

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 47004-2019

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ALIZA COVER,

Petitioner-Respondent/Cross-Appellant,

v.

IDAHO BOARD OF CORRECTION, IDAHO DEPARTMENT OF CORRECTION, and  
JEFFREY R. RAY, Public Information Officer,

Respondents-Appellants/Cross-Respondents.

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**BRIEF OF AMICI CURIAE – COALITION OF IDAHO MEDIA  
ORGANIZATIONS**

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Appeal from the District Court of the Fourth Judicial District for Ada County  
Case No. CR01-18-03877  
The Honorable Lynn Norton, District Judge

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## **I. INTEREST OF *AMICI CURIAE***

Amici curiae are a coalition of Idaho media organizations, as well as non-profit and trade groups supporting journalists, that are deeply concerned by issues presented in this appeal.

Amicus curiae the Idaho Press Club (the “Press Club”) is a statewide association of working journalists from all media. Its members also include journalism students and teachers, public relations professionals, and retired journalists. The Press Club’s mission is to promote excellence in journalism, freedom of expression, and freedom of information.

Amicus curiae Idahoans for Openness in Government is a non-profit coalition that promotes open government and freedom of information in Idaho. Its board includes members of the media and civic organizations.

Amici curiae KTVB-TV Channel 7; Idaho Statesman; APG East Idaho Newspapers, including the Post Register (Idaho Falls), the Idaho State Journal, the Rexburg Standard Journal, the Jefferson Star, the Teton Valley News, the Challis Messenger, the Bingham County Chronicle, the Preston Citizen, and the News-Examiner (Montpelier); Newspaper Association of Idaho; and Idaho Press are active news reporting organizations in Idaho.

Amicus curiae The Associated Press is a not-for-profit New York corporation with an active news reporting bureau in Boise, Idaho.

Amici have a significant interest in this appeal because it raises important issues regarding the public’s access to governmental records and scrutiny of governmental action under the Idaho Public Records Act, Idaho Code § 74-101 *et seq.* (the “Public Records Act”). The media, as the public’s surrogate, relies on the Public Records Act to report on and inform the

public of government activities. If adopted, arguments advanced on appeal threaten the Public Records Act's continued viability as a method for investigating government affairs and decision-making, enforcing the public's right to know, and ultimately determining whether government officials and employees are performing their functions honestly, faithfully, and competently.

Amici agree with Respondent/Cross-Appellant Aliza Cover that *former* IDAPA 06.01.01.135(6) ("Board Rule 135.06") is not a statutory exemption to disclosure under the Public Records Act. The contrary position articulated by Appellants/Cross-Respondents would permit the Idaho Department of Correction ("IDOC") to be the final arbiter of responses to public records requests if any overbroad and sufficiently wide administrative rule exists.

Such a result undermines the Public Record Act's presumption that public records are open, and it runs counter to the language, history, and purpose of Idaho Code § 74-105(4)(a)(i). As the Idaho legislature acknowledged when enacting the Public Records Act, it is not for agencies to determine "what is good for the people to know"; rather, it is "in the public interest to enable any person to review and commend or criticize the operation and actions of government." Appendix ("App.") A at 1 (H.B. No. 860 Statement of Purpose). It is critical that exemptions to the presumption of disclosure remain within the province of the legislature, as narrowly construed by the courts, to ensure that government action is subject to public scrutiny.

Amici also agree that if the public interests are to be weighed, they favor disclosure of the identities of the suppliers of drugs and equipment for executions in this state. *See generally* Idaho Code § 74-105(4)(a)(i). Execution by lethal injection is a controversial issue and news reports on lethal injection supplies have prompted critical oversight and public discussion about



how states administer the death penalty. Such reporting would not have been possible without information obtained from public records requests.

In sum, amici file this brief due to their interest in preserving the fundamental purpose of the Public Records Act, which the press – the fourth estate – is tasked with upholding: opening the business of government to public scrutiny and debate.

## **II. SUMMARY OF ARGUMENT**

Amici write separately to direct the Court to legislative history that contextualizes the Public Records Act's presumption of openness and underscores the limited exemptions to disclosure that the legislature intended for IDOC records. Amici also seek to focus the Court's attention on how investigative reporting on executions, which often depends on responses to public records requests, is in the public interest.

First, the plain language and history of Idaho Code § 74-105(4)(a)(i) contravene IDOC's stated position that Board Rule 135.06 sanctions withholding of the public records at issue on appeal. Idaho Code § 74-105(4)(a)(i) exempts from disclosure only those IDOC records in which "the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code[.]" IDOC concedes that it did not perform this balancing test when promulgating Board Rule 135.06, but nonetheless maintains that it is a statutory exemption to disclosure that should be applied without further analysis. Appellants/ Cross-Respondents' Br. at 15. The legislature, however, did not intend to authorize IDOC to

make such unilateral, non-reviewable decisions to withhold public records because they “could jeopardize” its ability to perform an execution, as Board Rule 135.06 provided.

Second, open government records play a critical role in keeping the public informed about a topic of significant interest and debate. News reports about the sourcing of lethal injection drugs for executions, which have been facilitated in part by responses to records requests, have permitted scrutiny of state action by the public and federal agencies. The public interest in disclosure of such information is, therefore, demonstrably high.

### **III. ARGUMENT**

#### **A. The government may not delegate to itself the unqualified determination of whether disclosure of a public record “could jeopardize” its operations.**

Amici write separately to highlight that the Public Records Act’s legislative history, in addition to its plain text, forecloses IDOC’s contention on appeal that the district court was compelled to conclude that Board Rule 135.06 “created an applicable exemption” under the Public Records Act and should have applied it without further analysis. *See* Appellants/Cross-Respondents’ Br. at 15. The district court correctly held that Idaho Code § 74-105(4)(a)(i) mandates balancing, and a rule promulgated without such balancing does not permit withholding. *See* Idaho Code § 74-102(1).

#### **1. The Public Records Act presumes that public records are open.**

The Public Records Act presumes “that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.” Idaho Code § 74-102(1). The Act has a “very broad scope.” *Dalton v. Idaho Dairy Prod. Comm’n*, 107 Idaho 6, 11, 684 P.2d 988 (1984). Courts are to “narrowly construe exemptions to the disclosure

presumption,” *Hymas v. Meridian Police Department*, 156 Idaho 739, 745, 330 P.3d 1097 (Ct. App. 2014), and may not “create an exception to the rule of disclosure where one has not been explicitly provided.” *Dalton*, 107 Idaho at 11.

Idaho Code § 74-105(4)(a)(i) exempts from disclosure only those IDOC records in which “the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code[.]” Board Rule 135.06, however, provided that:

The Department will not disclose (under any circumstance) the identity of the onsite physician; or staff, contractors, consultants, or volunteers serving on escort or medical teams; nor will the Department disclose any other information wherein the disclosure of such information could jeopardize the Department’s ability to carry out an execution.

IDOC stipulated that no express interest balancing occurred in promulgating Board Rule 135.06. *See R.* at 1870.<sup>1</sup> Even so, IDOC contends that the district court “should have found that Board Rule 135.06 created an exemption.” Appellants/Cross-Respondents’ Br. at 15. In analyzing that contention, the Court should consider the legislative purpose underlying the Public Records Act.

**2. HB 860 (1990): It is not for public officials “to decide what is good for the people to know.”**

In 1990, the Idaho legislature enacted HB 860, an early iteration of today’s Public Records Act. *See* 1990 Idaho Session Laws, ch. 213, p. 481. At that time, the legislature acknowledged that it is anathema to the “fundamental philosophy of our federal and state constitutional form of representative government” for “public officials and employees . . . to

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<sup>1</sup> “R.” cites to the clerk’s amended record on appeal.

decide what is good for the people to know and what is not good for the people to know.”

App. A at 1. Rather, officials must perform their business “in an open and public manner so that citizens shall be knowledgeable and advised of the operations of government at all levels.” *Id.*

The legislature sought to compel this result by opening all government records in Idaho for inspection “unless access is expressly denied by statute.” *Id.*; *see also* Idaho Code § 74-102(1).

The 1990 law included one clause exempting IDOC “[i]nformation, records, . . . or investigations . . . to the extent that disclosure thereof would”:

[I]nterfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

Idaho Code § 9-340 (35) (1990). App. B at 8 (1990 Idaho Session Laws, ch. 213, p. 487). In 1999, the legislature enacted Idaho Code § 9-340(B)(3), which contained similar language. *See* App. C at 3 (1999 Idaho Session Laws, ch. 30, p. 43).

### **3. HB 18 (2001): The legislature declined to expand IDOC exemptions.**

The exemption applicable to IDOC came up for amendment in 2001. IDOC lobbied to extend the separate protections applicable to Idaho law enforcement under Idaho Code § 9-335 (now Idaho Code § 74-124) to IDOC. App. D at 5 (2001 Idaho House Bill No. 18, Bill Text, at 2:4, <https://legislature.idaho.gov/sessioninfo/2001/legislation/H0018/>). The original bill text also proposed eliminating the balancing test language found in Idaho Code § 9-340(B)(3). *Id.* at 6 (2:43-3:22).

The bill generated significant concern in committee. The Press Club was one of multiple groups that expressed opposition, explaining that closing records to the public “is a serious matter” and that it “d[id] not want to see the Department of Corrections listed as a law enforcement agency for any purpose.” *See* App. E at 9 (Minutes, House Judiciary, Rules, and Administration Committee (Feb. 7, 2001)). The Committee ultimately rejected the amendments, citing fears of “ramifications down the line” if IDOC was given “law enforcement” privileges. *Id.* at 10. The legislature also elected to retain the balancing test language of Idaho Code § 9-340(B)(3), and the bill was amended to contain the language now found in Idaho Code § 74-105(4)(a)(i). *See id.* at 19; *see also* App. D at 11; 2001 Idaho Sess. Laws, ch. 180, p. 607.

**4. IDOC may not unilaterally expand exemptions applicable to its records.**

It is the legislature’s duty to create the express statutory exceptions to the Public Records Act’s rule and presumption of disclosure. *See* Idaho Code § 74-102(1). It is not for IDOC “to decide what is good for the people to know and what is not good for the people to know,” *see* App. A at 1, and it is not for the courts to create exceptions “where one has not been explicitly provided.” *Dalton*, 107 Idaho at 11. Board Rule 135.06 “lacks the explicit balancing test language” and was promulgated without any such balancing, and therefore cannot qualify as a statutory exception to disclosure. *See* R at 1870.

To conclude otherwise would permit IDOC to ignore the legislative mandate to weigh the public interests, reaffirmed during the 2001 session, and justify withholding public records by pointing to *any* administrative rule, whether or not it was promulgated pursuant to the Public Records Act. Such a result plainly contravenes the language and intent of the Act.

Moreover, even if Board Rule 135.06 *was* an express exemption (and it was not), it was insufficiently narrow to sanction withholding. *Federated Publ'ns, Inc. v. Boise City*, 128 Idaho 459, 463, 915 P.2d 21, 25 (1996) (courts “narrowly construe exemptions to the disclosure presumption”). The district court correctly concluded that “[c]ould jeopardize’ is not the legal standard” in a Public Records Act proceeding. R. at 1870. Indeed, the phrase is so amorphous that it evades narrow construction entirely.

IDOC may not do what the legislature declined to do in 2001: expand the Public Records Act to exempt more IDOC public records from disclosure and remove the public interest balancing test. Board Rule 135.06 is not a statutory exemption to disclosure, and all records previously withheld on its authority should be disclosed.

**B. The public interest in open access to records concerning execution by lethal injection is significant.**

Notwithstanding the foregoing, the district court weighed the public interests identified in Idaho Code § 74-105(4)(a)(i) in determining whether Bates 654 and 655 (as defined in Respondent/Cross-Appellant’s Br. at 3-4) were subject to disclosure. R. at 1870. Cover identifies additional reasons that this analysis was improper, including that (1) the IDOC claimed only Board Rule 135.06, not Idaho Code § 74-105(4)(a)(i), as an exemption when first responding to her request (Respondent/Cross-Appellant’s Br. at 17-22 (explaining that agencies waive claimed exemptions that are untimely or insufficiently specific)), and (2) Board Rule 135.06 is not a Public Records Act exemption (*id.* at 23-30).

Should the Court review the district court's application of the balancing test set forth in Idaho Code § 74-105(4)(a)(i), amici seek to emphasize the significant public interest in disclosure of information related to the death penalty, and lethal injection suppliers in particular. Amici have a unique understanding of the importance of opening this information to public review, and would like to focus the Court on the results of such access to highlight the risks of denying it.

**1. Execution by lethal injection is a controversial government affair that requires informed public debate.**

“The execution of people by the state is plainly an affair of government which evokes spirited public controversy.” *Hoffman v. Illinois Dep’t of Corr.*, 511 N.E.2d 759, 760 n.1, 158 Ill. App. 3d 473, 475 n.1 (Ill. App. Ct. 1987). The United States Supreme Court has recognized the public’s role in determining the “evolving standards of decency” that characterize the constitutionality of execution practices. *Hall v. Florida*, 572 U.S. 701, 708 (2014) (citation omitted). Public scrutiny of executions is therefore critical to the proper functioning of the capital punishment process. *See Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 876 (9th Cir. 2002); *Philadelphia Inquirer v. Wetzel*, 906 F. Supp. 2d 362, 371 (M.D. Pa. 2012). Indeed, “[a]n informed public debate is critical in determining whether execution by lethal injection comports with ‘the evolving standards of decency which mark the progress of a maturing society.’” *Woodford at 876* (internal quotation marks and citation omitted).

