

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 436

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO HEALTH CARE DIRECTIVES; AMENDING SECTION 39-4510, IDAHO CODE,
2 TO PROVIDE FOR THE REGISTRATION OF A HEALTH CARE DIRECTIVE WITH THE DE-
3 PARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 39-4514, IDAHO CODE,
4 TO PROVIDE FOR THE REGISTRATION OR REVOCATION OF A DIRECTIVE WITH THE
5 DEPARTMENT OF HEALTH AND WELFARE AND TO MAKE A TECHNICAL CORRECTION;
6 AMENDING SECTION 39-4515, IDAHO CODE, TO REVISE PROVISIONS REGARDING
7 THE HEALTH CARE DIRECTIVE REGISTRY AND TO MAKE A TECHNICAL CORRECTION;
8 AND AMENDING SECTION 74-106, IDAHO CODE, TO REVISE A REFERENCE TO THE
9 HEALTH CARE DIRECTIVE REGISTRY.
10

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

12 SECTION 1. That Section 39-4510, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 39-4510. LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH
15 CARE. (1) Any competent person may execute a document known as a "Living Will
16 and Durable Power of Attorney for Health Care." Such document shall be in
17 substantially the following form, or in another form that contains the ele-
18 ments set forth in this chapter. Any portions of the "Living Will and Durable
19 Power of Attorney for Health Care" which are left blank by the person execut-
20 ing the document shall be deemed to be intentional and shall not invalidate
21 the document.

22 LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

23 Date of Directive:

24 Name of person executing Directive:

25 Address of person executing Directive:

26 A LIVING WILL

27 A Directive to Withhold or to Provide Treatment

28 1. I willfully and voluntarily make known my desire that my life shall not
29 be prolonged artificially under the circumstances set forth below. This Di-
30 rective shall only be effective if I am unable to communicate my instructions
31 and:

32 a. I have an incurable or irreversible injury, disease, illness or con-
33 dition, and a medical doctor who has examined me has certified:

34 1. That such injury, disease, illness or condition is terminal;
35 and

36 2. That the application of artificial life-sustaining procedures
37 would serve only to prolong artificially my life; and

1 3. That my death is imminent, whether or not artificial life-sus-
2 taining procedures are utilized; or

3 b. I have been diagnosed as being in a persistent vegetative state.
4 In such event, I direct that the following marked expression of my intent be
5 followed, and that I receive any medical treatment or care that may be re-
6 quired to keep me free of pain or distress.

7 Check one box and initial the line after such box:

8 I direct that all medical treatment, care and procedures neces-
9 sary to restore my health and sustain my life be provided to me. Nutrition
10 and hydration, whether artificial or nonartificial, shall not be withheld or
11 withdrawn from me if I would likely die primarily from malnutrition or dehy-
12 dration rather than from my injury, disease, illness or condition.

13 OR

14 I direct that all medical treatment, care and procedures, includ-
15 ing artificial life-sustaining procedures, be withheld or withdrawn, except
16 that nutrition and hydration, whether artificial or nonartificial shall not
17 be withheld or withdrawn from me if, as a result, I would likely die primarily
18 from malnutrition or dehydration rather than from my injury, disease, ill-
19 ness or condition, as follows: (If none of the following boxes are checked
20 and initialed, then both nutrition and hydration, of any nature, whether ar-
21 tificial or nonartificial, shall be administered.)

22 Check one box and initial the line after such box:

- 23 A. Only hydration of any nature, whether artificial or
- 24 nonartificial, shall be administered;
- 25 B. Only nutrition, of any nature, whether artificial or
- 26 nonartificial, shall be administered;
- 27 C. Both nutrition and hydration, of any nature, whether
- 28 artificial or nonartificial shall be administered.

29 OR

30 I direct that all medical treatment, care and procedures be with-
31 held or withdrawn, including withdrawal of the administration of artificial
32 nutrition and hydration.

33 2. If I have been diagnosed as pregnant, this Directive shall have no force
34 during the course of my pregnancy.

35 3. I understand the full importance of this Directive and am mentally compe-
36 tent to make this Directive. No participant in the making of this Directive
37 or in its being carried into effect shall be held responsible in any way for
38 complying with my directions.

1 4. Check one box and initial the line after such box:

2 I have discussed these decisions with my physician, advanced
3 practice professional nurse or physician assistant and have also completed a
4 Physician Orders for Scope of Treatment (POST) form that contains directions
5 that may be more specific than, but are compatible with, this Directive. I
6 hereby approve of those orders and incorporate them herein as if fully set
7 forth.

8 OR

9 I have not completed a Physician Orders for Scope of Treatment
10 (POST) form. If a POST form is later signed by my physician, advanced prac-
11 tice professional nurse or physician assistant, then this living will shall
12 be deemed modified to be compatible with the terms of the POST form.

