

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 623

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO TRESPASS; AMENDING SECTION 6-202, IDAHO CODE, TO PROVIDE THAT  
2 A PROCESS SERVER ENGAGED IN THE COURSE AND SCOPE OF SERVING LEGAL DOCU-  
3 MENTS HAS NOT COMMITTED THE ACT OF CIVIL TRESPASS AND TO MAKE A TECHNICAL  
4 CORRECTION; AMENDING SECTION 18-7008, IDAHO CODE, TO PROVIDE THAT  
5 A PROCESS SERVER ENGAGED IN THE COURSE AND SCOPE OF SERVING LEGAL DOCU-  
6 MENTS IS NOT GUILTY OF CRIMINAL TRESPASS AND TO MAKE A TECHNICAL CORREC-  
7 TION; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
8

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

10 SECTION 1. That Section 6-202, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this  
13 section:

14 (a) "Crops" means field crops including, but not limited to, grains,  
15 feed crops, legumes, fruits and vegetables.

16 (b) "Cultivated land" means:

17 (i) Land whose soil is loosened or broken up for the raising of  
18 crops;

19 (ii) Land used for the raising of crops; or

20 (iii) Pasturage that is artificially irrigated.

21 (c) "Damage" means any injury or damage to real or personal property  
22 and includes, but is not limited to, any of the following actions, when  
23 conducted without lawful authority, the consent of the landowner or his  
24 agent, or a valid license:

25 (i) Cutting down or carrying off any wood, underbrush, tree or  
26 timber, or girdling or otherwise injuring any tree or timber on the  
27 land of another;

28 (ii) Severing from the property of another anything attached  
29 thereto, or the produce thereof;

30 (iii) Digging, taking or carrying away any earth, soil or stone  
31 from the property of another;

32 (iv) Tearing down or otherwise damaging any fence on the land of  
33 another, or opening any gate, bar or fence of another and leaving  
34 it open, or using the corral or corrals of another;

35 (v) Dumping trash or covering up in any manner the property of  
36 another;

37 (vi) The unprovoked, intentional killing or injuring of a domes-  
38 tic animal of another on his property;

39 (vii) Removing, mutilating, damaging or destroying any "no tres-  
40 passing" signs or markers of similar meaning;

1 (viii) Going through or driving a motor vehicle, as defined in sec-  
2 tions 49-114 and 49-123, Idaho Code, into, upon, over or through  
3 any cultivated lands; or

4 (ix) Injuring or killing livestock.

5 (d) "Enter" or "enters" means going upon or over real property either  
6 in person or by causing any object, substance or force to go upon or over  
7 real property.

8 (e) "Navigable streams" shall have the meaning set forth in section  
9 36-1601, Idaho Code.

10 (f) "Permission" means written authorization from the owner or his  
11 agent to enter upon private land, which shall include the signature of  
12 the owner or his agent, the name of the person being given permission,  
13 the appropriate dates that the permission is valid and a general de-  
14 scription of the property; or another form of permission or invitation  
15 recognized by law.

16 (g) "Remains" means to fail to depart from the real property of another  
17 immediately when notified to do so by the owner or his agent.

18 (2) (a) Acts constituting civil trespass. Any person who enters or re-  
19 mains upon the real property of another person without permission com-  
20 mits a civil trespass.

21 (b) Acts constituting civil trespass with damage. A person commits a  
22 civil trespass with damage when he enters or remains on the real prop-  
23 erty of another without permission, knowing or with reason to know that  
24 his presence is not permitted, and causes damage to real or personal  
25 property in excess of one thousand dollars (\$1,000). A person has rea-  
26 son to know that his presence is not permitted on real property that  
27 meets any of the following descriptions:

28 (i) The property is reasonably associated with a residence or  
29 place of business;

30 (ii) The property is cultivated;

31 (iii) The property is fenced or otherwise enclosed in a manner  
32 that a reasonable person would recognize as delineating a private  
33 property boundary. Provided, however, if the property adjoins  
34 or is contained within public lands, the fence line adjacent to  
35 public land is posted with conspicuous "no trespassing" signs or  
36 bright orange or fluorescent paint at the corners of the fence  
37 adjoining public land and at all navigable streams, roads, gates  
38 and rights-of-way entering the private land from the public land,  
39 and is posted in a manner that a reasonable person would be put on  
40 notice that it is private land; or

41 (iv) The property is unfenced and uncultivated but is posted with  
42 conspicuous "no trespassing" signs or bright orange or fluores-  
43 cent paint at all property corners and boundaries where the prop-  
44 erty intersects navigable streams, roads, gates and rights-of-way  
45 entering the land, and is posted in a manner that a reasonable per-  
46 son would be put on notice that it is private land.

