

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 401

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO SPECIAL INDEMNITY FUND; AMENDING SECTION 72-223, IDAHO  
2 CODE, TO CLARIFY CERTAIN SUBROGATION INTERESTS AND TO REMOVE OBSOLETE  
3 LANGUAGE; AMENDING SECTION 72-324, IDAHO CODE, TO PROVIDE LANGUAGE  
4 RELATING TO ADJUSTING CERTAIN CLAIMS, ENTERING INTO CERTAIN AGREEMENTS  
5 AND SETTling CERTAIN DISPUTED CLAIMS; AMENDING SECTION 72-327, IDAHO  
6 CODE, TO REVISE THE METHOD OF CALCULATION OF AN ANNUAL ASSESSMENT,  
7 TO REVISE CERTAIN APPORTIONMENTS, TO REVISE PROVISIONS RELATING TO  
8 REPORTING, TO REMOVE A PROVISION RELATING TO CERTAIN INDEMNITY BENEFITS  
9 PAID AND TO REMOVE A PENALTY; AMENDING SECTION 72-328, IDAHO CODE, TO  
10 REVISE A PROVISION RELATING TO CERTAIN WILLFUL MISREPRESENTATIONS;  
11 AMENDING SECTION 72-332, IDAHO CODE, TO REVISE LANGUAGE RELATING TO  
12 CERTAIN RESPONSIBLE PARTIES FOR PAYMENT OF COMPENSATION BENEFITS  
13 BEFORE A CERTAIN DATE; AND AMENDING SECTION 72-334, IDAHO CODE, TO  
14 PROVIDE A DATE TO PRECLUDE CLAIMS AGAINST THE INDUSTRIAL SPECIAL  
15 INDEMNITY FUND.  
16

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

18 SECTION 1. That Section 72-223, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 72-223. THIRD PARTY LIABILITY. (1) The right to compensation under  
21 this law shall not be affected by the fact that the injury, occupational  
22 disease or death is caused under circumstances creating in some person other  
23 than the employer a legal liability to pay damages therefor, such person  
24 so liable being referred to as the third party. Such third party shall not  
25 include those employers described in section 72-216, Idaho Code, having  
26 under them contractors or subcontractors who have in fact complied with the  
27 provisions of section 72-301, Idaho Code; nor include the owner or lessee of  
28 premises, or other person who is virtually the proprietor or operator of the  
29 business there carried on, but who, by reason of there being an independent  
30 contractor or for any other reason, is not the direct employer of the workmen  
31 there employed.

32 (2) Action may be instituted against such third party by the employee,  
33 or in event compensation has been claimed and awarded, by the employee and  
34 employer jointly, in the employee's name, or, if the employee refuses to  
35 participate in such action, by the employer in the employee's name.

36 (3) If compensation has been claimed and awarded, the employer having  
37 paid such compensation or having become liable therefor, shall be subrogated  
38 to the rights of the employee, to recover against such third party to  
39 the extent of the employer's compensation liability. The subrogated  
40 interest of the employer shall not include compensation paid or awarded  
41 for total and permanent disability which is in part apportionable to  
42 preexisting permanent impairments of the employee, except to the extent that

1 compensation relating to the preexisting permanent impairments was paid as  
 2 part of an award or order of the industrial commission.

3 (4) Unless otherwise agreed, upon any recovery by the employee against  
 4 the third party, the employer shall pay or have deducted from its subrogated  
 5 portion thereof, a proportionate share of the costs and attorney's fees  
 6 incurred by the employee in obtaining such recovery unless one (1) or more of  
 7 the following circumstances exist:

8 (a) If prior to the date of a written retention agreement between the  
 9 employee and an attorney, the employer has reached an agreement with  
 10 the third party, in writing, agreeing to pay in full the employer's  
 11 subrogated interest;

12 (b) If the employee alleges or asserts a position in the third  
 13 party claim adverse to the employer, then the commission shall have  
 14 jurisdiction to determine a reasonable fee, if any, for services  
 15 rendered to the employer;

16 (c) If there is a joint effort between the employee and employer to  
 17 pursue a recovery from the third party, then the commission shall have  
 18 jurisdiction to determine a reasonable fee, if any, and apportion the  
 19 costs and attorney's fees between the employee and employer.

20 (5) If the amount recovered from the third party exceeds the amount  
 21 of the subrogated portion payable to the employer for past compensation  
 22 benefits paid, then to the extent the employer has a future subrogated  
 23 interest in that portion of the third party recovery paid to the employee,  
 24 the employer shall receive a credit against its future liability for  
 25 compensation benefits. Such credit shall apply as future compensation  
 26 benefits become payable, and the employer shall reimburse the employee for  
 27 the proportionate share of attorney's fees and costs paid by the employee  
 28 in obtaining that portion of the third party recovery corresponding to the  
 29 credit claimed. The employer shall not be required to pay such attorney's  
 30 fees and costs related to the future credit prior to the time the credit is  
 31 claimed. However, the employer and employee may agree to different terms if  
 32 approved by the industrial commission.