13 A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

14 1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated
15 as your agent: (1) your treating health care provider; (2) a nonrelative em-
16 ployee of your treating health care provider; (3) an operator of a community
17 care facility; or (4) a nonrelative employee of an operator of a community
18 care facility. If the agent or an alternate agent designated in this Direc-
19 tive is my spouse, and our marriage is thereafter dissolved, such designa-
20 tion shall be thereupon revoked.

21 I do hereby designate and appoint the following individual as my attorney in
22 fact (agent) to make health care decisions for me as authorized in this Di-
23 rective. (Insert name, address and telephone number of one individual only
24 as your agent to make health care decisions for you.)

25 Name of Health Care Agent:
26 Address of Health Care Agent:
27 Telephone Number of Health Care Agent:

28 For the purposes of this Directive, "health care decision" means consent,
29 refusal of consent, or withdrawal of consent to any care, treatment, service
30 or procedure to maintain, diagnose or treat an individual's physical condi-
31 tion.

32 2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of
33 this Directive, I create a durable power of attorney for health care. This
34 power of attorney shall not be affected by my subsequent incapacity. This
35 power shall be effective only when I am unable to communicate rationally.

36 3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full
37 power and authority to make health care decisions for me to the same extent
38 that I could make such decisions for myself if I had the capacity to do so.
39 In exercising this authority, my agent shall make health care decisions that
40 are consistent with my desires as stated in this Directive or otherwise made

1 known to my agent including, but not limited to, my desires concerning ob-
 2 taining or refusing or withdrawing artificial life-sustaining care, treat-
 3 ment, services and procedures, including such desires set forth in a living
 4 will, Physician Orders for Scope of Treatment (POST) form, or similar docu-
 5 ment executed by me, if any. (If you want to limit the authority of your agent
 6 to make health care decisions for you, you can state the limitations in para-
 7 graph 4 ("Statement of Desires, Special Provisions, and Limitations") be-
 8 low. You can indicate your desires by including a statement of your desires
 9 in the same paragraph.)

10 4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent
 11 must make health care decisions that are consistent with your known desires.
 12 You can, but are not required to, state your desires in the space provided
 13 below. You should consider whether you want to include a statement of your
 14 desires concerning artificial life-sustaining care, treatment, services
 15 and procedures. You can also include a statement of your desires concerning
 16 other matters relating to your health care, including a list of one or more
 17 persons whom you designate to be able to receive medical information about
 18 you and/or to be allowed to visit you in a medical institution. You can also
 19 make your desires known to your agent by discussing your desires with your
 20 agent or by some other means. If there are any types of treatment that you do
 21 not want to be used, you should state them in the space below. If you want to
 22 limit in any other way the authority given your agent by this Directive, you
 23 should state the limits in the space below. If you do not state any limits,
 24 your agent will have broad powers to make health care decisions for you,
 25 except to the extent that there are limits provided by law.) In exercising
 26 the authority under this durable power of attorney for health care, my agent
 27 shall act consistently with my desires as stated below and is subject to
 28 the special provisions and limitations stated in my Physician Orders for
 29 Scope of Treatment (POST) form, a living will, or similar document executed
 30 by me, if any. Additional statement of desires, special provisions, and
 31 limitations:.....(You may attach additional pages or
 32 documents if you need more space to complete your statement.)

33 5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MEN-
 34 TAL HEALTH.

35 A. General Grant of Power and Authority. Subject to any limitations in this
 36 Directive, my agent has the power and authority to do all of the following:
 37 (1) Request, review and receive any information, verbal or written, regard-
 38 ing my physical or mental health including, but not limited to, medical and
 39 hospital records; (2) Execute on my behalf any releases or other documents
 40 that may be required in order to obtain this information; (3) Consent to the
 41 disclosure of this information; and (4) Consent to the donation of any of
 42 my organs for medical purposes. (If you want to limit the authority of your
 43 agent to receive and disclose information relating to your health, you must
 44 state the limitations in paragraph 4 ("Statement of Desires, Special Provi-
 45 sions, and Limitations") above.)

1 B. HIPAA Release Authority. My agent shall be treated as I would be with
 2 respect to my rights regarding the use and disclosure of my individually
 3 identifiable health information or other medical records. This release
 4 authority applies to any information governed by the Health Insurance
 5 Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45
 6 CFR 160 through 164. I authorize any physician, health care professional,
 7 dentist, health plan, hospital, clinic, laboratory, pharmacy, or other cov-
 8 ered health care provider, any insurance company, and the MIB Group, Inc.
 9 (formerly the Medical Information Bureau, Inc.) or other health care clear-
 10 inghouse that has provided treatment or services to me, or that has paid for
 11 or is seeking payment from me for such services, to give, disclose and re-
 12 lease to my agent, without restriction, all of my individually identifiable
 13 health information and medical records regarding any past, present or future
 14 medical or mental health condition, including all information relating to
 15 the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness,
 16 and drug or alcohol abuse. The authority given my agent shall supersede
 17 any other agreement that I may have made with my health care providers to
 18 restrict access to or disclosure of my individually identifiable health
 19 information. The authority given my agent has no expiration date and shall
 20 expire only in the event that I revoke the authority in writing and deliver it
 21 to my health care provider.

