

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 658, As Amended in the Senate

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 PROVIDE
3 DEFINITIONS, TO PROVIDE FOR ACTS CONSTITUTING CIVIL TRESPASS AND CIVIL
4 TRESPASS WITH DAMAGE, TO PROVIDE FOR DAMAGES AND TO PROVIDE FOR EXCLU-
5 SIONS; REPEALING SECTION 6-202A, IDAHO CODE, RELATING TO DEFINITIONS
6 OF TERMS; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER
7 31, TITLE 6, IDAHO CODE, TO PROVIDE FOR THE LIABILITY AND DUTY OF A LAND
8 POSSESSOR TO A TRESPASSER AND TO PROVIDE FOR THE APPLICABILITY OF THE
9 ATTRACTIVE NUISANCE COMMON LAW DOCTRINE; REPEALING SECTION 18-7008,
10 IDAHO CODE, RELATING TO TRESPASS; AMENDING CHAPTER 70, TITLE 18, IDAHO
11 CODE, BY THE ADDITION OF A NEW SECTION 18-7008, IDAHO CODE, TO PROVIDE
12 FOR CRIMINAL TRESPASS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR ACTS
13 CONSTITUTING CRIMINAL TRESPASS AND CRIMINAL TRESPASS WITH DAMAGE, TO
14 PROVIDE FOR PENALTIES AND TO PROVIDE FOR EXCLUSIONS; REPEALING SECTION
15 18-7011, IDAHO CODE, RELATING TO CRIMINAL TRESPASS; AMENDING SECTION
16 19-4705, IDAHO CODE, TO PROVIDE FOR THE DISPOSITION OF FINES; AMENDING
17 SECTION 36-1402, IDAHO CODE, TO PROVIDE FOR A VIOLATION OF TRESPASSING
18 FOR THE PURPOSE OF HUNTING, FISHING OR TRAPPING AND TO MAKE TECHNICAL
19 CORRECTIONS; REPEALING SECTION 36-1602, IDAHO CODE, RELATING TO HUNT-
20 ING ON CERTAIN LANDS WITHOUT PERMISSION; AMENDING SECTION 36-1603,
21 IDAHO CODE, TO PROHIBIT TRESPASSING WHILE HUNTING, FISHING AND TRAP-
22 PING, TO PROVIDE REMEDIES, TO AUTHORIZE PERMISSION FORMS AND TO PROVIDE
23 FOR THE DISSEMINATION OF INFORMATION; AMENDING SECTION 36-1604, IDAHO
24 CODE, TO PROVIDE FOR THE APPLICABILITY OF CERTAIN REMEDIES WITH RESPECT
25 TO THE LIABILITY OF THOSE USING THE LAND OF ANOTHER PERSON FOR RECRE-
26 ATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1108,
27 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL
28 CORRECTION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE
29 FOR THE ACCRUAL OF ACTIONS.
30

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

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

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

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

1 (3) The Legislature finds that trespassing on private property has be-
 2 come a serious problem for landowners throughout the state. While many in-
 3 dividuals respect private property rights, landowners report a significant
 4 number of persons who blatantly disregard the rights of property owners and
 5 frequently cause damage to private property, including cut fences, ruined
 6 crops, vandalism and theft.

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

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

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

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

20 6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this
 21 section:

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

24 (b) "Cultivated land" means:

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

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

28 (iii) Pasturage that is artificially irrigated.

29 (c) "Damage" means any injury or damage to real or personal property
 30 and includes, but is not limited to, any of the following actions, when
 31 conducted without lawful authority, the consent of the landowner or his
 32 agent, or a valid license:

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

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

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

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

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

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

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

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

4 (ix) Injuring or killing livestock.

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

8 (e) "Navigable streams" shall have the meaning set forth in section
9 36-1601, Idaho Code.

10 (f) "Permission" means written authorization from the owner or his
11 agent to enter upon private land, which shall include the signature of
12 the owner or his agent, the name of the person being given permission,
13 the appropriate dates that the permission is valid and a general de-
14 scription of the property; or another form of permission or invitation
15 recognized by law.