33 (6) If death results from the injury or occupational disease and if  
 34 the employee leaves no dependents entitled to benefits under this law, the  
 35 surety shall have a right of action against the third party for recovery of  
 36 income benefits, reasonable expenses of medical and related services and  
 37 burial expense actually paid by the surety and for recovery of amounts paid  
 38 into the industrial special indemnity account pursuant to section 72-420,  
 39 Idaho Code, and such right of action shall be in addition to any cause of  
 40 action of the heirs or personal representatives of the deceased.

41 ~~(7) All rights and restrictions herein granted to the employer have~~  
 42 ~~previously been intended to be, and are hereby expressly granted to the~~  
 43 ~~industrial special indemnity account.~~

44 SECTION 2. That Section 72-324, Idaho Code, be, and the same is hereby  
 45 amended to read as follows:

46 72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND. There is  
 47 hereby created in the department of administration the office of manager of  
 48 the industrial special indemnity fund, elsewhere in this chapter referred to  
 49 as manager, whose duties shall be to administer the fund without liability

1 on the part of the state or the manager beyond the amount of such fund. Among  
2 the powers of the manager shall be the power to evaluate, investigate, adjust  
3 claims made against the fund and make agreements, subject to the approval of  
4 the industrial commission, for compensation for injuries and occupational  
5 diseases in accordance with the provisions of this act, including the power  
6 to order payment from the fund for such medical, hospital and nursing care  
7 charges as injured persons or those suffering from occupational diseases  
8 may be entitled to from the fund. In the process of adjusting claims made  
9 against the fund and entering into agreements for compensation, the manager  
10 shall not be required to stipulate or agree to any or all of the elements  
11 of industrial special indemnity fund liability. The manager shall have  
12 authority, subject to approval of the industrial commission, to settle  
13 disputed claims without being required to stipulate to any element of  
14 industrial special indemnity fund liability.

15 The compensation of such manager shall be as provided in section 59-508,  
16 Idaho Code.

17 The manager shall be given notice of all applications, hearings and  
18 proceedings involving rights of the fund, and shall represent the fund in  
19 all proceedings brought to enforce a claim against it. The manager shall  
20 have the authority to employ such medical or other experts and to defray  
21 the expense thereof and of such witnesses as are reasonably necessary to  
22 administer, evaluate or defend the fund. The manager may also employ such  
23 employees as are necessary to assist in the administration of the fund. The  
24 manager may also employ legal counsel, or obtain legal counsel pursuant to  
25 section 72-330, Idaho Code, to represent and conduct on behalf of the fund  
26 all suits, actions and proceedings whatsoever involving the fund.

27 The manager may, in his official name, sue and be sued in all the  
28 courts of the state and before the industrial commission in all actions or  
29 proceedings arising out of anything done or offered in connection with the  
30 industrial special indemnity fund or business related thereto.

31 The industrial commission shall compute and collect the assessment  
32 provided by section 72-327, Idaho Code, and shall make quarterly reports  
33 to the fund of the same. The manager of the fund shall, each quarter of  
34 each year, prepare and file with the industrial commission and the state  
35 treasurer a report of all expenses of administration, legal expenses and  
36 payments from the fund, which reports will be kept on file and open to  
37 inspection by any interested person.

38 The director of the department of administration shall appoint the  
39 manager from a list of at least three (3) names provided by the industrial  
40 commission. The manager shall serve at the pleasure of the director of the  
41 department of administration.

42 SECTION 3. That Section 72-327, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 72-327. ASSESSMENT -- METHOD OF CALCULATION AND PRORATION -- TIME FOR  
45 PAYMENT. (1) The state insurance fund, every authorized self-insurer and  
46 every surety authorized under the Idaho insurance code or by the director of  
47 the department of insurance to transact worker's compensation insurance in  
48 Idaho, in addition to all other payments required by statute, shall, within  
49 thirty (30) days subsequent to September 1 and April 1 of each year, pay to

1 the industrial commission for deposit in the industrial special indemnity  
2 fund an assessment as follows:

3 (a) The total annual assessment payable in the manner set forth in  
4 this section shall be equal in amount to ~~two (2) times the amount of all~~  
5 ~~expenses of the industrial special indemnity fund incurred during the~~  
6 ~~immediately preceding fiscal year less the existing cash balance of the~~  
7 ~~industrial special indemnity fund as of the thirtieth day of June of the~~  
8 ~~immediately preceding fiscal year, the sum of all of the following:~~

9 (i) The total of all annuity payments scheduled to be made in the  
10 next fiscal year;

11 (ii) The administrative expenses projected for the fund over the  
12 next fiscal year; and

13 (iii) An amount equal to five percent (5%) of the total of all  
14 annuity payments scheduled to be made in the next fiscal year.

