

IN THE SENATE

SENATE BILL NO. 1202

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GARNISHMENTS; AMENDING THE HEADING FOR CHAPTER 5, TITLE 8,
2 IDAHO CODE, TO REVISE THE CHAPTER DESCRIPTION; REPEALING SECTIONS 8-507
3 THROUGH 8-523, IDAHO CODE, RELATING TO GARNISHMENT, SERVICE OF WRIT
4 OF ATTACHMENT, EXECUTION OR GARNISHMENT, BANKS, SERVICE ON DEFENDANT
5 AND THIRD PARTIES BY SHERIFF, SERVICE ON DEFENDANT AND THIRD PARTIES
6 BY BANK OR DEPOSITORY INSTITUTION, FORMS, DOCUMENTS TO BE PROVIDED BY
7 PLAINTIFF, DUTIES OF SHERIFF, SERVICE AND MAILING CRITERIA, TIME COM-
8 PUTATION, LIABILITY OF GARNISHEE, EXAMINATION OF GARNISHEE, NOTICE
9 OF GARNISHMENT, DISCHARGE OF GARNISHEE, INTERROGATORIES SUBMITTED TO
10 GARNISHEE, ANSWER TO INTERROGATORIES, JUDGMENT AGAINST GARNISHEE, EX-
11 CEPTION TO ANSWER, AMENDMENT, DENIAL OF ANSWER, REPLICATION, TRIAL,
12 JUDGMENT AND EXECUTION, JUDGMENT ON ANSWER, COSTS AND ALLOWANCES, JUDG-
13 MENT AGAINST GARNISHEE, ALLEGATION OF ASSIGNMENT OF DEBT, PROCEDURE,
14 ALLEGATION OF ASSIGNMENT OF DEBT, TRIAL OF ISSUE, CLAIM OF EXEMPTION
15 BY DEFENDANT, LIABILITY OF GARNISHEE ON NEGOTIABLE PAPER, LIABILITY
16 OF OFFICERS AND EXECUTORS AS GARNISHEES, APPEALS IN GARNISHMENT PRO-
17 CEEDINGS AND APPLICATION OF PRECEDING SECTIONS; AMENDING CHAPTER 5,
18 TITLE 8, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 8-507, IDAHO CODE,
19 TO PROVIDE FOR APPLICABILITY; AMENDING SECTION 11-201, IDAHO CODE,
20 TO PROVIDE THAT CERTAIN PROPERTY IS LIABLE TO SEIZURE BY COURT ORDER;
21 REPEALING SECTION 11-202, IDAHO CODE, RELATING TO DEBTS OWING BY THE
22 STATE OF IDAHO SUBJECT TO EXECUTION OR GARNISHMENT AFTER JUDGMENT;
23 AMENDING SECTION 11-203, IDAHO CODE, TO PROVIDE THAT CERTAIN PARTIES
24 MAY MOVE THE COURT FOR AN ORDER OF EXEMPTION AND TO PROVIDE CORRECT
25 CODE REFERENCES; AMENDING SECTION 11-301, IDAHO CODE, TO PROVIDE COR-
26 RECT CODE REFERENCES; AMENDING SECTION 11-604, IDAHO CODE, TO REMOVE A
27 PROVISION REGARDING EXEMPTIONS FOR CERTAIN FUNDS; AMENDING TITLE 11,
28 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 7, TITLE 11, IDAHO CODE, TO
29 DEFINE TERMS, TO PROVIDE FOR WHEN A GARNISHMENT EXECUTION MAY BE MADE
30 RETURNABLE, TO PROVIDE FOR A RECORD IN AN EXECUTION BOOK, TO PROVIDE
31 THAT THE SHERIFF SHALL SERVE CERTAIN DOCUMENTS, TO PROVIDE PROCEDURES
32 FOR SERVICE OF DOCUMENTS, TO PROVIDE APPLICABILITY FOR CERTAIN LEVIES,
33 TO PROVIDE FOR CONTINUOUS GARNISHMENT BY AN EMPLOYER, TO PROVIDE FOR
34 THE SHERIFF'S RETURN ON CONTINUOUS WAGE GARNISHMENT AND CONTINUOUS GAR-
35 NISHMENT FOR CHILD SUPPORT, TO PROVIDE FOR DOCUMENTS TO BE PROVIDED BY A
36 JUDGMENT CREDITOR, DUTIES OF THE SHERIFF, SERVICE AND MAILING CRITERIA,
37 AND TIME COMPUTATION, TO PROVIDE FOR THE USE AND AVAILABILITY OF CERTAIN
38 FORMS, TO PROVIDE THAT INTERROGATORIES SHALL BE DELIVERED TO A GAR-
39 NISHEE WITH CERTAIN CONDITIONS, TO PROVIDE THAT THE SHERIFF SHALL SERVE
40 CERTAIN DOCUMENTS ON A JUDGMENT DEBTOR AND THIRD PARTIES UNDER CERTAIN
41 CONDITIONS, TO PROVIDE THAT A FINANCIAL INSTITUTION SHALL SERVE CERTAIN
42 DOCUMENTS ON A JUDGMENT DEBTOR AND THIRD PARTIES UNDER CERTAIN CONDI-
43 TIONS, TO AUTHORIZE A JUDGMENT DEBTOR TO FILE A CLAIM OF EXEMPTION, TO
44 PROVIDE FOR RESTRICTIONS ON WAGE GARNISHMENT, TO PROVIDE THAT CERTAIN
45

1 DEPOSITS INTO FINANCIAL INSTITUTIONS SHALL NOT BE SUBJECT TO GARNISH-
 2 MENT, TO PROVIDE FOR CERTAIN OBLIGATIONS OF FINANCIAL INSTITUTIONS WHEN
 3 SERVED WITH A WRIT OF GARNISHMENT, TO PROVIDE FOR CERTAIN LIABILITY OF A
 4 GARNISHEE, TO PROVIDE FOR A NOTICE OF GARNISHMENT AND THE DISCHARGE OF A
 5 GARNISHEE, TO PROVIDE FOR THE EXAMINATION OF A GARNISHEE UNDER CERTAIN
 6 CONDITIONS, TO PROVIDE THAT DEBTS OWING BY THE STATE SHALL BE SUBJECT
 7 TO EXECUTION OR GARNISHMENT AFTER JUDGMENT, TO PROVIDE THAT A GAR-
 8 NISHEE SHALL ANSWER INTERROGATORIES, TO PROVIDE THAT JUDGMENT AGAINST
 9 A GARNISHEE SHALL BE ISSUED UNDER CERTAIN CONDITIONS, TO PROVIDE THAT
 10 A JUDGMENT CREDITOR MAY EXCEPT TO AND AMEND AN ANSWER UNDER CERTAIN
 11 CONDITIONS, TO PROVIDE THAT A JUDGMENT CREDITOR MAY DENY THE ANSWER OF
 12 A GARNISHEE, TO PROVIDE PROCEDURES FOLLOWING DENIAL OF AN ANSWER, TO
 13 PROVIDE PROCEDURES FOR JUDGMENT ON AN ANSWER, TO PROVIDE THAT COSTS
 14 SHALL BE ADJUDGED UNDER CERTAIN CONDITIONS, TO PROVIDE FOR JUDGMENT
 15 AGAINST A GARNISHEE UNDER CERTAIN CONDITIONS, TO PROVIDE PROCEDURES FOR
 16 WHEN A GARNISHEE ALLEGES THE ASSIGNMENT OF A DEBT, TO PROVIDE FOR HOW AN
 17 ALLEGATION OF AN ASSIGNMENT OF DEBT SHALL BE TRIED, TO PROVIDE FOR THE
 18 LIABILITY OF A GARNISHEE ON NEGOTIABLE PAPER UNDER CERTAIN CONDITIONS,
 19 TO PROVIDE THAT OFFICERS AND EXECUTORS SHALL NOT BE LIABLE AS GARNISHEES
 20 IN CERTAIN INSTANCES, TO AUTHORIZE AN EMPLOYER WHO IS A GARNISHEE TO
 21 DEDUCT A CERTAIN FEE, TO AUTHORIZE THE SHERIFF TO COLLECT CERTAIN FEES
 22 FOR SERVICE, TO PROVIDE THAT FEES FOR SERVICE SHALL BE PUBLISHED, TO
 23 PROVIDE FOR APPEALS IN THE GARNISHMENT PROCESS AND TO PROVIDE APPLICA-
 24 BILITY; AMENDING SECTION 31-3203, IDAHO CODE, TO PROVIDE FOR A WRIT OF
 25 WAGE GARNISHMENT AND FINANCIAL INSTITUTION GARNISHMENT, TO REMOVE A FEE
 26 AND TO PROVIDE FOR A CERTAIN FEE REGARDING GARNISHMENT; AND AMENDING
 27 SECTION 32-1605, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

