

IN THE SENATE

SENATE BILL NO. 1411

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GARNISHMENTS; AMENDING SECTION 8-507, IDAHO CODE, TO PROVIDE
2 THAT A SERVING ATTORNEY SHALL SERVE CERTAIN DOCUMENTS, TO DEFINE A TERM
3 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-507A, IDAHO CODE,
4 TO REVISE PROVISIONS RELATING TO SERVICE ON A DEFENDANT OR CERTAIN THIRD
5 PARTIES BY THE SHERIFF OR A SERVING ATTORNEY; AMENDING SECTION 8-507B,
6 IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE ON A DEFENDANT OR
7 CERTAIN THIRD PARTIES BY A BANK OR DEPOSITORY INSTITUTION; AMENDING
8 SECTION 8-507C, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AVAIL-
9 ABILITY OF CERTAIN FORMS AND TO REVISE A CERTAIN NOTICE FORM; AMENDING
10 SECTION 8-507D, IDAHO CODE, TO PROVIDE THAT A SERVING ATTORNEY HAS CER-
11 TAIN DUTIES; AMENDING SECTION 8-508, IDAHO CODE, TO REVISE PROVISIONS
12 RELATING TO LIABILITY OF A GARNISHEE; AMENDING SECTION 8-509, IDAHO
13 CODE, TO REVISE PROVISIONS RELATING TO AN EXAMINATION OF A GARNISHEE;
14 AMENDING SECTION 8-510, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
15 DISCHARGE OF A GARNISHEE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
16 SECTION 8-521, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE LIABIL-
17 ITY OF CERTAIN PERSONS; AMENDING SECTION 8-524, IDAHO CODE, TO REQUIRE A
18 SERVING ATTORNEY TO MAKE A FULL INVENTORY OF CERTAIN PROPERTY; AMENDING
19 SECTION 11-102, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE FORM OF
20 A CERTAIN WRIT; AMENDING SECTION 11-103, IDAHO CODE, TO REVISE PROVI-
21 SIONS RELATING TO THE TIME WHEN AN EXECUTION IS RETURNABLE AND TO REVISE
22 PROVISIONS RELATING TO CONTINUOUS EXECUTION OR GARNISHMENT FOR CHILD
23 SUPPORT; AMENDING SECTION 11-107, IDAHO CODE, TO PROVIDE THAT WHERE AN
24 EXECUTION IS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR IT MAY BE IS-
25 SUED TO A SERVING ATTORNEY AND TO PROVIDE THAT WHERE AN EXECUTION IS FOR
26 CERTAIN GARNISHMENTS IT MAY BE ISSUED TO A SERVING ATTORNEY; AMENDING
27 SECTION 11-203, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CLAIM OF
28 EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM AND TO MAKE TECHNICAL COR-
29 RECTIONS; AMENDING SECTION 11-206, IDAHO CODE, TO DEFINE A TERM AND TO
30 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-301, IDAHO CODE, TO RE-
31 VISE PROVISIONS RELATING TO THE EXECUTION OF A CERTAIN WRIT AND TO MAKE
32 TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 32, TITLE 31, IDAHO CODE,
33 BY THE ADDITION OF A NEW SECTION 31-3203A, IDAHO CODE, TO PROVIDE THAT
34 A SERVING ATTORNEY MAY CHARGE A REASONABLE FEE AND MAY CHARGE A CERTAIN
35 COMMISSION.
36

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

38 SECTION 1. That Section 8-507, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 8-507. GARNISHMENT -- SERVICE OF WRIT OF ATTACHMENT, EXECUTION, OR
41 GARNISHMENT -- BANKS. (a) Upon receiving written directions from the plain-
42 tiff or his attorney, that any person or corporation, public or private, has

1 in his or its possession or control, any credits or other personal property
2 belonging to the defendant, or is owing any debt to the defendant, the sher-
3 iff or a serving attorney shall serve upon any such person, or corporation
4 identified in the plaintiff's written directions all of the following docu-
5 ments:

- 6 (1) a A copy of the writ;
- 7 (2) a A notice that such credits, or other property, or debts, as the
8 case may be, are attached in pursuance of such writ;
- 9 (3) a A notice of exemptions available under federal and state law;
- 10 (4) Instructions to debtors and third parties for asserting a claim of
11 exemption;
- 12 (5) a A form for making a claim of exemption; and
- 13 (6) If the garnishee is a bank or depository institution, a search fee
14 of five dollars (\$5.00) and the last known mailing address of the defen-
15 dant and, if known, a tax identification number, that will enable the
16 garnishee to identify the defendant on its records.

