

IN THE SENATE

SENATE BILL NO. 1316, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES AND COSTS REGARDING AN ADMINISTRATIVE PROCEED-  
2 ING; AMENDING SECTION 12-117, IDAHO CODE, TO AUTHORIZE THE ASSESSMENT  
3 OF REASONABLE COSTS AND REASONABLE ATTORNEY'S FEES IN FAVOR OF A PRE-  
4 VAILING PARTY IN CERTAIN ADMINISTRATIVE PROCEEDINGS INVOLVING LICENS-  
5 ING AUTHORITIES AND TO PROVIDE A DEFINITION; AMENDING SECTION 36-2113,  
6 IDAHO CODE, TO PROVIDE APPLICATION TO OUTFITTERS AND GUIDES AND TO MAKE  
7 A TECHNICAL CORRECTION; AMENDING SECTION 54-713, IDAHO CODE, TO PROVIDE  
8 APPLICATION TO CHIROPRACTORS; AMENDING SECTION 54-1406A, IDAHO CODE,  
9 TO PROVIDE APPLICATION TO MEDICATION ASSISTANTS; AMENDING SECTION  
10 54-1413, IDAHO CODE, TO PROVIDE APPLICATION TO LICENSEES OF THE NURSING  
11 BOARD AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1502A,  
12 IDAHO CODE, TO PROVIDE APPLICATION TO UNLICENSED OPTOMETRISTS; AMEND-  
13 ING SECTION 54-1512, IDAHO CODE, TO PROVIDE APPLICATION TO LICENSED  
14 OPTOMETRISTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
15 54-1728, IDAHO CODE, TO PROVIDE APPLICATION TO PHARMACISTS; AMENDING  
16 SECTION 54-1732, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND  
17 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1806, IDAHO CODE,  
18 TO PROVIDE APPLICATION TO PHYSICIANS AND SURGEONS; AMENDING SECTION  
19 54-1914, IDAHO CODE, TO PROVIDE APPLICATION TO PUBLIC WORKS CONTRAC-  
20 TORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2059, IDAHO  
21 CODE, TO PROVIDE APPLICATION TO REAL ESTATE LICENSEES; AMENDING SEC-  
22 TION 54-2118, IDAHO CODE, TO PROVIDE APPLICATION TO VETERINARIANS AND  
23 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2220, IDAHO CODE,  
24 TO PROVIDE APPLICATION TO PHYSICAL THERAPISTS AND TO MAKE TECHNICAL  
25 CORRECTIONS; AMENDING SECTION 54-2221, IDAHO CODE, TO PROVIDE APPLICA-  
26 TION TO PHYSICAL THERAPISTS; AMENDING SECTION 54-2925, IDAHO CODE, TO  
27 PROVIDE APPLICATION TO SPEECH AND HEARING LICENSEES; AMENDING SECTION  
28 54-3113, IDAHO CODE, TO PROVIDE APPLICATION TO CERTIFIED SHORTHAND RE-  
29 PORTERS; AMENDING SECTION 54-3720, IDAHO CODE, TO PROVIDE APPLICATION  
30 TO OCCUPATIONAL THERAPISTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
31 SECTION 54-3913, IDAHO CODE, TO PROVIDE APPLICATION TO ATHLETIC TRAIN-  
32 ERS; AMENDING SECTION 54-4132, IDAHO CODE, TO PROVIDE APPLICATION TO  
33 APPRAISAL MANAGEMENT COMPANIES; AMENDING SECTION 54-5215, IDAHO CODE,  
34 TO PROVIDE APPLICATION TO CONTRACTORS AND TO MAKE A TECHNICAL CORREC-  
35 TION; AMENDING SECTION 54-5607, IDAHO CODE, TO PROVIDE APPLICATION TO  
36 GENETIC COUNSELORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
37 67-2601A, IDAHO CODE, TO PROVIDE APPLICATION TO LICENSEES UNDER THE  
38 JURISDICTION OF THE DIVISION OF BUILDING SAFETY AND TO PROVIDE A COR-  
39 RECT CODE REFERENCE; AMENDING SECTION 67-2602, IDAHO CODE, TO PROVIDE  
40 APPLICATION TO LICENSEES UNDER THE AUTHORITY OF THE OCCUPATIONAL LI-  
41 CENSES BUREAU; AND AMENDING SECTION 67-2609, IDAHO CODE, TO PROVIDE FOR  
42 RULEMAKING AUTHORITY PROVIDING APPLICATION TO BOARDS UNDER THE OCCUPA-  
43 TIONAL LICENSES BUREAU AND TO MAKE TECHNICAL CORRECTIONS.  
44

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

2 SECTION 1. That Section 12-117, Idaho Code, be, and the same is hereby  
3 amended to read as follows:

4 12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CER-  
5 TAIN INSTANCES. (1) Unless otherwise provided by statute, in any proceeding  
6 involving as adverse parties a state agency or a political subdivision and  
7 a person, the state agency, political subdivision or the court hearing the  
8 proceeding, including on appeal, shall award the prevailing party reason-  
9 able attorney's fees, witness fees and other reasonable expenses, if it  
10 finds that the nonprevailing party acted without a reasonable basis in fact  
11 or law.

12 (2) If a party to a proceeding prevails on a portion of the case, and  
13 the state agency or political subdivision or the court hearing the proceed-  
14 ing, including on appeal, finds that the nonprevailing party acted without a  
15 reasonable basis in fact or law with respect to that portion of the case, it  
16 shall award the partially prevailing party reasonable attorney's fees, wit-  
17 ness fees and other reasonable expenses with respect to that portion of the  
18 case on which it prevailed.

19 (3) Expenses awarded against a state agency or political subdivision  
20 pursuant to this section shall be paid from funds in the regular operating  
21 budget of the state agency or political subdivision. If sufficient funds are  
22 not available in the budget of the state agency, the expenses shall be con-  
23 sidered a claim governed by the provisions of section 67-2018, Idaho Code.  
24 If sufficient funds are not available in the budget of the political subdivi-  
25 sion, the expenses shall be considered a claim pursuant to chapter 9, ti-  
26 tle 6, Idaho Code. Every state agency or political subdivision against which  
27 litigation expenses have been awarded under this act shall, at the time of  
28 submission of its proposed budget, submit a report to the governmental body  
29 which appropriates its funds in which the amount of expenses awarded and paid  
30 under this act during the fiscal year is stated.

31 (4) In any civil judicial proceeding involving as adverse parties a  
32 governmental entity and another governmental entity, the court shall award  
33 the prevailing party reasonable attorney's fees, witness fees and other rea-  
34 sonable expenses. For purposes of this subsection, "governmental entity"  
35 means any state agency or political subdivision.

36 (5) Notwithstanding any other provision of law, in any administrative  
37 proceeding or administrative judicial proceeding involving as adverse par-  
38 ties a licensing authority and a licensee, the prevailing party shall be en-  
39 titled to recover its reasonable attorney's fees and reasonable investiga-  
40 tive or defense costs, as the case may be, necessarily and actually incurred.  
41 "Prevailing party," for the purpose of this subsection, means a party that  
42 prevailed on the claims or allegations that constituted the gravamen of the  
43 claims and allegations as a whole. An assessment of fees and costs made pur-  
44 suant to this section is subject to judicial review. Notwithstanding any  
45 other provision of law, the failure of a licensee to pay an award of costs  
46 or attorney's fees awarded under this subsection shall not be deemed a vio-  
47 lation of a licensure requirement, as long as the licensee is in compliance  
48 with a payment arrangement made with the licensing authority.

1       (6) For purposes of this section:

2       (a) "Licensee" means any person holding a license, registration, cer-  
3 tificate, permit or other authorization to practice a profession or oc-  
4 cupation.

5       (b) "Licensing authority" means any professional or occupational  
6 licensing board charged with granting, suspending or revoking the li-  
7 cence, certificate, registration, permit or other authorization of any  
8 person to practice a profession or occupation.

9       (c) "Person" means any individual, partnership, limited liability  
10 partnership, corporation, limited liability company, association or  
11 any other private organization;

12       (d) "Political subdivision" means a city, a county, any taxing dis-  
13 trict or a health district;

14       (e) "Proceeding" means any administrative proceeding, administrative  
15 judicial proceeding, civil judicial proceeding or petition for judi-  
16 cial review or any appeal from any administrative proceeding, adminis-  
17 trative judicial proceeding, civil judicial proceeding or petition for  
18 judicial review.

19       (f) "State agency" means any agency as defined in section 67-5201,  
20 Idaho Code.

21       (7) If the amount pleaded in an action by a person is twenty-five thou-  
22 sand dollars (\$25,000) or less, the person must satisfy the requirements of  
23 section 12-120, Idaho Code, as well as the requirements of this section be-  
24 fore he or she may recover attorney's fees, witness fees or expenses pursuant  
25 to this section.

26       SECTION 2. That Section 36-2113, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28       36-2113. REVOCATION OR SUSPENSION OF LICENSE -- GROUNDS. (a) Every li-  
29 cense shall, by virtue of this chapter, be subject to suspension, revoca-  
30 tion, probation or other restriction by the board for the commission of any  
31 of the following acts:

32       1. For supplying false information or for failure to provide informa-  
33 tion required to be furnished by the license application form for a li-  
34 cense currently valid or for other fraud or deception in procuring a li-  
35 cense under the provisions of this chapter.

36       2. For fraudulent, untruthful or misleading advertising.

37       3. For conviction of a felony.

38       4. For two (2) or more forfeitures of any deposits of money or collat-  
39 eral with a court or administrative agency or for a conviction for vio-  
40 lation of regulations of the United States forest service or the bureau  
41 of land management.

42       5. For unethical or unprofessional conduct as defined by rules of the  
43 board.

44       6. For conviction of any violation of any state or federal fish and game  
45 or outfitting and guiding laws.

46       7. For a substantial breach of any contract with any person utilizing  
47 his services.

1 8. For willfully (i) operating in any area for which the licensee is not  
 2 licensed, or (ii) engaging in any activity for which the licensee is not  
 3 licensed.

4 9. For the employment of an unlicensed guide by an outfitter.

5 10. For inhumane treatment of any animal used by the licensed outfit-  
 6 ter or guide in the conduct of his business which endangers the health or  
 7 safety of any guest or patron or which interferes with the conduct of his  
 8 business.

9 11. For failure by any firm, partnership, corporation or other organ-  
 10 ization or any combination thereof licensed as an outfitter to have at  
 11 least one (1) licensed outfitter as designated agent conducting its  
 12 outfitting business who meets all of the qualifications and require-  
 13 ments of a licensed outfitter.

14 12. For the failure to provide any animal used by the licensed outfitter  
 15 or guide in the conduct of his business with proper food, drink and shel-  
 16 ter, or for the subjection of any such animal to needless abuse or cruel  
 17 and inhumane treatment.

18 13. For failure of an outfitter to serve the public in any of the follow-  
 19 ing ways: (i) by nonuse of license privileges as defined by rules of the  
 20 board, (ii) by limiting services to any individual, group, corporation  
 21 or club that limits its services to a membership, or (iii) by not offer-  
 22 ing services to the general public.

23 14. For violation of or noncompliance with any applicable provision of  
 24 this chapter, or for violation of any lawful rule or order of the outfit-  
 25 ters and guides licensing board.

26 (b) For the purposes of this section, the term "conviction" shall mean a  
 27 finding of guilt, an entry of a guilty plea by a defendant and its acceptance  
 28 by the court, or a forfeiture of bail bond or collateral deposited to secure  
 29 a defendant's appearance, suspended sentence, probation or withheld judg-  
 30 ment.

