

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 174

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1
2 RELATING TO THE IDAHO CODE; AMENDING SECTION 73-210, IDAHO CODE, TO PROVIDE
3 THAT THE IDAHO CODE IS IN THE PUBLIC DOMAIN AND TO PROVIDE THAT NO COPY-
4 RIGHT MAY BE CLAIMED BY THE STATE OF IDAHO OR ANY OTHER ENTITY; REPEALING
5 SECTION 9-352, IDAHO CODE, RELATING TO THE IDAHO CODE BEING THE PROPERTY
6 OF THE STATE OF IDAHO; AND AMENDING SECTIONS 9-349 AND 65-301, IDAHO
7 CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

9 SECTION 1. That Section 73-210, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 73-210. ~~COPYRIGHT IDAHO CODE IN THE PUBLIC DOMAIN. Copyright of all~~
12 ~~compilations shall be taken by and in the name of the publishing company~~
13 ~~which shall thereupon assign the same to the state of Idaho, and thereafter~~
14 ~~the same shall be owned by the state of Idaho. The commission is authorized~~
15 ~~and empowered to grant the use of the copyrights of the Idaho Code published~~
16 ~~pursuant to Session Laws of 1947, Chapter 224, and of all compilations au-~~
17 ~~thorized by this act, in connection with the performance of its said duties~~
18 ~~and obligations. The Idaho Code, as set forth in sections 73-201 and 73-202,~~
19 Idaho Code, including the statutes themselves, notes, annotations, index-
20 ing, and the organizational and numbering scheme, shall be the official
21 compilation of the general acts of Idaho and shall be entirely in the public
22 domain for purposes of federal copyright law. No copyright in the Idaho Code
23 shall be claimed by the state of Idaho or any other entity. The only official
24 source of the Idaho Code shall be the publication by the Idaho code commis-
25 sion, as the official publisher of the Idaho Code, in accordance with powers
26 granted it pursuant to section 73-205, Idaho Code.

27 SECTION 2. That Section 9-352, Idaho Code, be, and the same is hereby
28 repealed.

29 SECTION 3. That Section 9-349, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 9-349. REPLEVIN -- PUBLIC RECORDS -- IMPROPER OR UNLAWFUL TRANSFER OR
32 REMOVAL. (1) Public records of the state and/or territory of Idaho are the
33 property of the citizens of the state in perpetuity and they may not be im-
34 properly or unlawfully transferred or removed from their proper custodian.
35 For purposes of this section, the terms "public record" and "record," or plu-
36 rals thereof, shall have the same meaning as "public record" as provided in
37 section 9-337, Idaho Code.

38 (2) For the purpose of this section, where public records of a county,
39 local district, or independent public body corporate and politic thereof are
40 involved, all references to the state archivist also refer to any responsi-

1 ble public official or records custodian and all references to the attorney
2 general also refer to county prosecutors.

3 (3) Whenever the state archivist or their designee has reasonable
4 grounds to believe that records belonging to the state, county, local dis-
5 trict, or independent public body corporate and politic thereof, are in
6 the possession of a person or entity not authorized by law to possess those
7 records, and such possession was acquired on or after July 1, 2011, he or she
8 may issue a written notice demanding that person or entity to do either of the
9 following within ten (10) calendar days of receiving the notice:

10 (a) Return the records to the office of origin or the Idaho state
11 archives; or

12 (b) Respond in writing and declare why the records do not belong to the
13 state or a local agency.

14 (4) The notice and demand shall identify the records claimed to belong
15 to the state or local agency with reasonable specificity, and shall specify
16 that the state archivist may undertake legal action to recover the records if
17 the person or entity fails to respond in writing within the required time or
18 does not adequately demonstrate that the records do not belong to the state
19 or a local agency.

20 (5) If a person or entity that receives a written notice and demand from
21 the state archivist pursuant to this chapter fails to deliver the described
22 records, fails to respond to the notice and demand within the required time,
23 or does not adequately demonstrate that the records do not belong to the
24 state or a local agency, the state archivist may ask the attorney general to
25 petition a court of competent jurisdiction for an order requiring the return
26 of the records.