Thus, when it comes to execution by lethal injection, the public must have reliable information to determine whether the executions are fairly and humanely administered. *Id.*

“This information is best gathered first-hand or from the media, which serves as the public’s surrogate.” *Id.*; see also *Associated Press v. Otter*, 682 F.3d 821, 824 (9th Cir. 2012) (finding the First Amendment protects the public’s right to witness all phases of an execution);<sup>2</sup> IDAPA 06.01.01.135.06(a)(ix)(11) (permitting four members of the news media in the execution unit in “most instances”). Not only does allowing the press to report on executions promote “a more informed discussion of the death penalty,” it promotes “the public perception of fairness and transparency concerning the death penalty.” See *Wetzel*, 906 F. Supp. 2d at 371.

The need for transparency extends to the lethal injection drugs that are administered to carry out the death penalty. “The procedures to be followed to execute people by lethal injection . . . may themselves be the subject of spirited public controversy and constitutional challenge if the procedures tend to violate the proscription that no ‘cruel and unusual punishments [shall be] inflicted.’” *Hoffman*, 511 N.E.2d at 760 n.1, 158 Ill. App. 3d at 475 n.1 (alterations in original; citation omitted). As a result, information related to states’ lethal injection procedures “is precisely the type of information that is required to be disclosed under” public records statutes. *Id.*; *Am. Civil Liberties Union of N. Cal. v. Drug Enf’t Admin.*, No. C 11-01997 RS, 2011 WL 13243729, at \*11 (N.D. Cal. Oct. 28, 2011) (lethal injection drugs “represent a ‘hotly-contested’ matter of public interest.”).

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<sup>2</sup> The public’s right to witness executions aligns with Idaho’s “historical tradition,” as documented in “newspaper accounts of past executions.” *Associated Press v. Otter*, No. 1:12-CV-00255-EJL, 2012 WL 12977323, at \*4 (D. Idaho June 5, 2012), *rev’d on other grounds*, *Associated Press*, 682 F.3d at 824.



**2. Courts have ordered disclosure of public records identifying suppliers of lethal injection drugs.**

The controversy surrounding lethal injection drugs extends to their sourcing.

Recognizing the need for public access to this information, the California Court of Appeal rejected the California Department of Corrections and Rehabilitation’s decision to withhold the names of pharmaceutical companies from which it sought to obtain lethal injection drugs. *Am. Civil Liberties Union of N. Cal. v. Superior Court*, 202 Cal. App. 4th 55 (2011). The court analyzed the “catchall exception” to California’s public records act, which, like Idaho Code § 74-105(4)(a)(i), allows an agency to withhold records only if it can demonstrate that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Cal. Gov. Code § 6225(a).

The court held that “the public interest served by revealing the names of the pharmaceutical companies and others from whom [the department] sought to obtain [drugs] *clearly outweighs* that favoring nondisclosure.” *Superior Court*, 202 Cal. App. 4th at 77-78 (emphasis added). It reasoned that:

[T]he passionate nature of the death penalty debate, which *heightens* public interest in the information at issue in this case, justifies nondisclosure *only* to the extent it may show that disclosure of that information would pose a potential security threat of some sort to any of the pharmaceutical companies or other entities from which [the department] sought to obtain [lethal injection drugs].

*Id.* at 71 (emphasis in original). Conversely, the department identified only “speculative” security threats about “possible endangerment” that might result from disclosing the names of

the intermediary suppliers and pharmaceutical companies. *Id.* at 75. The department’s view, the court explained, “ignores not just [its] burden of proof, but also the settled view that the threat to security that justified disclosure cannot be conjectural or speculative.” *Id.*

Cases in which courts have rejected requests for information related to lethal injection drugs, unlike *Superior Court*, have addressed public records laws that do not emphasize the importance of public disclosure to the same degree as Idaho Code § 74-104(4)(a)(i), or claims not brought under public records statutes at all. For instance, in *Travaglia v. Dep’t of Corrections*, 699 A.2d 1317, 1320 (Pa. Commw. Ct. 1997), the relevant balancing test under Pennsylvania’s Right-to-Know Act was whether disclosure would potentially “impair” security, not whether the public interest in confidentiality or safety *clearly* outweighed the interest in disclosure. And in *First Amendment Coal. of Ariz., Inc. v. Ryan*, the request for disclosure was made pursuant to the First Amendment, not an open records law. 938 F.3d 1069, 1079 (9th Cir. 2019) (observing that the First Amendment “does not ‘mandate[] a right of access to government information or sources of information within the government’s control.’” (alteration in original) (quoting *Houchins v. KQED*, 483 U.S. 1, 15 (1978))).

Here, the balancing test in Idaho Code § 74-105(4)(a)(i) mandates disclosure of the public records at issue on appeal. The public interest in confidentiality, safety, and habilitation does not “clearly outweigh[]” the public interest in disclosure of information identifying the suppliers of lethal injection drugs and medical equipment. Amici support Cover’s request that the Court order disclosure.

**3. When granted, public records requests have contributed meaningfully to the public debate about execution by lethal injection.**

Over the past decade, information disclosed in response to public records requests, often from the media, have given the public critical insight to their governments' management of executions. Cover's Reply Brief in Support of Petition detailed events giving rise to increased calls for public scrutiny over these matters. *See* R. at 712-15. In short, around the time of the executions of Richard Leavitt and Paul Ezra Rhoades, Idaho and other states were exploring options to import lethal injection drugs after the only U.S. supplier of pentobarbital (a lethal injection drug) prohibited its use in executions, and the only U.S. supplier of sodium thiopental (a pentobarbital substitute), stopped production. *Id.*

Between March and August 2011 — when the IDOC announced Board Rule 135.06 — the federal government seized sodium thiopental supplies manufactured overseas from prison officials in six states (Alabama, Arkansas, Georgia, Kentucky, South Carolina, and Tennessee). *Id.* Because sodium thiopental is a Schedule III controlled substance, it is and was illegal to import the drug from sources not registered with the U.S. Food and Drug Administration. *See* 21 U.S.C. §§ 331(p), 360(i), 812(b)(3)); 21 C.F.R. §§ 1312.11(b)-(c), 1312.18(b); *see also Am. Civil Liberties Union of N. Cal.*, No. C 11-01997 RS, 2011 WL 13243729, at \*1. The U.S. Drug Enforcement Administration suspected that the states had imported the sodium thiopental without compliance with these federal laws. *See, e.g., Ariane De Vogue, DOJ Tells Arizona It Illegally Obtained Death Penalty Drug*, ABC News (May 24, 2011), <https://abcnews.go.com/Politics/Controversial-arizona-execution-set/story?id=13679827>.

Public records requests played a central role in identifying states that may have illegally imported sodium thiopental. For example, before the seizures occurred, records requested by the ACLU of Northern California revealed that “[a]t least three states — Arizona, Arkansas and Tennessee — appear[ed] to have gotten supplies of the drug from England.” Andrew Welsh-Huggins, *FDA Quietly Helped States Obtain Lethal-Injection Drugs*, Associated Press (Jan. 11, 2011), [http://www.nbcnews.com/id/41025962/ns/us\\_news-crime\\_and\\_courts/t/fda-quietly-helped-states-obtain-lethal-injection-drugs/#.Xkn1pmhKhyw](http://www.nbcnews.com/id/41025962/ns/us_news-crime_and_courts/t/fda-quietly-helped-states-obtain-lethal-injection-drugs/#.Xkn1pmhKhyw).

Meanwhile, when news broke of the seizure in Georgia, NPR reported that “[a]n open records request in Kentucky revealed that the state purchased sodium thiopental from CorrectHealth, a Georgia company that provides all medical services for the Georgia Department of Corrections.” Kathy Lohr, *Georgia May Have Broken Law By Importing Drug*, NPR Morning Edition (March 17, 2011), <https://www.npr.org/2011/03/17/134604308/dea-georgia-may-have-broken-law-by-importing-lethal-injection-drug>. Less than two weeks later, Kentucky and Tennessee turned in their sodium thiopental supplies to the U.S. Drug Enforcement Administration. The Kentucky Department of Corrections, which stated it provided the drugs as evidence in another case, had “obtained a supply of thiopental that was made overseas and was sold to the state by CorrectHealth[.]” Nathan Koppel, *Two States Turn Over Execution Drug to U.S.*, The Wall Street Journal (April 2, 2011), <https://www.wsj.com/articles/SB10001424052748703806304576236931802889492>.

As journalists continued to inquire into drug sources, they continued to learn and report on questionable importations. In 2015, for example, BuzzFeed wrote a series of stories about

Nebraska’s purchase of sodium thiopental from Harris Pharma, an Indian company. The documents that BuzzFeed received in response to public records requests revealed that the owner of Harris Pharma had pitched the drug to multiple correctional departments and sold to at least two.<sup>3</sup>

They also showed that the U.S. Food and Drug Administration (the “FDA”) informed Nebraska’s correctional department that “[t]here is no FDA approved application for sodium thiopental” — and that importation was illegal — “*because of media reports that the state . . . ha[d] recently purchased and perhaps received sodium thiopental from an overseas source[.]*” McDaniel, Chris, *The Federal Government Plans To Seize Nebraska’s Illegal Execution Drug Shipment When It Arrives In The U.S.*, BuzzFeed News (June 17, 2015), available at <https://www.buzzfeednews.com/article/chrismdaniel/the-federal-government-plans-to-seize-nebraskas-illegal-exec#.qoPNyMvAmD> (emphasis added).

These reports realize the aims of the Public Records Act. They have kept the public “knowledgeable and advised of the operations of government at all levels[.]” App. A. at 1. They have inspired intervention to ensure compliance with governing law. It is essential to the

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<sup>3</sup> See, e.g., Chris McDaniel, *Nebraska Bought 300 Executions’ Worth Of Illegal Execution Drugs From A Foreign Supplier*, BuzzFeed News (June 8, 2015), <https://www.buzzfeednews.com/article/chrismdaniel/nebraska-bought-300-executions-worth-of-illegal-execution-dr> (showing disclosed emails indicating that Harris had sold to “a few” states besides Nebraska); Chris McDaniel and Tasneem Nashrulla, *This Is The Man In India Who Is Selling States Illegally Imported Execution Drugs*, BuzzFeed News (Oct. 20, 2015), <https://www.buzzfeednews.com/article/chrismdaniel/this-is-the-man-in-india-who-is-selling-states-illegally-imp>; Chris McDaniel, *Trump Administration Blocks Shipment Of Illegal Execution Drugs*, BuzzFeed News (April 20, 2017), <https://www.buzzfeednews.com/article/chrismdaniel/trump-administration-blocks-shipment-of-illegal-execution> (discussing final decision of FDA to refuse admission of 2,000 vials of sodium thiopental to Texas and Arizona, and noting that the 1,000 vials purchased by Nebraska never left India).

integrity of our democratic process that they continue. As the Idaho legislature recognized in enacting the Public Records Act:

Those who are elected to public office and those who are employed in government are trustees and servants of the people and it is in the public interest to enable any person to review and commend or criticize the operation and actions of government and governmental officials and employees, even though allowing the people to examine the operations and actions of government may cause inconvenience and additional expense to government and may result in criticism or embarrassment of officials and employees.

*Id.*

Amici respectfully request that the Court preserve the right of Idahoans to engage in fully informed commendation or criticism.

**C. The Public Records Act does not permit withholding non-responsive information.**

On appeal, Cover contends that the district court erred in finding that records about medical supplies used in lethal injections were outside the scope of her request. Respondent/Cross-Appellant's Br. at 41-42. Amici write separately to emphasize that even if the district court properly concluded that this information was "not responsive" to Cover's request, its redaction contravenes the Public Records Act because non-responsiveness is not a specific statutory exemption to disclosure. Idaho Code § 74-102(1).

The Public Records Act requires that "[i]f any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure," the agency shall separate the material and "make the nonexempt material available for examination." Idaho Code § 74-112. A requester may not be denied access to nonexempt material "based upon the

fact that such nonexempt material is contained in the same public record as the exempt material.”

*Id.* Even IDOC rules identify information that may be “exempt in part” and “subject to redaction” but do not list non-responsiveness as a basis for withholding. *See* IDAPA 06.01.01.108(4)(b).

Redaction of non-exempt, non-responsive information therefore runs afoul of the general rule that public records should be disclosed if it is not “obvious” that they are exempt. *Federated Publ’ns, Inc. v. Boise City*, 128 Idaho 459, 463, 915 P.2d 21 (1996); *Cowles Pub. Co. v. Kootenai Cty. Bd. of Cty. Comm’rs*, 144 Idaho 259, 264, 159 P.3d 896 (2007); *see also* Idaho Op. Att’y Gen. 42, Op. No. 08-03 (2008) (“pursuant to the Public Records Act, if a record is not obviously exempt from disclosure, then the court should hold that it is subject to disclosure”).