31 (c) In addition to the penalties imposed in this section, the board may  
 32 impose an administrative fine not to exceed five thousand dollars (\$5,000) ~~or~~  
 33 ~~or the administrative costs of bringing the action before the board includ-~~  
 34 ~~ing, but not limited to, attorney's fees and costs of hearing transcripts,~~  
 35 for each violation of the provisions of this chapter.

36 (d) The jurisdiction and authority of the board pursuant to this sec-  
 37 tion and section 36-2114, Idaho Code, extend to any former licensee for a vi-  
 38 olation of this section which occurred during the period of licensure.

39 (e) The assessment of costs and fees incurred in the investigation and  
 40 prosecution or defense of a licensee under this section shall be governed by  
 41 the provisions of section 12-117(5), Idaho Code.

42 SECTION 3. That Section 54-713, Idaho Code, be, and the same is hereby  
 43 amended to read as follows:

44 54-713. PENALTIES AND REINSTATEMENT. (1) Upon the finding of the ex-  
 45 istence of grounds for discipline of any person holding a license, seeking  
 46 a license, or renewing a license under the provisions of this chapter, the  
 47 board may impose one (1) or more of the following penalties:

48 (a) Suspension of the offender's license for a term to be determined by  
 49 the board;

1 (b) Revocation of the offender's license;

2 (c) Restriction of the offender's license to prohibit the offender from  
3 performing certain acts or from engaging in the practice of chiroprac-  
4 tic in a particular manner for a term to be determined by the board;

5 (d) Refusal to renew the offender's license;

6 (e) Placement of the offender on probation and supervision by the board  
7 for a period of time and under terms and conditions to be determined by  
8 the board;

9 (f) Imposition of an administrative fine not to exceed two thousand  
10 dollars (\$2,000) ~~plus costs of prosecution and reasonable attorney~~  
11 ~~fees;~~

12 (g) Written letters of censure or reprimand which shall become a per-  
13 manent record in the files of the licensee and which may be published  
14 within the discretion of the board; or

15 (h) Restitution for losses suffered or reimbursement for any damages  
16 incurred by a patient as a result of a violation of this chapter.

17 (2) In lieu of the penalties imposed by subsection (1) of this section,  
18 the board and licensee may enter into a written mutual agreement whereby the  
19 licensee agrees to discontinue a particular activity or comply with the pro-  
20 visions of this chapter without an admission or finding of culpability of the  
21 licensee, the violation of which may be the basis for disciplinary action by  
22 the board.

23 (3) The assessment of costs and fees incurred in the investigation and  
24 prosecution or defense of a person holding a license, seeking a license or  
25 renewing a license under this chapter shall be governed by the provisions of  
26 section 12-117(5), Idaho Code.

27 (4) Any person whose license to practice chiropractic in this state has  
28 been suspended, revoked or restricted pursuant to this chapter, whether vol-  
29 untarily or by action of the board, shall have the right, at reasonable in-  
30 tervals, to petition the board for reinstatement of such license. Such pe-  
31 tition shall be made in writing and in the form prescribed by the board. Upon  
32 investigation and hearing, the board may in its discretion grant or deny such  
33 petition, or it may modify its original finding to reflect any circumstances  
34 which have changed sufficiently to warrant such modifications.

35 (45) Nothing herein contained shall be construed as barring criminal  
36 prosecutions for violations of the provisions of this chapter where such vi-  
37 olations are deemed as criminal offenses in other statutes of this state or  
38 of the United States.

39 (56) All final decisions by the board shall be subject to judicial re-  
40 view pursuant to the provisions of the administrative procedure act.

41 SECTION 4. That Section 54-1406A, Idaho Code, be, and the same is hereby  
42 amended to read as follows:

43 54-1406A. CERTIFIED MEDICATION ASSISTANT (MA-C). (1) Effective July  
44 1, 2008, an individual registered as a nursing assistant, without substanti-  
45 ated charges, on the nursing assistant registry currently maintained by the  
46 Idaho department of health and welfare, may, with additional education and  
47 training as set forth in rule as established by the board, become a certified  
48 medication assistant (MA-C) permitted to administer medications as pre-

1 scribed by an authorized provider within the parameters set forth in rule. A  
2 licensed nurse shall supervise the certified medication assistant.

3 (2) The board shall adopt rules regarding the certification of cer-  
4 tified medication assistants, including rules applicable to education,  
5 training and other qualifications for certification that will ensure that  
6 the certified medication assistant is competent to perform safely within the  
7 range of authorized functions.

8 (3) The board shall maintain a public registry of the names and ad-  
9 dresses of all certified medication assistants.

10 (4) The board is authorized to impose and collect initial application  
11 and two (2) year renewal fees, as well as reinstatement fees, not to exceed  
12 one hundred dollars (\$100), as determined by board rule. Fees collected  
13 pursuant to this section shall be deposited in the state board of nursing  
14 account for the administration of examinations, evaluations and investiga-  
15 tions of applicants, issuance of certifications, evaluation of education  
16 and training programs, duplication and verification of records, and other  
17 administrative expenses.

18 (5) The board shall adopt by rule an application process.

19 (a) The application process shall include conducting a state and fed-  
20 eral criminal background check on all applicants seeking certification  
21 pursuant to this section.

22 (b) All applicants for original certification or for certification re-  
23 instatement shall submit to a fingerprint-based criminal history check  
24 of both the Idaho central criminal database and the federal bureau of  
25 investigation criminal history database. All such applicants shall  
26 submit a full set of their fingerprints and any relevant fees directly  
27 to the Idaho board of nursing for forwarding to the appropriate law  
28 enforcement agency for processing. Criminal background reports re-  
29 ceived by the board from the Idaho state police and the federal bureau  
30 of investigation shall be used only for licensing decisions and handled  
31 and disposed of in a manner consistent with requirements imposed by the  
32 Idaho state police and the federal bureau of investigation.

33 (c) Upon meeting all requirements and upon the successful completion of  
34 additional education, training and competency assessment prescribed by  
35 rule, an applicant shall be certified as a certified medication assis-  
36 tant (MA-C).

37 (6) A person may not use the title "certified medication assistant" or  
38 the abbreviation "MA-C" unless such person has been duly certified pursuant  
39 to this section.

40 (7) The board shall adopt rules governing the approval of education and  
41 training programs for certified medication assistants.

42 (8) The board shall set forth in rule criteria for acceptable certified  
43 medication assistant competency evaluations.

44 (9) (a) For any one (1) or a combination of grounds for discipline as  
45 set forth in paragraph (b) of this subsection, the board shall have the  
46 authority to:

47 (i) File a letter of concern if the board believes there is insuf-  
48 ficient evidence to support direct action against a certified med-  
49 ication assistant;

1 (ii) Deny certification or recertification, suspend, revoke,  
 2 place on probation, reprimand, limit, restrict, condition or ac-  
 3 cept the voluntary surrender of a certificate issued pursuant to  
 4 this section if a certified medication assistant commits an act  
 5 that constitutes grounds for discipline;

6 (iii) Refer criminal violations of this section to the appropriate  
 7 law enforcement agency; and

8 (iv) Impose a civil penalty of not more than one hundred dollars  
 9 (\$100) per violation; ~~and~~

10 ~~(v) Recover costs of investigation and disciplinary proceedings,~~  
 11 ~~including attorney's fees.~~

12 (b) Grounds for discipline shall include:

13 (i) Substance abuse or dependency;

14 (ii) Client abandonment, neglect or abuse;

15 (iii) Fraud or deceit, which may include, but is not limited to:

16 (A) Filing false credentials;

17 (B) Falsely representing facts on an application for ini-  
 18 tial certification, renewal or reinstatement; and

19 (C) Giving or receiving assistance in taking the competency  
 20 evaluation;

21 (iv) Boundary violations;

22 (v) Performance of unsafe client care;

23 (vi) Performing acts beyond the range of authorized functions or  
 24 beyond those tasks delegated under the provisions of this section;

25 (vii) Misappropriation or misuse of property;

26 (viii) Obtaining money or property of a client, resident or other  
 27 person by theft, fraud, misrepresentation or duress committed  
 28 during the course of employment as a certified medication assis-  
 29 tant;

30 (ix) Criminal conviction of a misdemeanor that directly relates  
 31 to or affects the functions of a certified medication assistant or  
 32 conviction of any felony as set forth in rule;

33 (x) Failure to conform to the standards of a certified medication  
 34 assistant;

35 (xi) Putting clients at risk of harm; and

36 (xii) Violating the privacy or failing to maintain the confiden-  
 37 tiality of client or resident information.

38 (10) The board shall comply with the provisions of the Idaho administra-  
 39 tive procedure act, chapter 52, title 67, Idaho Code, in taking any disci-  
 40 plinary action against a certified medication assistant and shall maintain  
 41 records of any such disciplinary action, which records shall be available  
 42 for public inspection to the same extent as records regarding disciplinary  
 43 proceedings against nurses and as otherwise consistent with chapter 1, title  
 44 74, Idaho Code. The assessment of costs and fees incurred in the investiga-  
 45 tion and prosecution or defense of a certified medication assistant shall be  
 46 governed by the provisions of section 12-117(5), Idaho Code.

47 (11) The board shall notify the Idaho nursing assistant registry of any  
 48 disciplinary action taken against a certified medication assistant pursuant  
 49 to this section.

1 SECTION 5. That Section 54-1413, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 54-1413. DISCIPLINARY ACTION. (1) Grounds for discipline. The board  
4 shall have the power to refuse to issue, renew or reinstate a license is-  
5 sued pursuant to this chapter, and may revoke, suspend, place on probation,  
6 reprimand, limit, restrict, condition or take other disciplinary action  
7 against the licensee as it deems proper, ~~including assessment of the costs~~  
8 ~~of investigation and discipline against the licensee,~~ upon a determination  
9 by the board that the licensee engaged in conduct constituting any one (1) of  
10 the following grounds:

11 (a) Made, or caused to be made, a false, fraudulent or forged state-  
12 ment or representation in procuring or attempting to procure a license  
13 to practice nursing;

14 (b) Practiced nursing under a false or assumed name;

15 (c) Is convicted of a felony or of any offense involving moral turpi-  
16 tude;

17 (d) Is or has been grossly negligent or reckless in performing nursing  
18 functions;

19 (e) Habitually uses alcoholic beverages or drugs as defined by rule;

20 (f) Is physically or mentally unfit to practice nursing;

21 (g) Violates the provisions of this chapter or rules and standards of  
22 conduct and practice as may be adopted by the board;

23 (h) Otherwise engages in conduct of a character likely to deceive,  
24 defraud or endanger patients or the public, which includes, but is not  
25 limited to, failing or refusing to report criminal conduct or other con-  
26 duct by a licensee that endangers patients;

27 (i) Has been disciplined by a nursing regulatory authority in any ju-  
28 risdiction. A certified copy of the order entered by the jurisdiction  
29 shall be prima facie evidence of such discipline;

30 (j) Failure to comply with the terms of any board order, negotiated set-  
31 tlement or probationary agreement of the board, or to pay fines or costs  
32 assessed in a prior disciplinary proceeding; or

33 (k) Engaging in conduct with a patient that is sexual, sexually ex-  
34 ploitative, sexually demeaning or may reasonably be interpreted as  
35 sexual, sexually exploitative or sexually demeaning; or engaging in  
36 conduct with a former patient that is sexually exploitative or may  
37 reasonably be interpreted as sexually exploitative. It would not be a  
38 violation under this subsection for a nurse to continue a sexual rela-  
39 tionship with a spouse or individual of majority if a consensual sexual  
40 relationship existed prior to the establishment of the nurse-patient  
41 relationship.

