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2017 LEGISLATIVE REPORT

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1 This year, the 1<sup>st</sup> Regular Session of the 64<sup>th</sup> Idaho Legislature started on Monday January 9 and went sine  
2 die on March 29, 2017, missing the target date of March 24. That was 80 days, five days longer than last  
3 session (2009, a real joy, went 117 days), which is typical of election years, and the third shortest in the  
4 last ten years, edged out by 75 last year and 74 in 2014, another election year. Generally sessions are  
5 from 74 to 89 days. This was my 30<sup>th</sup> session or so; I have lost count. This year was very contentious, both  
6 over individual interests and between the House and Senate. A number of issues that had been avoided  
7 that last few sessions had to be addressed this year, which added to the tensions, and the conflicts. A  
8 number are still not settled as of yet, as will be discussed.

9 The figures for the session: 785 RS's were made. 540 bills were printed ( 334 bills in House and 206 bills  
10 in the Senate). 347 bills passed both houses and about 340 bills may become law. So only about two thirds  
11 of RS's ever get printed, and generally only about 40% of RS's become law. Generally about 60% of  
12 printed bills become law. All that awaits final action of the Governor. Seven bills have been vetoed so far  
13 and the Governor has threatened to veto the sales tax on groceries repealer.

14 There were a total of 75 resolution, memorial, and proclamations, same as last year. The House had 29  
15 Concurrent Resolutions (17 passed) and 9 Joint Memorials (6 adopted) and 4 Joint Resolutions (none  
16 passed) and 3 House Resolutions (1 passed). The Senate had 24 Concurrent Resolutions (21 passed) and  
17 only 2 Joint Memorials (1 passed, on Sage Grouse Protections), 3 Joint Resolution (none passed) and 1  
18 Senate Resolution (Adopted, on contest of elections).

19 The legislature rejected a lot of Rules this year, but none relating to the areas I am covering.

20 The number of bills presented in the probate code, tax, and related areas was relatively limited for reasons  
21 that will be discussed. Tax & Estate Professionals of Idaho, Inc., which is a broad-based multi-disciplinary  
22 group, reviewed and proposed legislation in the tax and probate code arena. I currently serve as Chairman.  
23 The Idaho Supreme Court also proposed a bill in the C&G area from committees I serve on.

24 New laws of interest, all of which take effect July 1, 2017, unless otherwise noted (bills which failed or died  
25 are noted when appropriate), are, by area:

26 **1. PROBATE CODE, ELDER LAW, AND RELATED AREAS**

27 (a) **Developmental Disability and related Medical Issues** SB 1090. This was a bill I presented  
28 on behalf of the Quality of Life Committee. Six years in the making, but brought to a head by recent  
29 problems. This bill is about fundamental rights guaranteed to citizens of this nation and of this State.  
30 It is specifically about the right of persons to make their own medical decisions as long as they have  
31 capacity to make such decisions. It is also about the proper treatment of persons with a  
32 developmental disability who may or may not have a court appointed guardian. The existing law,  
33 to a certain extent as written, and even more as applied, discriminates against people with a  
34 developmental disability. The bill also corrects a number of problems in the existing statutes.

1 Some medical providers have interpreted the existing statutes to deny the ability of a person  
2 diagnosed with a developmental disability, and who does not have as guardian, to make medical  
3 decisions for themselves. The term “developmental disability” refers to a disability that began before  
4 age 22 and falls within a broad spectrum of types of disabilities. Many of those disabilities do not  
5 remove the ability of the person to make medical decisions. In, for example, a person with cerebral  
6 palsy, the person may have extremely limiting physical conditions, but their mental abilities are not  
7 affected. The proper tests for capacity for making medical decisions are set out in Section 39-4503,  
8 Idaho Code, which states:

9 Any person who comprehends the need for, the nature of and the significant risks ordinarily  
10 inherent in any contemplated hospital, medical, dental, surgical or other health care,  
11 treatment or procedure is competent to consent thereto on his or her own behalf.

12 But that test is often totally ignored if the patient has been diagnosed as having a developmental  
13 disability. Too often the person is told they must have a guardian appointed or are completely  
14 bypassed in making medical decisions. This is a widespread and unacceptable denial of  
15 fundamental rights.

16 The second major problem is that if a person with a developmental disability does have a guardian,  
17 there are protections provided in federal law and incorporated into the Idaho Administrative Code  
18 (IDAPA 16.06.05.004.10), often referred to as the “Baby Doe” regulations, which are mandatory  
19 protections for persons with a developmental disability who has a guardian. These protections are  
20 not in the existing Idaho statutes on developmental disability, which instead contains completely  
21 incorrect statements of the procedures to be followed.

22 Finally, the statute is greatly out of date on how to deal with advance directives such as Durable  
23 Powers of Attorney For Health Care, Living Wills, and Physician Orders For Scope of Treatment  
24 (POST form). This is especially true concerning revocation and suspension of such directives and  
25 in the area of presumed consent to resuscitation in certain situations.

26 **Specific provisions:**

27 A. In the Medical Consent and Natural Death Act, the bill makes clear that the right of “any person”  
28 to make medical decisions includes a person who is developmentally disabled but does not have  
29 a guardian (a person with an appointed guardian under the developmental disability statutes is  
30 called a “respondent”). Similarly, in the developmental disability statutes, the bill states that:

31 Nothing in this section shall affect the rights of a competent patient or surrogate decision-  
32 maker to withhold or withdraw treatment pursuant to section 39-4514, Idaho Coder, unless  
33 the patient is a respondent as defined in section 66-402, Idaho Code.

34 In other words, just because the developmental disability statutes contain provisions when the  
35 person with a developmental disability has a guardian, those provision do not apply when there is  
36 no guardian.