29 SECTION 1. That the Heading for Chapter 5, Title 8, Idaho Code, be, and
 30 the same is hereby amended to read as follows:

31 CHAPTER 5
 32 ATTACHMENTS ~~AND GARNISHMENTS~~

33 SECTION 2. That Sections [8-507](#) through [8-523](#), Idaho Code, be, and the
 34 same are hereby repealed.

35 SECTION 3. That Chapter 5, Title 8, Idaho Code, be, and the same is
 36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 37 ignated as Section 8-507, Idaho Code, and to read as follows:

38 8-507. APPLICABILITY. To the extent that the provisions of chapter 7,
 39 title 11, Idaho Code, are not inconsistent with the provisions of this chap-
 40 ter, such provisions shall apply to the attachment process.

41 SECTION 4. That Section 11-201, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

1 11-201. PROPERTY LIABLE TO SEIZURE. All goods, chattels, moneys and
2 other property, both real and personal, or any interest therein of the judg-
3 ment debtor, not exempt by law or by court order, and all property and rights
4 of property, seized and held under attachment in the action, are liable to
5 execution. Shares and interest in any corporation or company, and debts and
6 credits, and all other property both real and personal, or any interest in
7 either real or personal property, and all other property not capable of man-
8 ual delivery, may be attached on execution in like manner as upon writs of
9 attachment. Gold dust must be returned by the officer as so much money col-
10 lected, at its current value, without exposing the same to sale. Until a
11 levy, property is not affected by the execution.

12 SECTION 5. That Section 11-202, Idaho Code, be, and the same is hereby
13 repealed.

14 SECTION 6. That Section 11-203, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 11-203. CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM -- MOTION
17 TO CONTEST CLAIM AND HEARING -- HOLDING AND RELEASE OF PROPERTY BY SHER-
18 IFF. The following procedures shall apply to a claim by the defendant or the
19 defendant's representative that property levied upon is exempt and to any
20 claim by a third party that property levied upon is his property or that he
21 has a security interest therein. The defendant or the defendant's repre-
22 sentative shall complete the claim of exemption form as provided in section
23 ~~8-507C~~ 11-707, Idaho Code. A third party claimant shall prepare a written
24 claim setting forth the grounds upon which he claims the property, and in the
25 case of a secured party, also stating the dollar amount of the claim. Except
26 as provided in subsection (h) of this section, a claim of exemption or third
27 party claim may be filed only if property has been levied upon.

28 (a) The claim of exemption or third party claim shall be delivered or
29 mailed to the sheriff within fourteen (14) days after the date the sheriff
30 hand delivers or mails the documents required to be served upon the defendant
31 and third parties under section ~~8-507A~~ 11-709, Idaho Code. If the claim is
32 mailed, it must be received by the sheriff within the fourteen (14) day pe-
33 riod. In computing the fourteen (14) day period, intervening weekends and
34 legal holidays shall be counted, but if the last day of the period falls on a
35 weekend or legal holiday, the period shall be deemed to run until the close of
36 business of the first business day following the weekend or holiday.

37 Within one (1) business day after receiving a claim, the sheriff shall
38 deliver or mail a copy thereof to the plaintiff or other person in whose fa-
39 vor the writ of execution runs. The sheriff may provide notification of the
40 claim by telephone but must also mail a copy of the claim within one (1) busi-
41 ness day as herein provided.

42 (b) The plaintiff or other person in whose favor the writ of execution
43 runs shall have five (5) business days after the date a copy of the claim is
44 delivered or mailed to him by the sheriff within which to file a motion with
45 the court stating the grounds upon which he contests the claim of exemption
46 or third party claim. When the motion is filed, the plaintiff shall lodge
47 with the court a copy of the claim to which the motion pertains. Hearing on
48 the motion shall be set for a date within not less than five (5) nor more than

1 twelve (12) days after the filing date of the motion and may be continued only
2 at the request of the defendant. A copy of the motion and notice of hearing
3 shall be delivered or mailed to the defendant or third party claimant on the
4 date the motion is filed. The prevailing party at the hearing may be awarded
5 costs pursuant to the Idaho rules of civil procedure.

6 Within the period for filing a motion to contest, the moving party shall
7 notify the sheriff that the motion has been filed. Such notification may
8 be by telephone but a copy of the motion and notice of hearing shall also be
9 mailed or hand delivered to the sheriff within the filing period herein pre-
10 scribed.

11 (c) The sheriff shall not deliver to the plaintiff or sell the property
12 levied upon, except if perishable as provided by law, until the period for
13 filing a claim has elapsed. The sheriff shall refuse to accept or honor a
14 claim not filed with him within that period and unless otherwise ordered by
15 the court, shall, after such period has elapsed, proceed to sell or deliver
16 the property levied upon to the plaintiff or other person in whose favor the
17 execution runs. If, after notice from the sheriff of the filing of a claim,
18 the plaintiff or other person in whose favor the execution runs, notifies
19 the sheriff that the claim will be uncontested or fails to notify the sher-
20 iff within the time provided in subsection (b) of this section that the claim
21 is being contested, the sheriff shall release the claimed property to the de-
22 fendant or his agent.

23 (d) If a plaintiff or other person in whose favor the execution runs
24 has failed to contest a claim of exemption within the time allowed by this
25 section or if property has been determined by a court to be exempt, and
26 the plaintiff or other person in whose favor the execution runs thereafter
27 levies upon or otherwise seeks to apply the property toward the satisfaction
28 of the same money judgment, the plaintiff or other person in whose favor the
29 execution runs is not entitled to recover the subsequent costs of collection
30 unless the property is applied to satisfaction of the judgment.

31 (e) If a security agreement to the third party claimant is in default,
32 rendering said claimant the legal right to possession, the claimant may
33 file with the sheriff an affidavit of release to the claimant executed by
34 the defendant-debtor, or his agent; or, in lieu of said affidavit of re-
35 lease, the third party claimant may file an affidavit setting forth the
36 defendant-debtor's default and claiming possession under default and a hold
37 harmless agreement in favor of the sheriff, supported by an undertaking
38 qualifying in the state of Idaho, indemnifying the sheriff and said defen-
39 dant-debtor in double the actual value of the property as stated in said
40 third party claim. Upon receipt of either of the foregoing, the sheriff
41 shall release said property to the third party claimant, taking receipt
42 therefor; these proceedings to be reported to the court by sheriff's return
43 in the action.

44 (f) Nothing in this section shall be construed to prevent the defendant
45 from pursuing his common law remedies.

