

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 132

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO FOREST AND RANGE FIRE; PROVIDING LEGISLATIVE INTENT; AMENDING  
2 SECTION 6-202, IDAHO CODE, TO REVISE PROVISIONS RELATING TO TRESPASS;  
3 AMENDING SECTION 38-107, IDAHO CODE, TO LIMIT DAMAGES IN CERTAIN CIVIL  
4 ACTIONS FOR REAL AND PERSONAL PROPERTY DAMAGE CAUSED BY FOREST OR RANGE  
5 FIRE, TO DEFINE TERMS, TO CLARIFY THE APPLICABILITY OF SPECIFIED PRO-  
6 VISIONS OF LAW AND TO MAKE A TECHNICAL CORRECTION; PROVIDING SEVERABIL-  
7 ITY; AND DECLARING AN EMERGENCY.  
8

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

10 SECTION 1. LEGISLATIVE INTENT. The Legislature finds that generally,  
11 real and personal property damage caused by forest and range fire is measured  
12 by the diminution of fair market value of the real and personal property. In  
13 Idaho, restoration damages may be awarded if there is a reason personal to  
14 the owner for restoring the forest or range land to its original condition.

15 The Legislature further finds that in other jurisdictions, large forest  
16 or range land owners have sought and have been awarded double recovery, the  
17 diminution of fair market value and restoration costs, for the damage to for-  
18 est or range land caused by forest or range fires. The awards include intan-  
19 gible environmental damages that are clearly speculative in their nature,  
20 and should not be recoverable. This legislation clarifies that for real and  
21 personal property damage caused by forest or range fire, recovery is limited  
22 to reasonable suppression costs, economic damages and either the diminution  
23 of fair market value of the real and personal property, or the actual and tan-  
24 gible costs for restoration, not intangible environmental damages, as a re-  
25 sult of the forest or range fire.

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

28 6-202. ACTIONS FOR TRESPASS. Any person who, without permission of  
29 the owner, or the owner's agent, willfully and intentionally enters upon  
30 the real property of another person which property is posted with "No Tres-  
31 passing" signs or other notices of like meaning, spaced at intervals of not  
32 less than one (1) notice per six hundred sixty (660) feet along such real  
33 property; or who willfully and intentionally cuts down or carries off any  
34 wood or underwood, tree or timber, or girdles, or otherwise willfully and  
35 intentionally injures any tree or timber on the land of another person, or on  
36 the street or highway in front of any person's house, village, or city lot, or  
37 cultivated grounds; or on the commons or public grounds of or in any city or  
38 town, or on the street or highway in front thereof, without lawful authority,  
39 is liable to the owner of such land, or to such city or town, for treble the  
40 amount of damages which may be assessed therefor or fifty dollars (\$50.00),

1 plus a reasonable attorney's fee which shall be taxed as costs, in any civil  
2 action brought to enforce the terms of this act if the plaintiff prevails.

3 SECTION 3. That Section 38-107, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 38-107. UNCONTROLLED FIRES A NUISANCE -- ABATEMENT -- CIVIL LIABIL-  
6 ITY. (1) Any forest or range fire burning out of control or without adequate  
7 and proper precautions having been taken to prevent its spread, is hereby  
8 declared a public nuisance, by reason of its menace to life and/or property.  
9 Any person responsible through his conduct, acts and/or control of property  
10 or operations for either the starting or the existence of such fire is hereby  
11 required to make a reasonable effort to control or extinguish it immedi-  
12 ately, without awaiting instructions from the director of the department of  
13 lands or a fire warden. The director of the department of lands or any fire  
14 warden may summarily abate the nuisance thus constituted by controlling or  
15 extinguishing such fire and the person ~~wilfully~~ willfully or negligently  
16 responsible for the starting or existence of such fire shall be liable for  
17 the costs incurred by the state or its authorized agencies in controlling  
18 or extinguishing the same. The amount of such costs shall be recovered by  
19 a civil action prosecuted in the name of the state of Idaho and any amounts  
20 recovered shall be paid to the state treasurer for deposit to the forest pro-  
21 tection fund. Civil liability provided for herein shall be exclusive of and  
22 in addition to any criminal penalties otherwise provided.

23 (2) Notwithstanding any other provision of law, in a civil action  
24 against any person, legal entity, state or political subdivision for forest  
25 or range fire caused by a negligent or unintentional act, which act was not  
26 willful or intentional under section 6-202, Idaho Code, the real and per-  
27 sonal property damage is limited to:

28 (a) The reasonable costs for controlling or extinguishing the forest or  
29 range fire;

30 (b) Economic damages; and

31 (c) Either (i) the diminution of fair market value of the real and per-  
32 sonal property resulting from the fire, or (ii) the actual and tangible  
33 restoration costs associated with bringing the damaged real and per-  
34 sonal property back to its pre-injured state to the extent that such  
35 actual and tangible restoration costs are reasonable and practical.

36 As used in this subsection, "economic damages" means objectively verifiable  
37 monetary loss including, but not limited to, out-of-pocket expenses, loss of  
38 earnings, loss of use of property or loss of business or employment oppor-  
39 tunities. As further used in this subsection, "fair market value" means the  
40 amount a willing buyer would pay a willing seller in an arms-length trans-  
41 action when both parties are fully informed about all of the advantages and  
42 disadvantages of the property and neither is acting under any compulsion to  
43 buy or sell, as determined by a state certified appraiser, who is qualified  
44 to appraise the property. Claims against the state or a political subdivi-  
45 sion shall remain subject to the requirements of chapter 9, title 6, Idaho  
46 Code, and damages against the state or a political subdivision shall be the  
47 amount set forth in chapter 9, title 6, Idaho Code, as limited in this subsec-  
48 tion.

1           SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
2 to be severable and if any provision of this act or the application of such  
3 provision to any person or circumstance is declared invalid for any reason,  
4 such declaration shall not affect the validity of the remaining portions of  
5 this act.

6           SECTION 5. An emergency existing therefor, which emergency is hereby  
7 declared to exist, this act shall be in full force and effect on and after its  
8 passage and approval.