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

18 (2) (a) Acts constituting civil trespass. Any person who, without per-
19 mission of the owner, or the owner's agent, willfully and intention-
20 ally enters or remains upon the real property of another person which
21 property is posted with "No Trespassing" signs or other notices of like
22 meaning, spaced at intervals of not less than one (1) notice per six hun-
23 dred sixty (660) feet along such real property; or who willfully and in-
24 tentionally cuts down or carries off any wood or underwood, tree or tim-
25 ber, or girdling, or otherwise willfully and intentionally injures any
26 tree or timber on the land of another person, or on the street or high-
27 way in front of any person's house, village, or city lot, or cultivated
28 grounds; or on the commons or public grounds of or in any city or town,
29 or on the street or highway in front thereof, without lawful authority,
30 is liable to the owner of such land, or to such city or town, for tre-
31 ble the amount of damages which may be assessed therefor or fifty dol-
32 lars (\$50.00), plus a reasonable attorney's fee which shall be taxed as
33 costs, in any civil action brought to enforce the terms of this act if
34 the plaintiff prevails without permission commits a civil trespass.

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

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

44 (ii) The property is cultivated;

45 (iii) The property is fenced or otherwise enclosed in a manner
46 that a reasonable person would recognize as delineating a private
47 property boundary. Provided, however, if the property adjoins
48 or is contained within public lands, the fence line adjacent to
49 public land is posted with conspicuous "no trespassing" signs or
50 bright orange or fluorescent paint at the corners of the fence

1 adjoining public land and at all navigable streams, roads, gates
 2 and rights-of-way entering the private land from the public land,
 3 and is posted in a manner that a reasonable person would be put on
 4 notice that it is private land; or

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

11 (3) Remedies.

12 (a) Civil trespass. Any person found liable for a civil trespass pur-
 13 suant to subsection (2) (a) of this section shall be liable for the fol-
 14 lowing damages:

15 (i) The greater of:

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (7) A person has not committed the act of civil trespass under this sec-
 7 tion for entering or remaining upon real property if the person entered or
 8 remained on the property pursuant to any of the following rights or authori-
 9 ties:

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

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

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

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

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

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

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

25 (iii) Any licensed professional otherwise authorized to enter or
 26 remain on the real property during the course and scope of fulfill-
 27 ing his lawful duties; or

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

30 (8) Examples of the exclusions in subsection (7) of this section in-
 31 clude, but are not limited to, a customer entering and remaining in a store
 32 during business hours who has not been asked to depart by the property owner
 33 or his agent; a person knocking on a front door of a property that is not
 34 posted; a meter reader in the scope and course of his employment; a postal
 35 employee delivering mail or packages; power company personnel fixing downed
 36 power lines; a bail bondsman arresting a person who is in violation of a bail
 37 contract; a tenant in compliance with a valid lease; and the owner or op-
 38 erator of any right-of-way or easement for any ditch, canal or other con-
 39 duit, acting pursuant to the provisions of chapter 11 or chapter 12, title
 40 42, Idaho Code.

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

44 SECTION 3. That Section [6-202A](#), Idaho Code, be, and the same is hereby
 45 repealed.

46 SECTION 4. That Title 6, Idaho Code, be, and the same is hereby amended
 47 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 48 ter 31, Title 6, Idaho Code, and to read as follows:

1 CHAPTER 31
2 LIABILITY OF LAND POSSESSOR TO TRESPASSER

3 6-3101. DUTY OF LAND POSSESSOR TO TRESPASSER. A possessor of any in-
4 terest in real property, including an owner, lessee or other lawful occu-
5 pant, owes no duty of care to a trespasser, except to refrain from inten-
6 tional or willful and wanton acts that cause injury to the trespasser.

7 6-3102. ATTRACTIVE NUISANCE. Nothing in this chapter shall affect the
8 common law doctrine of attractive nuisance.

9 6-3103. APPLICABILITY. This chapter does not create or increase the
10 liability of any possessor of real property and does not affect any other
11 statutory or common law immunities from or defenses to civil liability to
12 which a possessor of real property may be entitled.

13 SECTION 5. That Section [18-7008](#), Idaho Code, be, and the same is hereby
14 repealed.

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

18 18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUT-
19 ING. (1) Definitions. As used in this 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, but is not limited to, 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 person, or opening any gate, bar or fence of another person
40 and leaving it open, or using the corral or corrals of another per-
41 son;

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

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

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

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

6 (ix) Injuring livestock.

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

10 (e) "Navigable streams" shall have the meaning set forth in section
11 36-1601, Idaho Code.

12 (f) "Permission" means written authorization from the owner or his
13 agent to enter upon private land, which shall include the signature of
14 the owner or his agent, the name of the person being given permission,
15 the appropriate dates that the permission is valid and a general de-
16 scription of the property; or another form of permission or invitation
17 recognized by law.

