISSION FORMS; AMENDING SECTION 36-1604, IDAHO CODE, TO
23 PROVIDE FOR THE APPLICABILITY OF CERTAIN REMEDIES WITH RESPECT TO THE
24 LIABILITY OF THOSE USING THE LAND OF ANOTHER PERSON FOR RECREATION AND
25 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1108, IDAHO CODE,
26 TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION;
27 PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE FOR THE ACCRUAL
28 OF ACTIONS.
29

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

31 SECTION 1. LEGISLATIVE INTENT. The Legislature of the State of Idaho
32 makes the following findings and declares the following statement of intent
33 and legislative purpose:

34 (1) Under Section 1, Article I, of the Constitution of the State of
35 Idaho, "acquiring, possessing and protecting property" is an inalienable
36 right. The right to own real property and to exclude others from that prop-
37 erty according to law is fundamental to our rights as citizens and has been
38 upheld repeatedly by the United States Supreme Court.

39 (2) Section 23, Article I of the Idaho Constitution also protects the
40 right to hunt and fish, but that right expressly does not include "a right to
41 trespass on private property."

42 (3) The Legislature finds that trespassing on private property has be-
43 come a serious problem for landowners throughout the state. While many in-

1 individuals respect private property rights, landowners report a significant
 2 number of persons who blatantly disregard the rights of property owners and
 3 frequently cause damage to private property, including cut fences, ruined
 4 crops, vandalism and theft.

5 (4) The trespass laws of the State of Idaho have been insufficient to
 6 deter trespassing and have offered inadequate penalties when trespassers
 7 are prosecuted.

8 (5) Moreover, the existing trespass laws are a confusing, inconsistent
 9 and constitutionally suspect patchwork of laws. They impose significant
 10 posting burdens on landowners, without reducing trespassing. The poor
 11 construction of the laws of trespass hinders the effective arrest and pros-
 12 ecution of trespassers.

13 (6) It is the intent of the Legislature in passing this act to culti-
 14 vate a new culture of respect for private property rights and a renewal of the
 15 neighborly ways that have been a hallmark of our state.

16 SECTION 2. That Section 6-202, Idaho Code, be, and the same is hereby
 17 amended to read as follows:

18 6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this
 19 section:

20 (a) "Crops" means field crops including, but not limited to, grains,
 21 feed crops, legumes, fruits and vegetables.

22 (b) "Cultivated land" means:

23 (i) Land whose soil is loosened or broken up for the raising of
 24 crops;

25 (ii) Land used for the raising of crops; or

26 (iii) Pasturage that is artificially irrigated.

27 (c) "Damage" means any injury or damage to real or personal property
 28 and includes, without limitation, any of the following actions, when
 29 conducted without lawful authority, the consent of the landowner or his
 30 agent, or a valid license:

31 (i) Cutting down or carrying off any wood, underbrush, tree or
 32 timber, or girdling or otherwise injuring any tree or timber on the
 33 land of another;

34 (ii) Severing from the property of another anything attached
 35 thereto, or the produce thereof;

36 (iii) Digging, taking or carrying away any earth, soil or stone
 37 from the property of another;

38 (iv) Tearing down or otherwise damaging any fence on the land of
 39 another, or opening any gate, bar or fence of another and leaving
 40 it open, or using the corral or corrals of another;

41 (v) Dumping trash or covering up in any manner the property of
 42 another;

43 (vi) The unprovoked, intentional killing or injuring of a domes-
 44 tic animal of another on his property;

45 (vii) Removing, mutilating, damaging or destroying any "no tres-
 46 passing" signs or markers of similar meaning;

47 (viii) Going through or driving a motor vehicle, as defined in sec-
 48 tions 49-114 and 49-123, Idaho Code, into, upon, over or through
 49 any cultivated lands; or

1 (ix) Injuring or killing livestock.
2 (d) "Enter" or "enters" means going upon or over real property either
3 in person or by causing any object, substance or force to go upon or over
4 real property.
5 (e) "Navigable streams" shall have the meaning set forth in section
6 36-1601, Idaho Code.
7 (f) "Permission" means written authorization from the owner or his
8 agent to enter upon private land, which shall include the signature of
9 the owner or his agent, the name of the person being given permission,
10 the appropriate dates that the permission is valid and a general de-
11 scription of the property.
12 (2) (a) Acts constituting civil trespass. Any person who, without per-
13 mission of the owner, or the owner's agent, willfully and intention-
14 ally enters or remains upon the real property of another person which
15 property is posted with "No Trespassing" signs or other notices of like
16 meaning, spaced at intervals of not less than one (1) notice per six hun-
17 dred sixty (660) feet along such real property; or who willfully and in-
18 tentionally cuts down or carries off any wood or underwood, tree or tim-
19 ber, or girdling, or otherwise willfully and intentionally injures any
20 tree or timber on the land of another person, or on the street or high-
21 way in front of any person's house, village, or city lot, or cultivated
22 grounds; or on the commons or public grounds of or in any city or town,
23 or on the street or highway in front thereof, without lawful authority,
24 is liable to the owner of such land, or to such city or town, for tre-
25 ble the amount of damages which may be assessed therefor or fifty dol-
26 lars (\$50.00), plus a reasonable attorney's fee which shall be taxed as
27 costs, in any civil action brought to enforce the terms of this act if
28 the plaintiff prevails without permission commits a civil trespass.
29 (b) Acts constituting civil trespass with damage. A person commits a
30 civil trespass with damage when he enters and remains on the real prop-
31 erty of another without permission, knowing or with reason to know that
32 his presence is not permitted, and causes damage to real or personal
33 property in excess of one thousand dollars (\$1,000). A person has rea-
34 son to know that his presence is not permitted on real property that
35 meets any of the following descriptions:
36 (i) The property is reasonably associated with a residence or
37 place of business;
38 (ii) The property is cultivated;
39 (iii) The property is fenced or otherwise enclosed in a manner
40 that a reasonable person would recognize as delineating a private
41 property boundary. Provided, however, if the property adjoins
42 or is contained within public lands, the fence line adjacent to
43 public land is posted with conspicuous "no trespassing" signs or
44 bright orange or fluorescent paint at the corners of the fence
45 adjoining public land and at all navigable streams, roads, gates
46 and rights-of-way entering the private land from the public land,
47 and is posted in a manner that a reasonable person would be put on
48 notice that it is private land; or
49 (iv) The property is unfenced and uncultivated but is posted with
50 conspicuous "no trespassing" signs or bright orange or fluores-