Cases interpreting the federal Freedom of Information Act, 5 U.S.C. § 552 (2006) (“FOIA”) are instructive. The D.C. Circuit has held that FOIA provides no authority to “redact particular information within the responsive record on the basis that the information is non-responsive.” *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016); *see also Wellman v. Dep’t of Justice*, No. 314-cv-000348, 2018 WL 4643135, at \*4 (D. Nev. Sept. 27, 2018) (holding that “[n]on-responsive’ is not one of those [FOIA] exemptions” and that “to the extent that the Government released certain pages to Plaintiff, but redacted portions of those pages and cited ‘non-responsive’ as the reason for redaction, that was improper”) (*citing Am. Immigration Lawyers*, 830 F.3d 667).

Nothing supports withholding non-exempt information from disclosed public records for non-responsiveness. Redactions upheld on that basis should be disclosed.

#### **IV. CONCLUSION**

Amici urge the Court to reaffirm the Public Records Act's broad scope and presumption of openness, consistent with the foregoing considerations.

DATED: February 28, 2020.

STOEL RIVES LLP

/s/ W. Christopher Pooser

Wendy J. Olson

W. Christopher Pooser

/s/ Samantha K. Sondag

Samantha K. Sondag

Attorneys for Amici Curiae



### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 28, 2020, I caused a true and correct copy of the foregoing APPELLANTS' BRIEF to be served by the method indicated below, and addressed to the following:

Lawrence G. Wasden  
Attorney General  
State of Idaho

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## **APPENDICES**

- A. Statement of Purpose, 1990 Idaho House Bill No. 860 (RS 24228)
- B. 1990 Idaho Session Laws, ch. 213, pgs. 480 - 489 (Idaho House Bill No. 860)
- C. 1999 Idaho Session Laws, ch. 30 (Idaho House Bill No. 93)
- D. 2001 Idaho House Bill No. 18 (*available at*  
<https://legislature.idaho.gov/sessioninfo/2001/legislation/H0018/>)
- E. 2001 Idaho House Bill No. 18 (Bill File)

# Appendix A

## STATEMENT OF PURPOSE

RS 24228

The fundamental philosophy of our federal and state constitutional form of representative government is that government is the servant of the people and not the master of them. In delegating authority, the people do not give public officials and employees the right to decide what is good for the people to know and what is not good for the people to know. It is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be knowledgeable and advised of the operations of government at all levels, of the performance of public officials, of the decisions that are reached in all governmental activities and of the formulation of public policy.

Those who are elected to public office and those who are employed in government are trustees and servants of the people and it is in the public interest to enable any person to review and commend or criticize the operation and actions of government and governmental officials and employees, even though allowing the people to examine the operations and actions of government may cause inconvenience and additional expense to government and may result in criticism or embarrassment of officials and employees.

Toward this end, this proposed legislation provides that every person has a right to inspect and take a copy of any public record of this state except as may be provided by statute. This legislation provides that all governmental records in Idaho are open at all reasonable times for inspection, unless access is expressly denied by statute. This right of access is premised on the first amendment to the Constitution of the United States, on Article I, Section 9 of the Constitution of the State of Idaho, on the common law and on strong historical and statutory precedent in this state. The records of governmental activity and officials at all levels should generally be accessible to members of the public to determine whether those entrusted with the affairs of government are honestly, faithfully and competently performing their functions as public servants.

This legislation is a result of workings of the Legislative Council Committee on Public Records which met during the legislative interim in 1989. This legislation will provide much needed procedures, dealing with requests for records, copying, expenses, and response to requests for records which have been heretofore

missing, for individuals to gain access to and obtain a copy of records held by state and local government in Idaho. This proposal will also require each state agency (but not local agencies) to do an inventory of what public records their entity of government possesses and make that inventory available to the public. Additionally, the proposed legislation would sunset exemptions to disclosure of public records effective July 1, 1993. Research presented to the interim committee revealed well over 100 sections in the Idaho Code which provide for the confidentiality or closure of public records. It was the feeling of the interim committee that these exemptions should sunset and that the agencies of government should have to rejustify them to the legislature before they expire.

#### FISCAL IMPACT

It is estimated that the proposed bill might require a one time expenditure of approximately \$113,500 from state general account moneys to initially implement the provisions of this act. This would occur as a result of the inventory of public records provided for in the act. The individual impact will probably vary from agency to agency. Some agencies would need to do little to comply with the provisions of the act, while other agencies may have to do a bit more work to put their house in order. After the initial year, there should be no fiscal impact to any state or local unit of government regarding the public records access issue and some may even save some money on the hiring of legal personnel for advice on whether a record is public or not when a request for access is received.

# Appendix B

ment, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) Except as hereinafter otherwise provided in the case of overtime pay only and subject to the same exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act; i.e., those employers not exempted or excepted by the overtime provisions of the federal fair labor standards act shall pay overtime as provided in this section, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in excess of forty (40) hours at a rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after April 1, 1990.

Approved April 5, 1990.

CHAPTER 213  
(H.B. No. 860)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 9-337 THROUGH 9-348, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE A RIGHT TO EXAMINE PUBLIC RECORDS AND A FEE FOR COPYING PUBLIC RECORDS, TO PROVIDE PROCEDURES IN RESPONSE TO A REQUEST FOR EXAMINATION OF A PUBLIC RECORD, TO PROVIDE RECORDS EXEMPT FROM DISCLOSURE, TO REQUIRE EXEMPT AND NON-EXEMPT PUBLIC RECORDS TO BE SEPARATED, TO PROVIDE PROCEDURES FOR INSPECTION OF RECORDS BY A PERSON ABOUT HIMSELF, TO PROVIDE PROCEEDINGS TO ENFORCE THE RIGHT TO EXAMINE OR RECEIVE A COPY OF A PUBLIC RECORD, TO PROVIDE FOR AN ORDER OF THE COURT AND COSTS, TO PROVIDE A CIVIL PENALTY, TO PROVIDE IMMUNITY, TO PROVIDE AGENCY GUIDELINES, AND TO PROVIDE SEVERABILITY; REPEALING SECTIONS 9-301, 9-302 AND 59-1009, IDAHO CODE; AMENDING SECTIONS 1-2103, 2-210, 6-1001, 6-1008, 6-1010, 15-5-602, 16-1513, 16-1623, 16-1811, 16-1816, 19-1112, 20-213A, 20-226, 22-609, 22-1215, 22-1313, 23-515, 25-2727, 26-1111, 26-1112, 26-2224, 28-46-106, 28-46-304, 30-1450, 31-874, 31-A3502, 33-1211, 36-2114, 37-334f, 37-2743, 38-712, 39-111, 39-257, 39-259A, 39-270, 39-606, 39-610, 39-1210, 39-1310, 39-1393, 39-4411, 39-4412 AND 39-5211, IDAHO CODE, TO PROVIDE PROCEDURES FOR ACCESS TO PUBLIC RECORDS; AMENDING SECTIONS 39-5203 AND 39-5205, IDAHO CODE, AS ENACTED BY CHAPTER 286, LAWS OF 1982, TO REDESIGNATE THE SECTIONS AND PROVIDE PROCEDURES FOR ACCESS TO PUBLIC RECORDS; AMENDING SECTIONS 39-5403, 39-5818, 39-6208, 40-2004, 41-227, 41-272, 41-902, 41-904, 41-1049, 41-1440, 41-3311, 41-3802, 41-3811, 41-4312, 42-4010, 47-319, 47-1314, 47-1506, 47-1515, 48-612, 48-801, 49-321, 49-1311,

49-1313, 49-1314, 54-204, 54-918, 54-934, 54-1210, 54-1806A, 54-1820, 54-1837, 54-1913, 54-2052, 54-3404, 56-221, 56-231, 57-112, 57-133B, 57-911, 58-126, 58-1005, 59-1325A, 66-348, 67-2345, 67-2726, 67-2743E, 67-4708, 67-5009, 67-5768, 67-7410, 67-7421, 67-7436, 67-7437, 67-7441, 67-7445, 69-250, 69-515, 72-603, 72-926, 72-1007, 72-1342 AND 72-1374, IDAHO CODE, TO PROVIDE PROCEDURES FOR ACCESS TO PUBLIC RECORDS; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 9-337 through 9-348, Idaho Code, and to read as follows:

9-337. DEFINITIONS. As used in sections 9-337 through 9-347, Idaho Code:

(1) "Copy" means transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.

(2) "Custodian" means the person having personal custody and control of the public records in question. If no such designation is made by the public agency, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

(3) "Inspect" means the right to listen, view and make notes of public records as long as the public record is not altered or damaged.

(4) "Investigatory record" means information with respect to an identifiable person, group of persons or entities compiled by a public agency pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct which the public agency has regulatory authority or law enforcement authority over.

(5) "Law enforcement agency" means any state or local agency given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.

(6) "Local agency" means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(7) "Person" means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.

(8) "Public agency" means any state or local agency as defined in this section.

(9) "Public official" means any state, county, local district or governmental official or employee, whether elected, appointed or hired.

(10) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of



the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(11) "State agency" means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia.

(12) "Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

9-338. PUBLIC RECORDS -- RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) The custodian shall make no inquiry of any person who applies for a public record, except that the person may be required to make a written request and provide a mailing address and telephone number.

(5) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8) A public agency or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record. For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record informa-

tion, a public agency or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

- (a) The agency's direct cost of copying the information in that form;
- (b) The standard cost, if any, for selling the same information in the form of a publication.

The custodian may require advance payment of the cost of copying. Any money received by the public agency shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(9) A public agency shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency from disclosing statistical information that is not descriptive of an identifiable person or persons.

9-339. RESPONSE TO REQUEST FOR EXAMINATION OF PUBLIC RECORDS. (1) A public agency shall either grant or deny a person's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. If it is determined by employees of the public agency that a longer period of time is needed to locate or retrieve the public records, the public agency shall so notify in writing the person requesting to examine or copy the records and shall provide the public records to the person no later than ten (10) working days following the person's request.

(2) If the public agency fails to respond, the request shall be deemed to be denied within ten (10) working days following the request.

(3) If the public agency denies the person's request for examination or copying the public records or denies in part and grants in part the person's request for examination and copying of the public records, the person legally responsible for administering the public agency or that person's designee shall notify the person in writing of the denial or partial denial of the request for the public record.

(4) The notice of denial or partial denial shall state that the attorney for the public agency has reviewed the request or shall state that the public agency has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so. .

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this sec-

tion mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- (3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.
- (4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.
- (5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.
- (6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.
- (7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.
- (8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.
- (9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.
- (10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.
- (11) Records of a personal nature as follows:
  - (a) Records of personal debt filed with a public agency pursuant to law;
  - (b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;
  - (c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;
  - (d) Records, with regard to the ownership of, or security interests in, registered public obligations;
  - (e) Vital statistics records.
- (12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and

instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active employee financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance

benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

9-341. EXEMPT AND NONEXEMPT PUBLIC RECORDS TO BE SEPARATED. If any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public agency shall, upon receipt of a request for disclosure, separate the exempt and nonexempt material and make the nonexempt material available for examination provided that a denial of a request to copy nonexempt material in a public record shall not be based upon the fact that such nonexempt material is contained in the same public record as the exempt material.

9-342. ACCESS TO RECORDS ABOUT AN INDIVIDUAL BY AN INDIVIDUAL.  
(1) A person may inspect and copy the records of a public agency pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) An individual may request in writing an amendment of any record pertaining to that person. Within ten (10) days of the receipt of the request, the public agency shall either:

- (a) Make any correction of any portion of the record which the individual establishes is not accurate, relevant, or complete; or
- (b) Inform the individual in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as those set forth in sections 9-343 and 9-344, Idaho Code, and the court may award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review otherwise exempt investigatory records of a public agency if the investigation is ongoing, information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable or the information relates to adoption records or information which is otherwise exempt from disclosure by statute.

9-343. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY OF RECORDS -- RETENTION OF DISPUTED RECORDS. (1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency to make the information available for public inspection in accordance with the provisions of this act. The petition contesting the public agency's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

9-344. ORDER OF THE COURT -- COURT COSTS AND ATTORNEY FEES. (1) Whenever it appears that certain public records are being improperly withheld from a member of the public, the court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow. The court may examine the record in camera in its discretion.

(2) If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without

disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued.

9-345. ADDITIONAL PENALTY. If the court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars (\$1,000), which shall be paid into the general account.

9-346. IMMUNITY. No public agency, public official, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record governed by the provisions of this chapter if the public agency, public official or custodian acted in good faith in attempting to comply with the provisions of this chapter.

9-347. AGENCY GUIDELINES. By January 1, 1991, every state agency shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency, the custodian, and the physical location of such documents.

9-348. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 2. That Sections 9-301, 9-302 and 59-1009, Idaho Code, be, and the same are hereby repealed.