22 6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement
 23 the health care decisions that my agent is authorized by this Directive to
 24 make, my agent has the power and authority to execute on my behalf all of the
 25 following: (a) Documents titled, or purporting to be, a "Refusal to Permit
 26 Treatment" and/or a "Leaving Hospital Against Medical Advice"; and (b) Any
 27 necessary waiver or release from liability required by a hospital or physi-
 28 cian.

29 7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any
 30 alternate agents but you may do so. Any alternate agent you designate will
 31 be able to make the same health care decisions as the agent you designated
 32 in paragraph 1 above, in the event that agent is unable or ineligible to act
 33 as your agent. If an alternate agent you designate is your spouse, he or she
 34 becomes ineligible to act as your agent if your marriage is thereafter dis-
 35 solved.) If the person designated as my agent in paragraph 1 is not available
 36 or becomes ineligible to act as my agent to make a health care decision for me
 37 or loses the mental capacity to make health care decisions for me, or if I re-
 38 voke that person's appointment or authority to act as my agent to make health
 39 care decisions for me, then I designate and appoint the following persons to
 40 serve as my agent to make health care decisions for me as authorized in this
 41 Directive, such persons to serve in the order listed below:

42 A. First Alternate Agent:
 43 Name
 44 Address
 45 Telephone Number

46 B. Second Alternate Agent:

1 Name
2 Address
3 Telephone Number

4 C. Third Alternate Agent:

5 Name
6 Address
7 Telephone Number

8 8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney
9 for health care.

10 DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and
11 Durable Power of Attorney for Health Care.)

12 I sign my name to this Statutory Form Living Will and Durable Power of At-
13 torney for Health Care on the date set forth at the beginning of this Form
14 at..... (City, State).....

15
16 Signature

17 (2) A health care directive meeting the requirements of subsection (1)
18 of this section may be registered with the ~~secretary of state~~ department
19 of health and welfare pursuant to the provisions of section 39-4515, Idaho
20 Code. Failure to register the health care directive shall not affect the
21 validity of the health care directive.

22 SECTION 2. That Section 39-4514, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 39-4514. GENERAL PROVISIONS. (1) Application. Except as specifically
25 provided herein, sections 39-4510 through 39-4512B, Idaho Code, shall have
26 no effect or be in any manner construed to apply to persons not executing a
27 living will and durable power of attorney for health care, POST form or other
28 health care directive pursuant to this chapter nor shall these sections in
29 any manner affect the rights of any such persons or of others acting for or on
30 behalf of such persons to give or refuse to give consent or withhold consent
31 for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho
32 Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in
33 any manner.

34 (2) Euthanasia, mercy killing, or assisted suicide. This chapter
35 does not make legal, and in no way condones, euthanasia, mercy killing, or
36 assisted suicide or permit an affirmative or deliberate act or omission to
37 end life, including any act or omission described in section 18-4017, Idaho
38 Code, other than to allow the natural process of dying.

39 (3) Withdrawal of care. Assisted feeding or artificial nutrition and
40 hydration may not be withdrawn or denied if its provision is directed by
41 a competent patient in accordance with section 39-4503, Idaho Code, by a
42 patient's health care directive under section 39-4510, Idaho Code, or by
43 a patient's surrogate decision-maker in accordance with section 39-4504,

1 Idaho Code. Health care necessary to sustain life or to provide appropriate
2 comfort for a patient other than assisted feeding or artificial nutrition
3 and hydration may not be withdrawn or denied if its provision is directed
4 by a competent patient in accordance with section 39-4503, Idaho Code, by a
5 patient's health care directive under section 39-4510, Idaho Code, or by a
6 patient's ~~surrogated~~ surrogate decision-maker in accordance with section
7 39-4504, Idaho Code, unless such care would be futile care as defined in
8 subsection (6) of this section. Except as specifically provided in chapters
9 3 and 4, title 66, Idaho Code, health care, assisted feeding or artificial
10 nutrition and hydration, the denial of which is directed by a competent pa-
11 tient in accordance with section 39-4503, Idaho Code, by a patient's health
12 care directive under section 39-4510, Idaho Code, or by a patient's surro-
13 gate decision-maker in accordance with section 39-4504, Idaho Code, shall be
14 withdrawn and denied in accordance with a valid directive. This subsection
15 does not require provision of treatment to a patient if it would require de-
16 nial of the same or similar treatment to another patient.

