

IN THE SENATE

SENATE BILL NO. 1026

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-349, IDAHO CODE, TO PROHIBIT THE IMPROPER OR UNLAWFUL TRANSFER OR REMOVAL OF PUBLIC RECORDS OF THE STATE AND/OR TERRITORY OF IDAHO, TO CLARIFY CERTAIN REFERENCES, TO PROVIDE FOR WRITTEN NOTICE AND DEMAND, TO PROVIDE FOR COURT PETITION, TO PROVIDE A REBUTTABLE PRESUMPTION, TO PROVIDE FOR COURT ORDERS, TO PROVIDE FOR ATTORNEY'S FEES AND COURT COSTS AND TO PROVIDE AN EXCEPTION TO APPLICATION OF SPECIFIED PROVISIONS; AMENDING SECTIONS 9-349, 9-349A AND 9-350, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AND AMENDING SECTIONS 40-1306C AND 65-301, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-349, Idaho Code, and to read as follows:

9-349. REPLEVIN. (1) Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and they may not be improperly or unlawfully transferred or removed from their proper custodian.

(2) For the purpose of this section, where public records of a county, local district, or independent public body corporate and politic thereof are involved, all references to the state archivist also refer to any responsible public official or records custodian and all references to the attorney general also refer to county prosecutors.

(3) Whenever the state archivist or their designee has reasonable grounds to believe that records belonging to the state, county, local district, or independent public body corporate and politic thereof, are in the possession of a person or entity not authorized by law to possess those records, he or she may issue a written notice demanding that person or entity to do either of the following within ten (10) calendar days of receiving the notice:

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

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

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

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

(6) In any proceeding pursuant to subsection (5) of this section, there is a rebuttable presumption that any record that was once in the custody of the state or a local agency was not lawfully alienated from that custody.

(7) The court may issue any order necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the records, and may order that the records be surrendered into the custody of the state archivist pending the court's decision on the petition.

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

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

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

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

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

SECTION 2. That Section 9-349, Idaho Code, be, and the same is hereby amended to read as follows:

~~9-349~~50. CONFIDENTIALITY LANGUAGE REQUIRED IN THIS CHAPTER. On and after January 1, 1996, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

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

~~9-349A~~51. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any

1 reason, such declaration shall not affect the validity of remaining portions
2 of this act.

3 SECTION 4. That Section 9-350, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 9-350~~2~~. IDAHO CODE IS PROPERTY OF THE STATE OF IDAHO. (1) The Idaho
6 Code is the property of the state of Idaho, and the state of Idaho and the tax-
7 payers shall be deemed to have a copyright on the Idaho Code. If a person re-
8 produces or distributes the Idaho Code for the purpose of direct or indirect
9 commercial advantage, the person shall owe to the Idaho code commission, as
10 the agent of the state of Idaho, a royalty fee in addition to the fee charged
11 for copying the Idaho Code. Any person who reproduces or distributes the
12 Idaho Code in violation of the provisions of this section, shall be deemed
13 to be an infringer of the state of Idaho's copyright. The Idaho code commis-
14 sion, through the office of the attorney general, is entitled to institute
15 an action for any infringement of that particular right committed while the
16 Idaho code commission or its designated agent has custody of the Idaho Code.

17 (2) A court having jurisdiction of a civil action arising under this
18 section may grant such relief as it deems appropriate. At any time while an
19 action under this section is pending, the court may order the impounding, on
20 such terms as it deems reasonable, of all copies claimed to have been made or
21 used in violation of the Idaho code commission's copyright pursuant to this
22 section.

23 (3) An infringer of the state of Idaho's copyright pursuant to this sec-
24 tion is liable for any profits the infringer has incurred by obtaining the
25 Idaho Code for commercial purposes or is liable for statutory damages as pro-
26 vided in subsection (4) of this section.

27 (4) The Idaho code commission, as agent of the copyright owner, may
28 elect, at any time before final judgment is rendered, to recover, instead of
29 actual damages and profits, an award of statutory damages for all infringe-
30 ments involved in the action, with respect to the Idaho Code for which any
31 one (1) infringer is liable individually, or for which any two (2) or more
32 infringers are liable jointly and severally, in a sum of not less than two
33 hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as
34 the court considers just.

35 (5) In any civil action under this section, the court may allow the re-
36 covery of full costs by or against any party and may also award reasonable at-
37 torney's fees to the prevailing party as part of the costs.

38 (6) The Idaho code commission is hereby authorized to license and
39 charge fees for the use of the Idaho Code. The Idaho code commission may
40 grant a license for the use of the Idaho Code to a public agency in the state
41 and waive all or a portion of the fees. All fees recovered by the Idaho code
42 commission shall be deposited in the general account.

43 SECTION 5. That Section 40-1306C, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 40-1306C. HIGHWAY DISTRICT RECORDS -- OPEN TO THE PUBLIC. All records
46 of the highway district are open to the public, except as provided by law.
47 With respect to highway district records, sections 9-337 through 9-349A~~51~~,
51,

1 Idaho Code, provide definitions, procedure for the right to examine, re-
 2 quests for the examination, records exempt from disclosure, copy fees,
 3 separation of exempt and nonexempt records, enforcement rights, court or-
 4 ders and penalties.

5 SECTION 6. That Section 65-301, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

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

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

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

44 (4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD,
 45 and NAVPERS 553, which is recorded at the request of any veteran of the United
 46 States armed forces or his or her surviving spouse, attorney, personal rep-
 47 resentative, executor or court appointed guardian shall be a public record
 48 subject to release by the provisions of sections 9-337 through 9-350~~2~~, Idaho

1 Code, without the express written consent of one (1) of the above enumerated
2 individuals.

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