SECTION 3. That Section 1-2103, Idaho Code, be, and the same is hereby amended to read as follows:

1-2103. REMOVAL, DISCIPLINING, OR RETIREMENT OF JUDGES OR JUSTICES -- PROCEDURE. A justice of the Supreme Court or judge of any district court, in accordance with the procedure prescribed in this section, may be disciplined or removed for wilful misconduct in office or wilful and persistent failure to perform his duties or habitual intemperance or conduct prejudicial to the administration of justice that brings judicial office into disrepute, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character. The judicial council may, after such investigation as the council deems necessary, order a hearing to be held before it concerning the removal, discipline or retirement of a justice or a judge, or the council may in its discretion request the Supreme Court to appoint three (3) special masters, who shall be justices or judges, to hear and take evidence in any such matters, and to report their findings to the council. If, after hearing, or after considering the record and the findings and report of the masters, the council finds good cause therefor,



# Appendix C

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1999.

Approved February 25, 1999.

CHAPTER 29  
(H.B. No. 92)

AN ACT

RELATING TO CAMPAIGN EXPENDITURES; AMENDING SECTION 67-6611, IDAHO CODE, TO REQUIRE THAT STATEMENTS OF INDEPENDENT EXPENDITURES BE FILED WITH THE SECRETARY OF STATE NOT LESS THAN THIRTY DAYS AFTER A PRIMARY ELECTION.

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

SECTION 1. That Section 67-6611, Idaho Code, be, and the same is hereby amended to read as follows:

67-6611. INDEPENDENT EXPENDITURES. (1) Each person who makes independent expenditures in an aggregate amount exceeding one hundred dollars (\$100) in support of or in opposition to any one (1) candidate, political committee or measure, shall file a statement of the expenditure with the secretary of state.

(2) Statements shall be filed with the secretary of state, not less than seven (7) days prior to the primary and general election and thirty (30) days after the primary and general election.

(3) The statement shall contain the following information: (a) the name and address of any person to whom an expenditure in excess of fifty dollars (\$50.00) has been made by any such person in support of or in opposition to any such candidate or issue during the reporting period, together with the amount, date and purpose of each such expenditure; and (b) the total sum of all expenditures made in support of or in opposition to any such candidate or measure.

Approved February 25, 1999.

CHAPTER 30  
(H.B. No. 93)

AN ACT

RELATING TO PUBLIC RECORDS; REPEALING SECTION 9-340, IDAHO CODE; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340A, IDAHO CODE, TO EXEMPT FROM DISCLOSURE RECORDS FOR WHICH FEDERAL OR STATE LAW PROVIDES EXEMPTIONS FROM DISCLOSURE AND TO EXEMPT CERTAIN COURT FILES OF JUDICIAL PROCEEDINGS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION

9-340B, IDAHO CODE, TO EXEMPT FROM DISCLOSURE CERTAIN LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES AND WORKER'S COMPENSATION RECORDS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340C, IDAHO CODE, TO EXEMPT FROM DISCLOSURE PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS AND PROFESSIONAL DISCIPLINE RECORDS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340D, IDAHO CODE, TO EXEMPT FROM DISCLOSURE TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS AND PROPRIETARY INFORMATION; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340E, IDAHO CODE, TO EXEMPT FROM DISCLOSURE RECORDS REGARDING ARCHAEOLOGICAL MATTERS, CERTAIN ENDANGERED SPECIES RECORDS, CERTAIN LIBRARY RECORDS AND CERTAIN INFORMATION REGARDING LICENSING EXAMS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340F, IDAHO CODE, TO EXEMPT FROM DISCLOSURE DRAFT LEGISLATION AND SUPPORTING MATERIAL, CERTAIN TAX COMMISSION RECORDS AND CERTAIN RECORDS OF THE PETROLEUM CLEAN WATER TRUST FUND; AMENDING SECTION 16-1623, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE; AMENDING SECTION 31-3418, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE; AMENDING SECTION 41-227, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE; AMENDING SECTION 41-335, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-5103, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-204, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE; AMENDING SECTION 54-918, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-934, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE REGARDING EXEMPTION FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340A, Idaho Code, and to read as follows:

9-340A. RECORDS EXEMPT FROM DISCLOSURE -- EXEMPTIONS IN FEDERAL OR STATE LAW -- COURT FILES OF JUDICIAL PROCEEDINGS. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is

provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

SECTION 3. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340B, Idaho Code, and to read as follows:

9-340B. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES, WORKER'S COMPENSATION. The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure. Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing information identifying victims or witnesses.

(4) Voting records of the sexual offender classification board. In accordance with section 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(5) Records of the sheriff or department of law enforcement

received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(6) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(7) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(8) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(9) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(10) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

SECTION 4. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340C, Idaho Code, and to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-

SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly

to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, finding, determinations and decision of any pre-litigation screening panel formed under chapter 10, title 6, Idaho Code.

(11) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the department of law enforcement or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

SECTION 5. That Chapter 3, Title 9, Idaho Code, be, and the same

is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340D, Idaho Code, and to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency.

(4) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers,



seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

SECTION 6. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340E, Idaho Code, and to read as follows:

9-340E. EXEMPTIONS FROM DISCLOSURE -- ARCHAEOLOGICAL, ENDANGERED SPECIES, LIBRARIES, LICENSING EXAMS. The following records are exempt from disclosure:

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(2) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(3) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(4) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(5) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

SECTION 7. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340F, Idaho Code, and to read as follows:

9-340F. RECORDS EXEMPT FROM DISCLOSURE -- DRAFT LEGISLATION AND SUPPORTING MATERIALS, TAX COMMISSION, PETROLEUM CLEAN WATER TRUST

FUND. The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(4) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4904, 41-4908, 41-4910A, 41-4911 or 41-4911A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of health and welfare, division of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4918, 41-4924A, 41-4931, 41-4933, 41-4935, 41-4940 or 41-4941, Idaho Code.

SECTION 8. That Section 16-161, Idaho Code, be, and the same is hereby amended to read as follows:

16-1623. POWERS AND DUTIES OF THE DEPARTMENT. The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(a) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, group homes or other diagnostic, treatment, or care centers or facilities, children of whom it has been given custody. The department is to be governed by the standards found in title 39, chapter 12, Idaho Code.

(b) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such

other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(c) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information.

(d) The department shall make periodic evaluation of all persons in its custody or under its supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court which vested custody of the person with the department. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1611, Idaho Code.

(e) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(f) The department shall keep written records of investigations, evaluations, prognosis and all orders concerning disposition or treatment of every person over whom it has legal custody. Department records shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting disclosure or the provisions of section 9-340 exemptions from disclosure provided in chapter 3, title 9, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(g) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department under this chapter.

(h) The department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and

the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.

(i) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody at intervals of not to exceed six (6) months. There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date of adjudication, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interests of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.

(j) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of home care.

(k) At any time the department is considering a placement pursuant to this act, the department shall make a reasonable effort to place the child in the least disruptive environment to the child and in so doing may consider, without limitation, placement of the child with related persons.

SECTION 9. That Section 31-3418, Idaho Code, be, and the same is hereby amended to read as follows:

31-3418. CONFIDENTIALITY -- PROCEEDINGS AND RECORDS OF INDIGENTS. All proceedings and records related to indigency, pursuant to chapter 34, title 31, Idaho Code, shall be exempt from disclosure pursuant to ~~section-9-340~~ chapter 3, title 9, Idaho Code.

SECTION 10. That Section 41-227, Idaho Code, be, and the same is hereby amended to read as follows:

41-227. EXAMINATION REPORT. (1) The director or his examiner shall make a full and true written report of every examination made by him under this chapter, and shall verify the report by his oath.

(2) The report shall comprise only facts appearing upon the books, papers, records or documents of the person being examined, or ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as may reasonably be warranted from such facts.

(3) Prior to a hearing and prior to any modifications the report shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the com-

pany examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(5) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers, and enter an order:

(a) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refileing pursuant to subsection (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(6) (a) All orders entered pursuant to subsection (5)(a) of this section shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner work papers and any written submissions or rebuttals. Any such order shall be considered a final order and may be appealed pursuant to sections 67-5270 through 67-5279, Idaho Code, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) Any hearing conducted under subsection (5)(c) of this section by the director or authorized representative, shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by, or as a result of, the director's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the director shall enter an order pursuant to the provisions of subsection (5)(a) of this section.

(c) The director shall not appoint a contract examiner or an employee of the department as an authorized representative to conduct the hearing.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the content of any investigation or activity of a criminal justice agency, except to the extent that the director relied upon information furnished to the director by such criminal justice agency

in making his decision.

(7) The report when so verified and filed shall be admissible in evidence in any action or proceeding brought by the director against the person examined, or against its officers, employees or agents, and shall be presumptive evidence of the material facts stated therein. The director or his examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the department.

(8) After an order is entered under the provisions of subsection (5)(a) of this section, the director may publish the report or the results of the examination as contained therein which report or results are a public record and shall be exempt from the provisions of section--9-340 exemptions from disclosure provided in chapter 3, title 9, Idaho Code.

(9) Nothing contained in this chapter shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(10) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any other person in the course of an examination made under the provisions of this chapter shall be made available to the person or company which was the subject of the examination in proceedings pursuant to chapter 52, title 67, Idaho Code, but shall otherwise be held by the director as a record not required to be made public pursuant to section--9-340 exemptions from disclosure provided in chapter 3, title 9, Idaho Code.

SECTION 11. That Section 41-335, Idaho Code, be, and the same is hereby amended to read as follows:

41-335. ANNUAL STATEMENT. (1) Each authorized insurer shall annually on or before March 1, or within any extension of time therefor, not to exceed thirty (30) days, which the director for good cause may have granted, file with the director a full and true statement of its financial condition, transactions and affairs as of the preceding December 31. Unless otherwise required by the director, the statement is to be prepared in accordance with the annual statement instructions and the accounting and procedures manual adopted by the national association of insurance commissioners (NAIC) and is to be submitted on the NAIC annual convention blank form, and any statement, form or other information relating to the compensation of any officer, director or employee will be deemed confidential. At the reasonable request of a domestic insurer the director shall furnish to the insurer the blank form of annual statement to be used by it. The statement shall be verified by the oath of the insurer's president or vice-president

vice president, and secretary or actuary as applicable, or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement as to the insurer's affairs throughout the world, the insurer shall file such statement with the director as soon as reasonably possible.

(3) An insurer which is subject to section 41-337, Idaho Code, (resident agent, countersignature law) shall attach to its annual statement the affidavit required under section 41-339, Idaho Code.

(4) Any insurance company licensed to do business in this state which neglects to file or fails to file in the time prescribed by statute its annual statement or supplemental summary statement requested by the director shall be subject to a penalty of twenty-five dollars (\$25.00) per day for each day in default. This penalty will be in addition to any administrative penalty which may be assessed pursuant to sections 41-327 and 41-324, Idaho Code.

(5) Each domestic insurer authorized to do business in this state shall annually, on or before March 1 of each year, file with NAIC its annual financial statement in a form prescribed by the director along with any additional filings prescribed by the director for the preceding year. The information filed with NAIC shall be in the same format and scope as that required by this code. Any amendments or addenda to the annual statement shall also be filed with NAIC.

(6) At time of filing, the insurer shall pay to the director the fee for filing its statement as prescribed by rule of the department of insurance.

(7) The financial statements filed with the director pursuant to this section, with the exception of information relating to officer, director, or employee compensation referred to in subsection (1) of this section, are public records and available to the public, notwithstanding the provisions--of-section-9-340 exemptions from disclosure provided in chapter 3, title 9, Idaho Code.

SECTION 12. That Section 41-5103, Idaho Code, be, and the same is hereby amended to read as follows:

41-5103. LICENSURE. (1) No person, firm, association or corporation shall act as a RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(a) In this state, unless such RB is a licensed producer in this state; or

(b) In another state, unless such RB is a licensed producer in this state or another state having a law substantially similar to this law or such RB is licensed in this state as a nonresident reinsurance intermediary.

(2) No person, firm, association or corporation shall act as a RM:

(a) For a reinsurer domiciled in this state, unless such RM is a



licensed producer in this state;

(b) In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such RM is a licensed producer in this state;

(c) In another state for a nondomestic insurer, unless such RM is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

(3) The director may require a RM subject to subsection (2) of this section to:

(a) File a bond in an amount from an insurer acceptable to the director for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the director.

(4) (a) The director may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(b) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the director as agent for service of process in the manner, and with the same legal effect, provided for in this title for designation of service of process upon unauthorized insurers, and shall also furnish the director with the name and address of a resident of this state upon whom notices or orders of the director or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the director in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the director.

(5) The director may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, ~~any-one~~ anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the director will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and exempt from disclosure pursuant to ~~section--9-340~~ exemptions provided in chapter 3, title 9, Idaho Code.

(6) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from the provisions of

this section.