37 B. In the Developmental Disability Act, paragraph 8 is substantially amended to remove the  
38 incorrect language (which is essentially the language used in Living Wills) and replace it with the  
39 correct language from the Baby Doe regs. This new language clearly and correctly sets out the  
40 conditions under which treatment, *but not the provision of appropriate nutrition or hydration*, can  
41 be withdrawn or withheld by a guardian of a person with a developmental disability. Nutrition and  
42 hydration are always provided. The new provisions require, before treatment can be withdrawn or  
43 withheld are:

1 The treating medical provider, called a “LIP” (defined earlier in the bill, and is either a  
2 licensed physician, a licensed physician’s assistant, or a licensed advance practice  
3 registered nurse - remembering that a PA or an APRN is always under the supervision of  
4 a licensed physician) makes “a reasonable medical judgment” that one of the following  
5 applies:

- 6 1. The attending LIP and at least one other LIP certifies that the respondent (the  
7 person with developmental disability and a guardian) is chronically and irreversibly  
8 comatose; or,
- 9 2. The provision of the treatment would merely prolong dying, would not be effective  
10 in ameliorating or correcting all of the respondent’s life-threatening conditions, or  
11 would otherwise be futile in terms of the survival of the respondent; or,
- 12 3. The provision of the treatment would virtually futile in terms of the survival of the  
13 respondent and the treatment itself would be inhumane under such circumstances.

14 These guidelines are very carefully drawn and have been the applicable law for many years. There  
15 is ample case law as to the meaning and application of the terms. LIP’s are, by their very nature,  
16 conservative in making such judgments and do not make them lightly. Additionally, such judgments  
17 are often referred to the Ethics Committee of the health care provider for review.

18 Testimony was given at the committee hearings of a heart-breaking case where it was clear that  
19 medical treatment, except for nutrition and hydration, should be withdrawn and was inhumane and  
20 futile. Because of the incorrect guidelines in the existing statute, the guardian had to file court  
21 pleadings and go through the expenses and delays and emotions of the hearings to get a result that  
22 everyone knew was needed and correct but could not be done. Unfortunately, this situation is not  
23 unique, but happens far too often. It is devastating to the families involved and creates unnecessary  
24 costs and delays.

25 Paragraph 7 of the Developmental Disability Act, as amended by this bill, sets the default rule,  
26 which is that if the tests of paragraph 8 are not met, the guardian cannot refuse or withhold consent  
27 for medically necessary treatment when the effect of withhold such treatment would seriously  
28 endanger the life or health and well-being of the respondent. Refusing to consent may be grounds  
29 for removal of the guardian. And, the healthcare provider or caregiver cannot, without the  
30 requirements of paragraph 8 being met, even if based on the guardian’s direction or refusal to  
31 consent, withhold or withdraw treatment. If the health care provider cannot obtain a valid consent  
32 for the medically necessary treatment from the guardian, the health care provider or caregiver must  
33 provide the medically necessary treatment as authorized under Section 39-4504(1)(i) of the  
34 Medicaid Consent and Natural Death Act.

35 Therefore, there are great protections put in place for persons with a developmental disability, but  
36 also allowance for withdrawing or withholding treatment when the strict guidelines of paragraph 8  
37 are met.

38 C. Other changes to protect the rights of patients generally and clarify current ambiguities or  
39 omissions in the current law:

- 40 1. Revocation of an Advance Directive There are times when an advance directive (Living  
41 Will or Durable Power of Attorney For Health Care, or Physician Orders For Scope of  
42 Treatment) no longer represents the wishes of the patient. An additional method for  
43 revoking an Advance Directive, covering situations where the patient does not have time

1 to use more formal methods, was added. This is a reflection of real life situations, especially  
2 in ER settings, where events happen quickly and there is no time for formal methods of  
3 revocation to be done by the patient. The bill makes clear that a health care provider who  
4 does not have actual knowledge of the revocation can rely on an otherwise apparently valid  
5 advance directive.

6 2. Suspension of an Advance Directive Similarly, there are times when an Advance  
7 Directive should be suspended, and like revocation, there are times when more formal  
8 methods are not available. So the bill adds the same language as was done in the  
9 revocation section, and adds the same language about actual knowledge by the health care  
10 provider as in revocation.

11 3. Presumed Consent to Resuscitation There is a presumption that a person should receive  
12 cardiopulmonary resuscitation, commonly called “CPR”, unless the exceptions in the statute  
13 are met. The existing provisions in the statute are not in line with current practice, update  
14 laws, and new documents created by those updated laws, and are therefore revised to be  
15 clear and correct. The exceptions are:

16 a. CPR is contrary to the person’s Advance Directive (normally the Living Will  
17 portion) or Physician Order For Scope of Treatment (POST form); or,

18 b. The person’s surrogate decision maker (perhaps the agent under the person’s  
19 Durable Power of Attorney For Health Care, or a guardian appointed by a court) has  
20 communicated the person’s unconditional wishes not to receive CPR; or,

21 c. The person’s surrogate decision maker has communicated the person’s  
22 conditional wishes not to receive CPR and those conditions have been met.

23 d. The person has a property POST (Physician Orders for Scope of Treatment)  
24 identification device - a bracelet or necklace that states that a POST Do Not  
25 Resuscitate Order is in place; or,

26 e. The attending health care provider has executed a Do Not Resuscitate order that  
27 is consistent with the person’s prior expressed wishes or the directives of the legally  
28 authorized surrogate decision maker for the person.

29 4. Wording changes A number of purely technical changes to wording are made. Some are  
30 to properly refer to an “advance directive”, the current correct term for documents which  
31 given advance directions as to medical care. Others, in the Developmentally Disabled  
32 statutes correct improper references to now say “respondent”, the proper term for a person  
33 with a developmental disability who has a guardian or is in the midst of a guardianship  
34 proceeding under the act.

35 Does this bill authorize euthanasia or assisted suicide or mercy killing? Absolutely not. Section 39-  
36 4514(2), set forth unchanged in the bill, states:

37 (2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in  
38 no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or  
39 deliberate act or omission to end life, including any act or omission described in section 18-  
40 4017, Idaho Code, other than to allow th natural process of dying.