46 (g) Personal service shall be accomplished in the same manner provided
47 for service of summons under the Idaho rules of civil procedure. Mailing
48 shall be by first class mail. The date when an item is deposited in the United
49 States mails shall constitute the date of mailing. In computing any period

1 of time prescribed in this section, the day of the act or event after which
2 the designated period of time begins to run is not to be included.

3 (h) At any time after the entry of a judgment that may be enforced by
4 writ of execution as provided in section 11-104, Idaho Code, the judgment
5 debtor, or any third party who claims a security interest or other interest
6 in the property of the judgment debtor, may move the court for an order of ex-
7 emption identifying the property for which the exemption is claimed and set-
8 ting forth the grounds, arising under this title or common law, upon which he
9 claims an exemption or, in the case of a third party, an interest in the prop-
10 erty, and in the case of a secured party, also stating the dollar amount of
11 such secured party's claim.

12 SECTION 7. That Section 11-301, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 11-301. EXECUTION OF WRIT. The sheriff must execute the writ against
15 the property of the judgment debtor by levying on a sufficient amount of
16 property if there be sufficient; collecting or selling the things in action,
17 and selling the other property, and paying to the plaintiff or his attorney
18 so much of the proceeds as will satisfy the judgment. Any excess in the pro-
19 ceeds over the judgment and accruing costs must be returned to the judgment
20 debtor unless otherwise directed by the judgment or order of the court. When
21 there is more property of the judgment debtor than is sufficient to satisfy
22 the judgment and accruing costs within the view of the sheriff, he must levy
23 only on such part of the property as the judgment debtor may indicate, if the
24 property indicated be amply sufficient to satisfy the judgment and costs.

25 ~~The provisions of sections 8-507 through 8-507D~~ 11-703, 11-706, 11-707,
26 11-709 and 11-710, Idaho Code, shall apply to a levy upon personal property.

27 SECTION 8. That Section 11-604, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 11-604. PROPERTY EXEMPT TO EXTENT REASONABLY NECESSARY FOR SUP-
30 PORT. (1) An individual is entitled to exemption of the following property to
31 the extent reasonably necessary for the support of him and his dependents:

32 (a) benefits paid or payable by reason of disability or illness;

33 (b) money or personal property received, and rights to receive money or
34 personal property for alimony, support, or separate maintenance;

35 (c) proceeds of insurance, a judgment, or a settlement, or other rights
36 accruing as a result of bodily injury of the individual or of the wrong-
37 ful death or bodily injury of another individual of whom the individual
38 was or is a dependent; and

39 (d) proceeds or benefits paid or payable on the death of an insured, if
40 the individual was the spouse or a dependent of the insured.

41 (2) The phrase "property to the extent reasonably necessary for the
42 support of him and his dependents" means property required to meet the
43 present and anticipated needs of the individual and his dependents, as
44 determined by the court after consideration of the individual's respon-
45 sibilities and all the present and anticipated property and income of the
46 individual, including that which is exempt.

1 ~~(3) The exemptions allowed by this section shall be lost immediately~~
 2 ~~upon the commingling of any of the funds or amounts described in this section~~
 3 ~~with any other funds.~~

4 SECTION 9. That Title 11, Idaho Code, be, and the same is hereby amended
 5 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 6 ter 7, Title 11, Idaho Code, and to read as follows:

7 CHAPTER 7
 8 GARNISHMENTS

9 11-701. DEFINITIONS. As used in this chapter:

10 (1) "Continuing garnishment" means a garnishment of wages of the judg-
 11 ment debtor that continues, subject to the limitations found in section
 12 11-705, Idaho Code, until the debt is satisfied.

13 (2) "Disposable earnings" means that part of the earnings of any indi-
 14 vidual remaining after the deduction from those earnings of any amounts re-
 15 quired by law to be withheld. This does not include amounts due to or re-
 16 ceived by a taxpayer in the form of an Idaho income tax refund.

17 (3) "Earnings" means compensation paid or payable for personal ser-
 18 vices, whether denominated as wages, salary, commission, bonus or other-
 19 wise, and includes periodic payments pursuant to a pension or retirement
 20 program.

21 (4) "Financial institution" means any state bank, national bank, trust
 22 company, savings and loan association, savings bank, federal savings and
 23 loan association, federal savings bank or credit union, as those terms are
 24 defined in title 26, Idaho Code, or any federal credit union organized under
 25 the federal credit union act, 12 U.S.C. 1751, et seq., or a state credit union
 26 organized under the Idaho credit union act in chapter 21, title 26, Idaho
 27 Code. The term also includes any other institution that holds and receives
 28 deposits, savings or share accounts; issues certificates of deposit; or pro-
 29 vides to its customers any deposit accounts that are subject to withdrawal
 30 by check, instrument, order or electronic means to effect third-party pay-
 31 ments.

32 (5) "Garnishee" means a person or institution that is indebted to or is
 33 in possession of property, money or credits of a debtor whose property has
 34 been subjected to garnishment.

35 (6) "Garnishment" means a judicial proceeding in which a creditor or
 36 potential creditor asks the court to order a third party who is indebted to,
 37 or is in possession of, property, money or credits of the debtor to turn over
 38 to the creditor any of the debtor's property, money or credits held by that
 39 third party.

40 (7) "Wage garnishment" means any legal or equitable procedure through
 41 which the earnings of any individual are required to be withheld for payment
 42 of any debt.

43 11-702. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK. A garnish-
 44 ment execution may be made returnable at any time not less than ten (10) but
 45 not more than ninety (90) days after its receipt by the sheriff, to the clerk
 46 with whom the judgment roll is filed. When the execution is returned, the
 47 clerk must attach it to the judgment roll and record the execution and the re-

1 turn thereto at large, and certify the same under his hand as true copies in
2 a book to be called the "execution book," which book must be indexed with the
3 names of the judgment creditors and judgment debtors in execution alphabet-
4 ically arranged, and kept open at all times during office hours for the in-
5 spection of the public without charge. It is evidence of the contents of the
6 originals whenever they, or any part thereof, may be destroyed, mutilated or
7 lost.

8 11-703. GARNISHMENT -- SERVICE OF WRIT OF EXECUTION OR GARNISHMENT
9 -- FINANCIAL INSTITUTIONS. (1) Upon receiving written directions from the
10 judgment creditor or his attorney, that any person or corporation, public
11 or private, has in his or its possession or control, any credits or other
12 personal property belonging to the judgment debtor, or is owing any debt to
13 the judgment debtor, the sheriff shall serve upon any such person, or corpo-
14 ration identified in the judgment creditor's written directions all of the
15 following documents:

- 16 (a) A copy of the writ;
17 (b) A notice that such credits, or other property, or debts, as the case
18 may be, are attached in pursuance of such writ;
19 (c) A notice of exemptions available under federal and state law;
20 (d) Instructions to debtors and third parties for asserting a claim of
21 exemption;
22 (e) A form for making a claim of exemption; and
23 (f) If the garnishee is a financial institution, a search fee of five
24 dollars (\$5.00) and the last known mailing address of the judgment
25 debtor and, if known, a tax identification number that will enable the
26 garnishee to identify the judgment debtor on its records.

27 The documents specified in paragraphs (c) through (e) of this subsection
28 shall be in a form as provided in section 11-707, Idaho Code.

29 (2) In case of service upon a corporation including, but not limited to,
30 any financial institution, the same may be had by delivering a copy of the
31 papers to be served, if upon a private corporation, to any officer, manager
32 or designated agent thereof, and if upon a public or municipal corporation,
33 to the mayor, president of the council or board of trustees, or any presiding
34 officer, or to the secretary or clerk thereof.