SECTION 13. That Section 54-204, Idaho Code, be, and the same is hereby amended to read as follows:

54-204. POWERS AND DUTIES. The Idaho state board of accountancy, in addition to the other powers and duties set forth in this chapter, shall have the following powers and duties:

(1) To adopt and amend rules in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code, governing its administration and the enforcement of this chapter and the conduct of licensees including, but not limited to:

(a) Rules governing the board's meetings and the conduct of its business;

(b) Rules of procedure governing the conduct of investigations and hearings by the board;

(c) Rules specifying the education qualifications required for the issuance of certificates, the experience required for initial issuance of certificates and the continuing professional education required for renewal of licenses;

(d) Rules of professional conduct directed to controlling the quality and probity of the practice of public accountancy by licensees, and dealing among other things with independence, integrity and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;

(e) Rules specifying actions and circumstances that shall be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;

(f) Rules regarding quality reviews that may be required to be performed under the provisions of this chapter;

(g) Rules for the method and substance of examination for licenses to practice as certified public accountants. The board shall provide for examination of applicants, at least annually, at such times and places as circumstances and applications may warrant. The board shall use all or part of the uniform CPA examination, and may use any related service available from the American institute of certified public accountants (AICPA) and the national association of state boards of accountancy (NASBA), or an examination and services consistent with standards of the AICPA examination. The board may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder. The board shall adopt a system to maintain the security and integrity of the examination process; and

(h) Such other rules as the board may deem necessary or appropriate to implement or administer the provisions and purposes of this chapter.

(2) To issue original certificates of qualification and licenses to practice as certified public accountants to such applicants as may be qualified by reciprocity, transfer of examination grades or by examination.

(3) To charge and collect from all applicants, certificate holders, and licensees such fees as are provided by this chapter and pre-

scribed by rules of the board.

(4) To initiate or receive complaints, cause the same to be investigated, initiate proceedings, and conduct hearings or proceedings pursuant to chapter 2, title 54, Idaho Code. The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. Unless dismissed by the board as unfounded or trivial, the board may proceed with disciplinary proceedings or may return the report to the investigating officer for further investigation.

(a) In order to protect the interests of a complainant, witness, third party or defendant, the board may upon application and for good cause shown, issue a protective order, consistent with ~~section-9-340~~ chapter 3, title 9, Idaho Code, prohibiting the disclosure of specific information otherwise not privileged and confidential and direct that the proceedings be conducted so as to implement the order.

(b) In carrying into effect the provisions of this chapter, the board may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents and other pertinent data in any disciplinary matters or in any case wherever a violation of the provisions of this chapter is alleged. Upon failure or refusal to comply with any such order of the board, or upon failure to honor its subpoena, the board may apply to the court in the district where the witness resides to enforce compliance.

(5) To authorize by written agreement the bureau of occupational licenses as agent to act in its interest.

(6) Any action, claim or demand to recover money damages from the board or its employees which any person is legally entitled to recover as compensation for the negligent or otherwise wrongful act or omission of the board or its employees, when acting within the course and scope of their employment, shall be governed by the Idaho tort claims act, chapter 9, title 6, Idaho Code. For purposes of this subsection, the term "employees" shall include special assignment members of the board and other independent contractors while acting within the course and scope of their board related work.

All hearings, investigations or proceedings conducted by the board shall, unless otherwise requested by the concerned party, be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 14. That Section 54-918, Idaho Code, be, and the same is hereby amended to read as follows:

54-918. EXAMINATIONS -- CERTIFICATE OF QUALIFICATION. At least once in each calendar year, the board or its agent shall conduct separate examinations in dentistry and in dental hygiene. Examinations shall be written or clinical, or both, and upon such subjects in dentistry and dental hygiene as the board shall determine will thoroughly test the fitness and ability of the applicant to practice dentistry or dental hygiene. It shall report and record the names of applicants who pass and of those who fail the examination. Upon the candidate's request, the board will issue to each passing applicant in dentistry,

who is qualified for Idaho licensure, a certificate of qualification to practice dentistry, and to each passing applicant in dental hygiene, who is qualified for Idaho licensure, a certificate of qualification to practice dental hygiene within the state of Idaho.

Prior to an examination, or by general rule, the board shall determine the relative weight of the written and of the clinical examination, the passing grade, not exceeding seventy per-cent percent (70%), for each subject, section, or part of the examination and the general average passing grade, not exceeding seventy-five per-cent percent (75%). The board may recognize a certificate granted by the commission on national dental examinations.

Applicants who fail the examination shall be notified thereof in writing by the board or its agent, which shall also record the fact of failure and the date and means of notification.

Written questions and answers of applicants shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt from disclosure ~~as provided by section 9-340, Idaho Code~~ in that chapter and title, and shall be destroyed by the board after the period of one (1) year following the examination.

SECTION 15. That Section 54-934, Idaho Code, be, and the same is hereby amended to read as follows:

54-934. PEER REVIEW COMMITTEES -- IMMUNITY FROM LIABILITY -- CONFIDENTIALITY OF RECORDS. (1) The state board of dentistry or the Idaho state dental association or both may establish one (1) or more peer review committees pursuant to this section, for the purpose of:

- (a) Determining the relevancy of a dentist's usual and reasonable fees or treatment procedure to the terms of a contract;
- (b) Assessing the quality of services rendered; or
- (c) Evaluating claims against dentists or engaging in underwriting decisions in connection with professional liability insurance coverage for dentists.

(2) The board or the associations, any one (1) of which has established a peer review committee pursuant to law, any committee member or any staff member of either the board or of the associations assisting a peer review committee, and any witness or consultant appearing before or presenting information to a peer review committee shall be immune from liability in any civil action brought as a result of a peer review investigation or proceeding conducted by a peer review committee, if the board, association, committee or staff member, witness or consultant, acts in good faith within the scope of the function of the committee, has made a reasonable effort to obtain the facts of the matter as to which the board or association or he acts, in the reasonable belief that the action taken is warranted by the facts.

(3) Any entity, organization or person acting without malice in making any report or other information available to a peer review committee, or who assists in the origination, investigation or preparation of that information, or assists a committee in carrying out any of its duties or functions, shall be immune from civil liability for any such actions.

(4) Any communications or information relating to peer committee

investigations or proceedings as provided by law, and the proceedings and records of the committee related to them, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt from disclosure ~~as provided in section 9-340, Idaho Code~~ in that chapter and title, and shall not be subject to discovery or introduced into evidence in any civil action against a dentist arising out of matters which are the subject of evaluation and review by the committee.

Approved February 25, 1999.

CHAPTER 31  
(H.B. No. 106)

AN ACT

RELATING TO IDAHO MEDICAL SAVINGS ACCOUNTS; AMENDING SECTION 63-3022K, IDAHO CODE, TO PROVIDE FOR DISPOSITION OF A MEDICAL SAVINGS ACCOUNT UPON THE DEATH OF THE ACCOUNT HOLDER; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3022K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022K. MEDICAL SAVINGS ACCOUNT. (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars (\$2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income. For married individuals the maximum deduction shall be computed separately for each individual. Contributions to the account shall not exceed the amount deductible under this section.

(2) For the purpose of this section, the following terms have the following meanings unless the context clearly denotes otherwise:

(a) "Account holder" means an individual, in the case of married individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.

(b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.

(c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:

(i) Under nineteen (19) years of age, or enrolled as a full-time student at an accredited college or university.

(ii) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care nec-

# Appendix D

## 2001 Legislation

### HOUSE BILL NO. 18

[View Daily Data Tracking History](#)

[View Bill Text](#)

[View Amendment](#)

[View Engrossed Bill \(Original Bill with Amendment\(s\) Incorporated\)](#)

[View Statement of Purpose / Fiscal Impact](#)

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Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

**This sentence is marked with bold and underline to show added text.**

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

### Daily Data Tracking History

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H0018aa.....by MR. SPEAKER

Requested by: Department of Correction

CORRECTION DEPARTMENT - RECORDS - Amends existing law to provide an exemption from disclosure for certain records of the Idaho Department of Correction.

01/08 House intro - 1st rdg - to printing

Rpt prt - to Jud

02/20 Rpt out - to Gen Ord

02/22 Rpt out amen - to engros

02/23 Rpt engros - 1st rdg - to 2nd rdg as amen

02/26 2nd rdg - to 3rd rdg as amen

02/27 3rd rdg as amen - PASSED - 58-1-11

AYES -- Barraclough, Barrett, Bedke, Bell, Bieter, Black, Boe, Bolz, Bradford, Bruneel, Callister, Campbell, Chase, Clark, Collins, Crow, Cuddy, Deal, Denney, Eskridge, Field(13), Field(20), Gagner, Gould, Hadley, Harwood, Henbest, Higgins, Hornbeck, Jaquet, Kellogg, Kendell, Kunz, Lake, Langford, Loertscher, Mader, Marley, Montgomery, Mortensen, Moss, Moyle, Pearce, Pomeroy, Raybould, Ridinger, Robison, Sali, Schaefer, Sellman, Shepherd, Smith, Smylie, Stevenson, Tilman, Wheeler, Young, Mr. Speaker

NAYS -- McKague

Absent and excused -- Ellis, Ellworth, Hammond, Jones, Meyer, Pischner, Roberts, Stone, Swan, Trail, Wood

Floor Sponsor -- Smith

Title apvd - to Senate

02/28 Senate intro - 1st rdg - to Jud

03/05 Rpt out - rec d/p - to 2nd rdg as amen

03/06 2nd rdg - to 3rd rdg as amen

03/19 3rd rdg as amen - PASSED - 26-9-0

AYES -- Andreason, Branch, Boatright, Brandt, Bunderson, Burtenshaw, Cameron, Danielson, Darrington, Davis, Deide, Dunklin, Geddes, Goedde, Keough, King-Barrutia, Lodge, Noh, Risch, Sandy, Sims, Sorensen, Stegner, Stennett, Thorne, Wheeler

NAYS -- Frasure, Hawkins, Ingram, Ipsen, Lee, Richardson, Schroeder, Whitworth, Williams

Absent and excused -- None

Floor Sponsor -- Stegner

Title apvd - to House

03/20 To enrol

03/21 Rpt enrol - Sp signed

Pres signed

03/22 To Governor

03/26 Governor signed

Session Law Chapter 180

Effective: 07/01/01



## Bill Text



32 an identifiable person or group of persons compiled by a law enforcement  
 33 agency in the course of conducting an investigation of a specific act or omis-  
 34 sion and shall not include the following information:

- 35 (a) The time, date, location, and nature and description of a reported
- 36 crime, accident or incident;
- 37 (b) The name, sex, age, and address of a person arrested, except as
- 38 otherwise provided by law;
- 39 (c) The time, date, and location of the incident and of the arrest;
- 40 (d) The crime charged;
- 41 (e) Documents given or required by law to be given to the person
- 42 arrested;
- 43 (f) Information ~~s~~ and indictments except as otherwise provided by law; and

2

1 (g) Criminal history reports.

2 As used herein, the term "law enforcement agency" means the office of the  
 3 attorney general, the office of the state controller, the Idaho state police,  
 4 the Idaho department of correction, the office of any prosecuting attorney,  
 5 sheriff or municipal police department.

6 (3) Whenever it is made to appear by verified petition to the district  
 7 court of the county where the records or some part thereof are situated that  
 8 certain investigative records are being improperly withheld from a member of  
 9 the public, the court shall order the officer or person charged with withhold-  
 10 ing the records to disclose the investigative record or show cause why he  
 11 should not do so. The court shall decide the case after examining the record  
 12 in camera, papers filed by the parties, and such oral argument and additional  
 13 evidence as the court may allow.

14 If the court finds that the public official's decision to refuse disclo-  
 15 sure is not justified, he shall order the public official ~~s~~ to make the record  
 16 public. If the judge determines that the public official was justified in  
 17 refusing to make the record public, he shall return the item to the public  
 18 official without disclosing its content with an order supporting the decision  
 19 refusing disclosure. Any person who fails to obey the order of the court shall  
 20 be cited to show cause why he is not in contempt of court. The court may, in  
 21 its discretion, award costs and fees to the prevailing party.

22 SECTION 2. That Section 9-340B, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 9-340B. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS, INVES-  
 25 TIGATORY RECORDS OF AGENCIES, WORKER'S COMPENSATION. The following records are  
 26 exempt from disclosure:

- 27 (1) Investigatory records of a law enforcement agency, as defined in sec-  
 28 tion 9-337(6), Idaho Code, under the conditions set forth in section 9-335,  
 29 Idaho Code.
- 30 (2) Juvenile records of a person maintained pursuant to chapter 5, title  
 31 20, Idaho Code, except that facts contained in such records shall be furnished

upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) (a) ~~Until July 1, 2001, The following~~ records of the department of correction: ~~to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction, or would substantially prejudice or prevent the carrying out of the functions of the department of correction if the public interest in confidentiality clearly outweighs the public interest in disclosure.~~

(i). ~~Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing~~ that contain any identifying information, identifying or any information that would lead to the identification

3

of any victims or witnesses;

(ii) Records of a subjective nature that contain information related to recommendations and observations of a prisoner or probationer including, but not limited to, contact notes, progress reports, assessments, and individual memoranda, which, if disclosed, would jeopardize professional candor;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(9), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Operation and security manuals, plans, ~~or~~ codes, shift summaries or briefings, or logs of county jails and buildings owned or leased by Idaho state government, a county or a city. "Operation manuals" are those internal documents of any state government agency, county or city building or jail that define the procedures utilized to maintain security within the building or jail. "Plans, ~~or~~ codes, shift summaries or briefings, or logs" relate only to those documents, the release of which could jeopardize the safety of workers in those buildings, prisoners or persons confined in those buildings, or adversely affect the public safety.