1 Additionally, in the Baby Doe regs, described above, where there is a guardian for the respondent  
2 (the person with a developmental disability), the emphasis is always on providing treatment and the  
3 guardian is not allowed to withdraw or withhold treatment (and medical providers can proceed on  
4 their own to provide treatment if the guardian refuses consent to treatment) - see page 8 of the bill,  
5 paragraph 7 - unless the very tightly drawn and defined circumstances of paragraph 8 on that  
6 page, the Baby Doe regs, are met, and even then nutrition and hydration and comfort care must  
7 always be provided.

8 Passed unanimously in Senate and with one dissenting vote (no clue why - perhaps hit the wrong  
9 button) in the House. **LAW**.

10 (b) **Conservatorship-Guardianship** HB 148 This bill was proposed by the Supreme Court based  
11 on a recommendation from its Guardianship and Conservatorship Committee, which brings together  
12 judges, practitioners, legislators, and others who deal with this area of the law. I am a member, and  
13 former chair, of that Committee. The bill amends the guardianship statutes in a few respects.

14 First, in Doe I v. Doe II, 160 Idaho 311, 372 P.3d 366 (2016), the Supreme Court held that  
15 the current statutes permit the appointment of only a single guardian for a minor. Oral  
16 discussion. This bill permits the appointment of two co-guardians for minors, incapacitated  
17 persons, and persons with developmental disabilities. It sets standards for the appointments  
18 of co-guardians, and also provides that the court would determine whether the co-guardians  
19 could act independently or would be required to act jointly.

20 Second, the legislation would clarify the standards for temporary guardians, who are  
21 appointed by a court when a guardian has not yet been appointed but a temporary guardian  
22 is needed to protect the individual, or when there is substantial evidence that an appointed  
23 guardian is not performing the duties of a guardian.

24 Third, the bill provides that Supreme Court rules would establish the qualifications of court  
25 visitors and the standards for visitors' reports to the court. This has been an ongoing project  
26 of the Committee and the rules are ready to be implemented. One of the main changes is  
27 that the visitor, under the new rule, must have a proper degree in social work, versus the  
28 old language of "trained in law, nursing, psychology, social work, or counseling or has other  
29 qualifications that make him suitable to perform the function". In the long run, all court  
30 visitors will be employees or independent contractors for the court system, and paid and  
31 monitored by the court system. Estates of persons under guardianship or conservatorship  
32 that have sufficient assets to reimburse the courts for the visitor costs would so, at the  
33 discretion of the court, into a special fund established for that purpose. Much more  
34 eventually, the goal is to have guardian ad litem in the same status. That would require  
35 legislative funding.

36 Finally, the bill would require that in cases of persons with developmental disabilities, the  
37 reports of evaluation committees would be made in compliance with Supreme Court rules.  
38 This is both part of having more and more of the details of the more administrative side of  
39 C&G proceedings be governed by rule rather than statute, for greater flexibility and ease  
40 of updating, but also to correct some flaws in the current evaluation committee system.

41 Some specific language:

42 15-5-207, new 3(a) and (b):

43 (3)(a) As an alternative to appointing one (1) guardian for a minor, the court may

1 appoint no more than two (2) persons as co-guardians for a minor if the court finds:  
2 (i) The appointment of co-guardians will best serve the interests of the minor;  
3 and  
4 (ii) The persons to be appointed as co-guardians will work together  
5 cooperatively to serve the best interests of the minor.  
6 (b) If the court appoints co-guardians, the court shall also determine whether the  
7 guardians:  
8 (i) May act independently;  
9 (ii) May act independently but must act jointly in specified matters; or  
10 (iii) Must act jointly.  
11 This determination by the court must be stated in the order of appointment and in  
12 the letters of guardianship

13 Deleted existing (4) on temporary appointments, very short language (oral discussion), and  
14 replaced with the following:

15 (5) Prior to the appointment of a guardian:  
16 (a) The court may appoint a temporary guardian for the minor if it finds by a  
17 preponderance of evidence that:  
18 (i) A petition for guardianship under this section has been filed, but  
19 a guardian has not yet been appointed;  
20 (ii) The appointment is necessary to protect the minor's health,  
21 safety or welfare until the petition can be heard; and  
22 (iii) No other person appears to have the ability, authority and  
23 willingness to act.  
24 (b) A temporary guardian may be appointed without notice or hearing if the  
25 minor is in the physical custody of the petitioner or proposed temporary  
26 guardian and the court finds from a statement made under oath that the  
27 minor may be immediately and substantially harmed before notice can be  
28 given or a hearing held.  
29 (c) Notice of the appointment of a temporary guardian must be given to  
30 those designated in subsection (2) of this section within seventy-two (72)  
31 hours after the appointment. The notice must inform interested persons of  
32 the right to request a hearing. The court must hold a hearing on the  
33 appropriateness of the appointment within ten (10) days after request by an  
34 interested person. In all cases, either a hearing on the temporary  
35 guardianship or on the petition for guardianship itself must be held within  
36 ninety (90) days of the filing of any petition for guardianship of a minor.  
37 (d) The temporary guardian's authority may not exceed six (6) months  
38 unless extended for good cause. The powers of the temporary guardian  
39 shall be limited to those necessary to protect the immediate health, safety  
40 or welfare of the minor until a hearing may be held and must include the care  
41 and custody of the minor.  
42 (e) A temporary guardian must make reports as the court requires.  
43 (6) When a minor is under guardianship:  
44 (a) The court may appoint a temporary guardian if it finds:  
45 (i) Substantial evidence that the previously appointed guardian is not  
46 performing the guardian's duties; and  
47 (ii) The appointment of a temporary guardian is necessary to protect  
48 the minor's health, safety or welfare.  
49 (b) A temporary guardian may be appointed without notice or hearing if the  
50 court finds from a statement made under oath that the minor may be

1 immediately and substantially harmed before notice can be given or a  
2 hearing held.