17 The documents specified in paragraphs (3) through (5) of this subsec-
18 tion shall be in a form substantially similar to the form provided in section
19 8-507C, Idaho Code.

20 (b) In case of service upon a corporation including, but not limited to,
21 any banking or trust corporation, the same may be had by delivering a copy of
22 the papers to be served, if upon a private corporation, to any officer, man-
23 ager or designated agent thereof, and if upon a public or municipal corpora-
24 tion, to the mayor, president of the council or board of trustees, or any pre-
25 siding officer, or to the secretary or clerk thereof.

26 In the event a banking or trust corporation operates more than one (1)
27 office where deposits are received within the state of Idaho, the banking or
28 trust corporation may, by notifying the Idaho department of finance, desig-
29 nate a particular office for the service of attachment, execution and gar-
30 nishment papers. Such office may be located either within or outside the
31 state of Idaho. The Idaho department of finance shall post the list of such
32 designated offices on its web page for access by the public.

33 If a banking or trust corporation operating more than one (1) office
34 where deposits are received has designated a particular office for the at-
35 tachment, execution, or garnishment, then service of such papers made on
36 the office so designated shall be valid and effective as to moneys to the
37 defendant's credit held in the possession or control of any of the banking or
38 trust corporation's branches or offices located within or outside the state
39 of Idaho.

40 If service of the attachment, execution or garnishment papers is not
41 made on the designated office of the banking or trust corporation, but in-
42 stead is made on another office of the banking or trust corporation located
43 in the state of Idaho, then service of such papers shall be valid and effec-
44 tive as to moneys to the defendant's credit in that particular office and as
45 to other personal property belonging to the defendant held in the possession
46 or control of that particular office, but shall only become valid and effec-
47 tive as to moneys to the defendant's credit held in the possession or control
48 of any of the bank or trust corporation's other offices upon receipt of the
49 attachment, execution or garnishment papers by the designated office. Such
50 banking or trust corporation may, but is under no obligation to, transmit

1 the original or a copy of the papers from the particular office served to the
2 designated office.

3 Service on any banking or trust corporation is effective as against the
4 moneys and other personal property to the defendant's credit which are in the
5 possession or control of the banking or trust corporation named in the gar-
6 nishment, but not any affiliate, parent or subsidiary not named. If the gar-
7 nishment fails to sufficiently distinguish the banking or trust corporation
8 from any affiliate, parent or subsidiary thereof, such that it is not clear
9 which entity is intended to be the garnishee, the garnishment may be returned
10 unsatisfied.

11 (c) The provisions of this section and sections 8-507A through 8-507D,
12 Idaho Code, shall apply to any levy by execution pursuant to chapters 2 and 3,
13 title 11, Idaho Code.

14 (d) For the purposes of chapter 5, title 8, and chapters 1 through 3,
15 title 11, Idaho Code, "serving attorney" means an attorney who is an active
16 member of the Idaho state bar and his or her duly authorized employee or agent
17 over whom the attorney has direct supervision.

18 SECTION 2. That Section 8-507A, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 8-507A. SERVICE ON DEFENDANT AND THIRD PARTIES BY SHERIFF OR SERVING
21 ATTORNEY. Within two (2) business days after service of the writ and other
22 documents as provided in section 8-507, Idaho Code, or if service is upon a
23 bank or other depository institution, within one (1) business day, the sher-
24 iff or serving attorney shall hand deliver or mail to the defendant and any
25 third party named in plaintiff's written directions as a co-owner or hav-
26 ing an interest in the property or money to be levied upon, one (1) copy of
27 all the documents and if the garnishee is a bank or depository institution,
28 the search fee and other information specified in subsection (a) of section
29 8-507, Idaho Code. The plaintiff shall identify in the plaintiff's writ-
30 ten directions the last known mailing address of the defendant and any third
31 party to be served. The sheriff or serving attorney shall indicate on the re-
32 turn of the writ filed with the court the date and manner of service upon the
33 defendant and any third party and shall indicate the documents served.

34 If at the time of service of the writ the sheriff or serving attorney
35 receives written answer from the garnishee stating that it has no money or
36 other personal property belonging or owing to the defendant, compliance with
37 the provisions of this section shall not be required.