(c) Records of the commission of pardons and parole shall be exempt from

24 public disclosure pursuant to section 20-213A, Idaho Code, and section  
25 20-223, Idaho Code. Records exempt from disclosure shall also include  
26 those containing the names, addresses and written statements of victims.

27 (4) Voting records of the sexual offender classification board. In accor-  
28 dance with section 18-8315, Idaho Code, the written record of the vote to  
29 classify an offender as a violent sexual predator by each board member in each  
30 case reviewed by that board member shall be exempt from disclosure to the pub-  
31 lic and shall be made available upon request only to the governor, the chair-  
32 man of the senate judiciary and rules committee, and the chairman of the house  
33 of representatives judiciary, rules and administration committee, for all law-  
34 ful purposes.

35 (5) Records of the sheriff or Idaho state police received or maintained  
36 pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

37 (6) Records of investigations prepared by the department of health and  
38 welfare pursuant to its statutory responsibilities dealing with the protection  
39 of children, the rehabilitation of youth, adoptions and the commitment of men-  
40 tally ill persons.

41 (7) Records including, but not limited to, investigative reports, result-  
42 ing from investigations conducted into complaints of discrimination made to  
43 the Idaho human rights commission unless the public interest in allowing  
44 inspection and copying of such records outweighs the legitimate public or pri-  
45 vate interest in maintaining confidentiality of such records. A person may  
46 inspect and copy documents from an investigative file to which he or she is a  
47 named party if such documents are not otherwise prohibited from disclosure by  
48 federal law or regulation or state law. The confidentiality of this subsection  
49 will no longer apply to any record used in any judicial proceeding brought by  
50 a named party to the complaint or investigation, or by the Idaho human rights  
51 commission, relating to the complaint of discrimination.

52 (8) Records containing information obtained by the manager of the Idaho  
53 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
54 behalf of employers or employees contained in underwriting and claims for ben-  
55 efits files.

4

1 (9) The worker's compensation records of the Idaho industrial commission  
2 provided that the industrial commission shall make such records available:

3 (a) To the parties in any worker's compensation claim and to the indus-  
4 trial special indemnity fund of the state of Idaho; or

5 (b) To employers and prospective employers subject to the provisions of  
6 the Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
7 limitations, who certify that the information is being requested with  
8 respect to a worker to whom the employer has extended an offer of employ-  
9 ment and will be used in accordance with the provisions of the Americans  
10 with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

11 (c) To employers and prospective employers not subject to the provisions  
12 of the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
13 tory limitations, provided the employer presents a written authorization

14 from the person to whom the records pertain; or  
15 (d) To others who demonstrate that the public interest in allowing  
16 inspection and copying of such records outweighs the public or private  
17 interest in maintaining the confidentiality of such records, as determined  
18 by a civil court of competent jurisdiction.  
19 (10) Records of investigations compiled by the commission on aging involv-  
20 ing vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to  
21 be abused, neglected or exploited.  
22 (11) Criminal history records and fingerprints, as defined by section  
23 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
24 shall be released only in accordance with chapter 30, title 67, Idaho Code.

## Amendment



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|||| LEGISLATURE OF THE STATE OF IDAHO ||||  
Fifty-sixth Legislature First Regular Session - 2001

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## IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 18, As Amended

BY MR. SPEAKER

Requested by: Department of Correction

1 AN ACT  
2 RELATING TO PUBLIC WRITINGS; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE  
3 AN EXEMPTION FROM DISCLOSURE FOR CERTAIN RECORDS OF THE IDAHO DEPARTMENT  
4 OF CORRECTION.

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

6 SECTION 1. That Section 9-340B, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 9-340B. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS, INVES-  
9 TIGATORY RECORDS OF AGENCIES, WORKER'S COMPENSATION. The following records are  
10 exempt from disclosure:

11 (1) Investigatory records of a law enforcement agency, as defined in sec-  
12 tion 9-337(6), Idaho Code, under the conditions set forth in section 9-335,  
13 Idaho Code.

14 (2) Juvenile records of a person maintained pursuant to chapter 5, title  
15 20, Idaho Code, except that facts contained in such records shall be furnished  
16 upon request in a manner determined by the court to persons and governmental  
17 and private agencies and institutions conducting pertinent research studies or  
18 having a legitimate interest in the protection, welfare and treatment of the  
19 juvenile who is thirteen (13) years of age or younger. If the juvenile is  
20 petitioned or charged with an offense which would be a criminal offense if  
21 committed by an adult, the name, offense of which the juvenile was petitioned  
22 or charged and disposition of the court shall be subject to disclosure as pro-  
23 vided in section 20-525, Idaho Code. Additionally, facts contained in any  
24 records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall  
25 be furnished upon request to any school district where the juvenile is  
26 enrolled or is seeking enrollment.

27 (3) (a) ~~Until July 1, 2001, The following~~ records of the department of  
28 correction: ~~to the extent that disclosure thereof would interfere with the~~  
29 ~~secure and orderly conduct of their operations, or the rehabilitation of~~  
30 ~~any person in the custody of the department of correction, or would sub-~~  
31 ~~stantially prejudice or prevent the carrying out of the functions of the~~



~~department of correction if the public interest in confidentiality clearly outweighs the public interest in disclosure.~~

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

~~(ii). Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing~~ that contain any identifying information, identifying or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a

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prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(9), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Operation and security manuals, plans or codes of county jails and buildings owned or leased by Idaho state government, a county or a city. "Operation manuals" are those internal documents of any state government agency, county or city building or jail that define the procedures utilized to maintain security within the building or jail. "Plans or codes" relate only to those documents, the release of which could jeopardize the safety of workers, visitors or prisoners in those buildings, or adversely affect the public safety.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(4) Voting records of the sexual offender classification board. In accordance with section 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(5) Records of the sheriff or Idaho state police received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(6) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(7) Records including, but not limited to, investigative reports, result-

34 ing from investigations conducted into complaints of discrimination made to  
 35 the Idaho human rights commission unless the public interest in allowing  
 36 inspection and copying of such records outweighs the legitimate public or pri-  
 37 vate interest in maintaining confidentiality of such records. A person may  
 38 inspect and copy documents from an investigative file to which he or she is a  
 39 named party if such documents are not otherwise prohibited from disclosure by  
 40 federal law or regulation or state law. The confidentiality of this subsection  
 41 will no longer apply to any record used in any judicial proceeding brought by  
 42 a named party to the complaint or investigation, or by the Idaho human rights  
 43 commission, relating to the complaint of discrimination.

44 (8) Records containing information obtained by the manager of the Idaho  
 45 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
 46 behalf of employers or employees contained in underwriting and claims for ben-  
 47 efits files.

48 (9) The worker's compensation records of the Idaho industrial commission  
 49 provided that the industrial commission shall make such records available:

50 (a) To the parties in any worker's compensation claim and to the indus-  
 51 trial special indemnity fund of the state of Idaho; or

52 (b) To employers and prospective employers subject to the provisions of  
 53 the Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
 54 limitations, who certify that the information is being requested with  
 55 respect to a worker to whom the employer has extended an offer of employ-

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 2 with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or  
 3 (c) To employers and prospective employers not subject to the provisions  
 4 of the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
 5 tory limitations, provided the employer presents a written authorization  
 6 from the person to whom the records pertain; or

7 (d) To others who demonstrate that the public interest in allowing  
 8 inspection and copying of such records outweighs the public or private  
 9 interest in maintaining the confidentiality of such records, as determined  
 10 by a civil court of competent jurisdiction.

11 (10) Records of investigations compiled by the commission on aging involv-  
 12 ing vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to  
 13 be abused, neglected or exploited.

14 (11) Criminal history records and fingerprints, as defined by section  
 15 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
 16 shall be released only in accordance with chapter 30, title 67, Idaho Code.

## Statement of Purpose / Fiscal Impact

## STATEMENT OF PURPOSE

RS10554

The purpose of the language changes to 9-335 and 9-340B are to permanently exempt from disclosure those IDOC records which, if released, would jeopardize the secure and orderly operation of IDOC facilities, or the rehabilitation of persons under IDOC custody or supervision, or would reveal the identities of victims and/or witnesses.

## FISCAL IMPACT

The proposed changes have no impact on any state fund or expenditure.

## CONTACT

Name: Pat Ogden

Agency: Department of Correction

Phone: 658-2052

Statement of Purpose/Fiscal Note

Bill No. H18

# Appendix E

2001

APPENDIX E

STATEMENT OF PURPOSE

RS10554

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CONTACT

Name: Pat Ogden  
Agency: Department of Correction  
Phone: 658-2052

Statement of Purpose/Fiscal Note

H 18

# 2001 Final Daily Data

Title apvd - to House  
02/19 To enrol  
02/20 Rpt enrol - Sp signed  
02/21 Pres signed  
02/22 To Governor  
02/27 Governor signed  
Session Law Chapter 26  
Effective: 07/01/01

H0016.....by MR. SPEAKER  
Requested by: Idaho State Police  
COURTS - FEES - Amends existing law to provide for an increase in the penalty assessment funds charged by the courts for Peace Officers Standards and Training purposes.

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

H0017.....by MR. SPEAKER  
Requested by: Department of Correction  
CORRECTIONS - STAFF TRAINING - Amends existing law relating to the State Board of Correction to delete a reference to guards; and to provide the State Board of Correction with the authority to specify the training of certain persons.

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

01/16 Rpt out - rec d/p - to 2nd rdg

01/17 2nd rdg - to 3rd rdg

01/18 3rd rdg - PASSED - 63-5-2

NAYS -- Barrett, Campbell, Crow, Higgins, McKague

Absent and excused -- Black, Sali

Floor Sponsor - Sellman

Title apvd - to Senate

01/19 Senate intro - 1st rdg - to Jud

02/01 Rpt out - rec d/p - to 2nd rdg

02/02 2nd rdg - to 3rd rdg

02/06 3rd rdg - PASSED - 33-0-1(1 vacant)

NAYS -- None

Absent and excused -- Risch

Vacant -- Dist. #4

Floor Sponsor -- Stegner

Title apvd - to House

02/07 To enrol

02/08 Rpt enrol - Sp signed

02/09 Pres signed

02/12 To Governor

02/16 Governor signed

Session Law Chapter 16

Effective: 07/01/01

H0018aa.....by MR. SPEAKER  
Requested by: Department of Correction  
CORRECTION DEPARTMENT - RECORDS - Amends existing law to provide an exemption from disclosure for certain records of the Idaho Department of Correction.

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

02/20 Rpt out - to Gen Ord

02/22 Rpt out amen - to engros

02/23 Rpt engros - 1st rdg - to 2nd rdg as amen

02/26 2nd rdg - to 3rd rdg as amen

02/27 3rd rdg as amen - PASSED - 58-1-11

NAYS -- McKague

Absent and excused -- Ellis, Ellworth, Hammond, Jones,

Meyer, Pischner, Roberts, Stone, Swan, Trail, Wood

Floor Sponsor -- Smith

Title apvd - to Senate

02/28 Senate intro - 1st rdg - to Jud

03/05 Rpt out - rec d/p - to 2nd rdg as amen

03/06 2nd rdg - to 3rd rdg as amen

03/19 3rd rdg as amen - PASSED - 26-9-0

--Continued--

NAYS -- Frasure, Hawkins, Ingram, Ipsen, Lee,  
Richardson, Schroeder, Whitworth, Williams  
Absent and excused -- None  
Floor Sponsor -- Stegner  
Title apvd - to House

03/20 To enrol

03/21 Rpt enrol - Sp signed

Pres signed

03/22 To Governor

03/26 Governor signed

Session Law Chapter 180

Effective: 07/01/01

H0019.....by MR. SPEAKER  
Requested by: Department of Parks and Recreation  
VESSELS - OPERATION UNDER INFLUENCE - Amends existing law to provide authority to make an arrest when a person is charged with operating a vessel under the influence of alcohol, intoxicating beverages or drugs; and to provide authority to make an arrest when a person operating a vessel fails to stop or give information after an accident causing damage to a vessel or other property.

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

H0020.....by MR. SPEAKER  
Requested by: Department of Juvenile Corrections  
JUVENILE CORRECTIONS - Amends existing law to provide that the petition fee assessed against juveniles adjudicated in juvenile court shall be named the "Detention/Probation Training Academy Fee"; and to change the name of the "Juvenile Corrections Account" to the "Juvenile Corrections Fund."

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

01/16 Rpt out - rec d/p - to 2nd rdg

01/17 2nd rdg - to 3rd rdg

01/18 3rd rdg - PASSED - 68-1-1

NAYS -- Bradford

Absent and excused -- Sali

Floor Sponsor - Roberts

Title apvd - to Senate

01/19 Senate intro - 1st rdg - to Jud

02/01 Rpt out - rec d/p - to 2nd rdg

02/02 2nd rdg - to 3rd rdg

02/06 3rd rdg - PASSED - 33-0-1(1 vacant)

NAYS -- None

Absent and excused -- Risch

Vacant -- Dist. #4

Floor Sponsor -- King-Barrutia

Title apvd - to House

02/07 To enrol

02/08 Rpt enrol - Sp signed

02/09 Pres signed

02/12 To Governor

02/16 Governor signed

Session Law Chapter 15

Effective: 07/01/01

H0021.....by MR. SPEAKER  
Requested by: Department of Juvenile Corrections  
JUVENILE CORRECTIONS FACILITIES - Amends existing law to clarify the source of money received in the Juvenile Corrections Victim Restitution Fund; and to provide for distribution and reporting requirements for state and other public and private contract facilities.