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

20 (2) Acts constituting criminal trespass.

21 (a) A person commits criminal trespass and is guilty of a misdemeanor,
22 except as provided in subsection (3) (a) (i) of this section, when he
23 enters or remains on the real property of another without permission,
24 knowing or with reason to know that his presence is not permitted. A
25 person has reason to know his presence is not permitted when, except un-
26 der a landlord-tenant relationship, he fails to depart immediately from
27 the real property of another after being notified by the owner or his
28 agent to do so, or he returns without permission or invitation within
29 one (1) year, unless a longer period of time is designated by the owner
30 or his agent. In addition, a person has reason to know that his pres-
31 ence is not permitted on real property that meets any of the following
32 descriptions:

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

35 (ii) The property is cultivated;

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

46 (iv) The property is unfenced and uncultivated but is posted with
47 conspicuous "no trespassing" signs or bright orange or fluores-
48 cent paint at all property corners and boundaries where the prop-
49 erty intersects navigable streams, roads, gates and rights-of-way

1 entering the land, and is posted in a manner that a reasonable per-
 2 son would be put on notice that it is private land.

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

8 (3) Penalties.

9 (a) Penalties for criminal trespass.

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

12 1. If no damage of any kind was committed during the trespass
 13 and the person accused does not remain if ordered to depart
 14 by the owner of the real property or his agent, then the per-
 15 son shall be guilty of an infraction and fined in the amount
 16 of three hundred dollars (\$300); or

17 2. Except as provided in subparagraph (i)1. of this para-
 18 graph, the person may be sentenced to jail for a period of no
 19 more than six (6) months and shall be fined in an amount no
 20 less than five hundred dollars (\$500) and no more than one
 21 thousand dollars (\$1,000).

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

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

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

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

34 (iii) Any person who pleads guilty to or is found guilty of a viola-
 35 tion of subsection (2) (a) of this section, who previously has been
 36 found guilty of or has pled guilty to two (2) or more violations of
 37 the provisions of subsection (2) of this section within ten (10)
 38 years, notwithstanding the form of the judgments or withheld judg-
 39 ments:

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

42 2. Shall be fined an amount no less than five thousand
 43 dollars (\$5,000) and no more than ten thousand dollars
 44 (\$10,000); and

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

50 (b) Penalties for criminal trespass with damage.

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

- 3 1. May be sentenced to jail for a period of no more than six
4 (6) months; and
5 2. Shall be fined in an amount no less than one thousand five
6 hundred dollars (\$1,500) and no more than five thousand dol-
7 lars (\$5,000).

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

- 11 1. May be sentenced to jail for a period of no more than six
12 (6) months;
13 2. Shall be fined in an amount no less than five thou-
14 sand dollars (\$5,000) and no more than ten thousand dollars
15 (\$10,000); and
16 3. If the trespass can be reasonably construed to have been
17 committed in a manner described in section 36-1603(a), Idaho
18 Code, shall have any license issued pursuant to chapter 3,
19 title 36, Idaho Code, suspended for a period of one (1) year.

20 (iii) Any person who pleads guilty to or is found guilty of a viola-
21 tion of subsection (2) (b) of this section, who previously has been
22 found guilty of or has pled guilty to two (2) or more violations of
23 the provisions of subsection (2) of this section within ten (10)
24 years, notwithstanding the form of the judgments or withheld judg-
25 ments, is guilty of a felony and:

- 26 1. Shall be sentenced to the custody of the state board of
27 correction for a period of no less than one (1) year and no
28 more than five (5) years;
29 2. Shall be fined in an amount no less than fifteen thou-
30 sand dollars (\$15,000) and no more than fifty thousand dol-
31 lars (\$50,000); and
32 3. If the trespass can be reasonably construed to have been
33 committed in a manner described in section 36-1603(a), Idaho
34 Code, shall have any license issued pursuant to chapter 3,
35 title 36, Idaho Code, suspended for a period of no less than
36 five (5) years.