3 (c) Notice of the appointment of a temporary guardian must be given to  
4 those designated in subsection (2) of this section within seventy-two (72)  
5 hours after the appointment. The notice must inform interested persons of  
6 the right to request a hearing. The court shall hold a hearing on the  
7 appropriateness of the appointment within ten (10) days after request by an  
8 interested person.

9 (d) The authority of a previously appointed guardian is suspended as long  
10 as a temporary guardian has authority. The court must hold a hearing before  
11 the expiration of the temporary guardian's authority and may enter any  
12 appropriate order. The temporary guardian's authority may not exceed six  
13 (6) months unless extended for good cause.

14 (e) A temporary guardian must make reports as the court requires.

15 The other changes reflect the same general provisions as above for adults and those with a  
16 developmental disability. **LAW**

17 (c) **Parental Delegation** This is complicated and therefore much of this will be oral. The parental  
18 delegation statute was first written, by my Legislative Committee in the Taxation, Probate & Trust  
19 Section of the Idaho Bar in 1991 for Desert Storm to allow deploying parents to temporarily  
20 delegate parental rights to someone, usually a close relative, while gone. It expanded over the  
21 years to be used by grandparents and others when a parent dumped off a child on another family  
22 member as they exited the State. Was considerably amended to provide details, time periods, etc.  
23 Has been very successful. Last year, TEPI had two bills (SB 1374 and SB 1375) to expand the  
24 existing statute by:

25 (1) providing for a Springing Delegation, so could do in advance, triggered by limited events,  
26 such as incarceration or incapacity. A number of safeguards were written in, including notice  
27 requirements etc. (1375)

28 (2) providing the ability in limited circumstances to obtain Letters of Guardianship, again  
29 with safeguards and procedures. (1374)

30 However, another proposed bill, HB 573, using the parental delegation statute, added new law to  
31 allow non-profit organizations to "facilitate voluntary partnerships between families". It would be an  
32 end run around the foster care system and the C&G system, using volunteer host families,  
33 apparently obtained through the non-profit, who would be trained, monitored, and background  
34 checked by the non-profit. All of this, with a number of other bills on the Foster Care System, raised  
35 serious questions. So the end result was the none of the bills passed and a House Concurrent  
36 Resolution 59 authorized a committee to study the foster care and C&G systems and Code  
37 provisions.

38 So this year, TEPI again presented a bill to provide for the Springing Delegation. At print hearing,  
39 there was a request to expand our bill to cover language being added by HB 148 (discussed later)  
40 re co-guardians etc. So I rewrote the bill into a new bill, working with Senator Davis on the  
41 language, to coordinate with HB 148. However, when the hearing came, Sen. Davis was absent  
42 on other business, and the bill basically died. Why I have no clue and the committee didn't seem  
43 to be able to express any reason. The original bill and the rewritten bill had no opposition and was  
44 widely disseminated and reviewed by a number of stakeholders, including the court system. The  
45 rest of this discussion is oral.

46 (d) **Attorney Fees** HB 97 This bill amends section 12-121, regarding the award of attorney fees in  
47 civil cases. On September 28, 2016, in a split decision, the Idaho Supreme Court issued a decision  
48 in the case of Hoffer v. Shappard, which changed a decades old interpretation of section 12-121.

1 As originally drafted in 1976, the section gave the courts discretion to award attorney fees to  
2 prevailing parties. In 1979, the Supreme Court took that discretion and by court rule limited the  
3 award of attorney fees to cases which were brought, pursued or defended frivolously, unreasonably  
4 or without foundation. The effect was that litigants for the most part have paid their own attorney  
5 fees unless the court found the claim or defense was brought or pursued frivolously, unreasonably  
6 or without foundation, or unless attorney fees were otherwise provided for by a different statute or  
7 by contract. This structure has worked to protect citizens' access to the courts, while penalizing  
8 those who sue or defend frivolously. The Court in Hoffer prospectively rescinded its own rule,  
9 effective March 1, 2017, and applied a new interpretation of section 12-121 to award attorney fees  
10 to the prevailing party "when justice so requires." This places the award of attorney fees in the  
11 discretion of each judge without, resulting in uncertainty to litigants, and potentially chilling access  
12 to courts due to that uncertainty, and promoting judge shopping. The proposed amendment  
13 restores the rule of awarding attorney fees when cases are brought, pursued or defended  
14 frivolously, unreasonably, or without foundation, and places it in statute. So we are back to where  
15 we started, although I remember, through a fog, the 1970-76 situation. **LAW** effective on signing,  
16 which was March 1, 2017.

17 (h) **Faith Healing** SB 1182 Tons of debate about this in the public. The statement of Purpose says:

18 This legislation amends Section 16-1602, Idaho Code to strike and add language to the  
19 definition of "neglected" child, and to defer defense of religious practice to Section 73-402,  
20 Idaho Code and to consider the wishes of the child; amends Section 16-1627, Idaho Code  
21 to strike language for authorization of emergency medical treatment, and to defer defense  
22 of religious practice to Section 73-402, Idaho Code. These changes will allow the State, in  
23 those instances where a parent has been advised and educated about their child's declining  
24 health, or in instances where the parents were not genuinely treating by spiritual means  
25 through prayer, to be properly investigated and perhaps prosecuted.  
26 Defeated in Senate 11-24

27 (i) **Idaho Unborn Infants Dignity Act** SB 1196 Makes some technical changes to clarify regarding  
28 research projects and grants that were undertaken or made before July 1, 2016. **LAW**.

## 29 **2. MEDICAID, COUNTY INDIGENCE, HEALTH CARE, INSURANCE**

30 (a) **Medicaid Expansion** Nope.