27 (6) The court may issue any order necessary to protect the records from
28 destruction, alteration, transfer, conveyance or alienation by the person
29 or entity in possession of the records, and may order that the records be sur-
30 rendered into the custody of the state archivist pending the court's deci-
31 sion on the petition.

32 (7) After a hearing, and upon a finding that the specified records are
33 in the possession of a person or entity not authorized by law to possess
34 the records, the court shall order the records to be delivered to the state
35 archivist or other official designated by the court.

36 (8) If the attorney general recovers a record under this section, the
37 court may award attorney's fees and court costs.

38 (9) Notwithstanding any other provision of this section, any public
39 record that is in the custody of an organization or institution shall not be
40 subject to the provisions of this section provided:

41 (a) That professional standards recognized by the society of American
42 archivists for the management and preservation of historical records
43 are maintained; and

44 (b) Such records are accessible to the public in a manner consistent
45 with sections 9-337 through 9-352~~1~~, inclusive, Idaho Code.

46 (10) When a record is returned pursuant to subsection (3) (a) of this
47 section, upon the request of the person, organization or institution that
48 returned the record, the record custodian that receives the record shall
49 issue to that person, organization or institution a copy or digital image
50 of the record which shall be certified as a true copy of the record that was

1 returned to the state or local agency, and dated on the same day the record
2 was returned.

3 SECTION 4. That Section 65-301, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 65-301. PERFORMANCE WITHOUT FEE -- SERVICES ENUMERATED. (1) Any
6 state, county, city or public officer, or board, or body, acting in his or her
7 or its official capacity on behalf of the state, county, or city, including
8 notaries public, shall not collect, demand or receive any fee or compensa-
9 tion for recording or indexing the discharge papers of any male or female
10 veteran who had active service in any war or conflict officially engaged
11 in by the government of the United States; or for issuing certified copies
12 thereof, or for any service whatever rendered by any such officer or offi-
13 cers, in the matter of a pension claim, application, affidavit, voucher, or
14 in the matter of any claim to be presented to the United States department of
15 veterans affairs or for the purposes of securing any benefits under acts of
16 congress providing pension benefits for honorably discharged veterans of
17 any war, and all acts or parts of acts amendatory thereto, or for furnishing
18 a certified copy of the public record of a marriage, death, birth, divorce,
19 deed of trust, mortgage, or property assessment, or making a reasonable
20 search for the same, wherein the same is to be used in a claim for pension,
21 or a claim for allotment, allowance, compensation, insurance, automatic
22 insurance, or otherwise provided for by any and all legislation by congress
23 providing pension benefits for honorably discharged veterans of any war.

24 (2) Any veteran wishing to record his or her discharge papers may do
25 so with personal identifying information such as date of birth, social se-
26 curity number, home address(es), blood type and other personal identifying
27 information redacted from the document. The name of the veteran may not be
28 redacted from the document.

29 (3) Any veteran or surviving spouse of any veteran of the United States
30 armed forces or his or her surviving spouse, attorney, personal representa-
31 tive, executor or court appointed guardian has the right to request that a
32 county recorder remove from the official records any of the following forms
33 recorded before, on or after July 1, 2003, by or on behalf of the requesting
34 veteran: DD-214; DD-215; WD AGO 53; WD AGO 55; WD AGO 53-55; NAVMC 78-PD; and
35 NAVPERS 553. The request must specify the identification page number of the
36 form to be removed. The request shall be made in person and with appropriate
37 identification to allow determination of identity. The county recorder has
38 no duty to inquire beyond the requestor to verify the identity of the person
39 requesting removal. No fee shall be charged for the removal. Any paper and
40 reasonably retrievable electronic likeness, the removal of which will not
41 affect other recorded documents, shall be removed from the record.

42 (4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD,
43 and NAVPERS 553, which is recorded at the request of any veteran of the United
44 States armed forces or his or her surviving spouse, attorney, personal rep-
45 resentative, executor or court appointed guardian shall be a public record
46 subject to release by the provisions of sections 9-337 through 9-3521, Idaho
47 Code, without the express written consent of one (1) of the above enumerated
48 individuals.

1 (5) Nothing in this section shall create or permit any cause of action
2 against a county, county employee or the state of Idaho based upon harm
3 caused by information released from the records of the county.