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

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

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

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

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

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

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

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

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

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

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

16 (iii) Any licensed professional otherwise authorized to enter or
17 remain on the real property during the course and scope of fulfill-
18 ing his lawful duties; or

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

21 (7) Examples of the exclusions in subsection (6) of this section in-
22 clude, but are not limited to: a customer entering and remaining in a store
23 during business hours who has not been asked to depart by the property owner
24 or his agent; a person knocking on a front door of a property that is not
25 posted; a meter reader during the scope and course of his employment; a
26 postal employee delivering mail or packages; power company personnel fixing
27 downed power lines; a bail bondsman arresting a person who is in violation of
28 a bail contract; a tenant pursuant to a valid lease; and the owner or operator
29 of any right-of-way or easement for any ditch, canal or other conduit, acting
30 pursuant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.

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

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

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

38 19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT
39 -- DISPOSITION -- APPORTIONMENT. (1) Except as otherwise provided in subsec-
40 tion (2) of this section:

41 (a) All fines and forfeitures collected pursuant to the judgment of
42 any court of the state shall be remitted to the court in which the judg-
43 ment was rendered. The judgment shall then be satisfied by entry in the
44 docket of the court. The clerk of the court shall daily remit all fines
45 and forfeitures to the county auditor who shall at the end of each month
46 apportion the proceeds according to the provisions of this chapter.
47 Other existing laws regarding the disposition of fines and forfeitures
48 are hereby repealed to the extent such laws are inconsistent with the

1 provisions of this chapter except as provided in section 49-1013(5),
2 Idaho Code.

3 (b) Fines and forfeitures remitted for violations of fish and game
4 laws shall be apportioned two and one-half percent (2 1/2%) to the
5 state treasurer for deposit in the state general fund, ten percent
6 (10%) to the search and rescue account, twenty-two and one-half percent
7 (22 1/2%) to the district court fund and sixty-five percent (65%) to the
8 fish and game fund.

9 (c) Fines and forfeitures remitted for violations of state motor ve-
10 hicle laws, for violation of state driving privilege laws, and for
11 violation of state laws prohibiting driving while under the influence
12 of alcohol, drugs or any other intoxicating substances, shall be ap-
13 portioned ten percent (10%) to the state treasurer of which eighty-six
14 percent (86%) shall be deposited to the state general fund and fourteen
15 percent (14%) shall be deposited to the peace officers standards and
16 training fund authorized in section 19-5116, Idaho Code, forty-five
17 percent (45%) to the state treasurer for deposit in the highway dis-
18 tribution account, twenty-two and one-half percent (22 1/2%) to the
19 district court fund and twenty-two and one-half percent (22 1/2%) to the
20 state treasurer for deposit in the public school income fund; provided,
21 however, that fines and forfeitures remitted for violation of state mo-
22 tor vehicle laws, for violation of state driving privilege laws, and for
23 violation of state laws prohibiting driving while under the influence
24 of alcohol, drugs or any other intoxicating substances, where an arrest
25 is made or a citation is issued by a city law enforcement official, or by
26 a law enforcement official of a governmental agency under contract to
27 provide law enforcement services for a city, shall be apportioned ten
28 percent (10%) to the state treasurer of which eighty-six percent (86%)
29 shall be deposited to the state general fund and fourteen percent (14%)
30 shall be deposited to the peace officers standards and training fund
31 authorized in section 19-5116, Idaho Code, and ninety percent (90%) to
32 the city whose officer made the arrest or issued the citation.

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

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

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

7 (g) Fines and forfeitures remitted for violations not specified in this
8 chapter shall be apportioned ten percent (10%) to the state treasurer
9 of which eighty-six percent (86%) shall be deposited to the state gen-
10 eral fund and fourteen percent (14%) shall be deposited to the peace of-
11 ficers standards and training fund authorized in section 19-5116, Idaho
12 Code, and ninety percent (90%) to the district court fund of the county
13 in which the violation occurred except in cases where a duly designated
14 officer of any city police department or city law enforcement official
15 shall have made the arrest for any such violation, in which case ninety
16 percent (90%) shall be apportioned to the city whose officer made the
17 arrest.

18 (h) Fines and forfeitures remitted for violations involving registra-
19 tions of motorcycles or motor-driven cycles used off highways, snowmo-
20 biles, or use of winter recreation parking areas shall be apportioned
21 ten percent (10%) to the state treasurer of which eighty-six percent
22 (86%) shall be deposited to the state general fund and fourteen percent
23 (14%) shall be deposited to the peace officers standards and training
24 fund authorized in section 19-5116, Idaho Code, and ninety percent
25 (90%) to the general fund of the county or city whose law enforcement
26 official issued the citation.