## 31 **3. TAX**

32 I am not currently going to have any comments on all the various appropriation bills for transportation,  
33 school funding, repeal of sales tax on groceries, etc. even though those may cause tax consequences,  
34 since that will be analyzed to death in the media.

### 35 (a) **PROPERTY TAX**

36 (1) **Property Tax Relief - Roth distributions** HB 31 Excludes nontaxable Roth individual  
37 retirement account distributions from income calculation for determining property tax relief eligibility.  
38 **LAW**

### 39 (b) **INCOME TAX:**

40 (1) **Compliance bill** HB 26 Simply updates the reference in 63-3004 from 2016 to 2017. No other  
41 change from last year. **LAW**



1 (2) **Reduce Income Tax Rates** HB 330 Introduced late and never got off the ground.

2 (c) **SALES AND OTHER TAXES**

3 (1) **Sales tax credit** HB 29 Back in 2008, language was added to the sales tax credit on income  
4 tax returns to suspend the scheduled increase if certain conditions were met. But the Grocery  
5 Credit has reached the maximum amount allowed, so this bill repeals the limitation provision. But  
6 stayed tuned to whether Governor vetoes the repeal of the sales tax on groceries which also  
7 removes the Grocery Credit. **LAW**

8 (2). **Time limit for motor vehicle purchased by nonresident** HB 32 Increases to 90 (was 60)  
9 days the amount of time a tax-exempt motor vehicle purchased by a non-resident may be used in  
10 Idaho, to match the use tax statute. **LAW**

11 (3) **Repeal Sales Tax on Groceries** HB 67 as twice amended. Lots in the press about this, so just  
12 the basics. This bill repeals the sales tax on food sold for human consumption, using the definition  
13 of food products provided under the Federal Supplemental Nutrition Assistance Program (SNAP) -  
14 formerly know as food stamps. To offset the reduction in General Fund revenue, the bill repeals the  
15 Grocery Tax Credit. For Fiscal Year 2019, revenues to the State General Fund are estimated to  
16 be reduced by \$52.8 million (this includes the loss in revenue from sales tax collections on food,  
17 and the offset to the General Fund from repealing the Grocery Tax Credit), while revenue sharing  
18 to local units of government are estimated to be an additional \$26.2 million in revenue reduction  
19 to the State General Fund. Local revenue sharing distribution is adjusted to compensate for this tax  
20 policy transition. Passed, but Governor Otter had in past expressed opposition and possible veto,  
21 but waiting. Governor candidates have generally supported the repeal.

22 **4. MISCELLANEOUS**

23 (1) **Abortion** Relative quiet this year. SB 1131 to require certain information about abortion to be  
24 posted on the Dept of H&W website was printed but never heard. HB 250 removes current  
25 language: (a) that a physician has to examine in person a woman to whom an abortifacient is  
26 issued and make certain determinations; and, (b) forbidding telehealth services for abortion. Settles  
27 a US Court Case for District of Idaho (Planned Parenthood of the Great Northwest and the  
28 Hawaiian Islands v. Wasden, et al., Case No. 1:15-cv-00557-BLW) where court had stated would  
29 hold language unconstitutional unless legislature changed it this session. Passed, on Governor's  
30 desk. HB 250 **LAW**.

31 (2) **Hybrid and Electric Vehicles fees** HB 20. Existing law has an electric vehicle fee of \$140 at  
32 registration, while a plug-in hybrid had a \$75 fee. There had been complaints about typical  
33 all-gasoline hybrid vehicles, which derives all of its miles from gasoline, the same way a traditional  
34 vehicle does. The owners of all-gasoline hybrids already pay the appropriate gas tax at the pump.  
35 A plug-in hybrid, however, uses the electrical grid as one of its power sources, thus avoiding paying  
36 its fair share of gas tax. The bill removes the additional registration fee for all-gasoline hybrid  
37 vehicles while continuing to charge the fee for plug-in hybrids. The bill also exempts neighborhood  
38 electric vehicles from the electric vehicle fee, so you can scoot around the neighborhood in your  
39 electric golf cart without an extra fee. An emergency clause was included, so effective upon  
40 signature by the Governor, February 28, 2107.

41 Interestingly, the fiscal note states that: "This change will result in a revenue reduction of  
42 approximately \$1 million. There is no fiscal impact to the general fund. In addition, the Idaho  
43 Department of Transportation will require \$20,000 to cover the programming costs required as a  
44 result of this change." So it will cost about \$1 million but that is not a fiscal impact? **LAW**

1 (3) **Secret Societies in public schools** HB 36 Didn't know this law existed. Chapter 19, Title 33  
2 prohibits the creation of fraternities, sororities, or secret societies in public schools and makes it  
3 unlawful to establish a fraternity, sorority or other secret society whose membership is comprised  
4 in whole or in part of pupils enrolled in the public elementary or secondary schools or to solicit  
5 students to become a member of such organization. Much of the language in this chapter is  
6 antiquated and outdated, additionally, federal regulations prohibit the discrimination of students,  
7 which historically the types of groups this chapter was targeted at did, making this chapter no longer  
8 necessary. The bill repeals this chapter of Idaho Code. **LAW**

9 (4) **ABLE Accounts** HB 41 The federal Achieving a Better Life Experience (ABLE) Act, public law  
10 133-295, 26 U.S.C. 529A, provides that a state may establish a program under which certain  
11 individuals with disabilities may open accounts to save money for qualified disability expenses, such  
12 as those relating to education, housing, transportation, employment training and assistive  
13 technology. Under the Act, these accounts are to be disregarded in determining an individual's  
14 eligibility for federal assistance programs, including Medicaid and supplemental security income.  
15 Although this bill does not provide for Idaho to establish an ABLE account program, eligible Idaho  
16 residents can open these accounts in other states having such a program, a bill passed last  
17 session. This bill provides for disregarding ABLE accounts when determining an Idaho resident's  
18 eligibility for a state or local assistance program or need-based state or local grant so long as the  
19 ABLE account and the activity related to it would be disregarded in determining the applicant's  
20 eligibility for a federal assistance program. This bill also establishes, subject to appropriation, a  
21 function to provide individuals with disabilities, and those assisting them, technical assistance  
22 relating to the ABLE Act. This technical assistance is to include information and assistance relating  
23 to the ABLE Act. This technical assistance is to include information and assistance in setting up  
24 ABLE accounts in other states and providing information related to financial literacy. Some battle  
25 in the House, but relatively easy in the Senate. **LAW**