38 SECTION 3. That Section 8-507B, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 8-507B. SERVICE ON DEFENDANT AND THIRD PARTIES BY BANK OR DEPOSITORY
41 INSTITUTION. If the writ and notice of garnishment are served upon a bank or
42 other depository institution holding money or accounts belonging to the de-
43 fendant, the garnishee shall within one (1) business day after such service,
44 mail or hand deliver a copy of all documents served upon it by the sheriff or
45 serving attorney:

46 (a) To the defendant at the address to which account statements or other
47 pertinent account documentation are normally sent, or if the money is not in

1 an account, to the last known address of the defendant shown upon the records
2 of the garnishee at the time of service upon it of the writ; and

3 (b) To any other person shown upon the records of the garnishee as a
4 co-owner or having an interest in the money or accounts garnished at the last
5 known address of the third party shown upon the records of the garnishee at
6 the time of service upon it of the writ.

7 The bank or depository institution shall be entitled to deduct a single
8 fee of not to exceed ten dollars (\$10.00) from the money transferred to the
9 sheriff or serving attorney pursuant to the garnishment to cover the costs
10 associated with the processing and service of the documents. The fee herein
11 provided shall be the only processing and service fee to which the bank or
12 depository institution is entitled regardless of the number of parties to
13 which documents are sent and is in addition to the search fee specified in
14 subsection (a) (6) of section 8-507, Idaho Code. Upon being notified by the
15 sheriff or serving attorney that money transferred pursuant to the garnish-
16 ment has been released as a result of a court determination that the money is
17 exempt or a failure by the plaintiff to contest the claim of exemption, the
18 garnishee shall recredit the fee to the defendant's account or reimburse the
19 defendant therefor and the plaintiff shall reimburse the garnishee for the
20 fee.

21 The garnishee shall indicate in the answer to interrogatories as pro-
22 vided in section 8-511, Idaho Code, the date and manner of service of the doc-
23 uments upon the defendant and any third party as herein required but shall
24 not be required to disclose the names or addresses of any third party served.

25 The garnishee shall only be required to serve on the defendant and any
26 third party copies of those documents served upon it by the sheriff or serv-
27 ing attorney.

28 SECTION 4. That Section 8-507C, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 8-507C. FORMS. The notice of exemptions, instructions to debtors and
31 third parties, and the claim of exemption shall be in a form substantially
32 similar to the form hereinafter provided. The forms shall be made available
33 in English and Spanish language translations in the offices of each county
34 sheriff and of each attorney who serves or processes garnishments. Notice,
35 written in Spanish, of the availability of these documents in Spanish trans-
36 lation shall be set forth on the notice of exemptions.

37 IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

38 MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE BEEN TAKEN OR
39 HELD IN ORDER TO SATISFY A COURT JUDGMENT. YOU MAY BE ABLE TO GET
40 YOUR MONEY/PROPERTY BACK SO READ THIS NOTICE CAREFULLY.

41 SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA EN ESPANOL EN EL
42 DEPARTAMENTO DEL SHERIFE O EN LA OFICINA DEL ABOGADO.

43 ONLY ONE ORDER OF GARNISHMENT AGAINST EARNINGS MAY BE IN EFFECT
44 AGAINST A JUDGMENT DEBTOR AT ANY GIVEN TIME. IF THERE IS AN ORDER
45 OF GARNISHMENT CURRENTLY IN EFFECT, THE EMPLOYER MUST RETURN THE