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

30 (j) Fines remitted for violations of section 18-7008, Idaho Code, shall
31 be apportioned ten percent (10%) to the district court fund, sixty-five
32 percent (65%) to the county where the trespass occurred for appropri-
33 ation to the sheriff's office, and twenty-five percent (25%) to the Idaho
34 rangeland resources commission for expanded education programs regard-
35 ing private property rights and land user responsibility.

36 (2) Any fine or forfeiture remitted for any misdemeanor violation for
37 which an increase in the maximum fine became effective on or after July 1,
38 2005, shall be apportioned as follows:

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

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

48 (3) As used in this section, the term "city law enforcement official"
49 shall include an official of any governmental agency which is providing law
50 enforcement services to a city in accordance with the terms of a contract or

1 agreement, when such official makes the arrest or issues a citation within
 2 the geographical limits of the city and when the contract or agreement pro-
 3 vides for payment to the city of fines and forfeitures resulting from such
 4 service.

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

7 36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION
 8 OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Except as pro-
 9 vided for in subsection (b) of this section, any person who pleads guilty to
 10 or is found guilty of an infraction of this code, or rules or proclamations
 11 promulgated pursuant thereto, shall be subject to a fine of seventy-two dol-
 12 lars (\$72.00).

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

16 (c) Misdemeanor Penalty. Any person entering a plea of guilty for,
 17 found guilty of or convicted of a misdemeanor under the provisions of this
 18 title or rules or proclamations promulgated pursuant thereto shall, ex-
 19 cept in cases where a higher penalty is prescribed, be fined in a sum of not
 20 less than twenty-five dollars (\$25.00) nor more than one thousand dollars
 21 (\$1,000) and/or by commitment to jail for not more than six (6) months. The
 22 minimum fine, per animal, fish or bird, for the illegal taking, illegal pos-
 23 session or the illegal waste of the following animals, fish or birds shall be
 24 as indicated below:

25	Animal, Fish or Bird	Minimum Fine
26	Bighorn sheep, mountain goat and moose	\$500
27	Elk	\$300
28	Any other big game animal	\$200
29	Wild turkey, swan and sturgeon	\$200
30	Chinook salmon, wild steelhead and bull trout	\$100
31	Any other game bird, game fish or furbearer	\$ 25

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

39 (e) License Revocation. Any person entering a plea of guilty or being
 40 found guilty or convicted of violating any of the provisions of this title,
 41 or who otherwise fails to comply with the requirements of a citation in con-
 42 nection with any such offense, may, in addition to any other penalty assessed
 43 by the court, have his hunting, fishing, or trapping privileges revoked for
 44 such period of time as may be determined by the court not to exceed three (3)
 45 years, except that violations classified as felonies under section 36-1401,

1 Idaho Code, or as flagrant violations as defined in subsection (f) of this
2 section, shall authorize the court to impose license revocations for peri-
3 ods of time up to and including life, with said period beginning on the date
4 of conviction, finding of guilt or the entry of the plea of guilty. Pro-
5 vided further, that the magistrate hearing the case shall forthwith revoke
6 the hunting, fishing, or trapping privileges for a period of not less than
7 one (1) year for any of the following offenses:

8 1. Taking or possessing upland game birds, migratory waterfowl,
9 salmon, steelhead, sturgeon, or any big game animal during closed sea-
10 son.

11 2. Exceeding the daily bag or possession limit of upland game birds, mi-
12 gratory waterfowl or big game animals.

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

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

17 ~~5. Trespassing in violation of warning signs or failing to depart the~~
18 ~~real property of another after notification as set forth in Violating~~
19 ~~section 36-1603, Idaho Code.~~

20 6. The unlawful release of any species of live fish into any public body
21 of water in the state. For purposes of this paragraph, an "unlawful re-
22 lease of any species of live fish" shall mean a release of any species of
23 live fish, or live eggs thereof, in the state without the permission of
24 the director of the department of fish and game; provided, that no per-
25 mission is required when fish are being freed from a hook and released at
26 the same time and place where caught or when crayfish are being released
27 from a trap at the same time and place where caught.

28 Provided further, that the magistrate hearing the case of a first-time
29 hunting violation offender under the age of twenty-one (21) years may re-
30 quire that the offender attend a remedial hunter education course at the of-
31 fender's expense. Upon successful completion of the course, the remainder
32 of the revocation period shall be subject to a withheld judgment ~~se~~ as long
33 as the offender is not convicted of any additional hunting violations during
34 the period. The cost of the course shall be seventy-five dollars (\$75.00) to
35 be paid to the department. The commission shall establish by rule the cur-
36 riculum of the hunter education remedial course.

