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LEGISLATURE OF THE STATE OF IDAHO
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AN ACT

1 RELATING TO TRESPASS; AMENDING SECTION 6-202, IDAHO CODE, TO PROVIDE FOR
2 ACTIONS FOR CIVIL TRESPASS, TO PROVIDE DEFINITIONS, TO DESCRIBE CERTAIN
3 ACTIONS CONSTITUTING CIVIL TRESPASS AND TO PROVIDE FOR PENALTIES; RE-
4 PEALING SECTION 6-202A, IDAHO CODE, RELATING TO DEFINITIONS OF CERTAIN
5 TERMS; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31,
6 TITLE 6, IDAHO CODE, TO PROVIDE FOR THE LIABILITY AND DUTY OF A LAND POS-
7 Sessor TO A TRESPASSER, TO PROVIDE FOR THE APPLICABILITY OF THE ATTRAC-
8 TIVE NUISANCE COMMON LAW DOCTRINE AND TO PROVIDE AN EFFECTIVE DATE FOR
9 THE ACCRUAL OF ACTIONS; REPEALING SECTION 18-7008, IDAHO CODE, RELATING
10 TO CRIMINAL TRESPASS; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE
11 ADDITION OF A NEW SECTION 18-7008, IDAHO CODE, TO PROVIDE FOR CRIMINAL
12 TRESPASS, TO PROVIDE DEFINITIONS, TO DESCRIBE CERTAIN ACTIONS CONSTI-
13 TUTING CRIMINAL TRESPASS, TO PROVIDE AN EXCEPTION AND TO PROVIDE FOR
14 PENALTIES; REPEALING SECTION 18-7011, IDAHO CODE, RELATING TO CRIMINAL
15 TRESPASS; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE FOR A VIO-
16 LATION OF TRESPASSING FOR THE PURPOSE OF HUNTING, RETRIEVING WILDLIFE,
17 FISHING OR TRAPPING; REPEALING SECTION 36-1602, IDAHO CODE, RELATING TO
18 HUNTING ON CERTAIN LANDS WITHOUT PERMISSION; AMENDING SECTION 36-1603,
19 IDAHO CODE, TO PROHIBIT TRESPASSING WHILE HUNTING AND FISHING AND TO
20 PROVIDE REMEDIES; AMENDING SECTION 36-1604, IDAHO CODE, TO PROVIDE FOR
21 THE APPLICABILITY OF CERTAIN REMEDIES WITH RESPECT TO THE LIABILITY
22 OF THOSE USING THE LAND OF ANOTHER PERSON FOR RECREATION; AND AMENDING
23 SECTION 36-1108, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
24

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

26 SECTION 1. That Section 6-202, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this
29 section:

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

32 (b) "Cultivated land" means:

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

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

36 (iii) Pasturage that is artificially irrigated.

37 (c) "Enter" or "enters" means going upon or over real property either
38 in person or by causing any object, substance or force to go upon or over
39 real property.

40 (d) "Permission" means:

41 (i) Written authorization from the owner or his agent to enter
42 upon private land, that shall include the signature of the owner

1 or his agent, the name of the person being given permission, the
2 appropriate dates that the permission is valid and a general de-
3 scription of the property; or
4 (ii) Any other license, invitation or privilege to enter upon pri-
5 ivate land from the owner or his agent.

6 A landowner or his agent may revoke permission to enter or remain at any time,
7 for any reason, orally, in writing or by any form of notice reasonably appar-
8 ent to the permitted persons.

9 (e) "Willfully and intentionally" means:

10 (i) A person has actual knowledge that his presence is not permit-
11 ted; or

12 (ii) A person enters or remains upon the real property of another
13 that displays sufficient indications of private ownership to put
14 a reasonable person on notice that his presence is not permitted.
15 The following examples, without limitation, are presumptive proof
16 that real property displays sufficient indications of private
17 ownership to put a reasonable person on notice that his presence is
18 not permitted:

19 1. Property that is fenced or otherwise enclosed in a man-
20 ner that a reasonable person would recognize as delineating
21 a private property boundary;

22 2. Cultivated land;

23 3. Property that is posted with signs prohibiting trespass
24 or clearly displays bright orange or fluorescent paint at
25 all property corners, fishing streams crossing property
26 lines, roads, gates and rights-of-way entering the land or
27 in a manner that would reasonably be expected to be seen by a
28 person in the area; or

29 4. Property that is reasonably associated with a residence
30 or place of business.