cent paint at all property corners and boundaries where the property intersects navigable streams, roads, gates and rights-of-way entering the land, and is posted in a manner that a reasonable person would be put on notice that it is private land.

(3) Remedies.

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

(i) The greater of:

1. A civil fine or penalty of five hundred dollars (\$500); or

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

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

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

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

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

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

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

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

(4) All damages and penalties awarded pursuant to this section shall be remitted to the owner of the land trespassed upon, or, if personal property was injured while trespassing, the owner of that personal property, or both.

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

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

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

(a) An established right of entry or occupancy of the real property in question, including, without limitation:

1 6-3103. APPLICABILITY. This chapter does not create or increase the
2 liability of any possessor of real property and does not affect any other
3 statutory or common law immunities from or defenses to civil liability to
4 which a possessor of real property may be entitled.

5 SECTION 5. That Section 18-7008, Idaho Code, be, and the same is hereby
6 repealed.

7 SECTION 6. That Chapter 70, Title 18, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 18-7008, Idaho Code, and to read as follows:

10 18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUT-
11 ING. (1) Definitions. As used in this section:

12 (a) "Crops" means field crops including, but not limited to, grains,
13 feed crops, legumes, fruits and vegetables.

14 (b) "Cultivated land" means:

15 (i) Land whose soil is loosened or broken up for the raising of
16 crops;

17 (ii) Land used for the raising of crops; or

18 (iii) Pasturage that is artificially irrigated.

19 (c) "Damage" means any injury or damage to real or personal property
20 and includes, without limitation, any of the following actions, when
21 conducted without lawful authority, the consent of the landowner or his
22 agent, or a valid license:

23 (i) Cutting down or carrying off any wood, underbrush, tree or
24 timber, or girdling or otherwise injuring any tree or timber on the
25 land of another;

26 (ii) Severing from the property of another anything attached
27 thereto, or the produce thereof;

28 (iii) Digging, taking or carrying away any earth, soil or stone
29 from the property of another;

30 (iv) Tearing down or otherwise damaging any fence on the land of
31 another person, or opening any gate, bar or fence of another person
32 and leaving it open, or using the corral or corrals of another per-
33 son;

34 (v) Dumping trash or covering up in any manner the property of
35 another person;

36 (vi) The unprovoked, intentional killing or injuring of a domes-
37 tic animal of another on his property;

38 (vii) Removing, mutilating, damaging or destroying any "no tres-
39 passing" signs or markers of similar meaning;

40 (viii) Going through or driving a motor vehicle, as defined in sec-
41 tions 49-114 and 49-123, Idaho Code, into, upon, over or through
42 any cultivated lands; or

43 (ix) Injuring livestock.

44 (d) "Enter" or "enters" means going upon or over real property either
45 in person or by causing any object, substance or force to go upon or over
46 real property.

47 (e) "Navigable streams" shall have the meaning set forth in section
48 36-1601, Idaho Code.

1 (f) "Permission" means written authorization from the owner or his
2 agent to enter upon private land, which shall include the signature of
3 the owner or his agent, the name of the person being given permission,
4 the appropriate dates that the permission is valid and a general de-
5 scription of the property.

6 (2) Acts constituting criminal trespass.

7 (a) A person commits criminal trespass when he enters and remains on
8 the real property of another without permission, knowing or with reason
9 to know that his presence is not permitted. A person has reason to know
10 that his presence is not permitted on real property that meets any of the
11 following descriptions:

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

14 (ii) The property is cultivated;

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

25 (iv) The property is unfenced and uncultivated but is posted with
26 conspicuous "no trespassing" signs or bright orange or fluores-
27 cent paint at all property corners and boundaries where the prop-
28 erty intersects navigable streams, roads, gates and rights-of-way
29 entering the land, and is posted in a manner that a reasonable per-
30 son would be put on notice that it is private land.

31 (b) Every person who commits a criminal trespass as provided by this
32 section and who causes damage to real or personal property in excess of
33 one thousand dollars (\$1,000) while trespassing is guilty of criminal
34 trespass with damage and is guilty of a misdemeanor, except as provided
35 in subsection (3) (b) (iii) of this section.

36 (3) Penalties.

37 (a) Penalties for criminal trespass.

38 (i) Any person who pleads guilty to or is found guilty of a viola-
39 tion of subsection (2) (a) of this section for the first time:

40 1. May be sentenced to jail for a period of no more than six

41 (6) months; and

42 2. Shall be fined in an amount no less than five hundred dol-
43 lars (\$500) and no more than one thousand dollars (\$1,000).

44 (ii) Any person who pleads guilty to or is found guilty of a viola-
45 tion of subsection (2) (a) of this section for a second time within
46 five (5) years:

47 1. May be sentenced to jail for a period of no more than six

48 (6) months;

1 2. Shall be fined in an amount no less than one thousand five
2 hundred dollars (\$1,500) and no more than three thousand
3 dollars (\$3,000); and

4 3. If the trespass can be reasonably construed to have been
5 committed in a manner described in section 36-1603(a), Idaho
6 Code, shall have any license issued pursuant to chapter 3,
7 title 36, Idaho Code, suspended for a period of one (1) year.