35 (3) In the event a financial institution operates more than one (1) of-
36 fice where deposits are received within the state of Idaho, the banking or
37 trust corporation may, by notifying the Idaho department of finance, desig-
38 nate a particular office for the service of attachment, execution and gar-
39 nishment papers. Such office may be located either within or outside the
40 state of Idaho. The Idaho department of finance shall post the list of such
41 designated offices on its web page for access by the public.

42 If a financial institution operating more than one (1) office where de-
43 posits are received has designated a particular office for the attachment,
44 execution, or garnishment, then service of such papers made on the office so
45 designated shall be valid and effective as to moneys to the judgment debtor's
46 credit held in the possession or control of any of the financial institu-
47 tion's branches or offices located within or outside the state of Idaho.

48 If service of the attachment, execution or garnishment papers is not
49 made on the designated office of the financial institution, but instead is

1 made on another office of the financial institution located in the state of
2 Idaho, then service of such papers shall be valid and effective as to moneys
3 to the judgment debtor's credit in that particular office and as to other
4 personal property belonging to the judgment debtor held in the possession
5 or control of that particular office, but shall only become valid and effec-
6 tive as to moneys to the judgment debtor's credit held in the possession or
7 control of any of the financial institution's other offices upon receipt of
8 the attachment, execution or garnishment papers by the designated office.
9 Such financial institution may, but is under no obligation to, transmit the
10 original or a copy of the papers from the particular office served to the
11 designated office.

12 Service on any financial institution is effective as against the moneys
13 and other personal property to the judgment debtor's credit which are in the
14 possession or control of the financial institution named in the garnishment,
15 but not any affiliate, parent or subsidiary not named. If the garnishment
16 fails to sufficiently distinguish the financial institution from any affil-
17 iate, parent or subsidiary thereof, such that it is not clear which entity is
18 intended to be the garnishee, the garnishment may be returned unsatisfied.

19 (4) The provisions of this section and sections 11-706, 11-707, 11-709
20 and 11-710, Idaho Code, shall apply to any levy by execution pursuant to
21 chapter 5, title 8, Idaho Code.

22 11-704. EMPLOYER -- CONTINUOUS GARNISHMENT. When the garnishee is the
23 employer of the judgment debtor, the judgment creditor, upon application to
24 the court, shall have issued by the clerk of court, a continuing garnish-
25 ment directing the employer-garnishee to pay to the sheriff such future mon-
26 eys coming due to the judgment debtor as may come due to said judgment debtor
27 as a result of the judgment debtor's employment. This continuing garnish-
28 ment shall continue in force and effect until the judgment is satisfied. The
29 judgment creditor shall be solely responsible for ensuring that the amounts
30 garnished do not exceed the amount due on the judgment. If additional gar-
31 nishments are issued during the term of a continuing garnishment and the con-
32 tinuing garnishment is the maximum allowed under the provisions of section
33 11-712, Idaho Code, the additional garnishments cannot be served until the
34 continuing garnishment is satisfied, or until the amount taken by the con-
35 tinuing garnishment is less than the maximum allowed. Additional garnish-
36 ments issued during the term of a continuing garnishment must be served in
37 the order in which presented.

38 11-705. SHERIFF'S RETURN ON CONTINUOUS WAGE GARNISHMENT AND CONTIN-
39 UOUS GARNISHMENT FOR CHILD SUPPORT. (1) In the case of continuing garnish-
40 ments for wages, the sheriff shall file interim returns at intervals not to
41 exceed fourteen (14) days, whenever the amount collected in the fourteen
42 (14) day period is at least one hundred dollars (\$100), but in any event,
43 interim returns on such continuous garnishment shall be filed by the sheriff
44 at intervals not to exceed sixty (60) days.

45 (2) Where an execution or garnishment against earnings or unemployment
46 benefits for a delinquent child support obligation is served upon any person
47 or upon the state of Idaho and there is in possession of such person or the
48 state of Idaho any such earnings or any unemployment benefits of the judg-

1 ment debtor, the execution and the garnishment shall operate continuously
2 and shall require such person or the state of Idaho to withhold the nonex-
3 empt portion of earnings or unemployment benefits at each succeeding earn-
4 ings or unemployment benefits disbursement interval until released by the
5 sheriff at the written request of the judgment creditor or until the judgment
6 for child support debt, in the dollar amount specifically set forth on the
7 writ of execution and subject to garnishment as of the date the writ of exe-
8 cution is issued, is discharged or satisfied in full; provided however, that
9 interim returns on such continuous execution or garnishment shall be filed
10 by the sheriff at intervals not to exceed fourteen (14) days, whenever the
11 amount collected in the fourteen (14) day period is at least equal to fifty
12 dollars (\$50.00), but in any event, interim returns on such continuous gar-
13 nishment shall be filed by the sheriff at intervals not to exceed thirty (30)
14 days. The proportion of earnings subject to garnishment as compared to to-
15 tal available earnings or unemployment benefits shall be limited to the per-
16 centage restrictions on garnishment of wages for child support as provided
17 in section 11-712, Idaho Code.

18 11-706. DOCUMENTS TO BE PROVIDED BY JUDGMENT CREDITOR -- DUTIES OF
19 SHERIFF -- SERVICE AND MAILING CRITERIA -- TIME COMPUTATION. With respect
20 to any garnishment or execution, the judgment creditor shall provide the
21 sheriff with sufficient copies of the writ and other documents required to
22 be served for service on the judgment debtor and each additional party iden-
23 tified in the judgment creditor's written directions and shall provide an
24 envelope addressed to each person required to be served. If the documents
25 are to be mailed, proper postage shall be affixed. The sheriff shall not
26 delay service for lack of sufficient copies or postage and shall make any ad-
27 ditional copies and affix any additional postage necessary. The sheriff may
28 charge the judgment creditor for the actual costs of any additional copies
29 and postage required, which costs shall be in addition to the fees permitted
30 under section 11-729, Idaho Code.

31 Personal service shall be accomplished in the same manner provided for
32 service of summons under the Idaho rules of civil procedure. Provided how-
33 ever, that in the case of garnishments the county sheriff shall have the op-
34 tion of accomplishing personal service by United States certified mail, re-
35 turn receipt requested, or United States first class mail with a facsimile
36 or electronic mail acknowledgment of such service by the garnishee. Unless
37 otherwise provided to the contrary, the date when an item is deposited in the
38 United States mail shall constitute the date of mailing and the date of ser-
39 vice shall be the date when the garnishee signs the return receipt for the
40 certified mail or the date the garnishee sends its facsimile or electronic
41 mail acknowledgment of service. In computing any period of time within which
42 an act is to be accomplished, the day of the act after which the designated
43 period of time begins to run is not to be included. The last day of the pe-
44 riod so computed is to be included, unless it falls on a weekend or legal hol-
45 iday, in which event the period runs until the close of business of the first
46 business day after the weekend or holiday, except that this provision shall
47 not extend the time within which hearing on a motion to contest a claim of ex-
48 emption or third-party claim must be set as provided in section 8-540, Idaho
49 Code, and section 11-203, Idaho Code.

1 The sheriff shall not be required to investigate or assure the accuracy
2 and completeness of the addresses of the parties to be served or any other
3 information provided by the judgment creditor.

4 11-707. FORMS FOR NOTICE OF EXEMPTIONS, INSTRUCTIONS TO DEBTORS AND
5 THIRD PARTIES AND CLAIM OF EXEMPTION. The forms used for notice of exemp-
6 tions, instructions to debtors and third parties and claims of exemption
7 shall be those prescribed by rules promulgated or orders issued by the
8 supreme court and posted on the website of the supreme court. The forms
9 shall be made available in English and Spanish language translations in the
10 offices of each county sheriff. Notice, written in Spanish, of the avail-
11 ability of these documents in Spanish translation shall be set forth on the
12 notice of exemptions.