31 (2) Any person who, without permission of the owner, or the owner's
32 agent, willfully and intentionally enters or remains upon the real property
33 of another person which property is posted with "No Trespassing" signs or
34 other notices of like meaning, spaced at intervals of not less than one (1)
35 notice per six hundred sixty (660) feet along such real property; or who
36 willfully and intentionally cuts down or carries off any wood or underwood,
37 tree or timber, or girdling, or otherwise willfully and intentionally in-
38 juries any tree or timber on the land of another person, or on the street or
39 highway in front of any person's house, village, or city lot, or cultivated
40 grounds; or on the commons or public grounds of or in any city or town, or on
41 the street or highway in front thereof, without lawful authority, is liable
42 to the owner of such land, or to such city or town, for treble the amount of
43 damages which may be assessed therefor or fifty dollars (\$50.00), plus a
44 reasonable attorney's fee which shall be taxed as costs, in any civil action
45 brought to enforce the terms of this act if the plaintiff prevails without
46 permission commits a civil trespass. Any conduct constituting trespassing
47 as described by this section shall not be deemed an innocent mistake.

48 (3) Civil trespass shall include causing damage or injury to real and
49 personal property while present upon the real property of another, includ-
50 ing, without limitation:

1 (a) Cutting down or carrying off any wood, underbrush, tree or timber,
2 or girdling or otherwise willfully and intentionally injuring any tree
3 or timber on the land of another person, or on the street or highway in
4 front of any person's house, village or city lot or cultivated grounds;
5 or on the commons or public grounds of or in any city or town, or on the
6 street or highway in front thereof, without lawful authority; or

7 (b) Maliciously injuring or severing from the property anything at-
8 tached thereto, or the produce thereof; or

9 (c) Digging, taking or carrying away any earth, soil or stone from any
10 lot situated within the limits of any incorporated city, without the li-
11 cence of the owner or legal occupant thereof; or

12 (d) Digging, taking or carrying away any earth, soil or stone from any
13 land in any of the cities of the state, laid down on the map or plan of
14 such city or otherwise recognized or established as a street, alley, av-
15 enue or park, without the license of the property authorities; or

16 (e) Willfully opening, tearing down or otherwise destroying any fence
17 on the enclosed land of another, or opening any gate, bar or fence of an-
18 other and willfully leaving it open or using the corral or corrals of an-
19 other without the permission of the owner; or

20 (f) Willfully covering up or encumbering in any manner the land or city
21 lot of another, without permission from the owner or custodian thereof;
22 or

23 (g) Killing or injuring a domestic animal not his own without provoca-
24 tion, intentionally and without the consent of the animal's owner; or

25 (h) Leaving open any gates on or about the property, or tearing down
26 or laying down any fencing, or willfully removing, mutilating, damag-
27 ing or destroying any "no trespassing" signs or markers or going through
28 cultivated crops that have not been harvested, or damaging any property
29 thereon; or

30 (i) Driving a motor vehicle, as defined in sections 49-114 and 49-123,
31 Idaho Code, into, upon, over or through any private land that is ac-
32 tively devoted to cultivated crops without permission; or

33 (j) Injuring or killing livestock.

34 (4) Any person found liable for a trespass pursuant to this section
35 shall be subject to the following penalties:

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

37 (b) A civil fine or penalty not to exceed one thousand dollars (\$1,000),
38 but not less than five hundred dollars (\$500);

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

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

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

1 SECTION 2. That Section 6-202A, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 3. That Title 6, Idaho Code, be, and the same is hereby amended
4 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
5 ter 31, Title 6, Idaho Code, and to read as follows:

6 CHAPTER 31
7 LIABILITY OF LAND POSSESSOR TO TRESPASSER

8 6-3101. DUTY OF LAND POSSESSOR TO TRESPASSER. A possessor of any in-
9 terest in real property, including an owner, lessee or other lawful occu-
10 pant, owes no duty of care to a trespasser, except to refrain from inten-
11 tional or willful and wanton acts that cause injury to the trespasser.