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

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

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

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

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

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

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

18 4. Hunting, fishing, trapping or purchasing a license when license
19 privileges have been revoked pursuant to this section or section
20 36-1501, Idaho Code.

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

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

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

25 1. Suspend a violator's license for failure to comply with the terms of
26 a citation from a party state. A copy of a report of failure to comply
27 from the licensing authority of the issuing state shall be conclusive
28 evidence.

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

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

35 SECTION 10. That Section [36-1602](#), Idaho Code, be, and the same is hereby
36 repealed.

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

39 36-1603. ~~TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING~~
40 ~~SIGNS -- POSTING OF PUBLIC LANDS -- HUNTING, FISHING AND TRAPPING.~~ (a) No
41 person shall enter the real property of another and shoot any weapon or en-
42 ter such property for the purposes of hunting, retrieving wildlife, fishing
43 or trapping, ~~without the permission of the owner or person in charge of the~~
44 ~~property, which property is either cultivated or:~~

45 ~~(1) Is posted with "No Trespassing" signs;~~

46 ~~(2) Is posted with a minimum of one hundred (100) square inches of fluo-~~
47 ~~rescent orange, bright orange, blaze orange, safety orange or any simi-~~
48 ~~lar high visibility shade of orange colored paint except that when metal~~

1 ~~fence posts are used, a minimum of eighteen (18) inches of the top of the~~
2 ~~post must be painted a high visibility shade of orange;~~

3 ~~(3) Is posted with other notices of like meaning, spaced at intervals~~
4 ~~of not less than one (1) sign, paint area or notice per six hundred sixty~~
5 ~~(660) feet along such real property; provided that where the geographi-~~
6 ~~cal configuration of the real property is such that entry can reasonably~~
7 ~~be made only at certain points of access, such property is posted suffi-~~
8 ~~ciently for all purposes of this section if said signs, paint or notices~~
9 ~~are posted at such points of access; or~~

10 ~~(4) Is posted with a conspicuous sign where a public road enters the~~
11 ~~real property, through which or along which road the public has a~~
12 ~~right-of-way, stating words substantially similar to "PRIVATE PROP-~~
13 ~~ERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE~~
14 ~~OF ROAD NEXT (fill in the distance) MILES," and which is posted with a~~
15 ~~conspicuous sign where the public road exits the real property stating~~
16 ~~words substantially similar to "LEAVING PRIVATE PROPERTY." The post-~~
17 ~~ings shall be placed on the private real property. In lieu of posting~~
18 ~~the compass direction(s), a map depicting the area of private property~~
19 ~~may be displayed on the sign;~~

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

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

29 (c) Remedies. Any violation of this section shall subject the violator
30 to the penalties set forth in this title, including, but not limited to, sec-
31 tion 36-1402(e), Idaho Code.

32 (d) Permission forms.

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

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

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

48 (4) The restrictions in this section and section 18-7008, Idaho Code,
49 relating to trespass shall be stated in all hunting and fishing procla-
50 mations issued by the department.

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

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

5 36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Pur-
6 pose. The purpose of this section is to encourage owners of land to make
7 land, airstrips and water areas available to the public without charge for
8 recreational purposes by limiting their liability toward persons entering
9 thereon for such purposes.

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

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

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

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

22 4. "Recreational purposes" includes, but is not limited to, any of
23 the following activities or any combination thereof: hunting, fish-
24 ing, swimming, boating, rafting, tubing, camping, picnicking, hiking,
25 pleasure driving, the flying of aircraft, bicycling, running, playing
26 on playground equipment, skateboarding, athletic competition, nature
27 study, ~~water skiing~~ waterskiing, animal riding, motorcycling, snowmo-
28 biling, recreational vehicles, winter sports, and viewing or enjoying
29 historical, archeological, scenic, geological or scientific sites,
30 when done without charge of the owner.

31 (c) Owner Exempt from Warning. An owner of land owes no duty of care
32 to keep the premises safe for entry by others for recreational purposes, or
33 to give any warning of a dangerous condition, use, structure, or activity on
34 such premises to persons entering for such purposes. Neither the installa-
35 tion of a sign or other form of warning of a dangerous condition, use, struc-
36 ture, or activity, nor any modification made for the purpose of improving the
37 safety of others, nor the failure to maintain or keep in place any sign, other
38 form of warning, or modification made to improve safety, shall create lia-
39 bility on the part of an owner of land where there is no other basis for such
40 liability.