42 (2) Separate offense. Each day an individual violates any of the provi-  
43 sions of this chapter or rules and standards of conduct and practice as may be  
44 adopted by the board shall constitute a separate offense.

45 (3) Proceedings.

46 (a) The executive director shall conduct such investigations and ini-  
47 tiate such proceedings as necessary to ensure compliance with this  
48 section. The board may accept the voluntary surrender of a license  
49 from any nurse under investigation and accordingly enter an order re-



1 voking or suspending such license and/or imposing such conditions,  
2 limitations, or restrictions on the practice of any such nurse as may  
3 be appropriate in the discretion of the board. Otherwise, every person  
4 subject to disciplinary proceedings shall be afforded an opportunity  
5 for hearing after reasonable notice. All proceedings hereunder shall  
6 be in accordance with chapter 52, title 67, Idaho Code.

7 (b) Hearings shall be conducted by the board or by persons appointed  
8 by the board to conduct hearings and receive evidence. The board and  
9 any person duly appointed by the board to conduct hearings shall have  
10 all powers as are necessary and incident to orderly and effective re-  
11 ceipt of evidence including, but not limited to, the power to administer  
12 oaths and to compel by subpoena attendance of witnesses and production  
13 of books, records and things at the hearing or at a deposition taken by a  
14 party in accordance with the Idaho rules of civil procedure. Any party  
15 shall be entitled to the use of subpoena upon application therefor.

16 (c) In the event any person fails to comply with a subpoena personally  
17 served upon him or refuses to testify to any matter regarding which he  
18 may be lawfully interrogated, the board shall petition the district  
19 court in the county where such failure or refusal occurred or where  
20 such person resides, to enforce such subpoena or compel such testimony.  
21 Proceedings before the district court shall be for contempt in the same  
22 nature as contempt of court for failure or refusal to comply with an  
23 order of the court and the court shall have the same powers to secure  
24 compliance with subpoena and testimony or to impose penalties as in con-  
25 tempt of court proceedings.

26 (d) The assessment of costs and attorney's fees incurred in the inves-  
27 tigation and prosecution or defense of an administrative proceeding  
28 against a licensee under this chapter shall be governed by the provi-  
29 sions of section 12-117(5), Idaho Code.

30 (4) Probation/Subsequent review. Any order of the board entered un-  
31 der this section may be withheld or suspended for a probationary period to be  
32 fixed by the board upon such terms and conditions as may be appropriate in or-  
33 der to regulate, monitor and/or supervise the practice of nursing by the li-  
34 censee subject to such order for the prescribed probationary period. Any or-  
35 der of the board entered under this section may be withdrawn, reversed, mod-  
36 ified or amended upon a showing by the person subject to the order that the  
37 grounds for discipline no longer exist or that he is rehabilitated, quali-  
38 fied and competent to practice nursing and that he is not likely to violate  
39 this chapter or rules adopted hereunder in the future. ~~The board may, as a~~  
40 ~~condition to withdrawal, reversal, modification or amendment of the order,~~  
41 ~~require the person to pay all or part of the costs incurred by the board in~~  
42 ~~proceedings upon which the order was entered.~~

43 (5) Reporting investigative information.

44 (a) Nothing in section 74-106(8) and (9), Idaho Code, shall be con-  
45 strued as limiting the authority of the board to report current  
46 significant investigative information to the coordinated licensure  
47 information system for transmission to states that are parties to any  
48 multistate agreements or compacts regarding nurse licensure.

1 (b) The executive director of the board may, in the administration of  
2 this chapter, share information and otherwise cooperate with govern-  
3 ment regulatory and law enforcement agencies.

4 SECTION 6. That Section 54-1502A, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 54-1502A. NONLICENSED PERSONS -- PENALTIES AND REMEDIES. (1) The  
7 board may investigate any person engaged in the practice of optometry within  
8 the state of Idaho or any person believed to have acted as an optometrist  
9 without being duly licensed as required by this chapter. Upon receipt of  
10 a written complaint, the board shall perform an investigation of the facts  
11 alleged. If the board investigation reveals that the facts alleged or re-  
12 ceived are sufficient to proceed with formal action, the board may authorize  
13 the filing of an administrative complaint against the person and may seek  
14 injunctive relief prohibiting such person from engaging in the practice of  
15 optometry. In addition or alternatively, the board may refer violators of  
16 the provisions of this chapter for prosecution pursuant to section 54-1513,  
17 Idaho Code.

18 (2) Each violation of the provisions of section 54-1502, Idaho Code,  
19 shall, upon conviction, result in a fine in an amount not to exceed one thou-  
20 sand dollars (\$1,000), or imprisonment in the county jail for not less than  
21 thirty (30) days but not more than ninety (90) days, or by both such fine and  
22 imprisonment and, ~~in addition, shall require the payment of the cost and fees~~  
23 ~~incurred in the investigation and prosecution of the violation.~~

24 (3) The assessment of costs and fees incurred in the investigation and  
25 prosecution or defense of a person under this section shall be governed by  
26 the provisions of section 12-117(5), Idaho Code.

27 SECTION 7. That Section 54-1512, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 54-1512. PENALTIES AND REINSTATEMENT. (1) Upon the finding of the ex-  
30 istence of grounds for discipline of any person holding a license, seeking  
31 a license, or renewing a license under the provisions of this chapter, the  
32 board of optometry may impose one (1) or more of the following penalties:

33 (a) Suspension of the offender's license for a term to be determined by  
34 the board;

35 (b) Revocation of the offender's license;

36 (c) Restriction of the offender's license to prohibit the offender from  
37 performing certain acts or from engaging in the practice of optometry in  
38 a particular manner for a term to be determined by the board;

39 (d) Refusal to renew offender's license;

40 (e) Placement of the offender on probation and supervision by the board  
41 for a period of time and under terms and conditions to be determined by  
42 the board;

43 (f) Imposition of an administrative fine not to exceed two thousand  
44 dollars (\$2,000) plus costs of prosecution and reasonable attorney's  
45 fees; or

46 (g) Written letters of censure or reprimand which shall become a perma-  
47 nent record in the files of the licensee.

1           (2) The assessment of costs and fees incurred in the investigation and  
2 prosecution or defense of a person holding a license, seeking a license, or  
3 renewing a license under this chapter shall be governed by the provisions of  
4 section 12-117(5), Idaho Code.

5           (3) Any person whose license to practice optometry in this state has  
6 been suspended, revoked or restricted pursuant to this chapter, whether vol-  
7 untarily or by action of the board, shall have the right, at reasonable in-  
8 tervals, to petition the board for reinstatement of such license. Such pe-  
9 tition shall be made in writing and in the form prescribed by the board. Upon  
10 investigation and hearing, the board may in its discretion grant or deny such  
11 petition, or it may modify its original finding to reflect any circumstances  
12 which have changed sufficiently to warrant such modifications.

13           (34) Nothing herein shall be construed as barring criminal prosecu-  
14 tions for violations of this chapter where such violations are deemed as  
15 criminal offenses in other statutes of this state or of the United States.

16           (45) All final decisions by the board shall be subject to judicial re-  
17 view pursuant to the provisions of the administrative procedure act.

18           SECTION 8. That Section 54-1728, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20           54-1728. PENALTIES AND REINSTATEMENT. (1) Upon the finding of the ex-  
21 istence of grounds for discipline of any person or business entity holding  
22 a license or registration, seeking a license or registration, or a renewal  
23 license or registration under the provisions of this chapter, the board of  
24 pharmacy may impose one (1) or more of the following penalties:

25           (a) Suspension of the offender's license or registration for a term to  
26 be determined by the board;

27           (b) Revocation of the offender's license or registration;

28           (c) Restriction of the offender's license or registration to prohibit  
29 the offender from performing certain acts or from engaging in the prac-  
30 tice of pharmacy in a particular manner for a term to be determined by  
31 the board;

32           (d) Refusal to renew the offender's license or registration;

33           (e) Placement of the offender on probation and supervision by the board  
34 for a period to be determined by the board;

35           (f) Imposition of an administrative fine not to exceed two thousand  
36 dollars (\$2,000) ~~plus costs of prosecution and administrative costs of~~  
37 ~~bringing the action including, but not limited to, attorney's fees and~~  
38 ~~costs and costs of hearing transcripts for each occurrence providing a~~  
39 basis for discipline.

40           (2) The board may take any action against a nonresident licensee or reg-  
41 istrant that the board can take against a resident licensee or registrant for  
42 violation of the laws of this state or the state in which it resides.

43           (3) The board may report any violation by a nonresident licensee or reg-  
44 istrant, or its agent or employee, of the laws and rules of this state, the  
45 state in which it resides or the United States to any appropriate state or  
46 federal regulatory or licensing agency including, but not limited to, the  
47 regulatory agency of the state in which the nonresident licensee or regis-  
48 trant is a resident.

1 (4) The board may elect to not initiate an administrative action under  
 2 Idaho law against a nonresident licensee or registrant upon report of a vi-  
 3 olation of law or rule of this state if the licensee's or registrant's home  
 4 state commences an action for the violation complained of; provided however,  
 5 that the board may elect to initiate an administrative action if the home  
 6 state action is unreasonably delayed or the home state otherwise fails to  
 7 take appropriate action for the reported violation.

8 (5) The suspension, revocation, restriction or other action taken  
 9 against a licensee or registrant by a state licensing board with authority  
 10 over a licensee's or registrant's professional license or registration or  
 11 by the drug enforcement administration may result in the board's issuance of  
 12 an order likewise suspending, revoking, restricting or otherwise affecting  
 13 the license or registration in this state, without further proceeding, but  
 14 subject to the effect of any modification or reversal by the issuing state or  
 15 the drug enforcement administration.

16 (6) The assessment of costs and fees incurred in the investigation and  
 17 prosecution or defense of a person holding a license or registration, seek-  
 18 ing a license or registration, or renewing a license or registration under  
 19 this chapter shall be governed by the provisions of section 12-117(5), Idaho  
 20 Code.

21 (7) Any person whose license to practice pharmacy in this state has  
 22 been suspended, revoked or restricted pursuant to this chapter, or any drug  
 23 outlet whose certificate of registration has been suspended, revoked or re-  
 24 stricted pursuant to this chapter, whether voluntarily or by action of the  
 25 board, shall have the right, at reasonable intervals, to petition the board  
 26 for reinstatement of such license. Such petition shall be made in writing  
 27 and in the form prescribed by the board. Upon investigation and hearing,  
 28 the board may in its discretion grant or deny such petition, or it may modify  
 29 its original finding to reflect any circumstances which have changed suffi-  
 30 ciently to warrant such modifications.

31 (78) Nothing herein shall be construed as barring criminal prosecu-  
 32 tions for violations of the act where such violations are deemed as criminal  
 33 offenses in other statutes of this state or of the United States.

34 (89) All final decisions by the board shall be subject to judicial re-  
 35 view pursuant to the procedures of the administrative procedure act.

36 SECTION 9. That Section 54-1732, Idaho Code, be, and the same is hereby  
 37 amended to read as follows:

38 54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in  
 39 section 54-1729, Idaho Code, shall be operated until a certificate of reg-  
 40 istration has been issued to said facility by the board. Upon the finding of  
 41 a violation of this subsection, the board may impose one (1) or more of the  
 42 penalties enumerated in section 54-1728, Idaho Code.

43 (2) Reinstatement of a certificate that has been suspended, revoked  
 44 or restricted by the board may be granted in accordance with the procedures  
 45 specified in section 54-1728(67), Idaho Code.