1 Type of Money and Property

- 2 1. Alimony, support, maintenance (money or property)
- 3 2. Appliances (household) (\$500 per item, up to \$5,000 gross)
- 4 3. Annuity contract payments
- 5 4. Bodily injury and wrongful death awards*
- 6 5. Books (professional) up to \$1,500
- 7 6. Burial plots
- 8 7. Child support payments*
- 9 8. Disability or illness benefits*
- 10 9. Furnishings (household) (\$500 per item, up to \$5,000 gross)
- 11 10. Health aids
- 12 11. Homestead, house, mobile home, and related structures
- 13 12. Jewelry (up to \$1,000)
- 14 13. Life insurance benefits payable to spouse or dependent*
- 15 14. Medical and/or hospital benefits
- 16 15. Military retirement and survivor's benefits
- 17 16. Motor vehicle: car, truck, motorcycle with a value of up to \$3,000
- 18 per person
- 19 17. Pension: stock bonus, profit sharing annuity, or similar plans
- 20 18. Personal property: (\$500 per item, up to \$5,000 gross) (furnish-
- 21 ings, appliances, one firearm, animals, musical instruments, books,
- 22 clothes, family portraits and heirlooms)
- 23 19. Public assistance: federal, state, or local including: Aid to
- 24 Aged, Blind and Disabled (AABD); Aid to Families with Dependent Chil-
- 25 drren (AFDC); Aid to Permanently and Totally Disabled (APTD)
- 26 20. Public Employee's Benefits including Federal Civil Service Retire-
- 27 ment, Idaho Retirement and Disability
- 28 21. Railroad Retirement Benefits
- 29 22. Retirement, pension or profit sharing plan qualified by IRS
- 30 23. Social Security Disability and Retirement Benefits
- 31 24. SSI (Supplemental Security Insurance Benefits)
- 32 25. Tools of trade and implements up to \$1,500
- 33 26. Unemployment benefits
- 34 27. Veterans benefits and insurance
- 35 28. Wages or salary:
- 36 Consumer debts primarily for personal or household purposes: ex-
- 37 emption is 30 times the federal minimum wage or 25% of disposable
- 38 income, whichever is greater
- 39 Nonconsumer debts: exemption is 30 times the federal minimum wage
- 40 or 25% of disposable income, whichever is greater
- 41 29. Worker's compensation
- 42 30. An unmatured life insurance contract other than a credit life in-
- 43 surance contract
- 44 31. An aggregate interest, not to exceed \$5,000, in any accrued divi-
- 45 dend or interest under, or loan value of, an unmatured life insurance
- 46 contract under which the insured is the individual or a person of whom
- 47 the individual is a dependent
- 48 32. An aggregate interest in any tangible personal property, not to ex-
- 49 ceed the value of \$800

1 * To the extent reasonably necessary for support of family and if not com-
 2 mingled with other funds.

3 INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

4 In order to claim an exemption from execution and garnishment under
 5 Idaho and federal law, you, the defendant, judgment debtor, or a third party,
 6 holding or known to have an interest in the money and/or personal property,
 7 must:

- 8 1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF PARTY WHO
 9 LEVIED UPON YOUR MONEY AND/OR PERSONAL PROPERTY AT (SHER-
 10 IFF'S OR SERVING ATTORNEY'S STREET ADDRESS) , WITHIN FOUR-
 11 TEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE IN-
 12 STRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A CLAIM
 13 OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST BE RE-
 14 CEIVED BY THE SHERIFF OR THE SERVING ATTORNEY WITHIN THE FOUR-
 15 TEEN (14) DAY PERIOD.
- 16 2. The sheriff or serving attorney has to notify the plaintiff
 17 or judgment creditor within one (1) business day, excluding
 18 weekends and holidays, that you filed a claim of exemption.
 19 The judgment creditor has five (5) business days, excluding
 20 weekends and holidays, after the date notice was provided
 21 that a claim of exemption was filed with the sheriff or serv-
 22 ing attorney, to file a motion with the court contesting the
 23 claim of exemption.
- 24 3. If the judgment creditor notifies the sheriff or the serving
 25 attorney that he will not object to the claim of exemption or
 26 does not file a motion with the court contesting the claim of
 27 exemption, the sheriff or the serving attorney will immedi-
 28 ately return the money and/or personal property or notify the
 29 bank or depository institution to release the money and/or
 30 personal property which has been levied upon.
- 31 4. IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT CON-
 32 TESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR OR
 33 ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE MOTION
 34 AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN NOT LESS
 35 THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER THE FIL-
 36 ING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO EXPLAIN THE
 37 GROUNDS FOR CLAIMING THE EXEMPTION IN COURT ON THE DATE AND
 38 TIME SET FOR THE HEARING. YOU SHOULD BRING WHATEVER DOCUMENTS
 39 YOU HAVE TO SUPPORT YOUR CLAIM.
- 40 5. This is a notice, not legal advice. If you have any questions
 41 concerning your rights in this action, you should contact an
 42 attorney as soon as possible. If you are low income and cannot
 43 afford an attorney you may contact the nearest office of Idaho
 44 Legal Aid Services, Inc. to inquire if they can assist you.

1 IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF THE STATE OF
2 IDAHO, IN AND FOR THE COUNTY OF

3-
4 ..,)
5 Plaintiff(s),) CASE NO.
6 vs.) CLAIM OF EXEMPTION
7-
8 ..,)
9 Defendant(s).)
10-
11 ...)