17 (4) Comfort care. Persons caring for a person for whom artificial life-
18 sustaining procedures or artificially administered nutrition and hydration
19 are withheld or withdrawn shall provide comfort care as defined in section
20 39-4502, Idaho Code.

21 (5) Presumed consent to resuscitation. There is a presumption in favor
22 of consent to cardiopulmonary resuscitation (CPR) unless:

23 (a) CPR is contrary to the person's advance directive and/or POST;

24 (b) The person's surrogate decision-maker has communicated the per-
25 son's unconditional wishes not to receive CPR;

26 (c) The person's surrogate decision-maker has communicated the per-
27 son's conditional wishes not to receive CPR and those conditions have
28 been met;

29 (d) The person has a proper POST identification device pursuant to sec-
30 tion 39-4502(15), Idaho Code; or

31 (e) The attending health care provider has executed a DNR order consis-
32 tent with the person's prior expressed wishes or the directives of the
33 legally authorized surrogate decision-maker.

34 (6) Futile care. Nothing in this chapter shall be construed to require
35 medical treatment that is medically inappropriate or futile; provided that
36 this subsection does not authorize any violation of subsection (3) of this
37 section. Futile care does not include comfort care. Futile care is a course
38 of treatment:

39 (a) For a patient with a terminal condition for whom, in reasonable
40 medical judgment, death is imminent within hours or at most a few days
41 whether or not the medical treatment is provided and that, in reasonable
42 medical judgment, will not improve the patient's condition; or

43 (b) The denial of which in reasonable medical judgment will not result
44 in or hasten the patient's death.

45 (7) Existing directives and directives from other states. A health
46 care directive executed prior to July 1, 2012, but which was in the living
47 will, durable power of attorney for health care, DNR, or POST form pursuant
48 to prior Idaho law at the time of execution, or in another form that contained
49 the elements set forth in this chapter at the time of execution, shall be
50 deemed to be in compliance with this chapter. Health care directives or sim-

1 ilar documents executed in another state that substantially comply with this
 2 chapter shall be deemed to be in compliance with this chapter. This section
 3 shall be liberally construed to give the effect to any authentic expression
 4 of the person's prior wishes or directives concerning his or her health care.

5 (8) Insurance.

6 (a) The making of a living will and/or durable power of attorney for
 7 health care, physician orders for scope of treatment (POST) form, or DNR
 8 order pursuant to this chapter shall not restrict, inhibit or impair in
 9 any manner the sale, procurement or issuance of any policy of life in-
 10 surance, nor shall it be deemed to modify the terms of an existing pol-
 11 icy of life insurance. No policy of life insurance shall be legally im-
 12 paired or invalidated in any manner by the withholding or withdrawal of
 13 artificial life-sustaining procedures from an insured person, notwith-
 14 standing any term of the policy to the contrary.

15 (b) No physician, health care facility or other health care provider
 16 and no health care service plan, insurer issuing disability insurance,
 17 self-insured employee plan, welfare benefit plan or nonprofit hospi-
 18 tal service plan shall require any person to execute a living will and
 19 durable power of attorney for health care or physician orders for scope
 20 of treatment (POST) form, or DNR order as a condition for being insured
 21 for, or receiving, health care services.

22 (9) Portability and copies.

23 (a) A physician orders for scope of treatment (POST) form that meets the
 24 requirements of section 39-4512A, Idaho Code, shall be transferred with
 25 the person to, and be effective in, all care settings including, but not
 26 limited to, home care, ambulance or other transport, hospital, residen-
 27 tial care facility, and hospice care. The POST form shall remain in ef-
 28 fect until such time as there is a valid revocation pursuant to section
 29 39-4511A, Idaho Code, or new orders are issued by a physician, APPN or
 30 PA.

31 (b) A photostatic, facsimile or electronic copy of a valid physician
 32 orders for scope of treatment (POST) form may be treated as an original
 33 by a health care provider or by an institution receiving or treating a
 34 person.

35 (10) Registration. A directive or the revocation of a directive meet-
 36 ing the requirements of this chapter may be registered with the ~~secretary of~~
 37 state department of health and welfare pursuant to section 39-4515, Idaho
 38 Code. Failure to register the health care directive shall not affect the va-
 39 lidity of the health care directive.

40 (11) Rulemaking authority.

41 (a) The department of health and welfare shall adopt those rules and
 42 protocols necessary to administer the provisions of this chapter.

43 (b) In the adoption of a physician orders for scope of treatment (POST)
 44 or DNR protocol, the department shall adopt standardized POST identifi-
 45 cation devices to be used statewide.