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

44 1. Extend any assurance that the premises are safe for any purpose.

45 2. Confer upon such person the legal status of an invitee or licensee to
46 whom a duty of care is owed.

47 3. Assume responsibility for or incur liability for any injury to per-
48 son or property caused by an act of omission of such persons.

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

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

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

11 1. Create a duty of care or ground of liability for injury to persons or
 12 property.

13 2. Relieve any person using the land of another for recreational pur-
 14 poses from any obligation which he may have in the absence of this
 15 section to exercise care in his use of such land and in his activities
 16 thereon, or from legal consequences or failure to employ such care.

17 3. Apply to any person or persons who for compensation permit the land
 18 to be used for recreational purposes.

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

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

26 36-1108. CONTROL OF DAMAGE BY PRONGHORN ANTELOPE, ELK, DEER OR MOOSE
 27 -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a pri-
 28 ority management objective of the department, and it is the obligation
 29 of landowners to take all reasonable steps to prevent property loss from
 30 wildlife or to mitigate damages by wildlife. When any pronghorn antelope,
 31 elk, deer or moose is doing damage to or is destroying any property or is
 32 about to do so, the owner or lessee thereof may make complaint and verbally or
 33 electronically report the facts to the director or his designee who shall,
 34 within seventy-two (72) hours, investigate the conditions complained of. If
 35 it appears that the complaint is well-founded and the property of the com-
 36 plainant is being or is likely to be damaged or destroyed by such pronghorn
 37 antelope, elk, deer or moose, the director may:

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

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

48 3. Make an agreement with the owner or lessee to allow continued use
 49 of lands by the animals where damage by them has occurred to stored,

1 growing or matured crops on private property whether owned or leased.
2 The agreement made under the provisions of this subsection may provide
3 for financial compensation to the owner or lessee. If made, financial
4 compensation under the provisions of this subsection shall be governed
5 by the provisions of section 36-115, Idaho Code, and shall not be in
6 addition to any payments for the same crop losses from any other source.
7 Compensation for damages under the provisions of this subsection shall
8 be available for damages done to private lands, whether owned or leased,
9 if the owner or lessee allowed hunters reasonable access to the property
10 or through the property to public lands for hunting purposes during the
11 preceding hunting season or as a measure of response to depredation.
12 This provision shall not negate the provisions of section 36-16023,
13 Idaho Code, relating to the necessity of obtaining permission to en-
14 ter private land. If necessary, the arbitration panel provided for in
15 subsection (b) of this section shall determine the reasonableness of
16 access allowed.

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

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

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

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

29 The owner or lessee must have allowed hunters reasonable access to the
30 property or through the property to public lands for hunting purposes
31 during the preceding hunting season or as a measure of response to
32 depredation, provided such access does not impact on their operations,
33 or the claim for damages may be disallowed. Compensation for crop dam-
34 ages claims shall not be in addition to any payments for the same crop
35 losses from any other source and shall not include fence or other types
36 of property damage. While fences and irrigation equipment are not sub-
37 ject to claim for payment, the department is allowed to provide support
38 and assistance, including provision of materials to design, construct,
39 and maintain fences for control of depredation. The notice of damages
40 caused must be in written form, shall be in the form of a claim for dam-
41 ages substantially the same as required by section 6-907, Idaho Code,
42 shall be attested to by the claimant under oath, and the claim shall
43 be at least seven hundred fifty dollars (\$750). The claim shall not be
44 amended after it is filed, provided however, that a claimant may file
45 an additional claim in the event additional damage occurs subsequent
46 to filing the initial claim. The department shall prepare and make
47 available suitable forms for notice and claim for damages. Claims may
48 be submitted only for the fiscal year (July 1 through June 30) in which
49 they occurred, with allowance for submission within the first sixty
50 (60) days of the following fiscal year if the claim occurred within the

1 last sixty (60) days of the previous fiscal year. Any person submitting
2 a fraudulent claim shall be prosecuted for a felony as provided in sec-
3 tion 18-2706, Idaho Code. For purposes of this subsection, crop damages
4 shall mean damage to plants grown or stored for profit and exclude orna-
5 mental plants.