01/08 House intro - 1st rdg - to printing  
Rpt prt - to Jud

01/16 Rpt out - rec d/p - to 2nd rdg

01/17 2nd rdg - to 3rd rdg

--Continued--

AGENDA  
**HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE**

1:30 p.m.  
Room 404  
Monday, January 15, 2001

BILL NO.	DESCRIPTION	SPONSOR
H 17	Correction Dept., training of certain staff	Dept. Correction
→ H 18	Correction Dept., records not disclosed (this bill will be heard, but no action taken at this time)	Dept. Correction
H 19	Vessel, DUI, arrest	Pat Beale, Parks & Recreation
H 20	Juvenile correction, petition fee	Juv. Corrections
H 21	Juvenile correction facilities, reports	Juv. Corrections

**COMMITTEE MEMBERS:**

Chairman Celia Gould  
Vice Chairman Debbie Field  
Rep Bill Sali  
Rep Jim Clark  
Rep Julie Ellsworth  
Rep Bev Montgomery  
Rep Sher Sellman  
Rep Leon Smith  
Rep Todd Hammond  
Rep Monty Pearce  
Rep Tom Moss  
Rep Ken Roberts  
Rep Gary Young

Rep Donna Boe  
Rep David Bieter

H 17

The Director said the purpose of this bill is to provide the board of correction with the power and authority to specify the training of its employees. The Director said the board would like POST Academy to take over the training of correction assistants and officers. The board will retain the authority to specify this training.

MOTION

Representative Clark moved to send H 17 to the floor with a **Do Pass recommendation. Motion carried.** Representative Sellman will carry the bill on the floor.

The next item on the agenda was H 18 and Director Spalding was recognized.

→ H 18

The Director said the purpose of this bill is to permanently exempt from disclosure those department of correction records which, if released, would jeopardize the secure and orderly operation of the correction facilities, or the rehabilitation of persons under the department's custody, or which would reveal the identities of victims and/or witnesses.

Deputy Attorney General Stephanie Altig was recognized to explain the bill in more detail. Ms. Altig said any controversy on the legislation might be due to a misunderstanding of the bill. The purpose is to identify the exemptions. The language just identifies what the records to be exempted are.

CON

Ron Coulter was recognized. Mr. Coulter said public records should not be exempted. The department of correction is not a law enforcement agency. The language of the bill is vague. Contact notes are very important to the public defender's office. If access to information is denied, it hinders the defender's office and can cause costly litigation.

CON

Marty Durant was recognized. Ms. Durant said the ACLU is concerned that perhaps the inmates would not receive a fair trial if pertinent information is not disclosed.

At the conclusion of the testimony from all parties, Representative Smith expressed the opinion that the information should be open. This bill is too far reaching and it is subjective. New language needs to be drafted. Chairman Gould appointed a committee to study the bill. The committee consists of Chairman Smith and Representatives Bieter, Moss and Young. This committee will draft new language to be brought before the full committee.

The next item to be explained was H 19 and Pat Beale was recognized.



AGENDA  
**HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE**  
**SMITH SUBCOMMITTEE**

Room 404

February 7, 2001

**Immediately following the full committee meeting**

<i>BILL NO.</i>	DESCRIPTION	SPONSOR
→ H 18	Department of Correction/records not disclosed	Dir. Spaulding

SUBCOMMITTEE MEMBERS:

Chairman Leon Smith

Rep Gary Young

Rep Tom Moss

Rep David Bieter

## MINUTES

### HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE Smith Subcommittee

**DATE:** February 7, 2001

**TIME:** 2:25 PM

**PLACE:** Room 404

**MEMBERS:** Present: Subcommittee Chairman Smith, Representatives: Moss, Young, and Bieter.

**ABSENT/  
EXCUSED:**

**GUESTS:** Irene Masterson, Stephanie A. Altig, Allan Derr, R.A. (Ron) Coulter, Marty Durand, & Roy Eiguren.

→ **H 18**

Subcommittee Chairman Smith started out by identifying the areas of concern:

1. Page 2, line 2-4 making the Idaho Department of Correction a "law enforcement agency".
2. Page 2, lines 43-49 eliminating language.
3. Page 2, lines 50 to page 3, line 1 which protects victims and witnesses.
4. Page 3, lines 2-6 keeping records of a "subjective nature..." from disclosure in order to encourage candor.
5. Page 3, lines 7-8 dealing with future transportation of prisoners.
6. Page 3, lines 9-10 dealing with presentence investigation records.
7. Page 2, lines 11-13 defining a prisoner and preventing information on him from being released to himself or other prisoners.
8. Page 2, lines 14-15 keeping shift summaries, or briefings, or logs confidential.

**PRO**

Stephanie Altig of the Department of Corrections, gave the history of this bill. Last year Senator Darrington contacted her saying the language on page 2, lines 43-49 was too vague and asked that it be stricken.

Page 2, line 2-4 makes the Idaho Department of Correction a "law enforcement agency." She pointed out that for crimes committed in a prison, they do the same things as any law enforcement agency would do, such as investigate.

Page 2, lines 50 to page 3, line 1 keeps the identity of victims or

witnesses from the public. These people are trying to lead a normal life, and need protection from retaliation. People will be more reluctant to testify if they fear for their personal safety.

Page 3, lines 9-10 the Supreme Court has said that presentencing hearings are sealed as well as the presentencing document. They are asking that the records gathered, but not necessarily used, also be restricted.

Page 3, lines 2-6 refers to records of a subjective nature that if disclosed would jeopardize professional candor. Ms. Altig explained that the Department of Corrections deals with 1) offenders, 2) institutional staff including security, religious, medical and psychological providers, 3) the general public, 4) parolees and probationers who are trying to rebuild their lives, and 5) parole and probation officers. Safety and rehabilitation are their two goals. To meet these ends, a lot of communication is done in writing to track the progress or "digression" of the offender. If taken out of context, the offender might strike out against the person who wrote unfavorable comments about him. There are people who blame others for all their problems. Serious incidents do happen, and the professionals must be able to communicate freely, or candor is jeopardized. Also once offenders leave and rebuild their lives, this information should not come back to haunt them.

Rep. Bieter inquired as to who a professional is--guard, counselor, or psychologist. Ms. Altig replied the notes are different depending upon the role. A security officer's notes would be very different from a counselor's.

Rep. Bieter asked who sees this information. Can the prisoner get it now? Ms. Altig said no. Points are assigned for good behavior and will affect classification of housing--minimum to maximum security. The prisoner receives a sheet showing his classification and points earned as well as a copy of any discipline report. The counselors may chose to give him additional information.

Rep. Bieter asked if before an appeal or parole, wouldn't a prisoner need this information. Ms. Altig said that the information inmates have in their possession can get stolen, so what a prisoner receives in writing is limited. Medical, psychological, and counseling records are never released to the inmate. However, his attorney is permitted to see them in most cases, and can appeal if he wants to see more.

Rep. Bieter asked if the counsel for the parolee can have it before filing. Ms. Altig replied that parole is a civil, not a criminal issue. In a civil rights issue, the inmate knows what is happening. There is enough to get a case filed. Discovery reveals nothing more.

Subcommittee Chairman Smith inquired about page 3, lines 7-8 dealing with releasing information about the future transportation of prisoners. Ms. Altig replied that it was a safety measure to forestall an escape attempt or an attack on the vehicle.

Ms. Altig stated that page 3, lines 9-10 deal with keeping records from presentence investigations confidential. Such things as letters from victims and other investigation documents end up in the files at the Department of Correction. People who give this information need protection.

As to page 2, lines 14-15 dealing with keeping "shift summaries, or briefings, or logs" confidential, Mrs. Altig said these communications are not always in writing. Primarily they are information passed from one security person to another as a shift changes.

**CON**

Ron Coulter, of the State Appellate Public Defender's office, spoke. He said his agency is against listing the Department of Corrections as a law enforcement agency. He fears it could be used to shield information.

He said he understood the need to shield victims. However, he is responsible for Capital Litigation at the post conviction level. He needs to talk to witnesses from "womb to tomb." All this information may be needed in order to get the death sentence reduced to a lesser sentence.

Page 3, lines 2-6 deal with keeping confidential information of a "subjective nature." Mr. Coulter said that in a capital case, one ends up with a "swearing contest between experts." Information as to contacts and conduct in prison can help build a case of mitigation. Discovery in post conviction cases is civil, not criminal and discovery is more limited. He does not believe professional candor would be jeopardized.

Subcommittee Chairman Smith inquired as to whether the court can be used to aid discovery in post conviction. Mr. Coulter said it is a limited discovery. There are not that many capital attorneys in Idaho. They are afraid there might be vital information in the file, but they have no way of knowing about it. He mentioned some recent cases in the news where years later an individual has been exonerated by information that was sitting in the file, but didn't come to light.

Mr. Coulter said that a presentence report is exempt from disclosure, but the report is only as good as the investigator. Unused material might help on appeal.

Subcommittee Chairman Smith asked if he couldn't do it through the court. Mr. Coulter replied the court may not know about it.

As to page 2, lines 14-15 keeping shift summaries, or briefings, or logs confidential, Mr. Coulter gave an example where security staff noted a prisoner's obvious remorse. It helped the prisoner's case. That information might help, or hurt a case, but it shouldn't be exempt.

**CON**

Mr. Allan Derr, Attorney for the Idaho Press Club, spoke. He wants openness of records. Closing records to the public is a serious matter. He does not want to see the Department of Corrections listed as a law enforcement agency for any purpose. He favors protecting the victims, but not the witnesses. He said there is no reason to protect the witnesses. He said "Security does not promote accuracy." He stated that shift summaries, briefings, or logs should only be secret at the moment. He asked, "Why should those records be forever locked up?"

**CON**

Marty Durand, Attorney for the American Civil Liberties Union, spoke. She stated her organization receives lots of prisoners' complaints. They first investigate. They ask for public records all the time before filing a complaint. Sometimes, the investigation reveals no cause for a complaint. If access were restricted, they would have to file a claim to get access to the information.

Rep. Moss agreed she did have a point. However, he asked if a prisoner is in prison for writing bad checks and confesses some very personal things to a counselor, shouldn't that be private? Ms. Durand said yes, just as it would be in the general public.

Subcommittee Chairman Smith asked about page 3, line 11 defining a prisoner. The definition was checked in code and it includes those in state prison, county jails, and juvenile detention centers.

Rep. Young commented that the primary focus is to keep the records out of the hands of people who have no interest in the matter. He believes the courts will allow people who are involved in the case to see the records. As to the issue of candor, he mentioned he had done counseling with police officers, and would not have made notes if he thought those records could become public. He mentioned a case where an inmate committed suicide in a county jail. He said the employees could have been at risk if certain information had become public.

Ms. Durand of the ACLU stated that one does not have to identify themselves when a request is made for information.

**CON**

Roy Eiguren, attorney for the Idaho Daily Trade Association, spoke. He feels that the language in page 2, lines 52 & 53, and page 3, line 1 is an "overly broad" exemption and would allow the Department of Correction to prevent the release of any information. He generally supports the

language in the law that was adopted with the help of the counties and sheriff's associations, and suggested that language be used here. He questioned the need to make the Department of Correction a law enforcement agency. He also suggested that the language dealing with the release of information on the pardons and parole bill last year be followed in this bill. He read from Statute 20-223.

Rep. Moss commented he had problems with page 3, lines 2-6. He asked Ms. Altig to give the example she mentioned earlier. Ms. Altig mentioned there had been a case of molestation of a young boy in a Boy Scout camp. A civil suit for damages was brought against the Boy Scout Camp, but not the prisoner. As part of court ordered sex-offender treatment, the prisoner must tell about all his fantasies and all the sex crimes he had committed. He had molested about 40 boys over the years, some of them Boy Scouts. (A polygraph test is given to verify the information.) The plaintiff sued to obtain the report from the sex-offender's treatment. Not only would the release of this information greatly damage the treatment of the prisoner or any future inmates, but the release of the names of the 40 other victims could have caused them great emotional trauma. A judge did go through the records and restrict the release of information to just what was pertinent to the current trial.

Rep. Moss commented that the court did release the appropriate information. Ms. Altig said a subpoena always worries the Department. Ms. Altig stated that to her knowledge, her office has received no complaints from the ACLU or Mr. Coulter's office.

Rep. Moss inquired as to why "shift summaries or briefings, or logs" was placed with building records and manuals. Ms. Altig replied they all deal with general safety.

Subcommittee Chairman Smith commented that the bill looks as if making the Department of Corrections part of "law enforcement" was an after thought. Ms. Altig stated that code defines how investigatory records of a public agency are handled to protect the integrity of the investigation and protect the innocent third parties, victims and witnesses. The Department of Corrections does the same type of thing. Sometimes the case will go to the county for prosecution. Other investigations may result in reclassification of housing, the separation of inmates, or discipline.