46 SECTION 3. That Section 39-4515, Idaho Code, be, and the same is hereby
 47 amended to read as follows:

48 39-4515. HEALTH CARE DIRECTIVE REGISTRY. (1) The ~~secretary of state~~
 49 department of health and welfare shall ~~create and maintain~~ administer a

1 health care directive registry. The health care directive registry shall be
 2 accessible through a ~~website maintained by the secretary of state~~ web-based
 3 platform. The information contained in such registry shall include: the
 4 full name of the person executing the health care directive as stated in the
 5 directive, a file identification number unique to the person executing the
 6 directive, and the date the directive was executed. The registry shall be
 7 made available twenty-four (24) hours a day, seven (7) days a week and shall
 8 incorporate directives previously submitted to the secretary of state.

9 ~~(2)~~ A person may register with the ~~secretary of state~~ department of
 10 health and welfare a health care directive or a revocation of a health care
 11 directive by submitting the directive or revocation, completing and sub-
 12 mitting an informational registration form as required by the ~~secretary of~~
 13 ~~state~~ department of health and welfare, and paying the ~~secretary of state~~
 14 ~~department~~ the fee ~~which that the secretary of state~~ department may require
 15 for registering a health care directive. The person may register either
 16 online or by submitting the registration form in the mail. The person who
 17 submits a document for registration pursuant to this section by mail shall
 18 provide a return address.

19 ~~(3)~~ The ~~secretary of state~~ department of health and welfare may charge
 20 and collect a fee not to exceed ten dollars (\$10.00) for the filing of a
 21 health care directive. All fees collected for the filing of a health care
 22 directive shall be deposited into the health care directive registry fund.
 23 No fee shall be charged for revoking a health care directive.

24 ~~(4)~~ ~~Upon receipt of the registration form, the secretary of state~~
 25 ~~shall:~~

- 26 ~~(a) Create a digital reproduction of the health care directive or the~~
 27 ~~revocation document and the informational registration form;~~
- 28 ~~(b) Enter these digitally reproduced documents into the health care di-~~
 29 ~~rective registry database;~~
- 30 ~~(c) Assign each entry a unique identification file number and password;~~
- 31 ~~(d) Return the original health care directive or revocation thereof to~~
 32 ~~the person who submitted the document;~~
- 33 ~~(e) Provide to the person who submitted the document a printed record of~~
 34 ~~the information entered into the database, the identification file num-~~
 35 ~~ber under which it was entered, the password assigned to that identifi-~~
 36 ~~cation file number; and~~
- 37 ~~(f) Provide to the person who submitted the document a wallet-sized~~
 38 ~~card that contains the name of the person executing the health care di-~~
 39 ~~rective as it appears on the document, the identification file number~~
 40 ~~assigned to the registration, and the password assigned to the identi-~~
 41 ~~fication file number.~~

42 ~~(5)~~ The registry established under this section shall be accessible
 43 only by entering the identification file number and the assigned password on
 44 the health care directive registry website.

45 ~~(6)~~ The ~~secretary of state~~ department of health and welfare and those
 46 granted access to the health care directive registry shall use information
 47 contained in the registry only for purposes prescribed in this section. No
 48 person granted access to the registry shall use the information for commer-
 49 cial solicitations or in any fraudulent or improper way. Any commercial so-
 50 licitation, or fraudulent or improper use of information contained in the

1 registry shall constitute a violation of this section and a violation of the
2 Idaho consumer protection act.

3 (74) ~~The secretary of state~~ department of health and welfare is not re-
4 quired to review a health care directive or revocation thereof to ensure that
5 the document complies with any applicable and statutory requirements. Entry
6 of a document into the health care directive registry pursuant to this sec-
7 tion does not create a presumption favoring the validity of the document.

8 (85) ~~The secretary of state~~ department of health and welfare shall
9 delete a health care directive and the informational registration form from
10 the health care directive registry when the ~~secretary of state~~ department of
11 health and welfare receives:

12 (a) ~~A revocation of~~ Written notification to remove a health care direc-
13 tive signed by the maker thereof or that person's legal representative
14 along with the identification file number and assigned password; or

15 (b) Verification from the bureau of ~~health policy and vital records and~~
16 health statistics of the ~~Idaho~~ department of health and welfare that the
17 person who executed the health care directive is deceased. The deletion
18 under this paragraph shall be performed not less than once every two (2)
19 years. ~~The bureau of health policy and vital statistics of the Idaho~~
20 ~~department of health and welfare shall share its registry of death cer-~~
21 ~~tificates with the secretary of state in order to permit the secretary~~
22 ~~of state to fulfill its responsibilities under this paragraph.~~

23 (96) Neither the ~~secretary of state~~ department of health and welfare
24 nor the state of Idaho shall be subject to civil liability for any claims or
25 demands arising out of the administration or operation of the health care di-
26 rective registry.