6 2. Upon receipt by the department, the department shall review the
7 claim, and if approved, pay it as provided in section 36-115, Idaho
8 Code, or order it paid as provided in section 36-115, Idaho Code.
9 Failure on the part of the owner or lessee to allow on-site access for
10 inspection and investigation of alleged losses shall void the claim for
11 damages.

12 3. In the event the owner or lessee and the department fail to agree on
13 the amount of damages within fifteen (15) business days of the written
14 claim, either party may elect to retain the services of an independent
15 certified insurance adjuster licensed in the state of Idaho to view the
16 affected property and determine the amount of damages. In the event the
17 owner or lessee and the department fail to agree on the amount of dam-
18 ages and neither party elects to retain the services of an independent
19 certified insurance adjuster, provisions of subsection (b)4. of this
20 section shall apply. The independent certified adjuster shall complete
21 his review and determination within twenty (20) days from the date he
22 is retained, and will report his determination in writing by certified
23 mail to the department and to the owner or lessee. Neither the owner or
24 lessee, nor the department, shall disturb the affected property prior
25 to review and determination by the independent insurance adjuster.
26 Costs associated with the services of the independent insurance ad-
27 juster shall be divided equally between the owner or lessee and the
28 department, subject to reapportionment of the costs by an arbitration
29 panel pursuant to the provisions of subsection (b)4. of this section.
30 If the department, or the owner or lessee rejects the determination of
31 the adjuster, they shall notify the other party in writing of the rejec-
32 tion within five (5) business days of receipt of the adjuster's determi-
33 nation. In the event that either party rejects the adjuster's determi-
34 nation, the provisions of subsection (b)4. of this section shall apply.

35 4. Within five (5) business days of a rejection of an adjuster's deter-
36 mination of damages or failure of the owner or lessee and the department
37 to agree on damages when a certified insurance adjuster is not used, the
38 director must convene an arbitration panel. To convene an arbitration
39 panel, the director must, within five (5) business days, appoint the
40 department's representative and notify the landholder of the appoint-
41 ment. The landholder(s) shall, within the next five (5) business days
42 following such notice from the department, appoint his representative
43 and notify the department of the appointment. Within the next five (5)
44 business days, the department representative and the landholder must
45 mutually appoint the third arbitrator. The arbitration panel shall
46 consist of three (3) members, as follows:

- 47 (A) The director of the department of fish and game or his de-
48 signee;
49 (B) The owner or his designee, or the lessee or his designee;
50 (C) One (1) member selected by the two (2) members above.

1 The panel shall convene within thirty (30) days of the selection of the
2 third arbitrator, and render its decision within fourteen (14) days
3 after the hearing. When convened, the arbitration panel shall have
4 the same authority to make on-site inspections as the department. The
5 owner or lessee shall be responsible for payment of the expenses of his
6 appointee; the director shall pay the expenses of his appointee from
7 the expendable big game depredation fund; and the expenses of the third
8 member shall be a joint responsibility of the owner or lessee, and the
9 department. Provided however, the panel is authorized to review the
10 costs associated with retaining the independent insurance adjuster and
11 to determine whether those costs should instead be borne solely by the
12 owner or lessee, solely by the department, or be apportioned between
13 the owner or lessee and the department. In cases where an independent
14 insurance adjuster was used, the party electing to use the adjuster
15 shall assume the insurance adjuster's determination of damage as their
16 estimate of damage. The panel shall consider the claim submitted by the
17 owner or lessee, and the estimate of damages submitted by the depart-
18 ment, and shall select one (1) amount or the other as being the closest
19 to the actual damages sustained by the claimant. The arbitration panel
20 shall report its decision in writing to both the owner or lessee and to
21 the department within ten (10) days of the decision, and the decision
22 of the panel shall be binding on the owner or lessee and the department.
23 The fish and game advisory committee shall develop guidelines to govern
24 arbitration procedures in accordance with chapter 52, title 67, Idaho
25 Code.

26 (c) Any claim received by the department under the provisions of sub-
27 section (b) of this section must be processed by the department within sixty
28 (60) calendar days of receipt. If the claim is approved for payment, pay-
29 ment must be made within forty-five (45) calendar days of such approval. Any
30 damage claim determination by an independent insurance adjuster pursuant to
31 subsection (b)3. of this section, accepted by the parties, must be paid by
32 the department within forty-five (45) calendar days of the determination.
33 If the claim is arbitrated, the arbitration must be completed within one hun-
34 dred eighty (180) calendar days of filing the claim for such damages.

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

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