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IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 174

BY HEALTH AND WELFARE COMMITTEE

AN ACT
RELATING TO THE IDAHO CODE; AMENDING SECTION 73-210, IDAHO CODE, TO PROVIDE
THAT THE IDAHO CODE IS IN THE PUBLIC DOMAIN AND TO PROVIDE THAT NO COPYRIGHT MAY BE CLAIMED BY THE STATE OF IDAHO OR ANY OTHER ENTITY; REPEALING
SECTION 9-352, IDAHO CODE, RELATING TO THE IDAHO CODE BEING THE PROPERTY
OF THE STATE OF IDAHO; AND AMENDING SECTIONS 9-349 AND 65-301, IDAHO
CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

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

- 73-210. COPYRIGHT IDAHO CODE IN THE PUBLIC DOMAIN. Copyright of all compilations shall be taken by and in the name of the publishing company which shall thereupon assign the same to the state of Idaho, and thereafter the same shall be owned by the state of Idaho. The commission is authorized and empowered to grant the use of the copyrights of the Idaho Code published pursuant to Session Laws of 1947, Chapter 224, and of all compilations authorized by this act, in connection with the performance of its said duties and obligations. The Idaho Code, as set forth in sections 73-201 and 73-202, Idaho Code, including the statutes themselves, notes, annotations, indexing, and the organizational and numbering scheme, shall be the official compilation of the general acts of Idaho and shall be entirely in the public domain for purposes of federal copyright law. No copyright in the Idaho Code shall be claimed by the state of Idaho or any other entity. The only official source of the Idaho Code shall be the publication by the Idaho code commission, as the official publisher of the Idaho Code, in accordance with powers granted it pursuant to section 73-205, Idaho Code.
- SECTION 2. That Section 9-352, Idaho Code, be, and the same is hereby repealed.
 - SECTION 3. That Section 9-349, Idaho Code, be, and the same is hereby amended to read as follows:
 - 9-349. REPLEVIN -- PUBLIC RECORDS -- IMPROPER OR UNLAWFUL TRANSFER OR REMOVAL. (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. For purposes of this section, the terms "public record" and "record," or plurals thereof, shall have the same meaning as "public record" as provided in section 9-337, Idaho Code.
 - (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 responsi-

ble 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, and such possession was acquired on or after July 1, 2011, 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) 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.
- (7) 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.
- (8) If the attorney general recovers a record under this section, the court may award attorney's fees and court costs.
- (9) 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 9-3521, inclusive, Idaho Code.
- (10) When a record is returned pursuant to subsection (3)(a) of this section, upon the request of the person, organization or institution that returned the record, the record custodian that receives the record shall issue to that person, organization or institution a copy or digital image of the record which shall be certified as a true copy of the record that was

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

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

- 65-301. PERFORMANCE WITHOUT FEE -- SERVICES ENUMERATED. (1) Any state, county, city or public officer, or board, or body, acting in his or her or its official capacity on behalf of the state, county, or city, including notaries public, shall not collect, demand or receive any fee or compensation for recording or indexing the discharge papers of any male or female veteran who had active service in any war or conflict officially engaged in by the government of the United States; or for issuing certified copies thereof, or for any service whatever rendered by any such officer or officers, in the matter of a pension claim, application, affidavit, voucher, or in the matter of any claim to be presented to the United States department of veterans affairs or for the purposes of securing any benefits under acts of congress providing pension benefits for honorably discharged veterans of any war, and all acts or parts of acts amendatory thereto, or for furnishing a certified copy of the public record of a marriage, death, birth, divorce, deed of trust, mortgage, or property assessment, or making a reasonable search for the same, wherein the same is to be used in a claim for pension, or a claim for allotment, allowance, compensation, insurance, automatic insurance, or otherwise provided for by any and all legislation by congress providing pension benefits for honorably discharged veterans of any war.
- (2) Any veteran wishing to record his or her discharge papers may do so with personal identifying information such as date of birth, social security number, home address(es), blood type and other personal identifying information redacted from the document. The name of the veteran may not be redacted from the document.
- (3) Any veteran or surviving spouse of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian has the right to request that a county recorder remove from the official records any of the following forms recorded before, on or after July 1, 2003, by or on behalf of the requesting veteran: DD-214; DD-215; WD AGO 53; WD AGO 55; WD AGO 53-55; NAVMC 78-PD; and NAVPERS 553. The request must specify the identification page number of the form to be removed. The request shall be made in person and with appropriate identification to allow determination of identity. The county recorder has no duty to inquire beyond the requestor to verify the identity of the person requesting removal. No fee shall be charged for the removal. Any paper and reasonably retrievable electronic likeness, the removal of which will not affect other recorded documents, shall be removed from the record.
- (4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553, which is recorded at the request of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian shall be a public record subject to release by the provisions of sections 9-337 through 9-3521, Idaho Code, without the express written consent of one (1) of the above enumerated 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.