27 (107) There is hereby created in the state treasury the health care di-
28 rective registry fund, the moneys of which shall be continuously appropri-
29 ated, administered by the ~~secretary of state~~ department of health and wel-
30 fare, and used to support, promote and maintain the health care directive
31 registry. The fund shall consist of fees paid by persons registering health
32 care directives under this section and income from investment from the fund,
33 gifts, grants, bequests and other forms of voluntary donations. On notice
34 from the ~~secretary of state~~ department of health and welfare, the state trea-
35 surer shall invest and divest moneys in the fund, and moneys earned from such
36 investment shall be credited to the fund.

37 SECTION 4. That Section 74-106, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 74-106. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PER-
40 SONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following
41 records are exempt from disclosure:

42 (1) Except as provided in this subsection, all personnel records of
43 a current or former public official other than the public official's pub-
44 lic service or employment history, classification, pay grade and step,
45 longevity, gross salary and salary history, including bonuses, severance
46 packages, other compensation or vouchered and unvouchered expenses for
47 which reimbursement was paid, status, workplace and employing agency. All
48 other personnel information relating to a public employee or applicant
49 including, but not limited to, information regarding sex, race, marital

1 status, birth date, home address and telephone number, social security num-
2 ber, driver's license number, applications, testing and scoring materials,
3 grievances, correspondence and performance evaluations, shall not be dis-
4 closed to the public without the employee's or applicant's written consent.
5 Names of applicants to classified or merit system positions shall not be dis-
6 closed to the public without the applicant's written consent. Disclosure of
7 names as part of a background check is permitted. Names of the five (5) final
8 applicants to all other positions shall be available to the public. If such
9 group is less than five (5) finalists, then the entire list of applicants
10 shall be available to the public. A public official or authorized represen-
11 tative may inspect and copy his personnel records, except for material used
12 to screen and test for employment.

13 (2) Retired employees' and retired public officials' home addresses,
14 home telephone numbers and other financial and nonfinancial membership
15 records; active and inactive member financial and membership records and
16 mortgage portfolio loan documents maintained by the public employee retire-
17 ment system. Financial statements prepared by retirement system staff,
18 funding agents and custodians concerning the investment of assets of the
19 public employee retirement system of Idaho are not considered confidential
20 under this chapter.

21 (3) Information and records submitted to the Idaho state lottery for
22 the performance of background investigations of employees, lottery retail-
23 ers and major procurement contractors; audit records of lottery retailers,
24 vendors and major procurement contractors submitted to or performed by the
25 Idaho state lottery; validation and security tests of the state lottery for
26 lottery games; business records and information submitted pursuant to sec-
27 tions 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such docu-
28 ments and information obtained and held for the purposes of lottery security
29 and investigative action as determined by lottery rules unless the public
30 interest in disclosure substantially outweighs the private need for protec-
31 tion from public disclosure.

32 (4) Records of a personal nature as follows:

33 (a) Records of personal debt filed with a public agency or independent
34 public body corporate and politic pursuant to law;

35 (b) Personal bank records compiled by a public depositor for the pur-
36 pose of public funds transactions conducted pursuant to law;

37 (c) Records of ownership of financial obligations and instruments of a
38 public agency or independent public body corporate and politic, such as
39 bonds, compiled by the public agency or independent public body corpo-
40 rate and politic pursuant to law;

41 (d) Records, with regard to the ownership of, or security interests in,
42 registered public obligations;

43 (e) Vital statistics records; and

44 (f) Military records as described in and pursuant to section 65-301,
45 Idaho Code.

46 (5) Information in an income or other tax return measured by items of
47 income or sales, which is gathered by a public agency for the purpose of ad-
48 ministering the tax, except such information to the extent disclosed in a
49 written decision of the tax commission pursuant to a taxpayer protest of a

1 deficiency determination by the tax commission, under the provisions of sec-
2 tion 63-3045B, Idaho Code.

3 (6) Records of a personal nature related directly or indirectly to the
4 application for and provision of statutory services rendered to persons
5 applying for public care for people who are elderly, indigent or have mental
6 or physical disabilities, or participation in an environmental or a public
7 health study, provided the provisions of this subsection making records
8 exempt from disclosure shall not apply to the extent that such records or
9 information contained in those records are necessary for a background check
10 on an individual that is required by federal law regulating the sale of
11 firearms, guns or ammunition.