8 (iii) Any person who pleads guilty to or is found guilty of a viola-
9 tion of subsection (2) (a) of this section, who previously has been
10 found guilty of or has pled guilty to two (2) or more violations of
11 the provisions of subsection (2) of this section within ten (10)
12 years, notwithstanding the form of the judgments or withheld judg-
13 ments:

14 1. May be sentenced to jail for a period no more than one (1)
15 year;

16 2. Shall be fined an amount no less than five thousand
17 dollars (\$5,000) and no more than ten thousand dollars
18 (\$10,000); and

19 3. If the trespass can be reasonably construed to have been
20 committed in a manner described in section 36-1603(a), Idaho
21 Code, shall have any license issued pursuant to chapter 3,
22 title 36, Idaho Code, suspended for a period of no more than
23 five (5) years.

24 (b) Penalties for criminal trespass with damage.

25 (i) Any person who pleads guilty to or is found guilty of a viola-
26 tion of subsection (2) (b) of this section for the first time:

27 1. May be sentenced to jail for a period of no more than six
28 (6) months; and

29 2. Shall be fined in an amount no less than one thousand five
30 hundred dollars (\$1,500) and no more than five thousand dol-
31 lars (\$5,000).

32 (ii) Any person who pleads guilty to or is found guilty of a viola-
33 tion of subsection (2) (b) of this section for a second time within
34 five (5) years:

35 1. May be sentenced to jail for a period of no more than six
36 (6) months;

37 2. Shall be fined in an amount no less than five thou-
38 sand dollars (\$5,000) and no more than ten thousand dollars
39 (\$10,000); and

40 3. If the trespass can be reasonably construed to have been
41 committed in a manner described in section 36-1603(a), Idaho
42 Code, shall have any license issued pursuant to chapter 3,
43 title 36, Idaho Code, suspended for a period of one (1) year.

44 (iii) Any person who pleads guilty to or is found guilty of a viola-
45 tion of subsection (2) (b) of this section, who previously has been
46 found guilty of or has pled guilty to two (2) or more violations of
47 the provisions of subsection (2) of this section within ten (10)
48 years, notwithstanding the form of the judgments or withheld judg-
49 ments, is guilty of a felony and:

1 1. Shall be sentenced to the custody of the state board of
2 correction for a period of no less than one (1) year and no
3 more than five (5) years;

4 2. Shall be fined in an amount no less than fifteen thou-
5 sand dollars (\$15,000) and no more than fifty thousand dol-
6 lars (\$50,000); and

7 3. If the trespass can be reasonably construed to have been
8 committed in a manner described in section 36-1603(a), Idaho
9 Code, shall have any license issued pursuant to chapter 3,
10 title 36, Idaho Code, suspended for a period of no less than
11 five (5) years.

12 (c) In addition to any other penalty prescribed by law, a court shall,
13 for any violation of subsection (2) of this section, order restitution
14 in accordance with section 19-5304, Idaho Code.

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

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

22 (6) A person shall not be guilty of trespass under this section for en-
23 tering or remaining upon real property if the person entered or remained on
24 the property pursuant to any of the following rights or authorities:

25 (a) An established right of entry or occupancy of the real property in
26 question, including, without limitation:

27 (i) An invitation, whether express or implied, to enter or remain
28 on real property including, without limitation, the right to enter
29 property that is, at the time, open to the public, if the person is
30 in compliance with lawful conditions imposed on access;

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

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

34 (b) A lawful authority to enter onto or remain upon the real property in
35 question, including, without limitation:

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

38 (ii) Any paramedic, firefighter or other emergency personnel dur-
39 ing the course and scope of fulfilling his lawful duties; or

40 (iii) Any licensed professional otherwise authorized to enter or
41 remain on the real property during the course and scope of fulfill-
42 ing his duties; or

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

45 (7) Examples of the exclusions in subsection (6) of this section in-
46 clude, without limitation: a customer entering and remaining in a store dur-
47 ing business hours who has not been asked to depart by the property owner or
48 his agent; a person knocking on a front door of a property that is not posted;
49 a meter reader during the scope and course of his employment; a postal em-
50 ployee delivering mail or packages; power company personnel fixing downed

1 power lines; a bail bondsman arresting a person who is in violation of a bail
2 contract; a tenant pursuant to a valid lease; and the owner or operator of any
3 right-of-way or easement for any ditch, canal or other conduit, acting pur-
4 suant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.

5 (8) The exclusions set forth in this section shall not relieve any per-
6 son of civil or criminal liability pursuant to other applicable law for caus-
7 ing damage while entering or remaining on the property in question.

8 SECTION 7. That Section [18-7011](#), Idaho Code, be, and the same is hereby
9 repealed.

10 SECTION 8. That Section 19-4705, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT
13 -- DISPOSITION -- APPORTIONMENT. (1) Except as otherwise provided in subsec-
14 tion (2) of this section:

15 (a) All fines and forfeitures collected pursuant to the judgment of
16 any court of the state shall be remitted to the court in which the judg-
17 ment was rendered. The judgment shall then be satisfied by entry in the
18 docket of the court. The clerk of the court shall daily remit all fines
19 and forfeitures to the county auditor who shall at the end of each month
20 apportion the proceeds according to the provisions of this chapter.
21 Other existing laws regarding the disposition of fines and forfeitures
22 are hereby repealed to the extent such laws are inconsistent with the
23 provisions of this chapter except as provided in section 49-1013(5),
24 Idaho Code.

25 (b) Fines and forfeitures remitted for violations of fish and game
26 laws shall be apportioned two and one-half percent (2 1/2%) to the
27 state treasurer for deposit in the state general fund, ten percent
28 (10%) to the search and rescue account, twenty-two and one-half percent
29 (22 1/2%) to the district court fund and sixty-five percent (65%) to the
30 fish and game fund.

