

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 461, As Amended in the Senate

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6-303,  
2 IDAHO CODE, TO PROVIDE NOTICE OF A CERTAIN ACTION AND TO MAKE A TECHNICAL  
3 CORRECTION; AMENDING SECTION 6-311C, IDAHO CODE, TO REVISE A FORM OF  
4 EXECUTION; AND AMENDING SECTION 6-316, IDAHO CODE, TO PROVIDE FOR CERTAIN  
5 PROCEDURES UPON A FINDING IN FAVOR OF A LANDLORD AND TO PROVIDE THAT  
6 A COURT MAY AWARD CERTAIN COSTS AND EXPENSES.  
7

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

9 SECTION 1. That Section 6-303, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 6-303. UNLAWFUL DETAINER DEFINED. A tenant of real property, for a  
12 term less than life, is guilty of an unlawful detainer:

13 1. When he continues in possession, in person or by subtenant, of the  
14 property, or any part thereof, after the expiration of the term for which it  
15 is let to him, without the permission of his landlord, or the successor in  
16 estate of his landlord, if any there be; but in case of a tenancy at will, it  
17 must first be terminated by notice, as prescribed in the civil code.

18 2. Where he continues in possession, in person or by subtenant, with-  
19 out permission of his landlord, or the successor in estate of his landlord,  
20 if any there be, after default in the payment of rent, pursuant to the lease  
21 or agreement under which the property is held, and three (3) days' notice, in  
22 writing, requiring its payment, stating the amount which is due, or possession  
23 of the property, shall have been served upon him, and if there be a sub-  
24 tenant in actual occupation of the premises, also upon such subtenant. Such  
25 notice shall also notify the tenant that if a court enters judgment against  
26 him, then he will have seventy-two (72) hours, if he is a residential ten-  
27 ant, and seven (7) days, or longer if granted by the court, if he is a commer-  
28 cial tenant or a tenant with a tract of land five (5) acres or more, to remove  
29 his belongings from the premises before the landlord may remove and dispose  
30 of such property pursuant to section 6-316, Idaho Code. Such notice may be  
31 served at any time within one (1) year after the rent becomes due. In all  
32 cases of tenancy upon agricultural lands, where the tenant has held over and  
33 retained possession for more than sixty (60) days after the expiration of his  
34 term without any demand of possession or notice to quit by the landlord, or  
35 the successor in estate of his landlord, if any there be, he shall be deemed  
36 to be holding by permission of the landlord, or the successor in estate of his  
37 landlord, if any there be, and shall be entitled to hold under the terms of  
38 the lease for another full year, and shall not be guilty of an unlawful de-  
39 tainer during said year, and such holding over for the period aforesaid shall  
40 be taken and construed as a consent on the part of a tenant to hold for another  
41 year.

1           3. Where he continues in possession in person, or by subtenants, after  
2 a neglect or failure to perform other conditions or covenants of the lease or  
3 agreement under which the property is held, including any covenant not to as-  
4 sign or sublet, than the one for payment of rent, and three (3) days' notice,  
5 in writing, requiring the performance of such conditions or covenants, or  
6 the possession of the property, shall have been served upon him, and if there  
7 be a subtenant in actual occupation of the premises, also upon such sub-  
8 tenant. Within three (3) days after the service of the notice, the tenant, or  
9 any subtenant in actual occupation of the premises, or any mortgagee of the  
10 term, or other person interested in its continuance, may perform the condi-  
11 tions or covenants of the lease, or pay the stipulated rent, as the case may  
12 be, and thereby save the lease from forfeiture: provided, if the covenants  
13 and conditions of the lease, violated by the lessee, ~~can not~~ cannot after-  
14 ward be performed, then no notice, as last prescribed herein, need be given  
15 to said lessee or his subtenant demanding the performance of the violated  
16 covenant or conditions of the lease. A tenant may take proceedings similar  
17 to those prescribed in this chapter, to obtain possession of premises let to  
18 an undertenant, in case of his unlawful detention of the premises underlet  
19 to him.

20           4. A tenant or subtenant, assigning or subletting, or committing waste  
21 upon, the demised premises contrary to the covenants of his lease, thereby  
22 terminates the lease, and the landlord, or his successor in estate, shall,  
23 upon service of three (3) days' notice to quit upon the person or persons  
24 in possession, be entitled to restitution of possession of such demised  
25 premises under the provisions of this chapter.

26           5. If any person is, or has been, engaged in the unlawful delivery, pro-  
27 duction or use of a controlled substance on the premises of the leased prop-  
28 erty during the term for which the premises are let to the tenant. For pur-  
29 poses of this chapter, the terms "delivery," "production," and "controlled  
30 substance" shall be defined as set forth in section 37-2701, Idaho Code.