13 11-708. INTERROGATORIES SUBMITTED TO GARNISHEE. Written interroga-
14 tories shall be delivered to the garnishee at the time of serving notice of gar-
15 nishment. The interrogatories shall be in a form prescribed by rules promul-
16 gated or orders issued by the supreme court.

17 11-709. SERVICE ON JUDGMENT DEBTOR AND THIRD PARTIES BY SHER-
18 IFF. Within two (2) business days after service of the writ and other
19 documents as provided in section 11-703, Idaho Code, or if service is upon
20 a financial institution, within one (1) business day, the sheriff shall
21 hand deliver or mail to the judgment debtor and any third party named in the
22 judgment creditor's written directions as a co-owner or having an interest
23 in the property or money to be levied upon, one (1) copy of all the documents
24 and if the garnishee is a financial institution, the search fee and other in-
25 formation specified in section 11-703(1), Idaho Code. The judgment creditor
26 shall identify in the judgment creditor's written directions the last known
27 mailing address of the judgment debtor and any third party to be served. The
28 sheriff shall indicate on the return of the writ filed with the court the date
29 and manner of service upon the judgment debtor and any third party and shall
30 indicate the documents served.

31 If at the time of service of the writ the sheriff receives written answer
32 from the garnishee stating that it has no money or other personal property
33 belonging or owing to the judgment debtor, compliance with the provisions of
34 this section shall not be required.

35 11-710. SERVICE ON JUDGMENT DEBTOR AND THIRD PARTIES BY A FINANCIAL
36 INSTITUTION. If the writ and notice of garnishment are served upon a finan-
37 cial institution holding money or accounts belonging to the judgment debtor,
38 the garnishee shall within three (3) business days after such service, mail
39 or hand deliver a copy of all documents served upon it by the sheriff:

40 (1) To the judgment debtor at the address to which account statements or
41 other pertinent account documentation are normally sent, or if the money is
42 not in an account, to the last known address of the judgment debtor shown upon
43 the records of the garnishee at the time of service upon it of the writ; and

44 (2) To any other person shown upon the records of the garnishee as a
45 co-owner or having an interest in the money or accounts garnished at the last

1 known address of the third party shown upon the records of the garnishee at
2 the time of service upon it of the writ.

3 The financial institution shall be entitled to deduct a single fee of
4 not to exceed ten dollars (\$10.00) from the money transferred to the sher-
5 iff pursuant to the garnishment to cover the costs associated with the pro-
6 cessing and service of the documents. The fee herein provided shall be the
7 only processing and service fee to which the financial institution is enti-
8 tled regardless of the number of parties to which documents are sent and is
9 in addition to the search fee specified in section 11-703(1) (f), Idaho Code.
10 Upon being notified by the sheriff that money transferred pursuant to the
11 garnishment has been released as a result of a court determination that the
12 money is exempt or a failure by the judgment creditor to contest the claim
13 of exemption, the garnishee shall recredit the fee to the judgment debtor's
14 account or reimburse the judgment debtor therefor and the judgment creditor
15 shall reimburse the garnishee for the fee.

16 The garnishee shall indicate in the answer to interrogatories as pro-
17 vided in section 11-708, Idaho Code, the date and manner of service of the
18 documents upon the judgment debtor and any third party as herein required but
19 shall not be required to disclose the names or addresses of any third party
20 served.

21 The garnishee shall only be required to serve on the judgment debtor and
22 any third-party copies of those documents served upon it by the sheriff.

23 11-711. CLAIM OF EXEMPTION BY JUDGMENT DEBTOR. The judgment debtor in
24 the main action may file a claim of exemption setting forth any facts showing
25 that the debt or the property with which it is sought to charge the garnishee
26 is exempt from execution, or for any other reason is not liable for the judg-
27 ment creditor's claim, and if issue thereon be joined by the judgment credi-
28 tor it shall be tried with the issues as to the garnishee's liability, and if
29 the property or debt, or any part thereof, is found to be thus exempt or not
30 liable, judgment shall be rendered accordingly.

31 11-712. RESTRICTION ON WAGE GARNISHMENT -- MAXIMUM. (1) Except as pro-
32 vided in subsection (2) of this section, the maximum amount of the aggregate
33 disposable earnings of an individual for any workweek which is subjected to
34 garnishment shall not exceed:

- 35 (a) Twenty-five percent (25%) of his disposable earnings for that week;
36 or
37 (b) The amount by which his disposable earnings for that week exceed
38 thirty (30) times the federal minimum hourly wage prescribed by 29
39 U.S.C.A. 206(a)(1) in effect at the time the earnings are payable,
40 whichever is less.

41 In the case of earnings for any pay period other than a week, the Idaho com-
42 missioner of labor shall by regulation prescribe a multiple of the federal
43 minimum hourly wage equivalent in effect to that set forth in paragraph (b)
44 of this subsection.

45 (2) (a) The restrictions of subsection (1) of this section shall not ap-
46 ply in the case of any order of any court for the support of any per-
47 son, any order of any court of bankruptcy under chapter XIII of the bank-
48 ruptcy act, or any debt due for any state or federal tax.

1 (b) The maximum part of the aggregate disposable earnings of an indi-
2 vidual for any workweek which is subject to garnishment to enforce any
3 order for the support of any person shall not exceed:

4 (i) Where such individual is supporting his spouse or dependent
5 child, other than a spouse or child with respect to whose support
6 such order is used, fifty percent (50%) of such individual's dis-
7posable earnings for that week; and

8 (ii) Where such individual is not supporting such a spouse or
9 dependent child described in subparagraph (i) of this paragraph,
10 sixty percent (60%) of such individual's disposable earnings for
11 that week; except that with respect to the disposable earnings of
12 any individual for any workweek, the fifty percent (50%) speci-
13fied in subparagraph (i) of this paragraph shall be deemed to be
14 fifty-five percent (55%) and the sixty percent (60%) specified in
15 this subparagraph shall be deemed to be sixty-five percent (65%),
16 if and to the extent that such earnings are subject to garnishment
17 to enforce a support order with respect to a period which is prior
18 to the twelve (12) week period which ends with the beginning of
19 such workweek.

20 11-713. DEPOSITS INTO FINANCIAL INSTITUTIONS NOT SUBJECT TO GARNISH-
21 MENT. (1) Money, funds, benefits and personal property that are exempt from
22 execution as provided in section 11-604(1), Idaho Code, including payable or
23 paid for disability and illness, alimony, support and child support, as a re-
24 sult of bodily injury, wrongful death and the death of an insured shall re-
25 main exempt in an account at a financial institution.

26 (2) Wages that are exempt from execution as provided in sections 11-207
27 and 11-712, Idaho Code, shall remain exempt when deposited into an account
28 at a financial institution. This subsection shall not apply to any accumula-
29 tion of wages greater than seven thousand five hundred dollars (\$7,500).

30 (3) All funds that are exempt under federal and state law; section
31 11-603, Idaho Code, including social security, SSI and veteran benefits,
32 federal and state public assistance, medical savings accounts, child sup-
33 port payments deposited by the Idaho department of health and welfare, and
34 unemployment benefits; section 11-604A, Idaho Code, retirement and pension
35 benefits including public employee retirement system of Idaho (PERSI) and
36 United States government benefits; and section 72-802, Idaho Code, worker's
37 compensation benefits shall remain exempt without limitation when deposited
38 into an account at a financial institution.