47 (3) Remedies.

48 (a) Civil trespass. Any person found liable for a civil trespass pur-  
49 suant to subsection (2) (a) of this section shall be liable for the fol-  
50 lowing damages:

1 (i) The greater of:

- 2 1. A damage award of five hundred dollars (\$500); or  
3 2. The amount of actual damages caused by the trespass;

4 (ii) Reasonable attorney's fees, which shall be taxed as costs  
5 in any civil action brought to enforce the provisions of this sec-  
6 tion, if the plaintiff prevails; and

7 (iii) Reasonable costs associated with investigating any tres-  
8 pass, as approved by the court, which shall be taxed as costs in any  
9 civil action brought to enforce the provisions of this section, if  
10 the plaintiff prevails.

11 (b) Civil trespass with damage. Any person found liable for a civil  
12 trespass with damage pursuant to subsection (2)(b) of this section  
13 shall be liable for the following damages and penalties:

14 (i) Treble the amount of actual damages caused by the trespass;

15 (ii) Reasonable attorney's fees, which shall be taxed as costs  
16 in any civil action brought to enforce the provisions of this sec-  
17 tion, if the plaintiff prevails; and

18 (iii) Reasonable costs associated with investigating any tres-  
19 pass, as approved by the court, which shall be taxed as costs in any  
20 civil action brought to enforce the provisions of this section, if  
21 the plaintiff prevails.

22 (c) If an action for civil trespass or civil trespass with damage is  
23 brought without foundation and the defendant prevails, the defendant  
24 may be awarded reasonable attorney's fees, which shall be taxed as  
25 costs.

26 Provided however, the owner or operator of any right-of-way or easement  
27 for any ditch, canal or other conduit governed by the provisions of  
28 chapter 11 or chapter 12, title 42, Idaho Code, or any rail carrier or  
29 aircraft ~~who is~~ found in violation of this section shall be liable only  
30 for actual damages and not for any treble damages, attorney's fees or  
31 investigation costs otherwise provided for under this subsection.

32 (4) All damages and penalties awarded pursuant to this section shall be  
33 remitted to the damaged party.

34 (5) Posting of navigable streams shall not prohibit access to navigable  
35 streams below the high-water mark pursuant to section 36-1601, Idaho Code.

36 (6) Subject to any rights or authorities described in subsection (7) of  
37 this section, a landowner or his agent may revoke permission granted under  
38 this section to another to enter or remain upon his property at any time, for  
39 any reason, orally, in writing, or by any other form of notice reasonably ap-  
40 parent to the permitted person or persons.

41 (7) A person has not committed the act of civil trespass under this sec-  
42 tion for entering or remaining upon real property if the person entered or  
43 remained on the property pursuant to any of the following rights or authori-  
44 ties:

45 (a) An established right of entry or occupancy of the real property in  
46 question, including, but not limited to:

- 47 (i) An invitation, whether express or implied, to enter or remain  
48 on real property including, but not limited to, the right to enter  
49 property that is, at the time, open to the public, if the person is  
50 in compliance with lawful conditions imposed on access;