The Committee then decided to go through the eight controversial areas point by point and vote.

**Page 2, line 2-4** The Committee was afraid of "ramifications down the line" if Department of Corrections was given "law enforcement" privileges. By a voice vote

the Committee rejected this section.

**Page 2, lines  
43-49**

This section strikes existing language. By a voice vote the Committee accepted this section.

**Page 2, lines 50  
to page 3, line  
1**

Rep. Moss pointed out that witnesses are as vulnerable as victims. A little sister might witness child abuse. In a drug case a witness could also be endangered. Rep. Young commented personal safety outweighs public interest. The defense attorney or prosecutor can get that information. Courts will see the overriding issue. By a voice vote the Committee accepted this section.

**Page 3, Lines  
7-8**

The Committee agreed that records on future transportation should not be released. By a voice vote the Committee accepted this section.

**Page 3, Lines  
9-10**

Rep. Young commented that the presentence investigation should be held to protect the innocent. Rep. Bieter agreed. He commented that an experienced defense counsel could get the needed information. By a voice vote the Committee accepted this section.

**Page 3, lines  
11-12**

The question was raised does this concern anyone on probation, parole, or even juveniles. Subcommittee Chairman Smith inquired about those in country jails. Rep. Bieter mentioned the separate law the sheriffs requested and received.

Ms. Altig spoke. The concern is that prisoners get records about themselves which than can be stolen, or records about other prisoners. By a voice vote the Committee accepted this section.

**Page 2, lines  
14-15**

Rep. Bieter commented that this seems too broad. County jail logs are of a general nature. There is improved public perception because of "daylight laws." The "Press and public needs those, but after the shifts are over." He was against that section as drafted.

Rep. Moss commented he struggled with the limits and the impact on public safety. Subcommittee Chairman Smith felt the terms "logs and briefings" should be in a previous paragraph. Rep. Young agreed. By a voice vote the Committee rejected this section.

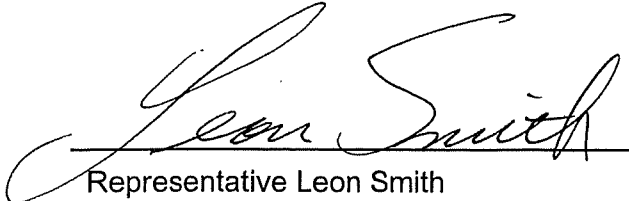
**Page 3, Lines  
2-6**

Subcommittee Chairman Smith said that this section needs a rewrite. Ms. Altig said her instructions were to agree with the Committee's decisions. Subcommittee Chairman Smith then asked Ms. Altig, Mr. Coulter, Mr. Eiguren, Ms. Durand, and Mr. Derr if they could meet and work out acceptable language for this section. All agreed they could.

After some discussion, the time was set for Thursday, 10:30 A.M. in the

Attorney General's Conference Room. They will report back later Thursday.

**ADJOURN:** The meeting was adjourned at 4:21 PM.

  
Representative Leon Smith  
Chairman

  
Janet Bryant  
Secretary



LEON E. SMITH  
DISTRICT 23-A  
TWIN FALLS COUNTY

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COMMITTEES  
JUDICIARY, RULES & ADMINISTRATION  
TRANSPORTATION & DEFENSE  
REVENUE & TAXATION

## House of Representatives State of Idaho

February 13, 2001

Representative Celia Gould  
Chairman  
House Judiciary, Rules & Administration  
STATE CAPITOL BUILDING

Re: **HB 18**

Dear Chairman Gould:

The subcommittee considering the Department of Correction public records exemptions has unanimously decided to recommend to the Judiciary, Rules and Administration committee modified language for HB 18.

The recommended language is set forth on the attached page and there is a recommended deletion of language on line 4, page 2 of HB 18.

Sincerely yours,

A handwritten signature of Leon Smith in cursive script, written over a horizontal line.

Representative Leon Smith  
Subcommittee Chairman

LS/bb

45 ~~secure and orderly conduct of their operations, or the~~  
rehabilitation of  
46 ~~any person in the custody of the department of correction, or~~  
would sub-  
47 ~~stantially prejudice or prevent the carrying out of the~~  
functions of the  
48 ~~department of correction if the public interest in confidentiality~~  
clearly  
49 ~~outweighs the public interest in disclosure.~~

50 (i) Records of which the public interest in confidentiality,  
public safety, security, and habilitation clearly  
outweighs the public interest in disclosure as  
identified pursuant to the authority of the Idaho board  
of correction under section 20-212, Idaho Code.  
51 (ii) ~~Records exempt from disclosure shall include, but not~~  
be lim-  
52 ~~ited to, those containing the names and addresses of~~  
witnesses or  
53 ~~victims or those containing~~ that contain any identifying  
information,  
54 ~~identifying or any information that would lead to the~~  
identification

3

1 of any victims or witnesses;  
2 (iii) Records that reflect future transportation or  
movement of a  
3 prisoner;  
4 (iv) Records gathered during the course of the presentence  
investi-  
5 gation;  
6 (v) Records of a prisoner, as defined in section 9-  
337(9), Idaho  
7 Code, or probationer shall not be disclosed to any other  
prisoner or  
8 probationer.  
9 (b) Operation and security manuals, plans, ~~or~~ codes of county  
jails and buildings owned or leased by Idaho  
10 state government, a county or a city. "Operation manuals" are  
those inter-  
11 nal documents of any state government agency, county or city  
building or  
12 jail that define the procedures utilized to maintain security  
within the  
13 building or jail. "Plans, ~~or~~ codes relate only to those documents,  
the release of which could jeopardize the  
14 safety of workers, visitors or prisoners in those buildings or  
adversely affect the public safety.  
15 (c) Records of the commission of pardons and parole shall be  
exempt from  
16 public disclosure pursuant to section 20-213A Idaho Code, and  
section  
17 20-223, Idaho Code. Records exempt from disclosure shall also  
include  
18 those containing the names, addresses and written statements of  
victims.

AGENDA  
**HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE**

2:15 PM

Room 404

Monday, February 19, 2001

BILL NO.	DESCRIPTION	SPONSOR
→ H 18	Correction Dept./records not disclosed	Dept. of Correction
H 184	Post-judgment, attorney fees/costs, when	Rep. Bieter
H 185	Child/emergency removal/temporary custody	Rep. Moss, Judge Murray
H 244	Theft/"criminal episode"/penalty	Rep. Higgins

**COMMITTEE MEMBERS:**

Chairman Celia Gould  
Vice Chairman Debbie Field  
Rep Bill Sali  
Rep Jim Clark  
Rep Julie Ellsworth  
Rep Bev Montgomery  
Rep Sher Sellman

Rep Leon Smith  
Rep Todd Hammond  
Rep Monty Pearce  
Rep Tom Moss  
Rep Ken Roberts  
Rep Gary Young

Rep Donna Boe  
Rep David Bieter

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 19, 2001

TIME: 1:55 PM

PLACE: Room 404

MEMBERS: Chairman Gould, Vice Chairman Field, Representatives Sali, Clark, Ellsworth, Montgomery, Sellman, Smith, Hammond, Pearce, Moss, Roberts, Young, Boe, Bieter

ABSENT/  
EXCUSED: Chairman Gould

GUESTS: Stephanie Altig, Idaho Dept. of Correction; Judge Bryan K. Murray; Todd Joyner, Deputy Prosecuting Attorney; Representative Higgins

MOTION: Vice Chairman Field called the meeting to order and asked the members to review the minutes. Representative Clark moved to approve the minutes of the meeting held on February 15, as written. Motion carried.

H 184: Vice Chairman Field said Representative Bieter, the sponsor of **H 184**, asked for unanimous consent to hold the bill for a time certain until Tuesday, February 27. There being no objection, **H 184 was held.**

→ H 18: Representative Smith was recognized to give his subcommittee's report and recommendations on **H 18**. Mr. Smith said the subcommittee met with all germane parties to discuss the bill. As a result, new language was worked out. Mr. Smith gave each member a copy of the recommended amendments (attachment.)

MOTION: Representative Smith moved **to send H 18 to General Orders with committee amendments attached. Motion carried.** Representative Smith will carry the bill on the floor.

H 185 The next item on the agenda was **H 185** and Vice Chairman Field recognized Representative Moss to speak to the bill. Mr. Moss said this bill comes about through a considerable effort on the part of the committee appointed by the Supreme Court to study children in foster care. This was a blue ribbon committee which carefully studied the problems over a three-year period before the bill was drafted. Judge Murray was one of the experts in this state dealing with child welfare. Mr. Moss asked to turn the podium over to Judge Murray for further explanation and to answer any questions. Judge Murray said federal grants were given under Chief Justice Trout to study the issues. Case

Date 2-19

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## COMMITTEES

JUDICIARY, RULES & ADMINISTRATION

TRANSPORTATION & DEFENSE

REVENUE & TAXATION

# House of Representatives State of Idaho

February 13, 2001

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Chairman  
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STATE CAPITOL BUILDING

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Sincerely yours,

A handwritten signature in cursive script, reading "Leon Smith", is written over the typed name and title.

Representative Leon Smith  
Subcommittee Chairman

LS/bb

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46 ~~any person in the custody of the department of correction, or~~  
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victims.

## AGENDA

### SENATE JUDICIARY AND RULES COMMITTEE

1:30 pm  
Room 437  
Friday, March 2, 2001

<i>BILL NO.</i>	<i>DESCRIPTION</i>	<i>SPONSOR</i>
RS11203	To provide enhancement to authority of a subdivision ordinance.	Senator Davis Senator Richardson
RS11217C1	To provide that a person may stand on a highway to solicit contributions if allowed	Senator Barrutia Rep. Bieter
RS11216	Relating to recreation districts	Senator Goedde
S1192	To allow ISP to provide public access to the sex offender registry	Senator Darrington
→ H18a	Relating to public writings; to provide exemption from disclosure for certain records of the Idaho Department of Corrections	Jim Spalding, Dept. of Corrections
H185a	Relating to the Child Protective Act	Rep. Tom Moss

#### OFFICE

Marianne Hansen, Committee Secretary  
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e-mail: mhansen@senate.state.id.us  
WATS: 1-800-626-0471  
Fax: (208) 334-2320

#### COMMITTEE MEMBERS

Sen. Darrington, Chairman	Sen. Richardson
Sen. Stegner, Vice Chairman	Sen. Davis
Sen. Risch	Sen. Lodge
Sen. Sorensen	Sen. Dunklin
Sen. King-Barrutia	



Senator Davis questioned the word "may", and was told that in case of a court challenge, the registry can be removed or altered, that the word may, provides greater flexibility to the department.

Bill von Tagen told the committee that the Attorney General's office had not taken a position on this, but he would address legal issues. The sex offender registration is new and in other states that are using it, there has been no legal challenge.

**MOTION:** Senator Sorensen made a motion that S1192 be sent to the floor with a do pass. Second was by Senator Dunklin and the motion carried by a voice vote. Senator Darrington will carry this bill on the Senate floor.

→ H18a - Jim Spalding, Dept. of Corrections told the committee that this bill is a compromise on records for public intent. The purpose of this bill changes the language to permanently exempt from disclosure those IDOC records which, if released, would jeopardize the secure and orderly operation of IDOC facilities, or the rehabilitation of persons under IDOC custody or supervision, or would reveal the identities of victims and/or witnesses. Last year, there was a sunset clause, and the law requires that they go to the Board of Correction and through administrative rule to establish exemption from disclosure for certain records. They will come back next year to approve that rule. Stephanie Altig, attorney for Dept. of Corrections told the committee that some records will be closed forever, and others will still be available. Sensitive records will call for discussion on length of time that they will be exempt.

**MOTION:** Senator Sorensen made a motion to send H18a to the floor with a do pass. Second was by Senator Stegner and the motion carried by a voice vote. Senator Stegner will carry this bill on the Senate floor.

H185a - Representative Tom Moss explained that this bill amends several sections of the Child Protective Act, Idaho Code, relating to temporary shelter for the placement of children who have been taken into custody for their protection, to streamline the Child Protective Act process, achieve permanency for children in the system more quickly, provide for the effective use of judicial time in reviewing cases, and comply with the Federal Adoption and Safe Families Act.

A committee appointed by the Supreme Court to study children in foster care has made several recommendations for statutory and rule changes to help bring about a safe and permanent home for Idaho children who are being protected from neglect or abuse under the Idaho child protection law. Among other improvements, these changes devise new procedures to meet the needs of children whose lives have been interrupted by reducing the time they spend in foster care awaiting a judicial determination. The protection of children in foster care committee also reviewed Idaho statutes from the perspective of new federal standards governing children in this setting, and the recommended changes are also designed to meet these standards so that vital federal funding for these children is not jeopardized.

The impact of this bill on state or local funds is very difficult to estimate, but is not believed to be substantial. In the short term, there may be some increase in the workloads of the courts and health and welfare caseworkers in child protection cases. However, much of this effort is already required by the Federal Adoption and Safe Families Act. Also, these short-term costs will be offset because Child Protection Act cases will be resolved more expeditiously and the time children remain in publicly funded foster care will be reduced.

SENATE JUDICIARY AND RULES COMMITTEE Date 3-2-61

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