12 6-3102. ATTRACTIVE NUISANCE. Nothing in this chapter shall affect the
13 common law doctrine of attractive nuisance.

14 6-3103. APPLICABILITY. This chapter does not create or increase the
15 liability of any possessor of real property and does not affect any other
16 statutory or common law immunities from or defenses to civil liability to
17 which a possessor of real property may be entitled.

18 6-3104. EFFECTIVE DATE. This chapter applies to all causes of actions
19 accruing on or after July 1, 2018.

20 SECTION 4. That Section 18-7008, Idaho Code, be, and the same is hereby
21 repealed.

22 SECTION 5. That Chapter 70, Title 18, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 18-7008, Idaho Code, and to read as follows:

25 18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUT-
26 ING. (1) Definitions. As used in this section:

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

29 (b) "Cultivated land" means:

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

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

33 (iii) Pasturage that is artificially irrigated.

34 (c) "Enter," "enters" or "entry" means going upon or over real property
35 either in person or by causing any object, substance or force to go upon
36 or over real property.

37 (d) "Permission" means:

38 (i) Written authorization from the owner or his agent to enter
39 upon private land, that shall include the signature of the owner
40 or his agent, the name of the person being given permission, the
41 appropriate dates that the permission is valid and a general de-
42 scription of the property; or

43 (ii) Any other license, invitation or privilege to enter upon pri-
44 vate land from the owner or his agent.

1 A landowner or his agent may revoke permission to enter or remain at any time,
2 for any reason, orally, in writing or by any form of notice reasonably appar-
3 ent to the permitted persons.

4 (e) "Willfully and intentionally" means:

5 (i) A person has actual knowledge that his presence is not permit-
6 ted; or

7 (ii) A person enters or remains upon real property of another that
8 displays sufficient indications of private ownership to put a rea-
9 sonable person on notice that his presence is not permitted. The
10 following examples, without limitation, are presumptive proof
11 that real property displays sufficient indications of private
12 ownership to put a reasonable person on notice that his presence is
13 not permitted:

14 1. Property that is fenced or otherwise enclosed in a man-
15 ner that a reasonable person would recognize as delineating
16 a private property boundary;

17 2. Cultivated land;

18 3. Property that is posted with signs prohibiting trespass
19 or a clear display of bright orange or fluorescent paint
20 at all property corners, fishing streams crossing property
21 lines, roads, gates and rights-of-way entering the land or
22 in a manner that would reasonably be expected to be seen by a
23 person in the area; or

24 4. Property that is reasonably associated with a residence
25 or place of business.

26 (2) Acts Constituting.

27 (a) Every person who willfully and intentionally enters or remains upon
28 the real property of another person without permission commits a crimi-
29 nal trespass and is guilty of a misdemeanor, except as provided in sub-
30 section (3) (c) of this section.

31 (b) Criminal trespass shall include causing damage or injury to real
32 and personal property while present upon the real property of another,
33 including, without limitation:

34 (i) Cutting down or carrying off any wood, underbrush, tree or
35 timber, or girdling or otherwise willfully and intentionally in-
36 juring any tree or timber on the land of another person, or on the
37 street or highway in front of any person's house, village or city
38 lot or cultivated grounds; or on the commons or public grounds
39 of or in any city or town, or on the street or highway in front
40 thereof, without lawful authority; or

41 (ii) Maliciously injuring or severing from the property anything
42 attached thereto, or the produce thereof; or

43 (iii) Digging, taking or carrying away any earth, soil or stone
44 from any lot situated within the limits of any incorporated city,
45 without the license of the owner or legal occupant thereof; or

46 (iv) Digging, taking or carrying away any earth, soil or stone
47 from any land in any of the cities of the state, laid down on the
48 map or plan of such city or otherwise recognized or established as
49 a street, alley, avenue or park, without the license of the prop-
50 erty authorities; or