- 1           (ii) A license to enter or remain on real property; or  
 2           (iii) A lease, easement, contract, privilege or other legal right  
 3           to enter, remain upon, possess or use the real property;  
 4       (b) A lawful authority to enter onto or remain upon the real property in  
 5       question, including, but not limited to:  
 6           (i) Any law enforcement officer during the course and scope of  
 7           fulfilling his lawful duties;  
 8           (ii) Any paramedic, firefighter or other emergency personnel dur-  
 9           ing the course and scope of fulfilling his lawful duties; or  
 10           (iii) Any licensed professional otherwise authorized to enter or  
 11           remain on the real property during the course and scope of fulfill-  
 12           ing his lawful duties; or  
 13       (c) Any other person with a legally prescribed right to enter or remain  
 14       upon the real property in question.  
 15       (8) Examples of the exclusions in subsection (7) of this section in-  
 16       clude, but are not limited to, a customer entering and remaining in a store  
 17       during business hours who has not been asked to depart by the property owner  
 18       or his agent; a person knocking on a front door of a property that is not  
 19       posted; a meter reader in the scope and course of his employment; a postal  
 20       employee delivering mail or packages; a process server engaged in the scope  
 21       and course of serving legal documents; power company personnel fixing downed  
 22       power lines; a bail bondsman arresting a person who is in violation of a bail  
 23       contract; a tenant in compliance with a valid lease; and the owner or op-  
 24       erator of any right-of-way or easement for any ditch, canal or other con-  
 25       duit, acting pursuant to the provisions of chapter 11 or chapter 12, title  
 26       42, Idaho Code.  
 27       (9) The exclusions set forth in this section shall not relieve any per-  
 28       son of civil or criminal liability pursuant to other applicable law for caus-  
 29       ing damage while entering or remaining on the property in question.

30           SECTION 2. That Section 18-7008, Idaho Code, be, and the same is hereby  
 31       amended to read as follows:

- 32           18-7008. CRIMINAL TRESPASS -- DEFINITIONS AND ACTS CONSTITUTING. (1)  
 33       Definitions. As used in this section:  
 34       (a) "Crops" means field crops including, but not limited to, grains,  
 35       feed crops, legumes, fruits and vegetables.  
 36       (b) "Cultivated land" means:  
 37           (i) Land whose soil is loosened or broken up for the raising of  
 38           crops;  
 39           (ii) Land used for the raising of crops; or  
 40           (iii) Pasturage that is artificially irrigated.  
 41       (c) "Damage" means any injury or damage to real or personal property  
 42       and includes, but is not limited to, any of the following actions, when  
 43       conducted without lawful authority, the consent of the landowner or his  
 44       agent, or a valid license:  
 45           (i) Cutting down or carrying off any wood, underbrush, tree or  
 46           timber, or girdling or otherwise injuring any tree or timber on the  
 47           land of another;  
 48           (ii) Severing from the property of another anything attached  
 49           thereto, or the produce thereof;

- 1 (iii) Digging, taking or carrying away any earth, soil or stone  
2 from the property of another;
- 3 (iv) Tearing down or otherwise damaging any fence on the land of  
4 another person, or opening any gate, bar or fence of another person  
5 and leaving it open, or using the corral or corrals of another per-  
6 son;
- 7 (v) Dumping trash or covering up in any manner the property of  
8 another person;
- 9 (vi) The unprovoked, intentional killing or injuring of a domes-  
10 tic animal of another on his property;
- 11 (vii) Removing, mutilating, damaging or destroying any "no tres-  
12 passing" signs or markers of similar meaning;
- 13 (viii) Going through or driving a motor vehicle, as defined in sec-  
14 tions 49-114 and 49-123, Idaho Code, into, upon, over or through  
15 any cultivated lands; or
- 16 (ix) Injuring livestock.
- 17 (d) "Enter" or "enters" means going upon or over real property either  
18 in person or by causing any object, substance or force to go upon or over  
19 real property.
- 20 (e) "Navigable streams" shall have the meaning set forth in section  
21 36-1601, Idaho Code.
- 22 (f) "Permission" means written authorization from the owner or his  
23 agent to enter upon private land, which shall include the signature of  
24 the owner or his agent, the name of the person being given permission,  
25 the appropriate dates that the permission is valid and a general de-  
26 scription of the property; or another form of permission or invitation  
27 recognized by law.
- 28 (g) "Remains" means to fail to depart from the real property of another  
29 immediately when notified to do so by the owner or his agent.
- 30 (2) Acts constituting criminal trespass.
- 31 (a) A person commits criminal trespass and is guilty of a misdemeanor,  
32 except as provided in subsection (3) (a) (i) of this section, when he  
33 enters or remains on the real property of another without permission,  
34 knowing or with reason to know that his presence is not permitted. A  
35 person has reason to know his presence is not permitted when, except un-  
36 der a landlord-tenant relationship, he fails to depart immediately from  
37 the real property of another after being notified by the owner or his  
38 agent to do so, or he returns without permission or invitation within  
39 one (1) year, unless a longer period of time is designated by the owner  
40 or his agent. In addition, a person has reason to know that his pres-  
41 ence is not permitted on real property that meets any of the following  
42 descriptions:
- 43 (i) The property is reasonably associated with a residence or  
44 place of business;
- 45 (ii) The property is cultivated;
- 46 (iii) The property is fenced or otherwise enclosed in a manner  
47 that a reasonable person would recognize as delineating a private  
48 property boundary. Provided, however, if the property adjoins  
49 or is contained within public lands, the fence line adjacent to  
50 public land is posted with conspicuous "no trespassing" signs or