31 (c) Fines and forfeitures remitted for violations of state motor ve-
32 hicle laws, for violation of state driving privilege laws, and for
33 violation of state laws prohibiting driving while under the influence
34 of alcohol, drugs or any other intoxicating substances, shall be ap-
35 portioned ten percent (10%) to the state treasurer of which eighty-six
36 percent (86%) shall be deposited to the state general fund and fourteen
37 percent (14%) shall be deposited to the peace officers standards and
38 training fund authorized in section 19-5116, Idaho Code, forty-five
39 percent (45%) to the state treasurer for deposit in the highway dis-
40 tribution account, twenty-two and one-half percent (22 1/2%) to the
41 district court fund and twenty-two and one-half percent (22 1/2%) to the
42 state treasurer for deposit in the public school income fund; provided,
43 however, that fines and forfeitures remitted for violation of state mo-
44 tor vehicle laws, for violation of state driving privilege laws, and for
45 violation of state laws prohibiting driving while under the influence
46 of alcohol, drugs or any other intoxicating substances, where an arrest
47 is made or a citation is issued by a city law enforcement official, or by
48 a law enforcement official of a governmental agency under contract to

1 provide law enforcement services for a city, shall be apportioned ten
2 percent (10%) to the state treasurer of which eighty-six percent (86%)
3 shall be deposited to the state general fund and fourteen percent (14%)
4 shall be deposited to the peace officers standards and training fund
5 authorized in section 19-5116, Idaho Code, and ninety percent (90%) to
6 the city whose officer made the arrest or issued the citation.

7 (d) Fines and forfeitures remitted for violation of any state law not
8 involving fish and game laws, or motor vehicle laws, or state driving
9 privilege laws, or state laws prohibiting driving while under the in-
10 fluence of alcohol, drugs or any other intoxicating substances, shall
11 be apportioned ten percent (10%) to the state treasurer of which eighty-
12 six percent (86%) shall be deposited to the state general fund and four-
13 teen percent (14%) shall be deposited to the peace officers standards
14 and training fund authorized in section 19-5116, Idaho Code, and ninety
15 percent (90%) to the district court fund of the county in which the vio-
16 lation occurred.

17 (e) Fines and forfeitures remitted for violation of county ordinances
18 shall be apportioned ten percent (10%) to the state treasurer of which
19 eighty-six percent (86%) shall be deposited to the state general fund
20 and fourteen percent (14%) shall be deposited to the peace officers
21 standards and training fund authorized in section 19-5116, Idaho Code,
22 and ninety percent (90%) to the district court fund of the county whose
23 ordinance was violated.

24 (f) Fines and forfeitures remitted for violation of city ordinances
25 shall be apportioned ten percent (10%) to the state treasurer of which
26 eighty-six percent (86%) shall be deposited to the state general fund
27 and fourteen percent (14%) shall be deposited to the peace officers
28 standards and training fund authorized in section 19-5116, Idaho Code,
29 and ninety percent (90%) to the city whose ordinance was violated.

30 (g) Fines and forfeitures remitted for violations not specified in this
31 chapter shall be apportioned ten percent (10%) to the state treasurer
32 of which eighty-six percent (86%) shall be deposited to the state gen-
33 eral fund and fourteen percent (14%) shall be deposited to the peace of-
34 ficers standards and training fund authorized in section 19-5116, Idaho
35 Code, and ninety percent (90%) to the district court fund of the county
36 in which the violation occurred except in cases where a duly designated
37 officer of any city police department or city law enforcement official
38 shall have made the arrest for any such violation, in which case ninety
39 percent (90%) shall be apportioned to the city whose officer made the
40 arrest.

41 (h) Fines and forfeitures remitted for violations involving registra-
42 tions of motorcycles or motor-driven cycles used off highways, snowmo-
43 biles, or use of winter recreation parking areas shall be apportioned
44 ten percent (10%) to the state treasurer of which eighty-six percent
45 (86%) shall be deposited to the state general fund and fourteen percent
46 (14%) shall be deposited to the peace officers standards and training
47 fund authorized in section 19-5116, Idaho Code, and ninety percent
48 (90%) to the general fund of the county or city whose law enforcement
49 official issued the citation.

1 (i) Fines and forfeitures remitted for violations of overweight laws
2 as provided in section 49-1013(3), Idaho Code, shall be deposited one
3 hundred percent (100%) into the highway distribution account.

4 (j) Fines remitted for violations of section 18-7008, Idaho Code, shall
5 be apportioned ten percent (10%) to the district court fund, sixty-five
6 percent (65%) to the county where the trespass occurred for appropria-
7 tion to the sheriff's office, and twenty-five percent (25%) to the Idaho
8 rangeland resources commission for expanded education programs regard-
9 ing private property rights and land user responsibility.

10 (2) Any fine or forfeiture remitted for any misdemeanor violation for
11 which an increase in the maximum fine became effective on or after July 1,
12 2005, shall be apportioned as follows:

13 (a) Any funds remitted, up to the maximum amount that could have been
14 imposed before July 1, 2005, as a fine for the misdemeanor violation,
15 shall be apportioned according to the applicable provisions of subsec-
16 tion (1) of this section; and

17 (b) Any other funds remitted, in excess of the maximum amount that could
18 have been imposed before July 1, 2005, as a fine for the misdemeanor vi-
19 olation, shall be remitted to the state treasurer and shall be deposited
20 in the drug court, mental health court and family court services fund as
21 set forth in section 1-1625, Idaho Code.

22 (3) As used in this section, the term "city law enforcement official"
23 shall include an official of any governmental agency which is providing law
24 enforcement services to a city in accordance with the terms of a contract or
25 agreement, when such official makes the arrest or issues a citation within
26 the geographical limits of the city and when the contract or agreement pro-
27 vides for payment to the city of fines and forfeitures resulting from such
28 service.