39 (4) The application of subsections (1), (2) and (3) of this section
40 shall not be affected by the commingling of exempt and nonexempt funds in an
41 account. For the purposes of identifying exempt funds in an account, first
42 in, first out accounting principles shall be used.

43 (5) The provisions of this chapter shall not prevent a debtor from
44 claiming any exemption that otherwise may be available under law for any
45 amounts garnished from an account at a financial institution.

46 11-714. FINANCIAL INSTITUTION OBLIGATIONS WHEN SERVED WITH WRIT OF
47 GARNISHMENT. (1) If a notice of garnishment is served upon a financial
48 institution that has an account or accounts of the debtor, the financial

1 institution shall conduct a garnishment review of all accounts in the name of
2 the debtor before taking any action that may affect funds in those accounts.

3 (2) The garnishment review shall be limited to the sixty-four (64) day
4 period immediately preceding the date of service upon the financial insti-
5 tution of the garnishment. Solely for purposes of the garnishment review,
6 any balance in the accounts on the sixty-fourth day immediately preceding
7 the date of service upon the financial institution of the garnishment shall
8 be deemed to be exempt. If the financial institution determines, solely from
9 information transmitted to the financial institution by the payor, that one
10 (1) or more payments of exempt funds as described in section 11-713(1), (2)
11 or (3), Idaho Code, were deposited by direct or electronic deposit payment in
12 an account of the debtor the total balance of deposited exempt funds in the
13 debtor account is not subject to garnishment.

14 (3) The financial institution conducting the garnishment review need
15 only review information transmitted to the financial institution by the
16 payor of direct or electronic deposit payments in making its determination
17 that funds in the accounts are of the types of payments described in section
18 11-713(1), (2) or (3), Idaho Code. The financial institution conducting
19 the garnishment review shall have no obligation to inquire into the source
20 of funds or examine any deposit item made by any means other than direct or
21 electronic deposit, even if such review would disclose that the funds so
22 deposited may be exempt from garnishment as described in section 11-713(1),
23 (2) or (3), Idaho Code.

24 (4) If a notice of right to garnish federal benefits from the United
25 States government or from a state child support enforcement agency is at-
26 tached to or included in the garnishment as provided in 31 CFR 212, the finan-
27 cial institution shall not conduct a garnishment account review under this
28 section and shall proceed on the garnishment.

29 (5) A financial institution conducting a garnishment review as re-
30 quired by this section is immune from civil liability to the garnishor,
31 debtor or account owner from any act or omission with respect to the gar-
32 nishment review, including without limitation, any incorrect determination
33 made after applying good faith methods for determining whether funds in an
34 account are exempt. If a court determines that a financial institution erred
35 in its identification of funds in an account as exempt or nonexempt, the sole
36 remedy in exemption proceedings shall be issuance of an order of the court
37 that the financial institution must adjust its actions with respect to a writ
38 of execution as soon as possible. A financial institution is not liable to an
39 account holder or garnishor, and may not be assessed any penalty, by reason
40 of any action or inaction in good faith including:

- 41 (a) Failure to deliver any funds;
- 42 (b) Failure to refuse to deliver any funds;
- 43 (c) Failure to provide the required notices to an account holder;
- 44 (d) Customary clearing and settlement adjustments made to a debtor's
45 account that affect the balance in the debtor's account; and
- 46 (e) Any bona fide errors that occur despite reasonable procedures im-
47 plemented by the financial institution to prevent those errors.

48 11-715. LIABILITY OF GARNISHEE. All persons having in their pos-
49 session or under their control, any credits or other personal property

1 belonging to the judgment debtor, at the time of service upon them of a copy
2 of the writ and notice, as provided in sections 11-711 and 11-712, Idaho
3 Code, shall be, unless such property be delivered up or transferred, or such
4 debts be paid to the sheriff, liable to the judgment creditor for the amount
5 of such credits, property, or debts, until the garnishment be discharged or
6 any judgment recovered by him be satisfied.

7 11-716. NOTICE OF GARNISHMENT -- DISCHARGE OF GARNISHEE. Any person
8 who has been served with a copy of the writ and notice as provided in sec-
9 tions 8-506, 11-706, 11-707, 11-709, 11-710 and 11-715, Idaho Code, shall be
10 deemed a garnishee, and service of copy of writ and the notice therein pro-
11 vided for, shall, for the purpose of sections 11-708, 11-711, 11-716, 11-719
12 through 11-727, 11-730 and 11-731, Idaho Code, be deemed to be notice of gar-
13 nishment, and whenever any person shall have been served with notice of gar-
14 nishment as herein defined, he may discharge himself by paying or deliver-
15 ing to the officer all debts owing by him to the judgment debtor, or a portion
16 thereof sufficient to discharge the claim of the judgment creditor, or any or
17 all money of the judgment debtor in his hands to a similar amount, taking a
18 receipt therefor from the officer, that shall discharge such person from any
19 and all liability to the extent of such payment, and that shall be held by the
20 officer subject to the orders of the court out of which the writ issued.

21 11-717. EXAMINATION OF GARNISHEE. Any person owing debts to the judg-
22 ment debtor, or having in his possession or under his control, any credits
23 or other personal property belonging to the judgment debtor, may be required
24 to attend before the court or judge, or a referee appointed by the court or
25 judge, and be examined on oath respecting the same. If the garnishee be a
26 corporation the officer or agent thereof having knowledge of the fact sought
27 to be established may be required to attend and give evidence thereof. The
28 judgment debtor may also be required to attend for the purpose of giving in-
29 formation respecting his property and may be examined on oath. The court or
30 judge may, after such examination, order personal property capable of man-
31 ual delivery to be delivered to the sheriff on such terms as may be just, hav-
32 ing reference to any liens or claims against the same, and a memorandum to be
33 given of all other personal property, containing the amount and description
34 thereof.

35 11-718. DEBTS OWING BY STATE OF IDAHO SUBJECT TO EXECUTION OR GARNISH-
36 MENT AFTER JUDGMENT. (1) Debts, moneys and credits due or owing by the state
37 of Idaho to any person whomsoever, except an elective official of the state
38 of Idaho, shall be subject to execution and garnishment after final judg-
39 ment against such person for the satisfaction of such judgment by service by
40 the sheriff of the debtor's county of residence in Idaho, upon the state con-
41 troller of a copy of the writ of execution and a notice of garnishment signed
42 by such officer in duplicate. The state controller shall at the time of such
43 service collect a fee of ten dollars (\$10.00) therefor from said officer.
44 The state controller shall thereafter have a period of thirty (30) days in
45 which to answer said notice of garnishment. The state controller shall pay,
46 in the usual manner provided by law to the officer serving said writ of exe-
47 cution and notice of judgment, the amount necessary to satisfy said judgment

1 excluding any exemption as provided by law. The officer's receipt therefor
2 shall be a sufficient release of the state of Idaho and the state controller,
3 of said claim of such person.

4 (2) The tax refund of any taxpayer may be subject to execution and gar-
5 nishment under this section. In the case of garnishment of a tax refund due
6 to a taxpayer, the plaintiff or his attorney shall provide in the written in-
7 structions to the Ada county sheriff the full name and social security num-
8 ber of the taxpayer subject to the garnishment, that shall be served with the
9 writ of execution and notice of garnishment. The Ada county sheriff, state
10 controller and state tax commission shall cooperate as necessary, including
11 the sharing of garnishee information, in order to carry out the garnishment
12 of a tax refund as provided in this section.