31           SECTION 2. That Section 6-311C, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33           6-311C. FORM OF EXECUTION. The execution, should judgment of restitu-  
34 tion be rendered, may be in the following form:

35 STATE OF IDAHO                    )  
36    ss.  
37 County of ....                    )  
38 TO THE SHERIFF OR ANY CONSTABLE OF THE COUNTY:

39           WHEREAS, a certain action for the possession of the following described  
40 premises, to-wit:

.....  
.....  
41 lately tried before the above entitled court, wherein .... was plaintiff and  
42 .... was defendant, judgment was rendered on the .... day of ...., A.D.,  
43 ....., that the plaintiff .... have restitution of the premises, and also  
44 that he recover the costs and disbursements in the sum of \$ ....;

45           In the name of the State of Idaho, you are, therefore, hereby commanded  
46 to cause the defendant ~~and his goods and chattels~~ to be forthwith removed  
47 from the premises and the plaintiff is to have restitution of the same. In

1 the event the goods and chattels are not promptly removed thereafter by the  
2 defendant ~~you are, the plaintiff is~~ authorized and empowered to cause remove  
3 the same ~~to be removed to a safe place for storage. You are also commanded to~~  
4 ~~levy on the goods and chattels of the defendant, and pay the costs and dis-~~  
5 ~~bursements, aforesaid, and all accruing costs, and to pursuant to Section~~  
6 6-316(2), Idaho Code. Upon returning premises to the plaintiff, the sheriff  
7 will make legal service and due return of this writ.

8 WITNESS My hand and official seal (if issued out of a court of record)  
9 this .... day of ....., A.D., .....

10 .....  
11 Clerk of the District Court

12 SECTION 3. That Section 6-316, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 6-316. JUDGMENT -- RESTITUTION. (1) If, upon the trial, the verdict of  
15 the jury, or, if the case be tried without a jury, the finding of the court,  
16 be in favor of the plaintiff and against the defendant, judgment shall be  
17 entered for the restitution of the premises; and if the proceeding be for  
18 an unlawful detainer after neglect or failure to perform the conditions or  
19 covenants of the lease or agreement under which the property is held, or af-  
20 ter default in the payment of rent or based upon a finding that a landlord had  
21 reasonable grounds to believe that a person is, or has been, engaged in the  
22 unlawful distribution, production, or use of a controlled substance on the  
23 leased premises during the term for which the premises are let to the ten-  
24 ant, the judgment shall also declare the forfeiture of such lease or agree-  
25 ment. The jury, or the court, if the proceeding be tried without a jury,  
26 shall also assess the damages occasioned to the plaintiff by any forcible en-  
27 try, or by any forcible or unlawful detainer, alleged in the complaint and  
28 proved on the trial, and find the amount of any rent due, if the alleged un-  
29 lawful detainer be after default in the payment of rent or, after default,  
30 based upon a finding that a landlord had reasonable grounds to believe that  
31 a person is, or has been, engaged in the unlawful distribution, production,  
32 or use of a controlled substance on the leased premises during the term for  
33 which the premises are let to the tenant, and the judgment shall be rendered  
34 against the defendant guilty of the forcible entry, or forcible or unlawful  
35 detainer, for the amount of the damages thus assessed, and of the rent found  
36 due. When the proceeding is for an unlawful detainer after default in pay-  
37 ment of rent where the tract of land is larger than five (5) acres, and the  
38 lease or agreement under which the rent is payable has not by its terms ex-  
39 pired, execution upon the judgment shall not be issued until the expiration  
40 of five (5) days after the entry of the judgment, within which time the ten-  
41 ant, or any subtenant, or any mortgagee of the term, or other party inter-  
42 ested in its continuance, may pay into court, for the landlord, the amount  
43 found due as rent, with interest thereon, and the amount of the damages found  
44 by the jury or the court for the unlawful detainer, and the costs of the pro-  
45 ceeding, and thereupon the judgment shall be satisfied and the tenant be re-  
46 stored to his estate; but if payment as here provided be not made within the  
47 five (5) days, the judgment may be enforced for its full amount, and for the  
48 possession of the premises. In all other cases the judgment may be enforced  
49 immediately.

1       (2) If, upon the trial, the verdict of the jury or, if the case is tried  
2 without a jury, the finding of the court is in favor of the landlord and for  
3 the possession of the premises, a residential tenant shall have seventy-two  
4 (72) hours to remove his belongings from the premises, and a commercial ten-  
5 ant or a tenant with a tract of land five (5) acres or more shall have seven  
6 (7) days to remove his belongings from the premises; provided however, that  
7 upon a finding of good cause shown, a court may grant a commercial tenant  
8 longer than seven (7) days to remove his belongings. The landlord or his  
9 agents may deliver a writ of restitution or provide the sheriff with a copy  
10 of the writ of restitution and request that the sheriff deliver the writ. If  
11 requested by the landlord or his agents, the sheriff shall deliver a writ of  
12 restitution in a form as provided in section 6-311C, Idaho Code. After the  
13 time required for a tenant to remove his belongings under this subsection and  
14 three (3) days after the finding of the court, the sheriff shall restore pos-  
15 session of the premises to the plaintiff by causing immediate removal of the  
16 tenant, and the landlord or his agents may, subject to any security inter-  
17 ests under chapter 9, title 28, Idaho Code, remove and dispose of all re-  
18 maining property of the tenant, including any motor vehicle that may be re-  
19 moved pursuant to section 49-1806, Idaho Code, that remains on or about the  
20 premises without any further compensation or consideration to the tenant.  
21 Upon a finding of good cause shown, the court may award to the landlord rea-  
22 sonable costs and expenses not otherwise provided for in this chapter for the  
23 removal of property pursuant to this subsection and for restoration of the  
24 premises.