12 (7) Employment security information, except that a person may agree,
13 through written, informed consent, to waive the exemption so that a third
14 party may obtain information pertaining to the person, unless access to the
15 information by the person is restricted by subsection (3) (a), (3) (b) or
16 (3) (d) of section 74-113, Idaho Code. Notwithstanding the provisions of
17 section 74-113, Idaho Code, a person may not review identifying information
18 concerning an informant who reported to the department of labor a suspected
19 violation by the person of the employment security law, chapter 13, title 72,
20 Idaho Code, under an assurance of confidentiality. As used in this section
21 and in chapter 13, title 72, Idaho Code, "employment security information"
22 means any information descriptive of an identifiable person or persons that
23 is received by, recorded by, prepared by, furnished to or collected by the
24 department of labor or the industrial commission in the administration of
25 the employment security law.

26 (8) Any personal records, other than names, business addresses and
27 business phone numbers, such as parentage, race, religion, sex, height,
28 weight, tax identification and social security numbers, financial worth or
29 medical condition submitted to any public agency or independent public body
30 corporate and politic pursuant to a statutory requirement for licensing,
31 certification, permit or bonding.

32 (9) Unless otherwise provided by agency rule, information obtained as
33 part of an inquiry into a person's fitness to be granted or retain a license,
34 certificate, permit, privilege, commission or position, private associa-
35 tion peer review committee records authorized in title 54, Idaho Code. Any
36 agency that has records exempt from disclosure under the provisions of this
37 subsection shall annually make available a statistical summary of the number
38 and types of matters considered and their disposition.

39 (10) The records, findings, determinations and decisions of any prelit-
40 igation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

41 (11) Complaints received by the board of medicine and investigations
42 and informal proceedings, including informal proceedings of any committee
43 of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and
44 rules adopted thereunder.

45 (12) Records of the department of health and welfare or a public health
46 district that identify a person infected with a reportable disease.

47 (13) Records of hospital care, medical records, including prescrip-
48 tions, drug orders, records or any other prescription information that
49 specifically identifies an individual patient, prescription records main-
50 tained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho

1 Code, records of psychiatric care or treatment and professional counseling
2 records relating to an individual's condition, diagnosis, care or treat-
3 ment, provided the provisions of this subsection making records exempt from
4 disclosure shall not apply to the extent that such records or information
5 contained in those records are necessary for a background check on an indi-
6 vidual that is required by federal law regulating the sale of firearms, guns
7 or ammunition.

8 (14) Information collected pursuant to the directory of new hires act,
9 chapter 16, title 72, Idaho Code.

10 (15) Personal information contained in motor vehicle and driver records
11 that is exempt from disclosure under the provisions of chapter 2, title 49,
12 Idaho Code.

13 (16) Records of the financial status of prisoners pursuant to subsec-
14 tion (2) of section 20-607, Idaho Code.

15 (17) Records of the Idaho state police or department of correction re-
16 ceived or maintained pursuant to section 19-5514, Idaho Code, relating to
17 DNA databases and databanks.

18 (18) Records of the department of health and welfare relating to a sur-
19 vey, resurvey or complaint investigation of a licensed nursing facility
20 shall be exempt from disclosure. Such records shall, however, be subject to
21 disclosure as public records as soon as the facility in question has received
22 the report, and no later than the fourteenth day following the date that de-
23 partment of health and welfare representatives officially exit the facility
24 pursuant to federal regulations. Provided however, that for purposes of
25 confidentiality, no record shall be released under this section that specif-
26 ically identifies any nursing facility resident.

27 (19) Records and information contained in the registry of immunizations
28 against childhood diseases maintained in the department of health and wel-
29 fare, including information disseminated to others from the registry by the
30 department of health and welfare.

31 (20) Records of the Idaho housing and finance association (IHFA) relat-
32 ing to the following:

33 (a) Records containing personal financial, family, health or similar
34 personal information submitted to or otherwise obtained by the IHFA;

35 (b) Records submitted to or otherwise obtained by the IHFA with regard
36 to obtaining and servicing mortgage loans and all records relating to
37 the review, approval or rejection by the IHFA of said loans;

38 (c) Mortgage portfolio loan documents;

39 (d) Records of a current or former employee other than the employee's
40 duration of employment with the association, position held and loca-
41 tion of employment. This exemption from disclosure does not include the
42 contracts of employment or any remuneration, including reimbursement
43 of expenses, of the executive director, executive officers or commis-
44 sioners of the association. All other personnel information relating
45 to an association employee or applicant including, but not limited to,
46 information regarding sex, race, marital status, birth date, home ad-
47 dress and telephone number, applications, testing and scoring materi-
48 als, grievances, correspondence, retirement plan information and per-
49 formance evaluations, shall not be disclosed to the public without the
50 employee's or applicant's written consent. An employee or authorized

1 representative may inspect and copy that employee's personnel records,
2 except for material used to screen and test for employment or material
3 not subject to disclosure elsewhere in the Idaho public records act.

4 (21) Records of the department of health and welfare related to child
5 support services in cases in which there is reasonable evidence of domestic
6 violence, as defined in chapter 63, title 39, Idaho Code, that can be used
7 to locate any individuals in the child support case except in response to a
8 court order.