29 SECTION 9. That Section 36-1402, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION
32 OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Except as pro-
33 vided for in subsection (b) of this section, any person who pleads guilty to
34 or is found guilty of an infraction of this code, or rules or proclamations
35 promulgated pursuant thereto, shall be subject to a fine of seventy-two dol-
36 lars (\$72.00).

37 (b) A violation of section 36-1401(a)1.(K) through (L) or (a)2.(S)
38 through (X), Idaho Code, shall constitute an infraction subject to a fine of
39 two hundred fifty dollars (\$250).

40 (c) Misdemeanor Penalty. Any person entering a plea of guilty for,
41 found guilty of or convicted of a misdemeanor under the provisions of this
42 title or rules or proclamations promulgated pursuant thereto shall, ex-
43 cept in cases where a higher penalty is prescribed, be fined in a sum of not
44 less than twenty-five dollars (\$25.00) nor more than one thousand dollars
45 (\$1,000) and/or by commitment to jail for not more than six (6) months. The
46 minimum fine, per animal, fish or bird, for the illegal taking, illegal pos-
47 session or the illegal waste of the following animals, fish or birds shall be
48 as indicated below:

	Animal, Fish or Bird	Minimum Fine
1		
2	Bighorn sheep, mountain goat and moose	\$500
3	Elk	\$300
4	Any other big game animal	\$200
5	Wild turkey, swan and sturgeon	\$200
6	Chinook salmon, wild steelhead and bull trout	\$100
7	Any other game bird, game fish or furbearer	\$ 25

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

15 (e) License Revocation. Any person entering a plea of guilty or being
16 found guilty or convicted of violating any of the provisions of this title,
17 or who otherwise fails to comply with the requirements of a citation in con-
18 nection with any such offense, may, in addition to any other penalty assessed
19 by the court, have his hunting, fishing, or trapping privileges revoked for
20 such period of time as may be determined by the court not to exceed three (3)
21 years, except that violations classified as felonies under section 36-1401,
22 Idaho Code, or as flagrant violations as defined in subsection (f) of this
23 section, shall authorize the court to impose license revocations for peri-
24 ods of time up to and including life, with said period beginning on the date
25 of conviction, finding of guilt or the entry of the plea of guilty. Pro-
26 vided further, that the magistrate hearing the case shall forthwith revoke
27 the hunting, fishing, or trapping privileges for a period of not less than
28 one (1) year for any of the following offenses:

- 29 1. Taking or possessing upland game birds, migratory waterfowl,
30 salmon, steelhead, sturgeon, or any big game animal during closed sea-
31 son.
- 32 2. Exceeding the daily bag or possession limit of upland game birds, mi-
33 gratory waterfowl or big game animals.
- 34 3. Taking any fish by unlawful methods as set forth in section 36-902 (a)
35 or (c), Idaho Code.
- 36 4. Unlawfully purchasing, possessing or using any license, tag or per-
37 mit as set forth in section 36-405 (c), Idaho Code.
- 38 5. ~~Trespassing in violation of warning signs or failing to depart the~~
39 ~~real property of another after notification as set forth in~~ Violating
40 section 36-1603, Idaho Code.
- 41 6. The unlawful release of any species of live fish into any public body
42 of water in the state. For purposes of this paragraph, an "unlawful re-
43 lease of any species of live fish" shall mean a release of any species of
44 live fish, or live eggs thereof, in the state without the permission of
45 the director of the department of fish and game; provided, that no per-
46 mission is required when fish are being freed from a hook and released at
47 the same time and place where caught or when crayfish are being released
48 from a trap at the same time and place where caught.

1 Provided further, that the magistrate hearing the case of a first-time
2 hunting violation offender under the age of twenty-one (21) years may re-
3 quire that the offender attend a remedial hunter education course at the of-
4 fender's expense. Upon successful completion of the course, the remainder
5 of the revocation period shall be subject to a withheld judgment ~~so~~ as long
6 as the offender is not convicted of any additional hunting violations during
7 the period. The cost of the course shall be seventy-five dollars (\$75.00) to
8 be paid to the department. The commission shall establish by rule the cur-
9 riculum of the hunter education remedial course.

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

22 It shall be a misdemeanor for any person to hunt, fish, or trap or pur-
23 chase a license to do so during the period of time for which such privilege is
24 revoked.

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

27 (f) **Flagrant Violations.** In addition to any other penalties assessed
28 by the court, the magistrate hearing the case shall forthwith revoke the
29 hunting, fishing or trapping privileges, for a period of not less than one
30 (1) year and may revoke the privileges for a period up to and including the
31 person's lifetime, for any person who enters a plea of guilty, who is found
32 guilty, or who is convicted of any of the following flagrant violations:

33 1. Taking a big game animal after sunset by spotlighting, with use of
34 artificial light, or with a night vision enhancement device.

35 2. Unlawfully taking two (2) or more big game animals within a twelve
36 (12) month period.

37 3. Taking a big game animal with a rimfire or centerfire cartridge
38 firearm during an archery or muzzleloader only hunt.

39 4. Hunting, fishing, trapping or purchasing a license when license
40 privileges have been revoked pursuant to this section or section
41 36-1501, Idaho Code.

42 5. Taking any big game animal during a closed season.

43 6. Any felony violation provided in section 36-1401, Idaho Code.

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

46 1. Suspend a violator's license for failure to comply with the terms of
47 a citation from a party state. A copy of a report of failure to comply
48 from the licensing authority of the issuing state shall be conclusive
49 evidence.

1 2. Revoke a violator's license for a conviction in a party state. A
2 report of conviction from the licensing authority of the issuing state
3 shall be conclusive evidence.