15 Subtract from this sum the existing cash balance of the fund as of the  
16 end of the thirtieth day of June of the immediately preceding fiscal  
17 year.

18 (b) The total annual assessment shall be apportioned on a pro rata  
19 percentage basis among and between the state insurance fund, every  
20 authorized self-insurer and every surety authorized under the Idaho  
21 insurance code or by the director of the department of insurance to  
22 transact worker's compensation insurance in Idaho based upon the  
23 proportionate share of the ~~total gross amount of indemnity benefits~~  
24 ~~paid net premiums written~~ by the state insurance fund or each surety,  
25 or for each self-insurer, the net premium as calculated pursuant to  
26 section 72-523, Idaho Code, on Idaho worker's compensation ~~claims~~  
27 policies during the applicable reporting period;

28 (c) The amount of each responsible entity's or person's assessment  
29 which is due and payable within thirty (30) days subsequent to September  
30 1 and April 1 of any year shall be calculated by dividing one-half  
31 (1/2) of the total annual assessment amount by the responsible party's  
32 proportionate share of the ~~total gross amount of indemnity benefits~~  
33 ~~paid net premiums written~~ during the preceding period of time from  
34 January 1 through December 31. In no case shall the amount of any such  
35 assessment be less than two hundred dollars (\$200).

36 (2) ~~In arriving at the total gross amount of indemnity benefits paid,~~  
37 ~~the amount of indemnity benefits shall include those payments provided for~~  
38 ~~or made under the provisions of the worker's compensation law with respect to~~  
39 ~~"income benefits" as defined in section 72-102, Idaho Code.~~

40 ~~(3)~~ For the purposes of this section, the responsible entities  
41 or persons shall report to the industrial commission their ~~total gross~~  
42 ~~indemnity benefits paid during the twelve (12) month period from January~~  
43 ~~1 through December 31 no later than March 3 of the next succeeding year net~~  
44 ~~premiums written as required in section 72-524, Idaho Code.~~

45 ~~(4) A penalty for the late filing of any report required by this section~~  
46 ~~will be assessed in accordance with the rules of the industrial commission.~~

47 (5) The industrial special indemnity fund shall certify to the  
48 industrial commission annually the amount of the assessment payable under  
49 this section and the industrial commission shall prepare and submit to each  
50 responsible entity or person notice of its pro rata amount payable hereunder

1 on or before April 1, 1998, and thereafter on or before September 1 and April  
2 1 of each succeeding year.

3 (64) For the purposes of this section, the cash balance of the  
4 industrial special indemnity fund in any fiscal year shall mean all money  
5 deposited or invested by the state treasurer to the credit of the industrial  
6 special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code,  
7 and all interest earned thereon.

8 (75) For purposes of this section, the term "fiscal year" shall mean  
9 that period of time commencing upon July 1 in any year and ending upon June 30  
10 of the next succeeding year.

11 SECTION 4. That Section 72-328, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 72-328. COLLECTION OF DELINQUENT ASSESSMENTS -- DUTY OF ATTORNEY  
14 GENERAL -- PENALTIES. (1) If any responsible entity or person required to  
15 make payment of an assessment as provided in this act shall fail to make full  
16 payment on or before ten (10) days following the time period specified in  
17 section 72-327, Idaho Code, for payment of the assessment, it shall be the  
18 duty of the attorney general to bring a civil action in the name of the state  
19 in the proper court to collect the amount of the assessment due. Any amount  
20 of assessment collected by the attorney general shall be deposited in the  
21 industrial special indemnity fund.

22 (2) Any responsible entity or person who is in default for ten (10) or  
23 more days in the payment of the assessment as set forth in this act shall  
24 be liable for a penalty for every ten (10) day period or any part thereof  
25 during which such failure continues. The penalty shall be in the amount  
26 of ten percent (10%) of the amount originally due. It shall be the duty of  
27 the attorney general to bring a civil action in the name of the state in the  
28 proper court to collect the amount of the penalty herein provided in addition  
29 to any unpaid assessment. Any amount of penalty and assessment collected by  
30 the attorney general shall be deposited in the industrial special indemnity  
31 fund.