26  
27 (5) **Licensure of Sign Language Interpreters** HB 46 Battle in House and squeaked through  
28 Senate 18-16. Relating to sign language interpreting, this bill creates a licensing system and  
29 licensing requirements for sign language interpreters. At least 13% of the general population has  
30 a variety of types of hearing loss, which affects 203,785 Idaho citizens. Out of that total, 2.42% of  
31 the population with hearing loss (34,486) experience severe to profound hearing loss. They are  
32 unable to readily understand speech due to the extent of their hearing loss, but instead rely on a  
33 visual mode of communication. These deaf people are at a distinct disadvantage with incomplete,  
34 incorrect, and unethically-delivered information, often by the hands of non-qualified interpreters. A  
35 professional and qualified interpreter is required to facilitate the communication and information,  
36 ensuring that it is fully accessible and understandable by the customers and the service providers.  
37 It is a quality control measure to ensure that deaf and hearing consumers receive appropriate  
38 interpreting services, which may reduce general threats to the health and safety of deaf people  
39 statewide. Licensing professional interpreters also minimize the liability of hiring entities in providing  
40 services to deaf consumers. It also ensures equal access to education, employment opportunities,  
41 and health care for deaf children and adults. Recognizing that using sign language interpreters can  
42 profoundly affect the lives of people of the state of Idaho, it is the purpose of this bill to set  
43 standards of qualification for those who engage in the practice of sign language interpreting and  
44 protect the public from unprofessional conduct in the practice of sign language interpreting. **LAW**

45 (6) **Fees For Business Filings** HB 54 This amendment corrects oversights that were included in  
46 the 2015 enactment of the Idaho Uniform Business Organizations Code. These corrections include  
47 clarifying fee names, including missed fees, and removing fees that are no longer charged. **LAW**

48 (7) **Unattended Motor Vehicles** HB 78 The wording of the Unattended Motor Vehicle code written  
49 in years past prohibits a driver, perhaps unintentionally, from remotely starting a vehicle. The

1 wording also appears to prohibit a driver from starting a vehicle ahead of time to warm up the  
2 interior in cold weather. This bill would allow such activities. It also clarifies that the code does not  
3 apply to vehicles on private property. The exact wording, in case you are worried about it:

4 49-602. UNATTENDED MOTOR VEHICLE. No person driving or in charge of a motor  
5 vehicle shall permit it to stand unattended without first ~~stopping the engine, locking the~~  
6 ~~ignition, removing the key from the ignition~~ locking the vehicle if the engine is running,  
7 effectively setting the parking brake and, when standing upon any grade, turning the front  
8 wheels to the curb or side of the highway. The provisions of this section do not apply to  
9 motor vehicles on private property. **LAW**

10 (8) **Concealed Weapons** HB 93 This legislation amends Section 18-3302 to allow any person who  
11 is a current member of the armed forces of the United States, even if not an Idaho resident, to carry  
12 a concealed handgun. Last session this part of the statute was amended to allow concealed carry  
13 without a permit in much broader situations., but was limited to Idaho residents. **LAW.**

14 (9) **Sharia Law etc.** HB 94 The annual attempt to prohibit use of foreign law in Idaho courts, mostly  
15 aimed at Sharia law, was printed but never heard.

16 (10) **Motorcycle Profiling** HB 123 A most interesting situation. Essentially provides that law  
17 enforcement is not to engage in motorcycle profiling. Passed House unanimously. I was there for  
18 the Senate hearing (they saved a seat for me in front because I was not about to tell some 6' 4" 280  
19 pound dude in full motorcycle regalia, including death heads etc. to get up and move - I guess I was  
20 profiling). Was packed and overflow to adjacent room. Senate defeated the bill on the floor 13-22.

21 (11) **Maximum Passing Speeds** HB 132 This bill changes the Idaho Motor Vehicle Law 49-654.  
22 It provides exception to the Basic Rule and Maximum Speed Limits while passing another vehicle  
23 in a 55 or higher MPH posted speed zone. Current law provides no exception or leniency of a  
24 speed above the posted speed limit during or immediately following a pass. This is a common  
25 occurrence on two lane roads. This exception is limited to highways divided by two lanes, with one  
26 lane of traffic in each direction while passing on the left. The amendment allows for a driver of a  
27 passenger car, motorcycle or pickup truck, not towing any other vehicle, additional 15 MPH during  
28 the pass and a return to the posted limit within a practicable distance. All other basic rules of safety  
29 while passing remain in force. The amendment is not applicable in construction zones. **LAW**

30 (12) **Voter ID** HB 149 You can use a license to carry concealed weapons as ID. **LAW** effective  
31 upon Governor signing on March 24, 2017.