1 bright orange or fluorescent paint at the corners of the fence  
2 adjoining public land and at all navigable streams, roads, gates  
3 and rights-of-way entering the private land from the public land,  
4 and is posted in a manner that a reasonable person would be put on  
5 notice that it is private land; or

6 (iv) The property is unfenced and uncultivated but is posted with  
7 conspicuous "no trespassing" signs or bright orange or fluores-  
8 cent paint at all property corners and boundaries where the prop-  
9 erty intersects navigable streams, roads, gates and rights-of-way  
10 entering the land, and is posted in a manner that a reasonable per-  
11 son would be put on notice that it is private land.

12 (b) Every person who commits a criminal trespass as provided by this  
13 section and who causes damage to real or personal property in excess of  
14 one thousand dollars (\$1,000) while trespassing is guilty of criminal  
15 trespass with damage and is guilty of a misdemeanor, except as provided  
16 in subsection (3) (b) (iii) of this section.

17 (3) Penalties.

18 (a) Penalties for criminal trespass.

19 (i) Any person who pleads guilty to or is found guilty of a viola-  
20 tion of subsection (2) (a) of this section for the first time:

21 1. If no damage of any kind was committed during the trespass  
22 and the person accused does not remain if ordered to depart  
23 by the owner of the real property or his agent, then the per-  
24 son shall be guilty of an infraction and fined in the amount  
25 of three hundred dollars (\$300); or

26 2. Except as provided in subparagraph (i)1. of this para-  
27 graph, the person may be sentenced to jail for a period of no  
28 more than six (6) months and shall be fined in an amount no  
29 less than five hundred dollars (\$500) and no more than one  
30 thousand dollars (\$1,000).

31 (ii) Any person who pleads guilty to or is found guilty of a viola-  
32 tion of subsection (2) (a) of this section for a second time within  
33 five (5) years:

34 1. May be sentenced to jail for a period of no more than six  
35 (6) months;

36 2. Shall be fined in an amount no less than one thousand five  
37 hundred dollars (\$1,500) and no more than three thousand  
38 dollars (\$3,000); and

39 3. If the trespass can be reasonably construed to have been  
40 committed in a manner described in section 36-1603(a), Idaho  
41 Code, shall have any license issued pursuant to chapter 3,  
42 title 36, Idaho Code, suspended for a period of one (1) year.

43 (iii) Any person who pleads guilty to or is found guilty of a viola-  
44 tion of subsection (2) (a) of this section, who previously has been  
45 found guilty of or has pled guilty to two (2) or more violations of  
46 the provisions of subsection (2) of this section within ten (10)  
47 years, notwithstanding the form of the judgments or withheld judg-  
48 ments:

49 1. May be sentenced to jail for a period of no more than one  
50 (1) year;

1           2. Shall be fined an amount no less than five thousand  
2 dollars (\$5,000) and no more than ten thousand dollars  
3 (\$10,000); and

4           3. If the trespass can be reasonably construed to have been  
5 committed in a manner described in section 36-1603(a), Idaho  
6 Code, shall have any license issued pursuant to chapter 3,  
7 title 36, Idaho Code, suspended for a period of no more than  
8 five (5) years.

9 (b) Penalties for criminal trespass with damage.

10           (i) Any person who pleads guilty to or is found guilty of a viola-  
11 tion of subsection (2) (b) of this section for the first time:

12           1. May be sentenced to jail for a period of no more than six  
13 (6) months; and

14           2. Shall be fined in an amount no less than one thousand five  
15 hundred dollars (\$1,500) and no more than five thousand dol-  
16 lars (\$5,000).