4 (h) Disposition of Fines and Forfeitures. Distribution of fines and
5 forfeitures remitted shall be in accordance with section 19-4705, Idaho
6 Code.

7 SECTION 10. That Section 36-1602, Idaho Code, be, and the same is hereby
8 repealed.

9 SECTION 11. That Section 36-1603, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 36-1603. ~~TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING~~
12 ~~SIGNS -- POSTING OF PUBLIC LANDS -- HUNTING, FISHING AND TRAPPING.~~ (a) No
13 person shall enter the real property of another and shoot any weapon or en-
14 ter such property for the purposes of hunting, retrieving wildlife, fishing
15 or trapping, without the permission of the owner or person in charge of the
16 property, which property is either cultivated or:

- 17 ~~(1) Is posted with "No Trespassing" signs;~~
18 ~~(2) Is posted with a minimum of one hundred (100) square inches of fluo-~~
19 ~~rescent orange, bright orange, blaze orange, safety orange or any simi-~~
20 ~~lar high visibility shade of orange colored paint except that when metal~~
21 ~~fence posts are used, a minimum of eighteen (18) inches of the top of the~~
22 ~~post must be painted a high visibility shade of orange;~~
23 ~~(3) Is posted with other notices of like meaning, spaced at intervals~~
24 ~~of not less than one (1) sign, paint area or notice per six hundred sixty~~
25 ~~(660) feet along such real property; provided that where the geographi-~~
26 ~~cal configuration of the real property is such that entry can reasonably~~
27 ~~be made only at certain points of access, such property is posted suffi-~~
28 ~~ciently for all purposes of this section if said signs, paint or notices~~
29 ~~are posted at such points of access; or~~
30 ~~(4) Is posted with a conspicuous sign where a public road enters the~~
31 ~~real property, through which or along which road the public has a~~
32 ~~right-of-way, stating words substantially similar to "PRIVATE PROP-~~
33 ~~ERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE~~
34 ~~OF ROAD NEXT (fill in the distance) MILES," and which is posted with a~~
35 ~~conspicuous sign where the public road exits the real property stating~~
36 ~~words substantially similar to "LEAVING PRIVATE PROPERTY." The post-~~
37 ~~ings shall be placed on the private real property. In lieu of posting~~
38 ~~the compass direction(s), a map depicting the area of private property~~
39 ~~may be displayed on the sign;~~

40 For the purposes of this section, "cultivated" shall mean soil that is being
41 or has been prepared by loosening or breaking up for the raising of crops, or
42 used for the raising of crops, or artificially irrigated pasturage. No per-
43 son shall fail to depart immediately from the real property of another after
44 being notified in writing or orally by the owner of the real property or the
45 owner's authorized agent in violation of section 18-7008, Idaho Code.

46 (b) No person shall post, sign, or indicate that any public lands within
47 this state, not held under an exclusive control lease, are privately owned
48 lands.

1 (c) Remedies. Any violation of this section shall subject the violator
 2 to the penalties set forth in sections 36-1401 and 36-1402 (e), Idaho Code.

3 (d) Permission forms.

4 (1) The department shall produce permission forms for a landowner to
 5 indicate that a land user has express written permission to use private
 6 land. The permission forms produced must contain spaces for all of the
 7 information required by section 18-7008 (1) (f), Idaho Code. The permis-
 8 sion forms must state clearly that the permission may be revoked at any
 9 time by the landowner or his agent.

10 (2) The department shall make the permission forms available on the de-
 11 partment's website, in all fish and game offices and in the sheriff's
 12 office in each county in the state of Idaho, at no charge to any person
 13 owning land in Idaho.

14 (3) The department shall provide information to anyone holding li-
 15 censes, tags or permits to take fish or wildlife in Idaho regarding
 16 owners' rights and sportsmen's duties, at each point of sale and through
 17 all reasonable means, including on the department's website and through
 18 the public media.

19 (4) The restrictions in this section and section 18-7008, Idaho Code,
 20 relating to trespass shall be stated in all hunting and fishing procla-
 21 mateions issued by the department.

22 (5) A landowner is not limited to using a permission form provided by
 23 the department under this subsection.

24 SECTION 12. That Section 36-1604, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Pur-
 27 pose. The purpose of this section is to encourage owners of land to make
 28 land, airstrips and water areas available to the public without charge for
 29 recreational purposes by limiting their liability toward persons entering
 30 thereon for such purposes.

31 (b) Definitions. As used in this section:

32 1. "Airstrips" means either improved or unimproved landing areas used
 33 by pilots to land, park, take off, unload, load and taxi aircraft.
 34 Airstrips shall not include landing areas which are or may become el-
 35 igitible to receive federal funding pursuant to the federal airport and
 36 airway improvement act of 1982 and subsequent amendments thereto.

37 2. "Land" means private or public land, roads, airstrips, trails,
 38 water, watercourses, irrigation dams, water control structures,
 39 headgates, private or public ways and buildings, structures, and ma-
 40 chinery or equipment when attached to or used on the realty.

41 3. "Owner" means the possessor of a fee interest, a tenant, lessee, oc-
 42 cupant or person in control of the premises.

43 4. "Recreational purposes" includes, but is not limited to, any of
 44 the following activities or any combination thereof: hunting, fish-
 45 ing, swimming, boating, rafting, tubing, camping, picnicking, hiking,
 46 pleasure driving, the flying of aircraft, bicycling, running, playing
 47 on playground equipment, skateboarding, athletic competition, nature
 48 study, ~~water skiing~~ waterskiing, animal riding, motorcycling, snowmo-
 49 biling, recreational vehicles, winter sports, and viewing or enjoying

1 historical, archeological, scenic, geological or scientific sites,
2 when done without charge of the owner.