32 (13) **Change of Name** HB 201 Proposed by the Supreme Court to correct and clarify provisions in  
33 the statutes regarding name changes. First, it clarifies who can petition for a name change for a  
34 minor (parent or guardian, dropping the old "some near relative or friend").. It also provides that an  
35 emancipated minor may petition for a name change. Second, it specifies the relatives of the minor  
36 who must be listed in the name change petition and who must be given notice of the hearing on the  
37 name change (mostly the other parent if only one petitions). This will provide a clear procedure for  
38 changing the name of a minor and will ensure that persons with an interest in such a name change  
39 will have the opportunity to bring their concerns to the attention of the court. Finally, it updates the  
40 provision for publishing notice of a hearing on a name change petition (must be newspaper  
41 "designated by the court as most likely to give notice in the county where the person whose name  
42 is proposed to be changed resides". **LAW**

43 (14) **Personal Delivery Devices on Sidewalks** HB 204 This legislation defines "personal delivery  
44 device" and "personal delivery device operator." It provides an exception for personal delivery

1 device in the definition of motor vehicle, and clarifies that personal delivery devices may operate  
2 on sidewalks. The legislation gives cities, counties, and highway districts the authority to adopt  
3 regulations for the safe operation of personal delivery devices. Finally, it adds a new section of code  
4 that lists requirements for and restrictions on personal delivery devices. The definition of the device:

5 "Personal delivery device" means an electrically powered device that is operated on  
6 sidewalks and crosswalks and is intended primarily to transport property; weighs less than  
7 eighty (80) pounds, excluding cargo; has a maximum speed of ten (10) miles per hour; and  
8 is equipped with technology to allow for operation of the device with or without the active  
9 control or monitoring of a natural person. A personal delivery device shall not be defined as  
10 a vehicle or motor vehicle in any section of the law, unless expressly so stated. **LAW**

11 (15) **Recording Costs** HB 205 This bill amends I.C. § 31-3205 to change recording fees for certain  
12 types of instruments that do not exceed 30 pages to a flat fee rather than a fee per page recorded.  
13 This bill will simplify the real estate settlement process for title companies, Realtors, lenders and  
14 consumers by providing accurate recording and closing costs for consumers. The specific  
15 language, which you need to be aware of since it applies to all such recordings:

16 For recording each of the following types of instruments, provided such instrument is thirty  
17 (30) pages or less:

- 18 (i) Deeds, grants and conveyances of real property ..... \$15.00
- 19 (ii) Trust deeds or mortgages of real property, including fixture filings, security  
20 agreements and assignments of leases and rents if contained within the same  
21 instrument for recording .... \$45.00
- 22 (iii) Reconveyances of trust deeds, including a substitution of trustee if contained  
23 within the same instrument for recording, and releases of mortgages  
24 ..... \$15.00
- 25 (iv) Powers of attorney ..... \$25.00

26 **LAW**

27 (16) **Notaries** HB 209 21 page of bill and there will be education in the future, so only the very  
28 basics. This bill repeals the current notary statutes and introduces a completely new notary act,  
29 "Revised Uniform Law on Notarial Acts", utilizing a draft that was originally provided by the Uniform  
30 Law Commission. The primary purpose of this new Act is to provide notaries public with the option  
31 to use technology to perform notarial acts. This Act also requires the Secretary of State to provide  
32 a course of education for applicants and notaries who wish to use it. **LAW** effective July 1, 2019,  
33 so a while to get it figured out.

34 (17) **Secure Treatment Facility Act** HB 222 With the deinstitutionalization of clients and the falling  
35 census at the Southwest Idaho Treatment Center (SWITC) the mission of the institution has  
36 changed from an Intermediate Care Facility to a stabilization facility that should have levels of  
37 secure and less secure placement according to client needs. This bill will allow for a wing of the  
38 facility to have secured features protecting more vulnerable clients and the community. Idaho courts  
39 have expressed the need for a short term placement option for individuals with developmental  
40 disabilities who pose a threat to the community during the pendency of their criminal cases. Will  
41 require remodeling of existing facility but not a new structure. **LAW**

42 (18) **Funeral Processions** SB 1023 This is one of the bills that the Supreme Court has  
43 recommended in its annual report to the Governor concerning defects or omissions in the law as  
44 required under article V, section 25 of the Idaho Constitution. Chapter 27 of title 49 contains  
45 provisions concerning how funeral processions are to be conducted, and also specifies that  
46 pedestrians and drivers must yield the right-of-way to funeral processions, and may not interfere

1 with them. I.C. § 49-2706 states that a violation of the provisions of the chapter is a misdemeanor  
2 punishable by a fine of up to \$100; there is no jail time for this offense. This bill would make these  
3 offenses traffic infractions, unless the interference is knowing and intentional, in which case it would  
4 be a misdemeanor punishable by both a fine and a possible jail sentence. This offense is rarely  
5 charged; there were only two such charges in 2016. **LAW**

6 (19) **Health Savings Accounts** SB 1046 Would provide that a high deductible health plan must be  
7 made available to state employees on an optional basis and that the Dept of Administration must  
8 make an annual deposit in a health savings account. **VETOED** March 24, 2017.

9 (20) **REAL ID** SB 1069 The implementation of the Federal Real ID Act in Idaho was approved in  
10 2016 to allow Idaho Driver Licences to be used as ID to get on planes etc. This legislation is to  
11 assure the citizens of Idaho that they will be offered the option of a Real ID compliant or  
12 noncompliant drivers license or identification card, be informed of the different purposes of a  
13 compliant and noncompliant license and be notified of what documents will be retained by the  
14 department. **LAW**

15 (21) **DNA Database** SB 1088 I sat through this very long and sometimes emotional hearing. Basics  
16 are that it amends law to provide that registered sex offenders must submit DNA samples, and to  
17 set up multiple procedures. Allows national or other state searches to look at all Idaho resident sex  
18 offenders. There are an estimated 300 individuals each year that move to Idaho who have been  
19 convicted of a crime that requires them to register as a sex offender in both the state they have  
20 moved from, as well as, in Idaho. However, these sex offenders are not currently required to submit  
21 a DNA sample in Idaho under the DNA Database Act, section 19-5506, Idaho Code. This bill  
22 amends Idaho's DNA Database Act, section 19-5506, to require DNA collection from any person  
23 required to register pursuant to the Sexual Offender Registration Act, sections 18-8304 and  
24 18-8410, Idaho Code. There are also currently 1,535 sex offenders on the Idaho Sex Offender  
25 Registry that have not had DNA collected. This amendment provides for a verification process to  
26 section 19-5507(9), Idaho Code, to ensure that the DNA has been collected in Idaho. Further, a  
27 collection facility will not be required to collect a DNA sample if one already exists in the Idaho DNA  
28 database. This verification will eliminate costly duplicate sample collection and ensure that a  
29 sample is collected from each individual on the Idaho Sex Offender Registry. On Governor's desk.