13 (3) Notwithstanding any provision in this title to the contrary, in the
14 case of garnishment of a tax refund due to a taxpayer, the state controller
15 shall hold the writ for a period of one hundred fifty (150) days after ser-
16 vice or until the date it is determined that a refund is due the taxpayer,
17 whichever occurs first, at which time the state controller shall thereafter
18 have a period of thirty (30) days in which to answer such notice of garnish-
19 ment. The Ada county sheriff shall file a return on the writ as soon as prac-
20 ticable after receipt of the state controller's answer, but if no answer is
21 received from the state controller by one hundred ninety (190) days after
22 service, the sheriff shall file a final return to that effect and close the
23 garnishment.

24 11-719. ANSWER TO INTERROGATORIES -- JUDGMENT AGAINST GARNISHEE. Upon
25 a copy of the interrogatories being served upon him, the garnishee shall make
26 full and true answer to the same under oath and filed in the cause within five
27 (5) days thereafter. If he fails to do so, the judgment creditor may take
28 judgment against him by default, or the court may, upon motion, compel him
29 to answer by attachment. But no final judgment shall be rendered against the
30 garnishee until there shall be a final judgment against the judgment debtor;
31 nor shall judgment be rendered for a greater amount than the debt claimed by
32 the judgment creditor with interest and costs, nor for a greater amount than
33 the garnishee shall appear to be liable for to the judgment debtor; nor shall
34 execution issue against a garnishee until the maturity of his debt to the
35 judgment debtor.

36 11-720. EXCEPTION TO ANSWER -- AMENDMENT. The judgment creditor may
37 except to the answer of the garnishee for insufficiency, and if adjudged in-
38 sufficient, the court may allow him to amend it in such time and on such terms
39 as shall be just.

40 11-721. DENIAL OF ANSWER -- REPLICATION -- TRIAL, JUDGMENT AND EXECU-
41 TION. The judgment creditor may deny the answer of the garnishee in whole or
42 in part without oath, and allege specially the grounds upon which a recov-
43 ery is sought against the garnishee, to which the garnishee may reply ei-
44 ther generally or specially, and the issue presented by such denial and re-
45 ply, shall be tried as ordinary issues between judgment creditor and judg-
46 ment debtor, and judgment rendered thereon and execution issued accordingly
47 except as herein otherwise provided.

1 11-722. JUDGMENT ON ANSWER -- COSTS AND ALLOWANCES. If the answer of
2 the garnishee be not excepted to, or denied within three (3) days after its
3 filing, unless the court, or judge in vacation, for good cause shown, gives
4 longer time, it shall be taken to be true and sufficient, and if in such case
5 any indebtedness or liability is admitted, judgment shall be rendered ac-
6 cordingly, and the garnishee shall be allowed a reasonable sum out of the
7 funds or property confessed in his hands for his trouble and expense in an-
8 swering. If all liability is denied, and the denial is uncontroverted, the
9 garnishee shall be discharged at the cost of the judgment creditor. In con-
10 tested cases the costs shall be adjudged as in ordinary cases between judg-
11 ment creditor and judgment debtor.

12 11-723. JUDGMENT AGAINST GARNISHEE. If the garnishee admits in his an-
13 swer that he is indebted to the judgment debtor, or has money or property of
14 the judgment debtor in his hands, or under his control, and fails or refuses
15 to turn the same over to the officer as in section 11-716, Idaho Code, pro-
16 vided, the judgment creditor may move the court out of which the writ issued,
17 on or before the return day thereof, for judgment against the garnishee for
18 the amount of such admitted debt, or for the delivery to the officer of the
19 money or property of the judgment debtor in his hands, to an amount suffi-
20 cient to satisfy the judgment creditor's claim; serving the garnishee with
21 due notice of the said motion; and at the hearing thereof the court shall ren-
22 der such judgment as shall be conformable to law and the facts shown to exist.

23 11-724. ALLEGATION OF ASSIGNMENT OF DEBT -- PROCEDURE. If the gar-
24 nishee shall allege in his answer that he is indebted to the judgment debtor,
25 but declare his belief under oath that the debt has been assigned to some
26 other person, while naming such person, and the judgment creditor shall file
27 a reply, denying the fact, or the force and validity of the alleged assign-
28 ment, the court shall thereupon make an order requiring the alleged assignee
29 to appear, on a day to be therein named, and show cause why the alleged as-
30 signment should not be disregarded. Such order shall be served upon the
31 supposed assignee, if within the jurisdiction of the court, at least fifteen
32 (15) days before the return day thereof. But, if he cannot be found, or is out
33 of the jurisdiction of the court, he may be brought in by publication as in
34 other civil cases; provided, that the order shall be published instead of the
35 summons, and that such publication need only be made for three (3) weeks suc-
36 cessively, and that the last insertion thereof need not be more than fifteen
37 (15) days before the return day thereof.

38 11-725. ALLEGATION OF ASSIGNMENT OF DEBT -- TRIAL OF ISSUE. Upon the
39 return day of the order of notice, or upon such other day to which the trial
40 may be postponed, if the alleged assignee fails to appear, or appearing,
41 fails to assert any claim as such assignee, the alleged assignment shall be
42 disregarded, but if he shall appear and set up a claim as assignee, the exis-
43 tence, force and validity of the alleged assignment shall be tried as similar
44 issues between judgment creditor and judgment debtor, and such judgment
45 shall be rendered as shall be conformable to the facts and the law.

1 11-726. LIABILITY OF GARNISHEE ON NEGOTIABLE PAPER. The garnishee
2 shall not be held liable on any debt due upon negotiable paper unless such pa-
3 per is delivered up to him, or he is fully exonerated or indemnified against
4 any liability thereon after he may have satisfied the judgment. But if it
5 shall be made to appear to the satisfaction of the court in which the pro-
6 ceedings are pending, that the paper is in the possession or control of the
7 judgment debtor, he may be compelled to produce it by attachment.

8 11-727. LIABILITY OF OFFICERS AND EXECUTORS AS GARNISHEES. No sher-
9 iff, constable, or other officer charged with the collection of money shall,
10 prior to the return day of the execution upon which the same may be made, be
11 liable to be summoned as a garnishee, nor shall any county collector or mu-
12 nicipal corporation or any officer thereof, nor administrator or executor of
13 any estate, prior to the allowance of a demand found to be due by his estate,
14 or prior to an order of distribution or for the payment of debts and legacies,
15 be liable in their official capacities as garnishee.

16 11-728. FEE FOR EMPLOYER -- GARNISHEE. When the garnishee is the em-
17 ployer of the judgment debtor, the garnishee may deduct a onetime fee to
18 cover the costs associated with administering the garnishment. The fee to be
19 deducted shall not exceed ten dollars (\$10.00) and shall be deducted from the
20 employer's first answer to the writ from money remitted to the sheriff.

21 11-729. SHERIFF FEE FOR SERVICE. (1) The board of county commissioners
22 of each respective county shall have the power to set sheriff's fees by res-
23 olution of the board for serving an initial order of garnishment and writ of
24 execution. The board may also set an additional lesser fee for making an in-
25 terim return on a continuing garnishment to show disbursement of moneys held
26 by the sheriff for return service, including for receiving and paying over
27 money from any money garnishment, and including wage garnishment or finan-
28 cial institution garnishment. These fees shall be established using crite-
29 ria determined by the board not to exceed actual costs directly incurred for
30 order of garnishment and writ of execution service.

31 (2) At the time of adoption of the resolution establishing any fee au-
32 thorized in this section, the board shall annually publish on the county web-
33 site all the criteria used to establish the total fee and the value of each
34 criterion's proportionate share of the total fee. The initial garnishment
35 and continuing service fee herein allowed shall be collected from the judg-
36 ment debtor.

37 11-730. APPEALS IN GARNISHMENT PROCEEDINGS. Appeals may be taken,
38 heard and determined in cases arising under sections 11-708, 11-711, 11-716,
39 11-719 through 11-727, and 11-731, Idaho Code, in the same manner and with
40 like effect as is now, or may hereafter be, provided by law for appeals in
41 ordinary civil actions.

