IN THE SENATE

SENATE BILL NO. 1400, As Amended

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO TRANSFER OF REAL PROPERTY; AMENDING CHAPTER 3, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-307A, IDAHO CODE, TO PROVIDE A STATEMENT OF INTENT, TO PROVIDE DEFINITIONS, TO PROVIDE FOR A REPORT OF TRANSFERS AND CHANGE IN OWNERSHIP RECORDS, TO PROVIDE FOR A PROPERTY TRANSFER CERTIFICATE, TO PROVIDE FOR EXEMPTIONS FROM DISCLOSURE OF VALUE, TO PROHIBIT DISCLOSURE OF INFORMATION AND TO PROVIDE PENALTIES; AND AMENDING SECTION 9-340D, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO EXEMPT FROM DISCLOSURE PROPERTY TRANSFER CERTIFICATES.

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

SECTION 1. That Chapter 3, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 63-307A, Idaho Code, and to read as follows:

63-307A. CHANGE OF OWNERSHIP -- TRANSFER OF REAL PROPERTY -- DISCLOSURE. (1) The purpose of this act is to obtain residential real estate sales price data which may be utilized to assist in real property valuation assessments for the purpose of uniformity of assessment as provided in the constitution of the state of Idaho. It is the intent of the legislature that the demand for individual privacy be respected and protected in the valuation process. Appropriate penalties for violations shall be provided in this section. Further, it is the intent of the legislature to not impose any form of a real estate transfer tax or excise tax and, provided further, that no such sales price data collected in accordance with this section shall be utilized for the purpose of establishing or collecting an excise tax or a real estate transfer tax by the state or any political subdivision thereof.

(2) As used in this section:

(a) "Property transfer certificate" means a form designed by the state tax commission required for statewide use by all county assessors, and which requires the person making the certification to declare the sales price.

(b) "Purchaser" means one who has become an owner of real property through taking title by deed, grant or recorded contract of sale of real property for an agreed upon sales price less or net the value of personal property.

(c) "Real property" means single family residences, residential townhouses, condominiums or residential units up to a fourplex.

(d) "Sales price" means the amount of the sales price attributable to real and personal property therefor paid or to be paid, including the amount of any lien or liens thereon.

(e) "Transfer" means an act of the parties or of the law in which title to real property or ownership in real property is conveyed from one person to another and that a change in ownership on the assessor's records is required.

(3) All transfers of real property, including the transfer of a partial interest, executed by the purchaser after January 1, 2009, shall be reported and delivered to the office of the county assessor in the county in which the real property is located on a property transfer certificate as defined in this section. All property transfer certificates shall be delivered to the office of the county assessor within thirty (30) days from the closing of the transfer of real property.

(4) The purchaser, who is a party to the real property transfer, shall be solely responsible to have delivered to the county assessor within thirty (30) days from the closing of the transfer of real property, a property transfer certificate declaring the consideration paid for the real property transferred or claiming an exemption from disclosure.

(5) The property transfer certificate required by this section shall not apply to:

(a) An instrument executed by the purchaser prior to January 1, 2009.

(b) A transfer between members of a family related within the second degree of consanguinity.

(c) A transfer by trustee's deed of reconveyance, a trustee's deed after a nonjudicial foreclosure, deed in lieu of foreclosure or sheriff's deed.

(d) A transfer between related legal entities where the original owner still has ultimate ownership and control over the residential real property.

(e) A transfer as a result of eminent domain proceedings pursuant to chapter 7, title 7, Idaho Code.

(6) The certificate required by this section and the information therein shall be held confidential by the county assessor, not to be disclosed except as follows:

(a) To Idaho licensed or certified appraisers;

(b) To Idaho real estate licensees;

(c) To the Idaho state tax commission;

(d) To a person owning at least a five percent (5%) ownership in the property;

(e) To the board of equalization, the board of tax appeals, and the Idaho system of courts having jurisdiction over property tax matters or to the appellant taxpayer who has filed an appeal concerning property taxes or assessments at any of these appellate levels. Provided however, summaries, analyses and evaluations of data drawn from the certificates are not confidential.

(7) (a) If an Idaho court finds that any public official, as defined in section 59-703, Idaho Code, has willfully or intentionally disclosed information protected from disclosure by subsection (6) of this section, a civil penalty may be assessed by the court against that official in an amount not to exceed one thousand dollars ($1,000) which shall, upon collection, be paid into the county's general fund, or in the case of Idaho state level officials, as the court may direct.

(b) A purchaser who willfully makes a false statement on the certificate declaring the consideration paid for the real property transferred, or who claims an exemption from disclosure knowing that the transfer is not one in which an exemption applies, shall be guilty of a misdemeanor. Failure, by the purchaser, to deliver the property transfer certificate to the office of the county assessor within thirty (30) days from the closing of the transfer shall be guilty of a misdemeanor and shall be fined not in excess of three hundred dollars ($300).

SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho

department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections

(1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor containing information showing the income and expenses of a taxpayer, which information was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.

(25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

(a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;

(b) The release of the test results is required by state or federal law; or

(c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.

(2~~5~~6) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.

(2~~5~~7) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.

(28) Property transfer certificates filed with the county assessor pursuant to section 63-307A, Idaho Code.