46 (3) The following acts, or the failure to act, and the causing of any  
 47 such act or failure are unlawful:

48 (a) The sale, delivery or administration of any prescription drug or  
 49 legend drug, except an opioid antagonist pursuant to section 54-1733B,

1 Idaho Code, or an epinephrine auto-injector pursuant to sections  
2 54-1733C and 54-1733D, Idaho Code, unless:

3 (i) Such legend drug is dispensed or delivered by a pharmacist  
4 upon an original prescription, drug order or prescription drug or-  
5 der by a practitioner in good faith in the course of his practice.  
6 Any person violating the provisions of this subparagraph shall  
7 be guilty of a felony, and on conviction thereof shall be impris-  
8 oned in the state penitentiary for a term not to exceed three (3)  
9 years, or punished by a fine of not more than five thousand dollars  
10 (\$5,000) or by both such fine and imprisonment.

11 (ii) In the case of a legend drug dispensed by a pharmacist or pre-  
12 scriber, there is a label affixed to the immediate container in  
13 which such drug is dispensed. Any person violating this subpara-  
14 graph shall be guilty of a misdemeanor and upon conviction thereof  
15 shall be fined not more than five hundred dollars (\$500). Noth-  
16 ing in this subparagraph prohibits a practitioner from delivering  
17 professional samples of legend drugs in their original contain-  
18 ers in the course of his practice when oral directions for use are  
19 given at the time of such delivery.

20 (b) The refilling of any prescription or drug order for a legend drug  
21 except as designated on the prescription or drug order, or by the autho-  
22 rization of the practitioner. Any person guilty of violating the pro-  
23 visions of this paragraph shall be guilty of a misdemeanor and upon con-  
24 viction thereof shall be incarcerated in the county jail for a term not  
25 to exceed one (1) year, or punished by a fine of not more than one thou-  
26 sand dollars (\$1,000) or by both such fine and incarceration.

27 (c) The possession or use of a legend drug or a precursor, except an  
28 opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epi-  
29 nephrine auto-injector pursuant to sections 54-1733C and 54-1733D,  
30 Idaho Code, by any person unless such person obtains such drug on the  
31 prescription or drug order of a practitioner. Any person guilty of vio-  
32 lating the provisions of this paragraph shall be guilty of a misdemeanor  
33 and upon conviction thereof shall be incarcerated in the county jail for  
34 a term not to exceed one (1) year, or punished by a fine of not more than  
35 one thousand dollars (\$1,000) or by both such fine and incarceration.

36 (d) The wholesale distribution of drugs or devices by a pharmacy except  
37 for:

38 (i) The sale, transfer, merger or consolidation of all or part of  
39 the business of a pharmacy or pharmacies from or with another phar-  
40 macy or pharmacies, whether accomplished as a purchase and sale of  
41 stock or business assets.

42 (ii) The sale of minimal quantities of prescription drugs to prac-  
43 titioners for office use.

44 (iii) The sale of a prescription drug for emergency medical rea-  
45 sons, but never to a wholesale distributor.

46 (iv) Intracompany sales of prescription drugs, meaning any trans-  
47 action or transfer between any division, subsidiary, parent or af-  
48 filiated or related company under common ownership and control of  
49 a corporate entity, or any transaction or transfer between colli-

1           censees or a colicensed product, but never to a wholesale distrib-  
2           utor.

3           (e) The failure to keep records as required by the board. Any person  
4           guilty of violating the provisions of this paragraph shall be guilty of  
5           a misdemeanor and upon conviction thereof shall be incarcerated in the  
6           county jail for a term not to exceed one (1) year, or punished by a fine  
7           of not more than one thousand dollars (\$1,000) or by both such fine and  
8           incarceration.

9           (f) The refusal to make available and to accord full opportunity to  
10          check any record, as required by the board. Any person guilty of vio-  
11          lating the provisions of this paragraph shall be guilty of a misdemeanor  
12          and upon conviction thereof shall be incarcerated in the county jail for  
13          a term not to exceed one (1) year, or punished by a fine of not more than  
14          one thousand dollars (\$1,000) or by both such fine and incarceration.

15          (g) It is unlawful to:

16           (i) Obtain or attempt to obtain a legend drug or procure or at-  
17           tempt to procure the administration of a legend drug by fraud, de-  
18           ceit, misrepresentation or subterfuge; by the forgery or alter-  
19           ation of a prescription, drug order, or of any written order; by  
20           the concealment of a material fact; or by the use of a false name or  
21           the giving of a false address.

22           (ii) Communicate information to a physician in an effort unlaw-  
23           fully to procure a legend drug, or unlawfully to procure the ad-  
24           ministration of any such drug. Any such communication shall not be  
25           deemed a privileged communication.

26           (iii) Intentionally make a false statement in any prescription,  
27           drug order, order, report or record required by this chapter.

28           (iv) For the purpose of obtaining a legend drug to falsely assume  
29           the title of, or represent himself to be, a manufacturer, whole-  
30           seller, pharmacist, physician, dentist, veterinarian or other per-  
31           son.

32           (v) Make or utter any false or forged prescription or false drug  
33           order or forged written order.

34           (vi) Affix any false or forged label to a package or receptacle  
35           containing legend drugs. This subparagraph does not apply to law  
36           enforcement agencies or their representatives while engaged in  
37           enforcing state and federal drug laws.

38           (vii) Wholesale or retail any prescription or legend drug to any  
39           person in this state not entitled by law to deliver such drug to  
40           another.

41          Every violation of paragraph (g) (i) through (vi) of this subsection shall  
42          be a misdemeanor, and any person convicted thereof shall be incarcerated in  
43          the county jail for a term not to exceed one (1) year, or fined not more than  
44          one thousand dollars (\$1,000), or punished by both such fine and imprison-  
45          ment. Any person violating paragraph (g) (vii) of this subsection is guilty  
46          of a felony and on conviction thereof shall be imprisoned in the state peni-  
47          tentiary for a term not to exceed three (3) years, or punished by a fine of not  
48          more than five thousand dollars (\$5,000), or by both such fine and imprison-  
49          ment.

1 (4) Provided however, that a veterinarian may dispense or deliver a  
2 legend drug prescribed for an animal upon the prescription, drug order, or  
3 prescription drug order of another veterinarian. The label shall be affixed  
4 pursuant to subsection (3) (a) (ii) of this section, and penalties for vio-  
5 lations of the provisions of this subsection shall be as provided in this  
6 section for like violations by a pharmacist.

7 (5) The ultimate user of a legend drug who has lawfully obtained such  
8 legend drug may deliver, without being registered, the legend drug to an-  
9 other person for the purpose of disposal of the legend drug if the person re-  
10 ceiving the legend drug for purposes of disposal is authorized under a state  
11 or federal law or regulation to engage in such activity.

12 SECTION 10. That Section 54-1806, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 54-1806. POWERS AND DUTIES. The board shall have the authority to:

15 (1) Hire or appoint employees, including an executive director, inves-  
16 tigators, attorneys, consultants and independent hearing examiners.

17 (2) Establish pursuant to the administrative procedure act rules for  
18 administration of this chapter, including rules governing all activities of  
19 persons employed as physician's assistants by persons licensed to practice  
20 medicine in this state. The board shall adopt rules pursuant to the adminis-  
21 trative procedure act establishing procedures for the receipt of complaints  
22 and for the investigation and disposition thereof. Such rules shall provide  
23 for notice to a person when the board has authorized the committee to inves-  
24 tigate that person and shall provide an opportunity for a person under in-  
25 vestigation to meet with the committee or its staff before the initiation of  
26 formal disciplinary proceedings by the board.

27 (3) Conduct investigations and examinations and hold hearings as au-  
28 thorized by this section and by section 54-1806A, Idaho Code.

29 (4) The board shall have the power in any investigation or disciplinary  
30 proceeding pursuant to this chapter to administer oaths, take depositions  
31 of witnesses within or without the state in the manner consistent with rules  
32 adopted by the board pursuant to the administrative procedure act, and upon a  
33 determination that there is good cause the board shall have power throughout  
34 the state of Idaho to require the attendance of such witnesses and the pro-  
35 duction of such books, records, and papers as it may deem appropriate for any  
36 investigation, deposition or hearing. For that purpose the board may issue  
37 a subpoena for any witnesses or a subpoena duces tecum to compel the produc-  
38 tion of any books, records or papers, directed to the sheriff of any county  
39 of the state of Idaho, where such witness resides, or may be found, which  
40 shall be served and returned in the same manner as a subpoena in a criminal  
41 case is served and returned. The fees and mileage of the witnesses shall be  
42 the same as that allowed in the district courts in criminal cases, which fees  
43 and mileage shall be paid from any funds in the state treasury in the same  
44 manner as other expenses of the board are paid. In any case of disobedience  
45 to, or neglect of, any subpoena or subpoena duces tecum served upon any per-  
46 son, or the refusal of any witness to testify to any matter regarding which  
47 he may lawfully be interrogated, it shall be the duty of the district court of  
48 any county in this state in which such disobedience, neglect or refusal oc-  
49 curs, or any judge thereof, on application by the board to compel compliance

1 with the subpoena by proceedings for contempt as in the case of disobedience  
 2 of the requirements of a subpoena issued from such court or for refusal to  
 3 testify therein. The licensed person accused in such formal contested case  
 4 shall have the same right of subpoena upon making application to the board  
 5 therefor.

6 (5) Seek injunctive relief prohibiting the unlawful practice of  
 7 medicine.

8 (6) Make and enter into contracts.

9 (7) Operate, manage, superintend and control the licensure of physi-  
 10 cians.

11 (8) Develop and submit a proposed budget setting forth the amount nec-  
 12 essary to perform its functions.

13 (9) Perform such other duties as set forth in the laws of this state.

14 (10) Provide such other services and perform such other functions as are  
 15 necessary to fulfill its responsibilities.

16 (11) ~~Provide for reasonable fees through rules for administrative costs~~  
 17 ~~and assess costs reasonably and necessarily incurred in the enforcement of~~  
 18 ~~this chapter when a licensee has been found to be in violation of the provi-~~  
 19 ~~sions of this chapter~~ Apply the provisions of section 12-117(5), Idaho Code,  
 20 regarding the assessment of costs and fees incurred in the investigation and  
 21 prosecution or defense of a licensee under this chapter.

22 (12) Prepare an annual report.

23 (13) Share with the department of labor personal identifying informa-  
 24 tion of persons licensed under the provisions of this chapter necessary for  
 25 the department of labor to identify workforce shortage areas in Idaho. The  
 26 information provided to the department of labor concerning any person li-  
 27 censed under this chapter shall remain confidential and not subject to pub-  
 28 lic disclosure, as required in section 74-106, Idaho Code.