- 1 (v) Willfully opening, tearing down or otherwise destroying any
2 fence on the enclosed land of another, or opening any gate, bar or
3 fence of another and willfully leaving it open or using the corral
4 or corrals of another without the permission of the owner; or
5 (vi) Willfully covering up or encumbering in any manner the land
6 or city lot of another, without permission from the owner or custo-
7 dian thereof; or
8 (vii) Killing or injuring a domestic animal not his own without
9 provocation, intentionally and without the consent of the ani-
10 mal's owner; or
11 (viii) Leaving open any gates on or about the property, or tearing
12 down or laying down any fencing, or willfully removing, mutilat-
13 ing, damaging or destroying any "no trespassing" signs or markers
14 or going through cultivated crops that have not been harvested, or
15 damaging any property thereon; or
16 (ix) Driving a motor vehicle, as defined in sections 49-114 and
17 49-123, Idaho Code, into, upon, over or through any private land
18 that is actively devoted to cultivated crops without permission;
19 or
20 (x) Injuring or killing livestock.
- 21 (c) This section does not apply to those who enter or remain upon real
22 property pursuant to a landlord and tenant relationship.
- 23 (3) Penalties.
- 24 (a) Any person who pleads guilty to or is found guilty of a violation of
25 subsection (2) of this section for the first time:
26 (i) May be sentenced to jail for a period of not more than six (6)
27 months; and
28 (ii) Shall be fined in an amount of not less than five hundred dol-
29 lars (\$500) and not to exceed one thousand dollars (\$1,000).
- 30 (b) Any person who pleads guilty to or is found guilty of a violation of
31 subsection (2) of this section for a second time within five (5) years:
32 (i) May be sentenced to jail for a period of not more than six (6)
33 months; and
34 (ii) Shall be fined in an amount of not less than one thousand dol-
35 lars (\$1,000) and not to exceed three thousand dollars (\$3,000).
- 36 (c) Any person who pleads guilty to or is found guilty of a violation
37 of subsection (2) of this section, who previously has been found guilty
38 of or has pled guilty to two (2) or more violations of the provisions of
39 subsection (2) of this section within ten (10) years, notwithstanding
40 the form of the judgments or withheld judgments, shall be guilty of a
41 felony and
42 (i) May be sentenced to the custody of the state board of correc-
43 tion for not to exceed one (1) year; and
44 (ii) May be fined in an amount not to exceed five thousand dollars
45 (\$5,000).
- 46 (d) In addition to any other penalty prescribed by law, a court may im-
47 pose a civil penalty in an amount up to triple the damage caused.
- 48 (e) In addition to any other penalty prescribed by law, a court shall,
49 for any violation of subsection (2) of this section, order restitution
50 in accordance with section 19-5304, Idaho Code.

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1 SECTION 6. That Section 18-7011, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 7. That Section 36-1402, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION
6 OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Except as pro-
7 vided for in subsection (b) of this section, any person who pleads guilty to
8 or is found guilty of an infraction of this code, or rules or proclamations
9 promulgated pursuant thereto, shall be subject to a fine of seventy-two dol-
10 lars (\$72.00).

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

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

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

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

37 (e) License Revocation. Any person entering a plea of guilty or being
38 found guilty or convicted of violating any of the provisions of this title,
39 or who otherwise fails to comply with the requirements of a citation in con-
40 nection with any such offense, may, in addition to any other penalty assessed
41 by the court, have his hunting, fishing, or trapping privileges revoked for
42 such period of time as may be determined by the court not to exceed three (3)
43 years, except that violations classified as felonies under section 36-1401,
44 Idaho Code, or as flagrant violations as defined in subsection (f) of this
45 section, shall authorize the court to impose license revocations for peri-
46 ods of time up to and including life, with said period beginning on the date

1 of conviction, finding of guilt or the entry of the plea of guilty. Pro-
2 vided further, that the magistrate hearing the case shall forthwith revoke
3 the hunting, fishing, or trapping privileges for a period of not less than
4 one (1) year for any of the following offenses:

5 1. Taking or possessing upland game birds, migratory waterfowl,
6 salmon, steelhead, sturgeon, or any big game animal during closed sea-
7 son.