17           (ii) Any person who pleads guilty to or is found guilty of a viola-  
18 tion of subsection (2) (b) of this section for a second time within  
19 five (5) years:

20           1. May be sentenced to jail for a period of no more than six  
21 (6) months;

22           2. Shall be fined in an amount no less than five thou-  
23 sand dollars (\$5,000) and no more than ten thousand dollars  
24 (\$10,000); and

25           3. If the trespass can be reasonably construed to have been  
26 committed in a manner described in section 36-1603(a), Idaho  
27 Code, shall have any license issued pursuant to chapter 3,  
28 title 36, Idaho Code, suspended for a period of one (1) year.

29           (iii) Any person who pleads guilty to or is found guilty of a viola-  
30 tion of subsection (2) (b) of this section, who previously has been  
31 found guilty of or has pled guilty to two (2) or more violations of  
32 the provisions of subsection (2) of this section within ten (10)  
33 years, notwithstanding the form of the judgments or withheld judg-  
34 ments, is guilty of a felony and:

35           1. Shall be sentenced to the custody of the state board of  
36 correction for a period of no less than one (1) year and no  
37 more than five (5) years;

38           2. Shall be fined in an amount no less than fifteen thou-  
39 sand dollars (\$15,000) and no more than fifty thousand dol-  
40 lars (\$50,000); and

41           3. If the trespass can be reasonably construed to have been  
42 committed in a manner described in section 36-1603(a), Idaho  
43 Code, shall have any license issued pursuant to chapter 3,  
44 title 36, Idaho Code, suspended for a period of no less than  
45 five (5) years.

46 (c) In addition to any other penalty prescribed by law, a court shall,  
47 for any violation of subsection (2) of this section, order restitution  
48 in accordance with section 19-5304, Idaho Code.

49 (4) Posting of navigable streams shall not prohibit access to navigable  
50 streams below the high-water mark pursuant to section 36-1601, Idaho Code.

1 (5) Subject to any rights or authorities described in subsection (6) of  
2 this section, a landowner or his agent may revoke permission granted under  
3 this section to another to enter or remain upon his property at any time, for  
4 any reason, orally, in writing, or by any other form of notice reasonably ap-  
5 parent to the permitted person or persons.

6 (6) A person shall not be guilty of trespass under this section for en-  
7 tering or remaining upon real property if the person entered or remained on  
8 the property pursuant to any of the following rights or authorities:

9 (a) An established right of entry or occupancy of the real property in  
10 question, including, but not limited to:

11 (i) An invitation, whether express or implied, to enter or remain  
12 on real property including, but not limited to, the right to enter  
13 property that is, at the time, open to the public, if the person is  
14 in compliance with lawful conditions imposed on access;

15 (ii) A license to enter or remain on real property; or

16 (iii) A lease, easement, contract, privilege or other legal right  
17 to enter, remain upon, possess or use the real property;

18 (b) A lawful authority to enter onto or remain upon the real property in  
19 question, including, but not limited to:

20 (i) Any law enforcement officer during the course and scope of  
21 fulfilling his lawful duties;

22 (ii) Any paramedic, firefighter or other emergency personnel dur-  
23 ing the course and scope of fulfilling his lawful duties; or

24 (iii) Any licensed professional otherwise authorized to enter or  
25 remain on the real property during the course and scope of fulfill-  
26 ing his lawful duties; or

27 (c) Any other person with a legally prescribed right to enter or remain  
28 upon the real property in question.

29 (7) Examples of the exclusions in subsection (6) of this section in-  
30 clude, but are not limited to: a customer entering and remaining in a store  
31 during business hours who has not been asked to depart by the property owner  
32 or his agent; a person knocking on a front door of a property that is not  
33 posted; a meter reader during the scope and course of his employment; a  
34 postal employee delivering mail or packages; a process server engaged in the  
35 scope and course of serving legal documents; power company personnel fixing  
36 downed power lines; a bail bondsman arresting a person who is in violation of  
37 a bail contract; a tenant pursuant to a valid lease; and the owner or operator  
38 of any right-of-way or easement for any ditch, canal or other conduit, acting  
39 pursuant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.

40 (8) The exclusions set forth in this section shall not relieve any per-  
41 son of civil or criminal liability pursuant to other applicable law for caus-  
42 ing damage while entering or remaining on the property in question.

43 SECTION 3. An emergency existing therefor, which emergency is hereby  
44 declared to exist, this act shall be in full force and effect on and after  
45 July 1, 2022.