29 SECTION 11. That Section 54-1914, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 54-1914. ADMINISTRATIVE ENFORCEMENT PROCEEDINGS. (1) The administra-  
 32 tor may upon his own motion or at the direction of the board, and shall upon  
 33 the verified complaint in writing of any person, investigate the actions of  
 34 any public works contractor within the state and may undertake to reclas-  
 35 sify, retype, place on probation, defer or precondition licensure, impose an  
 36 administrative fine not to exceed twenty thousand dollars (\$20,000) per vi-  
 37 olation, ~~impose the administrative costs of bringing the action including,~~  
 38 ~~but not limited to, hearing officer fees, expert witness fees, attorney's~~  
 39 ~~fees, costs of hearing transcripts and copies,~~ temporarily suspend or perma-  
 40 nently revoke any license if the holder, while a licensee or applicant here-  
 41 under, is guilty of or commits any one (1) or more of the following acts or  
 42 omissions:

43 (a) Abandonment without legal excuse of any construction project or op-  
 44 eration engaged in or undertaken by the licensee as a contractor-*i*

45 (b) Diversion of funds or property received under express agreement for  
 46 prosecution or completion of a specific construction project or opera-  
 47 tion, or for a specified purpose in the prosecution or completion of any  
 48 construction project or operation, and their application or use for any



1 other construction project or operation, obligation or purpose, with  
2 intent to defraud or deceive creditors or the owner-; i

3 (c) Willful departure from or disregard of-; plans or specifications in  
4 any material respect, and prejudicial to another, without consent of  
5 the owner or his duly authorized representative, and without the con-  
6 sent of the person entitled to have the particular construction project  
7 or operation completed in accordance with such plans and specifica-  
8 tions-; i

9 (d) Willful or deliberate disregard and violation of valid building  
10 laws of the state, or of any political subdivision thereof, or of the  
11 safety laws or labor laws or compensation insurance laws of the state-; i

12 (e) Misrepresentation of a material fact by an applicant in obtaining a  
13 license-; i

14 (f) Aiding or abetting an unlicensed person to evade the provisions of  
15 this chapter or conspiring with an unlicensed person, or allowing one's  
16 license to be used by an unlicensed person, or acting as agent or partner  
17 or associate or otherwise-; of an unlicensed person, i with the intent to  
18 evade the provisions of this chapter-; i

19 (g) Failure in any material respect to comply with the provisions of  
20 this chapter-; i

21 (h) Acting in the capacity of a contractor under any license issued  
22 hereunder except: (1) in the name of the licensee as set forth upon the  
23 license-; i or (2) in accordance with the personnel of the licensee as set  
24 forth in the application for such license, or as later changed as pro-  
25 vided in this chapter-; i

26 (i) Knowingly accepting a bid from-; or entering into a contract with an-  
27 other contractor for a portion of a public works project if at that time  
28 such contractor does not possess the appropriate license to do that work  
29 as provided in this chapter-; i

30 (j) Willful failure or refusal without legal excuse on the part of a  
31 licensee as a contractor to finish a construction project or operation  
32 with reasonable diligence, causing material injury to another-; i

33 (k) Willful or deliberate failure by any licensee, or agent or offi-  
34 cer thereof, to pay any moneys when due, for any materials or services  
35 rendered in connection with his operations as a contractor, when he has  
36 the capacity to pay or when he has received sufficient funds therefor as  
37 payment for the particular construction work, project or operation for  
38 which the services or materials were rendered or purchased; or denial  
39 of any such amount due or the validity of the claim thereof with intent  
40 to secure for himself, his employer, or other person-; any discount upon  
41 such indebtedness or with intent to hinder, delay or defraud the person  
42 to whom such indebtedness is due-; i

43 (l) Suffers a change in financial circumstances which may impair the  
44 licensee's financial responsibility-; i

45 (m) Holding oneself or one's firm out as a public works contractor by  
46 engaging in any act meeting the definition or character of a public  
47 works contractor as defined herein without a legally required license-; i

48 or

49 (n) Failure to comply with subsection (1), (2) or (3) of section  
50 67-2310, Idaho Code.

1 (2) The administrator may upon his own motion or at the direction of the  
 2 board, and shall upon the verified complaint in writing of any licensed pub-  
 3 lic works contractor eligible to perform public works contracting duties,  
 4 investigate the actions of any public entity within the state and may impose  
 5 an administrative fine not to exceed five thousand dollars (\$5,000) per vi-  
 6 olation ~~or impose the administrative costs of bringing the action includ-~~  
 7 ~~ing, but not limited to, hearing officer fees, expert witness fees, attor-~~  
 8 ~~ney's fees, costs of hearing transcripts and copies,~~ if the public agency  
 9 contracts for public works construction with an unlicensed or improperly li-  
 10 censed contractor or knowingly awards a contract based upon a bid or proposal  
 11 not in compliance with subsection (1) or (2) of section 67-2310, Idaho Code.

12 (3) The assessment of costs and fees incurred to investigate and prose-  
 13 cute or defend a complaint under this section shall be governed by the provi-  
 14 sions of section 12-117(5), Idaho Code.

15 SECTION 12. That Section 54-2059, Idaho Code, be, and the same is hereby  
 16 amended to read as follows:

17 54-2059. DISCIPLINARY POWERS -- REVOCATION, SUSPENSION OR OTHER DIS-  
 18 CIPLINARY ACTION. (1) The commission may temporarily suspend or permanently  
 19 revoke licenses issued under the provisions of this chapter, issue a formal  
 20 reprimand and impose a civil penalty in an amount not to exceed five thousand  
 21 dollars (\$5,000), ~~and assess costs and attorney's fees for the cost of any~~  
 22 ~~investigation and administrative or other proceedings~~ against any licensee  
 23 who is found to have violated any section of the Idaho Code, the commission's  
 24 administrative rules or any order of the commission. The executive director  
 25 may issue informal letters of reprimand to licensees without civil penalty  
 26 or cost assessment.

27 (2) The commission may impose a civil penalty in an amount not to exceed  
 28 five thousand dollars (\$5,000) and assess costs and attorney's fees for the  
 29 cost of any investigation and administrative or other proceedings against  
 30 any person who is found, through a court or administrative proceeding, to  
 31 have acted without a license in violation of section 54-2002, Idaho Code.  
 32 The civil penalty provisions of this section are in addition to and not in  
 33 lieu of any other actions or criminal penalties for acting as a broker or  
 34 salesperson without a license which might be imposed by other sections of  
 35 this chapter or Idaho law.

36 (3) The commission may also accept, on such conditions as it may pre-  
 37 scribe, or reject any offer to voluntarily terminate the license of a person  
 38 whose activity is under investigation or against whom a formal complaint has  
 39 been filed.

40 (4) The assessment of fees and costs incurred in the investigation and  
 41 prosecution or defense of a licensee or other person under this section shall  
 42 be governed by the provisions of section 12-117(5), Idaho Code.

43 (25) If the commission suspends or revokes a license, or imposes a civil  
 44 penalty, or assesses costs and attorney's fees, the commission may withhold  
 45 execution of the suspension, revocation or civil penalty, or costs and at-  
 46 torney's fees on such terms and for such time as it may prescribe.

47 (36) If any amounts assessed against a defendant by final order of the  
 48 commission become otherwise uncollectible or payment is in default, and only  
 49 if all the defendant's rights to appeal have passed, the commission may then

1 proceed to district court and seek to enforce collection through judgment  
2 and execution.

3 (47) All civil penalties, costs, and attorney's fees collected by the  
4 commission under this chapter shall be deposited in the state treasury to the  
5 credit of the special real estate fund established by section 54-2021, Idaho  
6 Code. Any amounts of civil penalties so collected, deposited and credited  
7 shall be expended for exclusive use in developing and delivering Idaho real  
8 estate education.

9 SECTION 13. That Section 54-2118, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 54-2118. VIOLATIONS OF CHAPTER -- REMEDIES AND PENALTIES. In addition  
12 to the disciplinary actions set forth in section 54-2115, Idaho Code:

13 (1) Administrative actions.

14 (a) Any person violating the provisions of this chapter, or violating a  
15 rule promulgated by the board to implement the provisions of this chap-  
16 ter, may be fined by the board or its duly authorized agent not more than  
17 five thousand dollars (\$5,000) for each offense ~~and shall be liable for~~  
18 ~~investigatory expenses and reasonable paralegal and attorney's fees,~~  
19 ~~and;~~ provided that each act on each day of violation shall constitute  
20 a separate offense. Imposition of a fine may be made in conjunction  
21 with any other board administrative action. No fine may be assessed  
22 unless the person charged was given notice and opportunity for a hearing  
23 pursuant to the Idaho administrative procedure act. If a person fined  
24 fails to fully pay the fine, investigatory expenses or reasonable para-  
25 legal and attorney's fees, the board may recover such amount by action  
26 in the appropriate district court. Any assessment for costs and attor-  
27 ney's fees incurred in the investigation and prosecution or defense of a  
28 person under this chapter shall be governed by the provisions of section  
29 12-117(5), Idaho Code.

30 (b) The board may establish alternatives to formal disciplinary ac-  
31 tion for violations of this chapter or board rules that may include a  
32 practice remediation program to educate and remediate licensees and  
33 certificate holders as a result of practice deficiencies. An alterna-  
34 tive to formal discipline may be offered by the board's liaison officer  
35 to a licensee or certificate holder when the officer has determined,  
36 in his sound discretion, after consultation with and approval of the  
37 board president or vice president if the president is unavailable, that  
38 animal and public safety will not be compromised and the violation can  
39 most appropriately be resolved without formal discipline. To further  
40 the purposes of an alternative to discipline, it will be offered only  
41 by or through the liaison officer and, unless the person violates its  
42 terms, the full board will not be informed of the alternative to disci-  
43 pline or have to expressly approve its terms. An alternative to formal  
44 discipline shall not be available and may not be offered by the liaison  
45 officer in any of the following circumstances:

46 (i) Within the preceding five (5) years, the person has been for-  
47 mally disciplined by the board or been the subject of an alterna-  
48 tive to discipline under this subsection;

49 (ii) The person is currently on probation by the board;

1 (iii) The person is currently under investigation by the board for  
2 any other offense;

3 (iv) Felony charges are pending against the person, or the person  
4 is the subject of a current criminal investigation involving al-  
5 legations that, if verified, may reasonably be expected to affect  
6 the person's qualifications or eligibility to remain licensed or  
7 certified under this chapter; or

8 (v) The act or omission committed by the person:

9 1. Caused significant harm to an animal;

10 2. Created a substantial risk likely to cause significant  
11 harm to an animal; or

12 3. Involved fraud or deception.

13 Among other terms and conditions, an alternative to formal discipline  
14 may require the licensee or certificate holder to comply with the in-  
15 structions of the board's liaison officer on remedying the violation,  
16 pay a monetary civil penalty to the board of up to one thousand dollars  
17 (\$1,000) and pay all board investigative expenses and costs associated  
18 with the file, if warranted under section 12-117(5), Idaho Code.

19 Upon successful completion of the terms and conditions of the alterna-  
20 tive to discipline, the violation shall not be considered "discipline,"  
21 shall not be reported to any national disciplinary database, and docu-  
22 ments and records related to the violation shall be exempt from disclo-  
23 sure under chapter 1, title 74, Idaho Code.

24 (2) Civil court proceedings. The board, the attorney general's of-  
25 fice, a county prosecuting attorney or any citizen of this state may bring an  
26 action in the district court of either Ada county or any county where a viola-  
27 tion is occurring, to enjoin any person from practicing veterinary medicine  
28 or practicing as a certified veterinary technician, certified euthanasia  
29 technician or any agency operating as a certified euthanasia agency without  
30 a currently valid, active license, certification, temporary permit or tem-  
31 porary certification. If the court finds that the person is violating the  
32 provisions of this chapter, it shall enter an injunction restraining that  
33 person from such unlawful acts.

34 (3) Criminal actions. Any person who practices veterinary medicine,  
35 any person practicing as a certified veterinary technician, a certified eu-  
36 thanasia technician or any agency operating as a certified euthanasia agency  
37 without a currently valid, active license, certification, temporary permit  
38 or temporary certification shall be guilty of a misdemeanor and upon convic-  
39 tion or withheld judgment shall be fined not less than one hundred dollars  
40 (\$100), nor more than ten thousand dollars (\$10,000), or incarcerated for no  
41 more than one hundred eighty (180) days, or both fined and incarcerated, and  
42 provided that each act of such unlawful practice shall constitute a distinct  
43 and separate offense.