3 (c) Owner Exempt from Warning. An owner of land owes no duty of care
4 to keep the premises safe for entry by others for recreational purposes, or
5 to give any warning of a dangerous condition, use, structure, or activity on
6 such premises to persons entering for such purposes. Neither the installa-
7 tion of a sign or other form of warning of a dangerous condition, use, struc-
8 ture, or activity, nor any modification made for the purpose of improving the
9 safety of others, nor the failure to maintain or keep in place any sign, other
10 form of warning, or modification made to improve safety, shall create lia-
11 bility on the part of an owner of land where there is no other basis for such
12 liability.

13 (d) Owner Assumes No Liability. An owner of land or equipment who ei-
14 ther directly or indirectly invites or permits without charge any person to
15 use such property for recreational purposes does not thereby:

- 16 1. Extend any assurance that the premises are safe for any purpose.
- 17 2. Confer upon such person the legal status of an invitee or licensee to
18 whom a duty of care is owed.
- 19 3. Assume responsibility for or incur liability for any injury to per-
20 son or property caused by an act of omission of such persons.

21 (e) Provisions Apply to Leased Public Land. Unless otherwise agreed in
22 writing, the provisions of this section shall be deemed applicable to the du-
23 ties and liability of an owner of land leased to the state or any subdivision
24 thereof for recreational purposes.

25 (f) Provisions Apply to Land Subject to a Conservation Easement. Un-
26 less otherwise agreed in writing, the provisions of this section shall be
27 deemed applicable to the duties and liability of an owner of land subject to a
28 conservation easement to any governmental entity or nonprofit organization.

29 (g) Owner Not Required to Keep Land Safe. Nothing in this section shall
30 be construed to:

- 31 1. Create a duty of care or ground of liability for injury to persons or
32 property.
- 33 2. Relieve any person using the land of another for recreational pur-
34 poses from any obligation which he may have in the absence of this
35 section to exercise care in his use of such land and in his activities
36 thereon, or from legal consequences or failure to employ such care.
- 37 3. Apply to any person or persons who for compensation permit the land
38 to be used for recreational purposes.

39 (h) User Liable for Damages. Any person using the land of another for
40 recreational purposes, with or without permission, shall be liable for any
41 damage to property, livestock or crops which he may cause while on said prop-
42 erty, in addition to all remedies provided in section 6-202, Idaho Code, in
43 the event the person has committed a civil trespass.

44 SECTION 13. That Section 36-1108, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 36-1108. CONTROL OF DAMAGE BY PRONGHORN ANTELOPE, ELK, DEER OR MOOSE
47 -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a pri-
48 ority management objective of the department, and it is the obligation
49 of landowners to take all reasonable steps to prevent property loss from

1 wildlife or to mitigate damages by wildlife. When any pronghorn antelope,
2 elk, deer or moose is doing damage to or is destroying any property or is
3 about to do so, the owner or lessee thereof may make complaint and verbally or
4 electronically report the facts to the director or his designee who shall,
5 within seventy-two (72) hours, investigate the conditions complained of. If
6 it appears that the complaint is well-founded and the property of the com-
7 plainant is being or is likely to be damaged or destroyed by such pronghorn
8 antelope, elk, deer or moose, the director may:

9 1. Send a representative onto the premises to control, trap, and/or re-
10 move such animals as will stop the damage to said property. Any ani-
11 mals so taken shall remain the property of the state and shall be turned
12 over to the director. The director may provide written authorization
13 for possession of animals so taken.

14 2. Grant properly safeguarded permission to the complainant to con-
15 trol, trap and/or remove such animals. Any animals so taken shall
16 remain the property of the state and shall be turned over to the direc-
17 tor. The director may provide written authorization for possession of
18 animals so taken.

19 3. Make an agreement with the owner or lessee to allow continued use
20 of lands by the animals where damage by them has occurred to stored,
21 growing or matured crops on private property whether owned or leased.
22 The agreement made under the provisions of this subsection may provide
23 for financial compensation to the owner or lessee. If made, financial
24 compensation under the provisions of this subsection shall be governed
25 by the provisions of section 36-115, Idaho Code, and shall not be in
26 addition to any payments for the same crop losses from any other source.
27 Compensation for damages under the provisions of this subsection shall
28 be available for damages done to private lands, whether owned or leased,
29 if the owner or lessee allowed hunters reasonable access to the property
30 or through the property to public lands for hunting purposes during the
31 preceding hunting season or as a measure of response to depredation.
32 This provision shall not negate the provisions of section 36-16023,
33 Idaho Code, relating to the necessity of obtaining permission to en-
34 ter private land. If necessary, the arbitration panel provided for in
35 subsection (b) of this section shall determine the reasonableness of
36 access allowed.

37 (b) 1. In order to establish eligibility for submission of claims for
38 damages, persons suffering crop damages on privately owned or leased
39 land caused by pronghorn antelope, elk, deer or moose must:

40 (A) Notify the department within seventy-two (72) hours of dis-
41 covery of damage.

42 (B) Follow up verbal notification with a written, which may be
43 electronic, notice within twenty (20) days of the discovery of
44 damages.

45 (C) The department shall not be held liable or accountable for any
46 damages occurring more than twenty (20) days prior to the initial
47 notification of damage. However, the department may extend the
48 period up to thirty (30) days under exceptional circumstances.