30 (22) **Renewal of Judgments** SB 1092 Amends existing law to provide that a renewed judgment  
31 may be recorded in the same manner as the original judgment, and the lien established thereby  
32 shall continue for 10 years from the date of the renewed judgment. **LAW** upon signature March 27,  
33 2017.

34 (23) **Judge's Salaries** SB 1108 This bill includes a base increase for all judicial officers of \$3,200,  
35 and restores appropriate salary differentials between judges and justices serving at different levels  
36 of the judiciary. It sets the annual salaries of justices of the Supreme Court at \$146,700, an  
37 increase of \$6,700 over their current salaries. The difference between salaries of Supreme Court  
38 justices and judges of the Court of Appeals is decreased from \$10,000 to \$9,000, resulting in a  
39 salary increase for Court of Appeals judges from \$130,000 to \$137,700. The difference between  
40 salaries of Court of Appeals judges and district judges is increased from \$1,500 to \$6,000, resulting  
41 in an increase in the salary of district judges from \$128,500 to \$131,700. The difference between  
42 salaries of district judges and magistrate judges remains at \$12,000, resulting in an increase in  
43 salaries of magistrate judges from \$116,500 to \$119,700. In addition, the bill increases the  
44 additional salary provided to the Chief Justice, the Chief Judge of the Court of Appeals, and  
45 Administrative District Judges from \$2,000 to \$3,000. **LAW**

1 (24) **Forcible Detainer** SB 1120 The current law provides that a property owner who rents a home  
2 and has a tenant that does not pay rent under a lease will have a hearing or trial on the issue within  
3 twelve days of filing the complaint and service of the summons. This bill provides a property owner  
4 who has someone take up residence in the owner's property without the owner's awareness or  
5 permission the ability to have an expedited trial within 72 hours to determine whether the person  
6 must vacate the premises. Was a lot in the papers about this, and it is a big problem in other states.  
7 **LAW.**

8 (25) **Wage Garnishments** SB 1202 This proposal amends existing law regarding wage  
9 garnishment and associated court, service, collection and enforcement procedures. It consolidates  
10 existing statutory titles and chapters governing civil suits regarding wage garnishments into a single  
11 title 7 new chapter 11. The bill empowers the Idaho Supreme Court to establish consistent forms  
12 for interrogatories and claims of exemption from wage garnishment. It requires financial institutions  
13 to review funds in accounts to avoid disturbing federal or state protected funds of an account  
14 holder. Clarifies the process for debtors to file claims of exemption protecting certain assets against  
15 wage garnishment. Requires county commissioners to adopt a fee for the delivery of a wage  
16 garnishment court order and writ by a county sheriff, and to post the sheriff fee's methodology on  
17 the county website and submit it to the Supreme Court for posting on the state website. **LAW**

## 18 **5. LICENSE PLATES** Every year I think we are done with all these, but no.

19 (a) Three years ago SB 1243 provided that, effective January 1, 2013, and going forward, specialty  
20 plates will be limited to State and other public agencies or foundations supporting the interests of  
21 State and/or local government, but outside groups promptly figured out how to get around that. Two  
22 years ago HB 169 amended §49-402D to clarify that legislation regarding specialty license plates  
23 is not subject to rejection or approval by the Idaho Transportation Department, and that the  
24 legislature can pass such legislation before, during, or after the application process, but that the  
25 plates will not be printed until all the prerequisites to the Department of Transportation specified in  
26 section 2 of §49-402D have been met.

27 (b) **No Front License Plate** HB 110 The annual attempt to allow only a back plate, but this time  
28 limited to motor vehicles originally manufactured without a bracket etc for front license plate. Failed  
29 in House.

30 (c) **Fees For License Plates** HB 111 Lot of history behind it, but the bottom line is that the state  
31 is now losing money on each plate and the reserve in the Department of Transportation is  
32 dwindling. So bill increases plate fee by 75 cents, on close to a million plates. **LAW.**

33 (d) **Idaho Rotary International** SB 1070 Would have made a Idaho Rotary International specialty  
34 license plate. Passed the House, never heard in Senate. As a Kiwanian with 42 years perfect  
35 attendance, I hereby give Rotary a raspberry.

36 (e) **Visibility** SB 1071 The purpose of the bill was to add guidelines for the visibility of license plates  
37 which are partially obscured by cargo or acceptable cargo transport devices - essentially trailer  
38 hitches, wheelchair lifts or carriers, trailers, bike or luggage racks, or other cargo-carrying devices.  
39 Printed but never heard.

## 40 **ISSUES FOR NEXT YEAR**

41 For TEPI, the first big question is where is C&G going? I am an Observer on the Uniform Laws Commission  
42 committee revising Chapter 5 of the Probate Code (C&G). Final version, July 2017, with final adoption with  
43 Comments in October. The proposed language is quite different in many areas from our existing law, since

- 1 it was based on the 1996 revision that went nowhere. I have made some suggestions which have been
- 2 integrated. Whether this will proceed through TEPI or through the Idaho Supreme Court C&G Committee
- 3 remains to be decided. Will require vast amount of time commitment.
  
- 4 TEPI has been studying the whole 2010 UPC, except for Chapter 5, in comparison to our existing statutes
- 5 to see if want to adopt more of the UPC as it now reads nationally. Whether that continues or not is another
- 6 question that remains to be decided. Has already been a great amount of time spent and probably several
- 7 years left to get to a final draft. Whether this will continue now, or later, or never, will be decided by TEPI.
  
- 8 The third question is the future activities of TEPI. Oral discussion.