44 (4) The remedies set forth in this section are not mutually exclusive  
45 and a successful action on any one (1) remedy does not preclude action on some  
46 or all of the other remedies.

47 SECTION 14. That Section 54-2220, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1           54-2220. DISCIPLINE ACTIONS AND PROCEDURES. (1) The board shall regu-  
2 late the practice of physical therapy in the state of Idaho. The board is au-  
3 thorized to institute any investigation, hearing or other legal proceeding  
4 necessary to effect compliance with this chapter.

5           (2) The board or its hearing officer, upon a finding that action is nec-  
6 essary, shall have the power pursuant to this chapter to administer oaths,  
7 take depositions of witnesses within or without the state in the manner pro-  
8 vided by the administrative rules adopted by the board, and shall have power  
9 throughout the state of Idaho to require the attendance of such witnesses and  
10 the production of such books, records and papers as it may desire at any hear-  
11 ing and for that purpose the board may issue a subpoena for any witness or a  
12 subpoena duces tecum to compel the production of any books, records or pa-  
13 pers, directed to the sheriff of any county of the state of Idaho, where such  
14 witness resides or may be found which shall be served and returned. The board  
15 may require a licensee to be examined to determine his or her mental or phys-  
16 ical competence when the board has probable cause to believe the licensee is  
17 suffering from an impairment that might impede his or her ability to practice  
18 competently.

19           (3) When it is brought to the attention of the board by the written  
20 statement of any person that a person licensed under this chapter has done  
21 any act or thing in violation of any provision of this chapter, the board  
22 shall immediately make an investigation of such person, and, if the board  
23 finds that there is probable cause to institute proceedings against such  
24 person, it shall without unnecessary delay transmit to that person by mail, a  
25 copy of the charges and shall fix a day for a hearing upon the matter. ~~S.~~ Said  
26 hearing shall be conducted in accordance with chapter 52, title 67, Idaho  
27 Code, and with the administrative rules adopted by the board.

28           (4) An assessment for costs and attorney's fees incurred in the inves-  
29 tigation and prosecution or defense of a person under this section shall be  
30 governed by the provisions of section 12-117(5), Idaho Code.

31           (5) The board may investigate any person to the extent necessary to de-  
32 termine if the person is engaged in the unlawful practice of physical ther-  
33 apy. If an investigation indicates that a person may be practicing physical  
34 therapy unlawfully, the board shall inform the person of the alleged viola-  
35 tion. The board may refer the matter for prosecution whether or not the per-  
36 son ceases the unlawful practice of physical therapy.

37           (56) The board may, in the name of the people of the state of Idaho, ap-  
38 ply for injunctive relief in any court of competent jurisdiction to enjoin  
39 any person from committing any act in violation of this chapter. Such in-  
40 junction proceedings shall be in addition to, and not in lieu of, all penal-  
41 ties and other remedies provided for in this chapter.

42           SECTION 15. That Section 54-2221, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44           54-2221. DISCIPLINARY ACTIONS -- PENALTIES. The board may, upon  
45 proof that a person has violated any provision contained in this chapter,  
46 take the following disciplinary actions singly or in combination:

47           (1) Issue a censure or reprimand by informal admonition for minor mis-  
48 conduct found by the board, which censure or reprimand shall be subject to  
49 disclosure according to chapter 1, title 74, Idaho Code;

1 (2) Impose restrictions and/or conditions as to scope of practice,  
2 place of practice, supervision of practice, duration of licensed status, or  
3 type or condition of patient or client served. The board may require a li-  
4 censee to report regularly to the board on matters regarding the restricted  
5 license;

6 (3) Suspend a license, the duration of which shall be determined by the  
7 board;

8 (4) Revoke a license;

9 (5) Refuse to issue or renew a license;

10 (6) Impose a reasonable fine for violation of this chapter in an amount  
11 not to exceed a maximum amount as set forth in the administrative rules  
12 adopted by the board;

13 (7) Accept a voluntary surrender of a license;

14 (8) Assess costs and attorney's fees against a licensee for any inves-  
15 tigation and/or administrative proceeding, pursuant to the provisions of  
16 section 12-117(5), Idaho Code.

17 SECTION 16. That Section 54-2925, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 54-2925. DISCIPLINARY ACTIONS -- PENALTIES. (1) The board, upon re-  
20 ceipt of a recommendation received from the licensure board that a person has  
21 violated any provision of this chapter, may take the following disciplinary  
22 actions singly or in combination:

23 (1a) Issue a formal reprimand;

24 (1b) Require additional education as a requirement for continued prac-  
25 tice;

26 (1c) Impose restrictions and/or conditions as to scope of practice,  
27 place of practice, supervision of practice, duration of license status,  
28 or type or condition of client served. The board may require a licensee  
29 to report regularly to the board on matters regarding the restricted  
30 license;

31 (1d) Suspend a license, the duration of which shall be determined by the  
32 board;

33 (1e) Revoke a license;

34 (1f) Refuse to issue or renew a license; or

35 (1g) Impose a fine not to exceed one thousand dollars (\$1,000) for each  
36 violation of this chapter; ~~or.~~

37 (1h) ~~Assess~~ The assessment of costs and attorney's fees against a li-  
38 icensee for any investigation and/or and prosecution or defense in an admin-  
39 istrative proceeding against a licensee shall be governed by the provisions  
40 of section 12-117(5), Idaho Code.

41 SECTION 17. That Section 54-3113, Idaho Code, be, and the same is hereby  
42 amended to read as follows:

43 54-3113. INVESTIGATION OF VIOLATIONS -- HEARING. The board shall,  
44 upon a verified complaint in writing by any member of the board or by a cer-  
45 tified shorthand reporter or any person claiming to have been injured or  
46 defrauded, investigate the actions of any certified shorthand reporter al-  
47 leged to have committed a violation of this chapter or any of the grounds for

1 revocation or suspension of a certificate. For the purpose of such inves-  
 2 tigation and hearings, each member of the board is empowered to administer  
 3 oaths and affirmations, subpoena witnesses, and hear and receive evidence  
 4 anywhere in the state. Upon conclusion of the hearings, the board shall  
 5 determine by majority vote whether the certificate of the certified short-  
 6 hand reporter should be revoked or suspended for a stated period of time, or  
 7 whether such disciplinary action short of suspension or revocation should  
 8 be imposed, including, but not limited to, conditional probationary periods  
 9 and the imposition of fines ~~and costs~~, or whether the complaint should be  
 10 dismissed. The proceedings and hearings pursuant to this section shall be  
 11 governed by chapter 52, title 67, Idaho Code. The assessment of costs and  
 12 attorney's fees shall be governed by the provisions of section 12-117(5),  
 13 Idaho Code.

14 SECTION 18. That Section 54-3720, Idaho Code, be, and the same is hereby  
 15 amended to read as follows:

16 54-3720. PENALTIES AND DISCIPLINARY ACTIONS. (1) Any person who vio-  
 17 lates any provision of this chapter shall, upon conviction, be guilty of a  
 18 misdemeanor.

19 (2) In addition to the penalties provided for in subsection (1) of this  
 20 section, the board may impose separately, or in combination, any of the fol-  
 21 lowing disciplinary actions on a licensee as provided in this chapter:

- 22 (a) Refuse to issue or renew a license;
- 23 (b) Suspend or revoke a license;
- 24 (c) Impose probationary conditions;
- 25 (d) Issue a letter of reprimand or concern;
- 26 (e) Require restitution of fees;
- 27 (f) Impose a fine as provided for by rule ~~which that~~ deprives the li-  
 28 censee of any economic advantage gained by the violation ~~and which reim-~~  
 29 ~~burses the board for costs of the investigation and proceeding;~~
- 30 (g) Impose practice and/or supervision requirements;
- 31 (h) Require licensees to participate in continuing competence activi-  
 32 ties specified by the board;
- 33 (i) Accept a voluntary surrendering of license; or
- 34 (j) Take other appropriate corrective actions, including advising  
 35 other parties, as needed, to protect their legitimate interests and to  
 36 protect the public.

37 (3) The assessment of costs and attorney's fees incurred in an inves-  
 38 tigation and prosecution or defense in an administrative proceeding against  
 39 a licensee shall be governed by the provisions of section 12-117(5), Idaho  
 40 Code.

41 (4) If the board imposes suspension or revocation of license, applica-  
 42 tion may be made to the board for reinstatement, subject to the limits of this  
 43 chapter. The board shall have discretion to accept or reject an application  
 44 for reinstatement and may require an examination or other satisfactory proof  
 45 of eligibility for reinstatement.

46 (45) If a licensee is placed on probation, the board may require the li-  
 47 cense holder to:

- 48 (a) Report regularly to the board on matters that are the basis of pro-  
 49 bation;

1 (b) Limit practice to the areas prescribed by the board;

2 (c) Continue to review continuing competence activities until the  
3 license holder attains a degree of skill satisfactory to the board in  
4 those areas that are the basis of the probation; or

5 (d) Provide other relevant information to the board.

6 (56) (a) The board is empowered to apply for relief by injunction, with-  
7 out bond, to restrain any person, partnership, or corporation from any  
8 threatened or actual act or practice, ~~which~~ that constitutes an offense  
9 under the provisions of this chapter. It shall not be necessary for the  
10 board to allege and prove that there is no adequate remedy at law in or-  
11 der to obtain the relief requested. The members of the board shall not  
12 be individually liable for applying for such relief.

13 (b) If a person other than a licensed occupational therapist or occu-  
14 pational therapy assistant threatens to engage in or has engaged in any  
15 act or practice ~~which~~ that constitutes an offense under the provisions  
16 of this chapter, a district court of any county on application of the  
17 board may issue an injunction or other appropriate order restraining  
18 such conduct.

19 SECTION 19. That Section 54-3913, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 54-3913. BOARD OF MEDICINE AND BOARD OF ATHLETIC TRAINERS -- POWERS  
22 AND DUTIES. (1) The board shall administer, coordinate, and enforce the pro-  
23 visions of this chapter, evaluate the qualifications and fitness of appli-  
24 cants, and approve the applications for licensure under this chapter, and  
25 may issue subpoenas, examine witnesses, and administer oaths, and may inves-  
26 tigate practices which are alleged to violate the provisions of this chap-  
27 ter. The board of athletic trainers shall evaluate all applicants for qual-  
28 ification and fitness for licensure and make recommendations to and consult  
29 with the board concerning issuance of licenses, revocation of licenses and  
30 rules to be promulgated under this chapter.

31 (2) The board shall, upon recommendation of the board of athletic  
32 trainers, adopt rules pursuant to chapter 52, title 67, Idaho Code, relating  
33 to professional conduct to carry out the policy of this chapter including,  
34 but not limited to, rules relating to professional licensure and to the  
35 establishment of ethical standards of practice, disciplinary proceedings,  
36 refusal to renew license proceedings, license suspension proceedings, or  
37 license revocation proceedings for persons licensed to practice as an ath-  
38 letic trainer in this state.

39 (3) The board of athletic trainers shall hold meetings, conduct hear-  
40 ings and keep records and minutes as are necessary to carry out its func-  
41 tions.

42 (4) Every person licensed as an athletic trainer in Idaho shall be sub-  
43 ject to discipline pursuant to the powers set forth in this chapter and the  
44 rules of the board of medicine promulgated pursuant thereto. The board of  
45 athletic trainers shall have no authority to impose sanctions or limitations  
46 or conditions on licenses issued under this chapter and shall be authorized  
47 only to make recommendations to the board with respect thereto. Members of  
48 the board of athletic trainers shall disqualify themselves and, on motion of  
49 any interested party, may on proper showing, be disqualified in any proceed-



1 ing concerning which they have an actual conflict of interest or bias which  
2 interferes with their fair and impartial service.