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

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

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

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

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

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

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

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

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

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

- 7 1. Taking a big game animal after sunset by spotlighting, with use of
8 artificial light, or with a night vision enhancement device.
- 9 2. Unlawfully taking two (2) or more big game animals within a twelve
10 (12) month period.
- 11 3. Taking a big game animal with a rimfire or centerfire cartridge
12 firearm during an archery or muzzleloader only hunt.
- 13 4. Hunting, fishing, trapping or purchasing a license when license
14 privileges have been revoked pursuant to this section or section
15 36-1501, Idaho Code.
- 16 5. Taking any big game animal during a closed season.
- 17 6. Any felony violation provided in section 36-1401, Idaho Code.

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

- 20 1. Suspend a violator's license for failure to comply with the terms of
21 a citation from a party state. A copy of a report of failure to comply
22 from the licensing authority of the issuing state shall be conclusive
23 evidence.
- 24 2. Revoke a violator's license for a conviction in a party state. A
25 report of conviction from the licensing authority of the issuing state
26 shall be conclusive evidence.

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

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

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

34 36-1603. ~~TRESPASSING ON CULTIVATED LANDS OR IN VIOLATION OF WARNING~~
35 ~~SIGNS -- POSTING OF PUBLIC LANDS -- HUNTING, FISHING AND TRAPPING.~~ (a) No
36 person shall enter the real property of another and shoot any weapon or en-
37 ter such property for the purposes of hunting, retrieving wildlife, fishing
38 or trapping, ~~without the permission of the owner or person in charge of the~~
39 ~~property, which property is either cultivated or:~~

- 40 ~~(1) Is posted with "No Trespassing" signs;~~
- 41 ~~(2) Is posted with a minimum of one hundred (100) square inches of fluo-~~
42 ~~rescent orange, bright orange, blaze orange, safety orange or any simi-~~
43 ~~lar high visibility shade of orange colored paint except that when metal~~
44 ~~fence posts are used, a minimum of eighteen (18) inches of the top of the~~
45 ~~post must be painted a high visibility shade of orange;~~
- 46 ~~(3) Is posted with other notices of like meaning, spaced at intervals~~
47 ~~of not less than one (1) sign, paint area or notice per six hundred sixty~~

1 ~~(660) feet along such real property; provided that where the geographi-~~
2 ~~cal configuration of the real property is such that entry can reasonably~~
3 ~~be made only at certain points of access, such property is posted suffi-~~
4 ~~ciently for all purposes of this section if said signs, paint or notices~~
5 ~~are posted at such points of access; or~~

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

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

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

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

27 (d) Permission forms.

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

34 (2) The department shall make the permission forms available upon re-
35 quest in all of its offices and in every United States department of
36 agriculture service center located in Idaho, at no charge to any person
37 owning land in Idaho.

38 (3) The department shall provide information to anyone holding li-
39 censes, tags or permits to take fish or wildlife in Idaho regarding
40 owners' rights and sportsmen's duties, at each point of sale and through
41 all reasonable means, including on the department's web site and
42 through the public media.

43 (4) The restrictions in this section and section 18-7008, Idaho Code,
44 relating to trespassing shall be stated in all hunting and fishing
45 proclamations issued by the department.

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

48 SECTION 10. That Section 36-1604, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Pur-
2 pose. The purpose of this section is to encourage owners of land to make
3 land, airstrips and water areas available to the public without charge for
4 recreational purposes by limiting their liability toward persons entering
5 thereon for such purposes.

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

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

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

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

18 4. "Recreational purposes" includes, but is not limited to, any of
19 the following activities or any combination thereof: hunting, fish-
20 ing, swimming, boating, rafting, tubing, camping, picnicking, hiking,
21 pleasure driving, the flying of aircraft, bicycling, running, playing
22 on playground equipment, skateboarding, athletic competition, nature
23 study, water skiing, animal riding, motorcycling, snowmobiling, recre-
24 ational vehicles, winter sports, and viewing or enjoying historical,
25 archeological, scenic, geological or scientific sites, when done with-
26 out charge of the owner.