42 11-731. APPLICATION OF PRECEDING SECTIONS. The provisions of sections
43 11-708, 11-711, 11-716, 11-719 through 11-727, and 11-730, Idaho Code, in-
44 clusive, shall apply to all courts of competent jurisdiction.

1 SECTION 10. That Section 31-3203, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 31-3203. SHERIFF'S FEES. The board of county commissioners of each re-
4 spective county shall have the power to set sheriff's fees by a resolution of
5 the board for the services herein specified in an amount reasonably related
6 to but not exceeding the actual costs of such service. The sheriff is allowed
7 and may demand and receive such fees. In the event that the board of com-
8 missioners does not resolve to set fees by resolution as herein described,
9 the sheriff is allowed and may demand and receive the fees hereinafter speci-
10 fied:

11 For serving summons and complaint, or any other process by which an ac-
12 tion or proceeding is commenced, on each defendant\$10.00

13 For serving an attachment on property, or levying an execution, except
14 for a writ of wage garnishment or financial institution garnishment, or
15 executing an order of arrest, or order for the delivery of personal prop-
16 erty\$10.00

17 For his trouble and expense in taking and keeping possession of and
18 preserving property under attachment or execution, or other process, such
19 sum as the court may order: provided, however, that said sum shall be no
20 more than five dollars (\$5.00) per diem or the reasonable costs incurred by
21 a keeper in preserving said property.

22 For making and issuing a keeper's receipt\$5.00

23 For taking a bond or undertaking in any case in which he is authorized to
24 take the same\$10.00

25 For copy of and making return on any writ, except for a writ of wage gar-
26 nishment or financial institution garnishment, process or other paper, when
27 demanded or required by law\$10.00

28 For serving every notice, rule or order\$10.00

29 For making and posting notices, and advertising property for sale on at-
30 tachment or execution, or under any judgment or order of sale, exclusive of
31 the costs of publication, each notice, per folio \$ 3.00

32 For serving a writ of possession or restitution, putting a person in
33 possession of premises and removing the occupant\$10.00

34 For holding each inquest, or trial of right of property, to include all
35 services in the matter except mileage \$ 3.00

36 For serving a subpoena, for each witness summoned\$10.00

37 For commissions for receiving and paying over money on execution or
38 other process, when land or personal property has been levied on and sold, on
39 the first one thousand dollars (\$1,000), two percent (2%); on all sums above
40 that amount, one percent (1%); but in no case of sale of real estate shall his
41 commission exceed the sum of\$100.00

42 When the amount of such sale is credited on the debt and no money is
43 transferred, then one-half (1/2) of such commission.

44 For commissions for receiving and paying over money on execution with-
45 out levy, except for a writ of wage garnishment or financial institution
46 garnishment, or where lands or goods levied on are not sold, on the first one
47 thousand dollars (\$1,000), one and one-half percent (1 1/2%); and one-half
48 (1/2) of one percent (1%) on all over that sum, but not to exceed in any
49 case\$75.00

1 The fees herein allowed for the levy of an execution, costs for adver-
2 tising and percentage for making or collecting the money on execution, must
3 be collected from the judgment debtor by virtue of such execution, in the
4 same manner as the sum therein directed to be made.

5 For drawing and executing a sheriff's deed, including the acknowledg-
6 ment, to be paid by the grantee before delivery\$10.00

7 For executing a certificate of sale, exclusive of the filing and record-
8 ing of same \$ 5.00

9 For making every arrest in a criminal proceeding \$ 5.00

10 For summoning each juror \$ 1.00

11 For serving a subpoena in a criminal action or proceeding, for each wit-
12 ness summoned\$10.00

13 For traveling to serve any summons and complaint, or any other process,
14 except for a writ of wage garnishment or financial institution garnishment,
15 by which an action or proceeding is commenced, notice, rule, order, sub-
16 poena, venire, attachment on property, to levy an execution, to post notice
17 of sale, to sell property under execution or other order of sale, or execute
18 an order of arrest, or order for the delivery of personal property, writ of
19 possession or restitution, to hold inquest or trial of right of property, for
20 each mile actually and necessarily traveled for the first twenty-five (25)
21 miles no charge shall be allowed, and for any miles traveled over twenty-five
22 (25) miles, even if process is not served, the following shall be allowed, in
23 going only \$.40

24 For traveling to execute any warrant of arrest, subpoena, venire or
25 other process in criminal cases, or for taking a prisoner from prison, before
26 a court or magistrate, or for taking a prisoner from the place of arrest to
27 prison, or before a court or magistrate, for each mile actually and necessar-
28 ily traveled, in going only \$.40

29 For each additional prisoner taken at the same time, per mile \$.25

30 But if any two (2) or more papers be required to be served in the same ac-
31 tion or proceeding, civil or criminal, or be in the possession of the sheriff
32 for service at the same time, and in the same direction, one (1) mileage only
33 shall be charged; and in serving a subpoena, venire, process or paper, when
34 two (2) or more jurors, witnesses, parties or persons to be served reside or
35 are found in the same direction, traveling fees must be charged only for the
36 most distant; and only one (1) mileage per day must be charged for taking a
37 prisoner from prison before a court or magistrate; and constructive mileage
38 must in no case be charged or allowed.

39 For all services under the election laws, the same mileage and fees as in
40 this chapter provided for similar services.

41 ~~For copy of and making an interim return on a continuing garnishment to~~
42 ~~show disbursement of moneys held by the sheriff.....\$5.00~~

43 For postage and processing of each mail renewal class D driver's license
44 authorized pursuant to section 49-319, Idaho Code\$1.00

45 For wage and financial institution garnishment, the board of county
46 commissioners shall set sheriff's fees as set forth in section 11-729, Idaho
47 Code.

48 SECTION 11. That Section 32-1605, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 32-1605. RECEIPT AND ACCEPTANCE OF ASSET WITHHOLDING ORDER. (1) When
2 an asset withholding order is received by a financial institution pursuant
3 to this chapter, the financial institution shall immediately freeze the as-
4 set subject to the withholding order up to the maximum amount as set forth in
5 section 32-1601(6), Idaho Code. Financial institutions shall accept the as-
6 set withholding order at any office of the financial institution located in
7 this state, or at a particular office in this state or another state desig-
8 nated by the financial institution for the service of attachment, execution
9 and garnishment papers pursuant to section ~~8-507(b)~~ 11-703(2), Idaho Code.

10 If the financial institution has designated a particular office for
11 service of attachment, execution and garnishment papers pursuant to section
12 ~~8-507(b)~~ 11-703(2), Idaho Code, and the asset withholding order is received
13 by another office of the financial institution, it is within the discretion
14 of the financial institution to accept the order and promptly forward the
15 order to the designated office; not accept the order and promptly forward the
16 order to the designated office; or promptly return it to the department. If
17 a financial institution has chosen to accept the order at a nondesignated
18 office, the financial institution's duties pursuant to section 32-1608(1),
19 Idaho Code, shall be effective upon acceptance at that office, and the time
20 periods for the financial institution's duties pursuant to subsections (2)
21 and (3) of section 32-1608, Idaho Code, shall begin to run upon receipt of the
22 order at the designated office.

23 (2) Unless otherwise notified by the department pursuant to this chap-
24 ter, the financial institution shall release the asset to the obligor on the
25 seventy-sixth day after the financial institution receives the asset with-
26 holding order.

27 (3) The department shall provide the financial institution with copies
28 of the order and notice required by section 32-1607, Idaho Code, to forward
29 to the obligor and any co-owner.