3 (5) In addition to its other powers, the board of athletic trainers  
4 shall be empowered and authorized:

5 (a) To recommend that the board reprimand by informal admonition any  
6 licensed athletic trainer respecting any matter it finds is minor mis-  
7 conduct. Such reprimand shall be subject to disclosure according to  
8 chapter 1, title 74, Idaho Code.

9 (b) To recommend that the board order, for good cause, nondisciplinary  
10 suspension or transfer to inactive status of any licensed athletic  
11 trainer incapacitated by illness, senility, disability, or addiction  
12 to drugs, intoxicants or other chemical or like substances, and to  
13 provide terms and conditions therefor, including provisions and con-  
14 ditions controlling reinstatement and any request therefor; provided,  
15 this paragraph shall not be construed to amend or repeal specific leg-  
16 islation expressly dealing with disabled athletic trainers whether  
17 heretofore or hereafter enacted by the legislature of the state of  
18 Idaho, but rather shall be construed as complementary thereto.

19 (c) To recommend that the board accept the resignation and surrender of  
20 the license of any athletic trainer under investigation or prosecution  
21 who tenders the same, and to impose terms and conditions in connection  
22 therewith as it may deem appropriate in the best interests of the public  
23 and of justice.

24 (d) To recommend that the board provide by order for reciprocal disci-  
25 pline in cases involving a licensed athletic trainer or applicant dis-  
26 ciplined in any other jurisdiction, provided that such licensee or ap-  
27 plicant shall be entitled to appear and show cause why such order should  
28 not apply in his or her case.

29 (e) To recommend that the board provide for reasonable fees through  
30 rules for administrative costs and ~~assess costs reasonably and neces-~~  
31 ~~sarily incurred in the enforcement of this chapter when a licensee or~~  
32 ~~applicant has been found to be in violation of this chapter.~~

33 (6) The assessment of attorney's fees and costs incurred in an investi-  
34 gation and prosecution or defense in an administrative proceeding against a  
35 licensee under this chapter shall be governed by the provisions of section  
36 12-117(5), Idaho Code.

37 SECTION 20. That Section 54-4132, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 54-4132. ADDITIONAL POWERS OF THE BOARD. In addition to the powers  
40 conferred elsewhere in this chapter, the board shall have the power under  
41 this act, in relation to appraisal management companies, to:

42 (1) Authorize by written agreement the bureau of occupational licenses  
43 to act as its agent, to act in its interest and, in its discretion, to con-  
44 tract with the bureau of occupational licenses for those services deemed  
45 necessary for the proper administration of this act;

46 (2) Adopt, pursuant to the administrative procedure act, rules that are  
47 consistent with the provisions of this act and are not in conflict with state  
48 or federal law that may be reasonably necessary to implement, administer and  
49 enforce the provisions of this act;

- 1 (3) Conduct investigations into violations of this act;  
 2 (4) Receive applications for and approve registration of appraisal  
 3 management companies pursuant to the provisions of this act;  
 4 (5) Hold meetings and hearings at such times as it may designate;  
 5 (6) Collect, deposit and disburse application and other fees and in-  
 6 come;  
 7 (7) Collect the actual costs and fees, including attorney's fees, in-  
 8 curred by the board in the investigation and prosecution of an AMC upon the  
 9 finding of a violation of this act or a rule adopted or an order issued by the  
 10 board under this act. Provided, however, that the assessment of costs and  
 11 fees against or in favor of a licensee under this chapter shall be governed by  
 12 the provisions of section 12-117(5), Idaho Code;  
 13 (8) Take such action as may be necessary to enforce the provisions of  
 14 this act and to regulate appraisal management companies;  
 15 (9) Report an AMC's violation of applicable appraisal-related laws,  
 16 regulations or orders, as well as disciplinary and enforcement actions or  
 17 other relevant information about an AMC's operations to state and federal  
 18 agencies; and  
 19 (10) Require new applicants, owners or designated controlling persons  
 20 for each new applicant to submit to a satisfactory fingerprint-based crimi-  
 21 nal history check of the Idaho central criminal database and the federal bu-  
 22 reau of investigation criminal history database and to collect fees from ap-  
 23 plicants for the cost of such background checks.

24 SECTION 21. That Section 54-5215, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 54-5215. AUTHORITY TO INVESTIGATE AND DISCIPLINE -- SUSPENSION OR  
 27 REVOCATION OF REGISTRATION. (1) The board may investigate any person en-  
 28 gaged in contracting within the state of Idaho, or any person believed to  
 29 have acted as a contractor without being duly registered as required by this  
 30 chapter. Upon receipt of a written complaint from a person who claims to have  
 31 been injured or defrauded by such person, or upon information received by the  
 32 board, the board shall perform an investigation of the facts alleged against  
 33 such person. If the board investigation reveals that the facts alleged or  
 34 received are sufficient to proceed with a formal action, the board may autho-  
 35 rize the filing of an administrative complaint against such person and may  
 36 seek injunctive relief prohibiting such person from engaging in construc-  
 37 tion.

38 (2) The board shall have the authority to issue informal letters of rep-  
 39 rimand, suspend or revoke a registration, impose a civil penalty in an amount  
 40 not to exceed one thousand dollars (\$1,000), ~~recover the costs and fees in-~~  
 41 ~~curring in an investigation and prosecution,~~ or to issue a formal reprimand  
 42 against any registered contractor if, after an opportunity for a hearing,  
 43 the board determines that:

- 44 (a) A contractor has violated any of the provisions of this chapter in-  
 45 cluding, but not limited to, failure to keep current or provide insur-  
 46 ance coverage as required by this chapter;  
 47 (b) A contractor has violated any of the provisions of chapter 6, title  
 48 48, Idaho Code, relating to consumer protection including, but not lim-  
 49 ited to, making fraudulent misrepresentations to consumers;

1 (c) A contractor employed fraud or deception, made a misrepresentation  
2 or misstatement, or employed any unlawful means in applying for or se-  
3 curing registration as a contractor;

4 (d) A contractor employed fraud or deception, made a misrepresentation  
5 or misstatement, or employed any unlawful means in applying for or se-  
6 curing a building permit or other permits for construction of any type;

7 (e) A contractor failed to pay the required fee for registration as pro-  
8 vided in this chapter;

9 (f) A contractor has been convicted of or has engaged in conduct consti-  
10 tuting a violation of public laws, ordinances or rules of this state,  
11 or any subdivision thereof, relevant to contracting, reflecting on  
12 the registered contractor's ability or qualifications to continue  
13 contracting for other persons, and making the registered contractor a  
14 threat to the public safety, health or well-being;

15 (g) A contractor has engaged in any other conduct whether of the same  
16 or a different character than hereinabove specified which constitutes  
17 dishonest or dishonorable dealings;

18 (h) A contractor was grossly negligent or reckless in his conduct in  
19 the performance of construction. For purposes of this chapter, conduct  
20 is grossly negligent or reckless if, when taken as a whole, it is con-  
21 duct which substantially fails to meet the generally accepted standard  
22 of care in the practice of construction in Idaho;

23 (i) A contractor had a license, registration or certification revoked,  
24 suspended or refused by this or another state, territory, incorporated  
25 municipality, county, alternative form of local government, or other  
26 municipal or political corporation or subdivision of this or another  
27 state, or omitted such information from any application to the board, or  
28 failed to divulge such information when requested by the board;

29 (j) A contractor has been adjudged mentally incompetent by a court of  
30 competent jurisdiction; or

31 (k) A contractor interfered with an investigation or disciplinary pro-  
32 ceeding by a willful misrepresentation of facts or by the use of threats  
33 or harassment against any person to prevent such person from providing  
34 evidence in a disciplinary proceeding, investigation or other legal ac-  
35 tion instituted in accordance with this chapter.

36 (3) A contractor whose registration has been revoked or suspended shall  
37 be required to return his certificate of registration within the time de-  
38 termined by the board or, upon a failure to do so, shall be liable for civil  
39 penalties as set by the board but not to exceed fifty dollars (\$50.00) per day  
40 for each day the certificate is not returned after the expiration of the pe-  
41 riod allowed.

42 (4) The suspension or revocation of a registration shall be considered  
43 a contested case as provided for in chapter 52, title 67, Idaho Code, and  
44 shall be subject to the provisions of that chapter as well as the administra-  
45 tive rules adopted by the board governing contested cases.

46 (5) The assessment of attorney's fees and costs incurred in the inves-  
47 igation and prosecution or defense of a person under this section shall be  
48 governed by the provisions of section 12-117(5), Idaho Code.

49 SECTION 22. That Section 54-5607, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1 54-5607. BOARD POWERS. (1) The board shall have the following powers:

2 (~~1~~a) To receive applications for licensure, determine the qualifica-  
3 tions of persons applying for licensure, provide licenses to applicants  
4 qualified under the provisions of this chapter and reinstate and deny  
5 licenses;

6 (~~2~~b) To establish by rule and collect fees as prescribed by this chap-  
7 ter;

8 (~~3~~c) To maintain records necessary to carry out its duties under this  
9 chapter;

10 (~~4~~d) To pass upon the qualifications and fitness of applicants for  
11 licenses and to adopt rules requiring annual continuing education as a  
12 condition for the renewal of licenses issued under this chapter;

13 (~~5~~e) To prescribe by rule the minimum number of and qualifications for  
14 continuing education units (CEUs) to be required of each genetic coun-  
15 sultor seeking to obtain or renew a license in the state of Idaho and for  
16 the approval of continuing education courses;

17 (~~6~~f) To examine for, deny, approve, issue, revoke and suspend licenses  
18 pursuant to this chapter and to conduct investigations and hearings in  
19 connection with such actions;

20 (~~7~~g) Establish requirements for reinstatement and renewal of licenses;

21 (~~8~~h) To adopt and revise such rules as may be necessary to carry into ef-  
22 fect the provisions of this chapter in compliance with chapter 52, title  
23 67, Idaho Code. The rules shall include, but shall not be limited to,  
24 a code of ethics for genetic counselors and licensed genetic counselor  
25 standards of practice;

26 (~~9~~i) In any proceeding before the board authorized by this chapter, the  
27 board or its designee may administer oaths or affirmations to witnesses  
28 appearing before it; and

29 ~~(10) The board may recover the actual costs and fees, including attor-~~  
30 ~~ney's fees, incurred by the board in the investigation and prosecution of a~~  
31 ~~licensee upon the finding of a violation of this chapter or a rule adopted or~~  
32 ~~an order issued by the board under this chapter;~~

33 (~~11~~j) To take such action as may be necessary to enforce the provisions  
34 of this chapter and to regulate the practice of genetic counseling;

35 (~~12~~) In a final order, the board may impose a civil penalty not to exceed  
36 one thousand dollars (\$1,000) for each violation by a licensee of this chap-  
37 ter or of rules adopted by the board; and.

38 ~~(13) The board may authorize, by written agreement, the bureau of oc-~~  
39 ~~cupational licenses as its agent to act in its interest and, in its discre-~~  
40 ~~tion, to contract with the bureau of occupational licenses for those ser-~~  
41 ~~vices deemed necessary for the proper administration of this chapter.~~

42 (4) The assessment of costs and attorney's fees incurred in the inves-  
43 igation and prosecution or defense of a licensee under this chapter shall be  
44 governed by the provisions of section 12-117(5), Idaho Code.

45 SECTION 23. That Section 67-2601A, Idaho Code, be, and the same is  
46 hereby amended to read as follows:

47 67-2601A. DIVISION OF BUILDING SAFETY. (1) The division of building  
48 safety will be headed by an administrator appointed by and serving at the  
49 will of the governor. The division administrator, deputy administrators and

1 regional managers shall be nonclassified employees exempt from the provi-  
2 sions of chapter 53, title 67, Idaho Code.