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

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

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

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

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

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

49 (f) Provisions Apply to Land Subject to a Conservation Easement. Un-
50 less otherwise agreed in writing, the provisions of this section shall be

1 deemed applicable to the duties and liability of an owner of land subject to a
2 conservation easement to any governmental entity or nonprofit organization.

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

5 1. Create a duty of care or ground of liability for injury to persons or
6 property.

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

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

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

18 SECTION 11. That Section 36-1108, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 36-1108. CONTROL OF DAMAGE BY PRONGHORN ANTELOPE, ELK, DEER OR MOOSE
21 -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a pri-
22 ority management objective of the department, and it is the obligation
23 of landowners to take all reasonable steps to prevent property loss from
24 wildlife or to mitigate damages by wildlife. When any pronghorn antelope,
25 elk, deer or moose is doing damage to or is destroying any property or is
26 about to do so, the owner or lessee thereof may make complaint and verbally or
27 electronically report the facts to the director or his designee who shall,
28 within seventy-two (72) hours, investigate the conditions complained of. If
29 it appears that the complaint is well founded and the property of the com-
30 plainant is being or is likely to be damaged or destroyed by such pronghorn
31 antelope, elk, deer or moose, the director may:

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

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

42 3. Make an agreement with the owner or lessee to allow continued use
43 of lands by the animals where damage by them has occurred to stored,
44 growing or matured crops on private property whether owned or leased.
45 The agreement made under the provisions of this subsection may provide
46 for financial compensation to the owner or lessee. If made, financial
47 compensation under the provisions of this subsection shall be governed
48 by the provisions of section 36-115, Idaho Code, and shall not be in

1 addition to any payments for the same crop losses from any other source.
2 Compensation for damages under the provisions of this subsection shall
3 be available for damages done to private lands, whether owned or leased,
4 if the owner or lessee allowed hunters reasonable access to the property
5 or through the property to public lands for hunting purposes during the
6 preceding hunting season or as a measure of response to depredation.
7 This provision shall not negate the provisions of section 36-16023,
8 Idaho Code, relating to the necessity of obtaining permission to enter
9 private land. If necessary, the arbitration panel provided for in
10 subsection (b) of this section shall determine the reasonableness of
11 access allowed.

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

15 (A) Notify the department within seventy-two (72) hours of discovery
16 of damage.

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

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

24 The owner or lessee must have allowed hunters reasonable access to the
25 property or through the property to public lands for hunting purposes
26 during the preceding hunting season or as a measure of response to
27 depredation, provided such access does not impact on their operations,
28 or the claim for damages may be disallowed. Compensation for crop
29 damages claims shall not be in addition to any payments for the same
30 crop losses from any other source and shall not include fence or other
31 types of property damage. While fences and irrigation equipment are not
32 subject to claim for payment, the department is allowed to provide support
33 and assistance, including provision of materials to design, construct,
34 and maintain fences for control of depredation. The notice of damages
35 caused must be in written form, shall be in the form of a claim for
36 damages substantially the same as required by section 6-907, Idaho Code,
37 shall be attested to by the claimant under oath, and the claim shall
38 be at least seven hundred fifty dollars (\$750). The claim shall not be
39 amended after it is filed, provided however, that a claimant may file
40 an additional claim in the event additional damage occurs subsequent
41 to filing the initial claim. The department shall prepare and make
42 available suitable forms for notice and claim for damages. Claims may
43 be submitted only for the fiscal year (July 1 through June 30) in which
44 they occurred, with allowance for submission within the first sixty
45 (60) days of the following fiscal year if the claim occurred within the
46 last sixty (60) days of the previous fiscal year. Any person submitting
47 a fraudulent claim shall be prosecuted for a felony as provided in
48 section 18-2706, Idaho Code. For purposes of this subsection, crop
49 damages shall mean damage to plants grown or stored for profit and
50 exclude ornamental plants.

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

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

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

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

46 The panel shall convene within thirty (30) days of the selection of the
47 third arbitrator, and render its decision within fourteen (14) days
48 after the hearing. When convened, the arbitration panel shall have
49 the same authority to make on-site inspections as the department. The
50 owner or lessee shall be responsible for payment of the expenses of his

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

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