32 (3) Any responsible surety or person who shall willfully misrepresent  
33 the amount of ~~total gross indemnity benefits paid~~ net premiums written under  
34 the provisions of this act shall be liable to the state for a penalty in  
35 an amount ten (10) times the difference between the payments made and the  
36 amounts that should have been paid had such misrepresentation not been made.  
37 It shall be the duty of the attorney general to bring a civil action in the  
38 name of the state in the proper court to collect the amount of the penalty  
39 herein provided in addition to any unpaid assessment. Any amount of penalty  
40 and assessment collected by the attorney general shall be deposited in the  
41 industrial special indemnity fund.

42 SECTION 5. That Section 72-332, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY  
45 ~~ACCOUNT~~ FUND. (1) If an employee who has a permanent physical impairment  
46 from any cause or origin, incurs a subsequent disability by an injury or  
47 occupational disease arising out of and in the course of his employment

1 before July 1, 2010, and by reason of the combined effects of both  
 2 the ~~pre-existing~~ preexisting impairment and the subsequent injury or  
 3 occupational disease or by reason of the aggravation and acceleration  
 4 of the ~~pre-existing~~ preexisting impairment suffers total and permanent  
 5 disability, the employer and surety shall be liable for payment of  
 6 compensation benefits only for the disability caused by the injury or  
 7 occupational disease, including scheduled and unscheduled permanent  
 8 disabilities, and the injured employee shall be compensated for the  
 9 remainder of his income benefits out of the industrial special indemnity  
 10 account fund.

11 (2) "Permanent physical impairment" is as defined in section 72-422,  
 12 Idaho Code, provided, however, as used in this section such impairment must  
 13 be a permanent condition, whether congenital or due to injury or disease,  
 14 of such seriousness as to constitute a hindrance or obstacle to obtaining  
 15 employment or to obtaining ~~re-employment~~ reemployment if the claimant  
 16 should become employed. This shall be interpreted subjectively as to the  
 17 particular employee involved, however, the mere fact that a claimant is  
 18 employed at the time of the subsequent injury shall not create a presumption  
 19 that the ~~pre-existing~~ preexisting permanent physical impairment was not of  
 20 such seriousness as to constitute such hindrance or obstacle to obtaining  
 21 employment.

22 (3) For injury occurring or occupational diseases manifesting on  
 23 or after July 1, 2010, the employer and the surety for the employer in  
 24 whose employ the employee suffered an accident or an occupational disease  
 25 resulting in total and permanent disability shall be responsible for the  
 26 payment of all benefits to which the employee is entitled by reason of  
 27 total and permanent disability, without reduction or apportionment of any  
 28 preexisting permanent impairment or nonmedical factors.

29 SECTION 6. That Section 72-334, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 72-334. FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY  
 32 FUND -- TIME FOR FILING -- RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM --  
 33 JURISDICTIONAL EFFECT. (1) Any claimant, employer or surety making a claim  
 34 for benefits with the industrial special indemnity fund shall file a notice  
 35 of claim with the manager not less than sixty (60) days prior to the date of  
 36 filing of a complaint against the industrial special indemnity fund with  
 37 the industrial commission seeking benefits from the industrial special  
 38 indemnity fund. Such notice of claim shall include, but not be limited  
 39 to, a detailed statement describing the disability claim and supporting  
 40 documentation including relevant medical and vocational rehabilitation  
 41 records. Failure to timely file a notice of claim with the manager shall  
 42 require the involuntary dismissal of any complaint against the industrial  
 43 special indemnity fund regarding the claim for benefits which the party  
 44 seeking to join the industrial special indemnity fund may cause to be filed  
 45 with the industrial commission. The manager shall evaluate the notice of  
 46 claim and shall approve or deny the claim or make an offer of settlement  
 47 within the sixty (60) day period. If, in the discretion of the manager, the  
 48 notice of claim is determined to be incomplete, the manager may, upon written  
 49 notice to the party seeking to join the industrial special indemnity fund,

1 extend the time period for evaluation of the claim for a maximum of thirty  
2 (30) days in order to request the necessary documents and records. The  
3 manager shall approve or deny the claim or make an offer of settlement within  
4 the extended period.

5 (2) Notice of a claim under subsection (1) of this section against  
6 the industrial special indemnity fund for income benefits due to total and  
7 permanent disability arising under the provisions of section 72-332, Idaho  
8 Code, before July 1, 2010, shall be filed with the manager before July 1,  
9 2012.

10 (3) Where notice is not filed, pursuant to subsection (2) of this  
11 section, before July 1, 2012, the employer and the surety for the employer  
12 shall be responsible for claims for total and permanent disability arising  
13 before July 1, 2010, in the same manner as they would be responsible for  
14 claims for total and permanent disability arising on or after July 1, 2010,  
15 pursuant to section 72-332(3), Idaho Code.