3 (2) The administrator shall administer the following provisions and  
4 shall perform such additional duties as are imposed on him by law: chapter  
5 41, title 39, Idaho Code, relating to the building code board; chapter 40,  
6 title 39, Idaho Code, relating to manufactured homes; chapter 43, title 39,  
7 Idaho Code, relating to factory built structures; chapter 21, title 44,  
8 Idaho Code, relating to manufactured home dealer and installer licensing;  
9 chapter 25, title 44, Idaho Code, relating to mobile home rehabilitation;  
10 chapter 10, title 54, Idaho Code, relating to electrical contractors and  
11 journeymen; chapter 19, title 54, Idaho Code, relating to licensing of  
12 public works contractors; chapter 26, title 54, Idaho Code, relating to  
13 plumbing and plumbers; chapter 45, title 54, Idaho Code, relating to public  
14 works construction management licensing; chapter 50, title 54, Idaho Code,  
15 relating to heating, ventilation and air conditioning systems; chapter 80,  
16 title 39, Idaho Code, relating to school building safety; chapter 58~~9~~, title  
17 33, Idaho Code, relating to Idaho school safety and security; chapter 86,  
18 title 39, Idaho Code, relating to elevator safety; and chapter 22, title 55,  
19 Idaho Code, relating to underground facilities damage prevention.

20 (3) The administrator shall also have the authority to perform safety  
21 inspections and safety training programs for logging operations in Idaho.

22 (a) When an inspection reveals evidence of a condition that poses an im-  
23 mediate threat of serious bodily harm or loss of life to any person, the  
24 administrator may issue an order to immediately stop the work or close  
25 the facility or site where the threat exists. The safety order shall not  
26 be rescinded until after the threat has been corrected or removed.

27 (b) The safety order may be enforced by the attorney general in a civil  
28 action brought in the district court for the county wherein the haz-  
29 arduous work site or facility is located.

30 (c) Any person who knowingly fails or refuses to comply with such an or-  
31 der is guilty of a misdemeanor.

32 (d) The administrator shall promulgate rules adopting minimum logging  
33 safety standards and procedures for conducting inspections and safety  
34 training.

35 (4) In addition to safety inspections of state-owned public buildings  
36 conducted under chapter 23, title 67, Idaho Code, the administrator may con-  
37 duct safety inspections of buildings owned or maintained by political sub-  
38 divisions of the state upon receipt of a written request from the governing  
39 body of that political subdivision, subject to the availability of division  
40 resources and the requesting entity's agreement to pay the division's cur-  
41 rent fees for such an inspection.

42 (a) The findings of the inspection shall be reported to the governing  
43 body of the political subdivision.

44 (b) The administrator may promulgate rules adopting minimum safety  
45 standards and procedures for conducting such inspections, as well as  
46 fees for performing the same.

47 (c) For purposes of this section, "political subdivision" means any  
48 governmental unit or special district of the state of Idaho other than  
49 public school districts.

1 (5) In administering the laws regulating professions, trades and occu-  
2 pations that are devolved for administration upon the division, and in addi-  
3 tion to the authority granted to the administrator by the laws and rules of  
4 the agencies and entities within the division, the administrator may:

5 (a) Revise the operating structure of the division as needed to provide  
6 efficient and appropriate services to the various professions, trades,  
7 occupations and programs administered within the division;

8 (b) Conduct examinations to ascertain the qualifications and fitness  
9 of applicants to exercise the profession, trade or occupation for which  
10 an examination is held; pass upon the qualifications of applicants for  
11 reciprocal licenses, certificates and authorities; prescribe rules for  
12 a fair and impartial method of examination of candidates to exercise the  
13 respective professions, trades or occupations; issue registrations,  
14 licenses and certificates; and until fees are established in rule, the  
15 administrator shall charge a fee of seventy-five dollars (\$75.00) for  
16 each examination administered;

17 (c) Conduct hearings on proceedings to discipline, renew or rein-  
18 state licenses, certificates or authorities of persons exercising the  
19 respective professions, trades or occupations; appoint hearing of-  
20 ficers, administer oaths, issue subpoenas, and compel the attendance  
21 of witnesses; revoke, suspend, refuse to renew, or take other disci-  
22 plinary action against such licenses, certifications or authorities;  
23 and prescribe rules to ~~recover~~ assess costs and fees incurred in the  
24 investigation and prosecution or defense of any certificate holder, li-  
25 censee or registrant of the division, its boards, bureaus and programs,  
26 in accordance with the provisions of section 12-117(5), Idaho Code,  
27 when applicable, the contested case provisions of chapter 52, title 67,  
28 Idaho Code, and the laws and rules of the boards, bureaus and programs  
29 the division administers;

30 (d) Assess civil penalties as authorized;

31 (e) Promulgate rules establishing: a coordinated system for the  
32 issuance, renewal, cancellation and reinstatement of licenses, cer-  
33 tificates, registrations and permits; assessment of all related fees;  
34 the terms by which fees may be prorated, if any; and procedures for the  
35 replacement of lost or destroyed licenses, certificates or registra-  
36 tions; and

37 (f) Promulgate other rules as may be necessary for the orderly adminis-  
38 tration of the chapters specified in subsection (2) of this section, ex-  
39 cept for those related to underground facilities damage prevention con-  
40 tained in chapter 22, title 55, Idaho Code, and such rules as may other-  
41 wise be required by those chapters as well as rules for the standardiza-  
42 tion of operating procedures.

43 (6) Notwithstanding any law governing any specific board, bureau or  
44 program comprising the division of building safety, each board member shall  
45 hold office until a successor has been duly appointed and qualified.

46 (7) The administrator shall have the authority to employ individuals,  
47 make expenditures, enter into contracts, require reports, make investiga-  
48 tions, travel, and take other actions deemed necessary.

49 SECTION 24. That Section 67-2602, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1           67-2602. BUREAU OF OCCUPATIONAL LICENSES. (1) The bureau of occupa-  
 2 tional licenses created in the department of self-governing agencies by  
 3 section 67-2601, Idaho Code, shall be empowered, by written agreement be-  
 4 tween the bureau and each agency for which it provides administrative or  
 5 other services as provided by law, to provide such services for the board of  
 6 acupuncture, board of architectural examiners, athletic commission, board  
 7 of barber examiners, certified shorthand reporters board, board of chiro-  
 8 practical physicians, Idaho contractors board, board of cosmetology, licens-  
 9 ing board of professional counselors and marriage and family therapists,  
 10 state board of dentistry, drinking water and wastewater professionals,  
 11 state driving businesses licensure board, Idaho board of massage therapy,  
 12 Idaho board of registration for professional geologists, speech and hear-  
 13 ing services licensure board, physical therapy licensure board, board of  
 14 landscape architects, liquefied petroleum gas safety board, board of mor-  
 15 ticians, board of naturopathic medical examiners, board of examiners of  
 16 nursing home administrators, occupational therapy licensure board, board of  
 17 optometry, board of podiatry, board of psychologist examiners, real estate  
 18 appraiser board, board of examiners of residential care facility adminis-  
 19 trators, board of social work examiners, board of midwifery and such other  
 20 professional and occupational licensing boards or commodity commissions as  
 21 may request such services. The bureau may charge a reasonable fee for such  
 22 services provided any agency not otherwise provided for by law and shall  
 23 maintain proper accounting methods for all funds under its jurisdiction.

24           (2) Notwithstanding the statutes governing specific boards, for any  
 25 board that contracts with the bureau of occupational licenses, each board  
 26 member shall hold office until a successor has been duly appointed and qual-  
 27 ified.

28           (3) The department of self-governing agencies, by and through the bu-  
 29 reau of occupational licenses, shall be empowered to provide administrative  
 30 or other services for the administration of chapter 48, title 54, Idaho Code,  
 31 to issue, suspend, revoke or refuse to renew licenses and certificates, to  
 32 issue subpoenas, to prescribe and impose fees and to assess administrative  
 33 penalties pursuant to the provisions of chapter 48, title 54, Idaho Code.

34           (4) Agencies that contract with the bureau of occupational licenses for  
 35 administrative services may assess and the bureau may collect costs, fees  
 36 and attorney's fees reasonably incurred in the investigation and prosecu-  
 37 tion or defense of a licensee or registrant ~~who is found to have violated the~~  
 38 ~~laws or rules of the agency,~~ pursuant to the provisions of section 12-117(5),  
 39 Idaho Code.

40           SECTION 25. That Section 67-2609, Idaho Code, be, and the same is hereby  
 41 amended to read as follows:

42           67-2609. REGISTRATION OF OCCUPATIONS. (a) The bureau of occupational  
 43 licenses shall, wherever the several laws regulating professions, trades  
 44 and occupations which are devolved upon the bureau for administration so  
 45 require or pursuant to written agreement as provided in section 67-2604,  
 46 Idaho Code, exercise, in its name, or as authorized agent, but subject to the  
 47 provisions of this chapter, the following powers:

48           (1) To conduct examinations to ascertain the qualifications and fit-  
 49 ness of applicants to exercise the profession, trade or occupation for

1 which an examination is held; to pass upon the qualifications of appli-  
2 cants for reciprocal licenses, certificates and authorities-;

3 (2) To prescribe rules for a fair and wholly impartial method of exami-  
4 nation of candidates to exercise the respective professions, trades or  
5 occupations-;

6 (3) To prescribe rules defining, for the respective professions,  
7 trades and occupations, what shall constitute a school, college or uni-  
8 versity, or department of a university, or other institution, reputable  
9 and in good standing and to determine the reputability and good standing  
10 of a school, college or university, or department of a university, or  
11 other institution, by reference to a compliance with such rules-;

12 (4) To establish a standard of preliminary education deemed requisite  
13 to admission to a school, college or university, and to require satis-  
14 factory proof of the enforcement of such standard by schools, colleges  
15 and universities-;

16 (5) To conduct hearings on proceedings to revoke or refuse renewal of  
17 licenses, certificates or authorities of persons exercising the re-  
18 spective professions, trades or occupations, and to revoke or refuse to  
19 renew such licenses, certificates or authorities-;

20 (6) To formulate rules for adoption by the boards allowing the boards  
21 to ~~recover~~ assess costs and fees incurred in the investigation and pros-  
22 ecution or defense of a licensee in accordance with the provisions of  
23 section 12-117(5), Idaho Code, and with the contested case provisions  
24 of chapter 52, title 67, Idaho Code, for an alleged violation of laws or  
25 rules of the boards-;

26 (7) To formulate rules for adoption by the boards establishing a sched-  
27 ule of civil fines which may be imposed upon a licensee prosecuted in  
28 accordance with the contested case provisions of chapter 52, title 67,  
29 Idaho Code, for a violation of laws or rules of the boards. Any civil  
30 fine collected by a board for a violation of its laws or rules shall  
31 not exceed one thousand dollars (\$1,000), unless otherwise provided by  
32 statute, and shall be deposited in the bureau of occupational licensing  
33 account-;

34 (8) To formulate rules when required in any act to be administered-; and

35 (9) To collect and pay such fees as are required for criminal background  
36 checks of applicants, licensees or registrants.

37 (b) None of the ~~above enumerated~~ functions and duties in subsection (a)  
38 of this section shall be exercised by the bureau of occupational licenses ex-  
39 cept upon the action and report in writing of persons designated from time to  
40 time by the chief of the bureau of occupational licenses to take such action  
41 and to make such report, for the respective professions, trades and occupa-  
42 tions.