9 (22) Records of the Idaho state bar lawyer assistance program pursuant
10 to chapter 49, title 54, Idaho Code, unless a participant in the program au-
11 thORIZES the release pursuant to subsection (4) of section 54-4901, Idaho
12 Code.

13 (23) Records and information contained in the time sensitive emergency
14 registry created by chapter 20, title 57, Idaho Code, together with any re-
15 ports, analyses and compilations created from such information and records.

16 (24) Records contained in the court files, or other records prepared as
17 part of proceedings for judicial authorization of sterilization procedures
18 pursuant to chapter 39, title 39, Idaho Code.

19 (25) The physical voter registration application on file in the county
20 clerk's office; however, a redacted copy of said application shall be made
21 available consistent with the requirements of this section. Information
22 from the voter registration application maintained in the statewide voter
23 registration database, including age, will be made available except for
24 the voter's driver's license number, date of birth and, upon a showing that
25 the voter comes within the provisions of subsection (30) of this section or
26 upon showing of good cause by the voter to the county clerk in consultation
27 with the county prosecuting attorney, the physical residence address of the
28 voter. For the purposes of this subsection, good cause shall include the
29 protection of life and property and protection of victims of domestic vio-
30 lence and similar crimes.

31 (26) File numbers, passwords and information in the files of the health
32 care directive registry maintained by the ~~secretary of state~~ department of
33 health and welfare under section 39-4515, Idaho Code, are confidential and
34 shall not be disclosed to any person other than to the person who executed the
35 health care directive or the revocation thereof and that person's legal rep-
36 resentatives, to the person who registered the health care directive or re-
37 vocation thereof, and to physicians, hospitals, medical personnel, nursing
38 homes, and other persons who have been granted file number and password ac-
39 cess to the documents within that specific file.

40 (27) Records in an address confidentiality program participant's file
41 as provided for in chapter 57, title 19, Idaho Code, other than the address
42 designated by the secretary of state, except under the following circum-
43 stances:

44 (a) If requested by a law enforcement agency, to the law enforcement
45 agency; or

46 (b) If directed by a court order, to a person identified in the order.

47 (28) Except as otherwise provided by law relating to the release of in-
48 formation to a governmental entity or law enforcement agency, any personal
49 information including, but not limited to, names, personal and business ad-
50 dresses and phone numbers, sex, height, weight, date of birth, social secu-

1 rity and driver's license numbers, or any other identifying numbers and/or
2 information related to any Idaho fish and game licenses, permits and tags un-
3 less written consent is obtained from the affected person.

4 (29) Documents and records related to alternatives to discipline that
5 are maintained by the Idaho board of veterinary medicine under the provi-
6 sions of section 54-2118(1)(b), Idaho Code, provided the requirements set
7 forth therein are met.

8 (30) The Idaho residential street address and telephone number of an el-
9 igible law enforcement officer and such officer's residing household mem-
10 ber(s) as provided for in chapter 58, title 19, Idaho Code, except under the
11 following circumstances:

12 (a) If directed by a court order, to a person identified in the court
13 order;

14 (b) If requested by a law enforcement agency, to the law enforcement
15 agency;

16 (c) If requested by a financial institution or title company for busi-
17 ness purposes, to the requesting financial institution or title com-
18 pany; or

19 (d) If the law enforcement officer provides written permission for dis-
20 closure of such information.

21 (31) All information exchanged between the Idaho transportation de-
22 partment and insurance companies, any database created, all information
23 contained in the verification system and all reports, responses or other
24 information generated for the purposes of the verification system, pursuant
25 to section 49-1234, Idaho Code.

26 (32) Nothing in this section shall prohibit the release of information
27 to the state controller as the state social security administrator as pro-
28 vided in section 59-1101A, Idaho Code.

29 (33) Personal information including, but not limited to, property val-
30 ues, personal and business addresses, phone numbers, dates of birth, social
31 security and driver's license numbers or any other identifying numbers or
32 information maintained by the administrator of the unclaimed property law
33 set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection
34 shall prohibit the release of names, last known city of residence, property
35 value ranges and general property information by the administrator for the
36 purpose of reuniting unclaimed property with its owner.

37 (34) Any personal information collected by the secretary of state, pur-
38 suant to section 67-906(1)(b), Idaho Code, for the purpose of allowing indi-
39 viduals to access the statewide electronic filing system authorized in sec-
40 tion 67-906, Idaho Code, and any notification e-mail addresses submitted as
41 part of a lobbyist's registration under section 67-6617, Idaho Code, of an
42 employer, client, or designated contact for the purpose of electronic noti-
43 fication of that employer, client, or designated contact of a report filed
44 under section 67-6619, Idaho Code.