49 The owner or lessee must have allowed hunters reasonable access to the
50 property or through the property to public lands for hunting purposes

1 during the preceding hunting season or as a measure of response to
2 depredation, provided such access does not impact on their operations,
3 or the claim for damages may be disallowed. Compensation for crop dam-
4 ages claims shall not be in addition to any payments for the same crop
5 losses from any other source and shall not include fence or other types
6 of property damage. While fences and irrigation equipment are not sub-
7 ject to claim for payment, the department is allowed to provide support
8 and assistance, including provision of materials to design, construct,
9 and maintain fences for control of depredation. The notice of damages
10 caused must be in written form, shall be in the form of a claim for dam-
11 ages substantially the same as required by section 6-907, Idaho Code,
12 shall be attested to by the claimant under oath, and the claim shall
13 be at least seven hundred fifty dollars (\$750). The claim shall not be
14 amended after it is filed, provided however, that a claimant may file
15 an additional claim in the event additional damage occurs subsequent
16 to filing the initial claim. The department shall prepare and make
17 available suitable forms for notice and claim for damages. Claims may
18 be submitted only for the fiscal year (July 1 through June 30) in which
19 they occurred, with allowance for submission within the first sixty
20 (60) days of the following fiscal year if the claim occurred within the
21 last sixty (60) days of the previous fiscal year. Any person submitting
22 a fraudulent claim shall be prosecuted for a felony as provided in sec-
23 tion 18-2706, Idaho Code. For purposes of this subsection, crop damages
24 shall mean damage to plants grown or stored for profit and exclude orna-
25 mental plants.

26 2. Upon receipt by the department, the department shall review the
27 claim, and if approved, pay it as provided in section 36-115, Idaho
28 Code, or order it paid as provided in section 36-115, Idaho Code.
29 Failure on the part of the owner or lessee to allow on-site access for
30 inspection and investigation of alleged losses shall void the claim for
31 damages.

32 3. In the event the owner or lessee and the department fail to agree on
33 the amount of damages within fifteen (15) business days of the written
34 claim, either party may elect to retain the services of an independent
35 certified insurance adjuster licensed in the state of Idaho to view the
36 affected property and determine the amount of damages. In the event the
37 owner or lessee and the department fail to agree on the amount of dam-
38 ages and neither party elects to retain the services of an independent
39 certified insurance adjuster, provisions of subsection (b)4. of this
40 section shall apply. The independent certified adjuster shall complete
41 his review and determination within twenty (20) days from the date he
42 is retained, and will report his determination in writing by certified
43 mail to the department and to the owner or lessee. Neither the owner or
44 lessee, nor the department, shall disturb the affected property prior
45 to review and determination by the independent insurance adjuster.
46 Costs associated with the services of the independent insurance ad-
47 juster shall be divided equally between the owner or lessee and the
48 department, subject to reapportionment of the costs by an arbitration
49 panel pursuant to the provisions of subsection (b)4. of this section.
50 If the department, or the owner or lessee rejects the determination of

1 the adjuster, they shall notify the other party in writing of the rejection
2 within five (5) business days of receipt of the adjuster's determination.
3 In the event that either party rejects the adjuster's determination,
4 the provisions of subsection (b)4. of this section shall apply.
5 4. Within five (5) business days of a rejection of an adjuster's determination
6 of damages or failure of the owner or lessee and the department
7 to agree on damages when a certified insurance adjuster is not used, the
8 director must convene an arbitration panel. To convene an arbitration
9 panel, the director must, within five (5) business days, appoint the
10 department's representative and notify the landholder of the appointment.
11 The landholder(s) shall, within the next five (5) business days
12 following such notice from the department, appoint his representative
13 and notify the department of the appointment. Within the next five (5)
14 business days, the department representative and the landholder must
15 mutually appoint the third arbitrator. The arbitration panel shall
16 consist of three (3) members, as follows:

17 (A) The director of the department of fish and game or his designee;
18

19 (B) The owner or his designee, or the lessee or his designee;

20 (C) One (1) member selected by the two (2) members above.

21 The panel shall convene within thirty (30) days of the selection of the
22 third arbitrator, and render its decision within fourteen (14) days
23 after the hearing. When convened, the arbitration panel shall have
24 the same authority to make on-site inspections as the department. The
25 owner or lessee shall be responsible for payment of the expenses of his
26 appointee; the director shall pay the expenses of his appointee from
27 the expendable big game depredation fund; and the expenses of the third
28 member shall be a joint responsibility of the owner or lessee, and the
29 department. Provided however, the panel is authorized to review the
30 costs associated with retaining the independent insurance adjuster and
31 to determine whether those costs should instead be borne solely by the
32 owner or lessee, solely by the department, or be apportioned between
33 the owner or lessee and the department. In cases where an independent
34 insurance adjuster was used, the party electing to use the adjuster
35 shall assume the insurance adjuster's determination of damage as their
36 estimate of damage. The panel shall consider the claim submitted by the
37 owner or lessee, and the estimate of damages submitted by the department,
38 and shall select one (1) amount or the other as being the closest
39 to the actual damages sustained by the claimant. The arbitration panel
40 shall report its decision in writing to both the owner or lessee and to
41 the department within ten (10) days of the decision, and the decision
42 of the panel shall be binding on the owner or lessee and the department.
43 The fish and game advisory committee shall develop guidelines to govern
44 arbitration procedures in accordance with chapter 52, title 67, Idaho
45 Code.

46 (c) Any claim received by the department under the provisions of subsection
47 (b) of this section must be processed by the department within sixty
48 (60) calendar days of receipt. If the claim is approved for payment, payment
49 must be made within forty-five (45) calendar days of such approval. Any
50 damage claim determination by an independent insurance adjuster pursuant to

1 subsection (b)3. of this section, accepted by the parties, must be paid by
2 the department within forty-five (45) calendar days of the determination.
3 If the claim is arbitrated, the arbitration must be completed within one hun-
4 dred eighty (180) calendar days of filing the claim for such damages.

5 SECTION 14. SEVERABILITY. The provisions of this act are hereby de-
6 clared to be severable and if any provision of this act or the application
7 of such provision to any person or circumstance is declared invalid for any
8 reason, such declaration shall not affect the validity of the remaining por-
9 tions of this act.

10 SECTION 15. Section 4 of this act shall apply to causes of action accru-
11 ing on or after July 1, 2018.