12 I claim an exemption from levy for the following described money and/or
13 property:

14 a. Money, including money in a bank account, which was paid to me or my
15 family as:

- 16 Public assistance of any kind
- 17 Social security or SSI
- 18 Worker's compensation
- 19 Unemployment benefits
- 20 Child support
- 21 Retirement, pension, or profit sharing benefits
- 22 Military or veterans benefits
- 23 Life insurance or other insurance
- 24 Disability, illness, medical or hospital benefits
- 25 Alimony, support or maintenance
- 26 Annuity contract benefits
- 27 Bodily injury or wrongful death awards
- 28 Other money (describe)
- 29 Wages (Do not check this box until you have first talked
30 to your employer to see if he correctly calculated your
31 exemption according to the formula under item 28 on the form
32 entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED."
33 Then check this box only if you believe your employer's
34 calculation is incorrect.)

35 b. Property:

- 36 Professional books
- 37 Burial plots

1 time within which hearing on a motion to contest a claim of exemption or third
2 party claim must be set as provided in section 8-540, Idaho Code, and section
3 11-203, Idaho Code.

4 The sheriff or the serving attorney shall not be required to investigate
5 or assure the accuracy and completeness of the addresses of the parties to be
6 served or any other information provided by the plaintiff.

7 SECTION 6. That Section 8-508, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 8-508. LIABILITY OF GARNISHEE. All persons having in their possession
10 or under their control, any credits or other personal property belonging to
11 the defendant, at the time of service upon them of a copy of the writ and no-
12 tice, as provided in the last two (2) sections, shall be, unless such prop-
13 erty be delivered up or transferred, or such debts be paid to the sheriff or
14 to the serving attorney, liable to the plaintiff for the amount of such cred-
15 its, property, or debts, until the attachment be discharged or any judgment
16 recovered by him be satisfied.

17 SECTION 7. That Section 8-509, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 8-509. EXAMINATION OF GARNISHEE. (a) Any person owing debts to the de-
20 fendant, or having in his possession or under his control, any credits or
21 other personal property belonging to the defendant, may be required to at-
22 tend before the court or judge, or a referee appointed by the court or judge,
23 and be examined on oath respecting the same. If the garnishee be a corpora-
24 tion the officer or agent thereof having knowledge of the fact sought to be
25 established may be required to attend and give evidence thereof. The defen-
26 dant may also be required to attend for the purpose of giving information re-
27 specting his property and may be examined on oath. The court or judge may,
28 after such examination, order personal property capable of manual delivery
29 to be delivered to the sheriff or to the serving attorney, on such terms as
30 may be just, having reference to any liens or claims against the same, and a
31 memorandum to be given of all other personal property, containing the amount
32 and description thereof.

33 (b) When the garnishee is the employer of the judgment debtor, the judg-
34 ment creditor, upon application to the court, shall have issued by the clerk
35 of court, a continuing garnishment directing the employer-garnishee to pay
36 to the sheriff or to the serving attorney such future moneys coming due to
37 the judgment debtor as may come due to said judgment debtor as a result of the
38 judgment debtor's employment. This continuing garnishment shall continue
39 in force and effect until the judgment is satisfied. The creditor shall be
40 solely responsible for insuring that the amounts garnished do not exceed the
41 amount due on the judgment. If additional garnishments are issued during
42 the term of a continuing garnishment and the continuing garnishment is the
43 maximum allowed under the provisions of section 11-207, Idaho Code, the ad-
44 ditional garnishments cannot be served until the continuing garnishment is
45 satisfied, or until the amount taken by the continuing garnishment is less
46 than the maximum allowed; additional garnishments issued during the term of
47 a continuing garnishment must be served in the order in which presented.

1 SECTION 8. That Section 8-510, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 8-510. NOTICE OF GARNISHMENT -- DISCHARGE OF GARNISHEE. Any person who
4 has been served with a copy of the writ and notice as provided in sections
5 8-506-- through 8-508, 11-201, 16-603, 16-604, or 16-1104, Idaho Code, shall
6 be deemed a garnishee, and service of copy of writ and the notice therein pro-
7 vided for, shall, for the purpose of sections 8-510-- through 8-523, Idaho
8 Code, be deemed to be notice of garnishment, and whenever any person shall
9 have been served with notice of garnishment as herein defined, he may dis-
10 charge himself by paying or delivering to the ~~officer~~ sheriff or the serving
11 attorney all debts owing by him to the defendant, or a portion thereof suffi-
12 cient to discharge the claim of the plaintiff, or any or all money of the de-
13 fendant in his hands to a similar amount, taking a receipt therefor from the
14 ~~officer~~ sheriff or the serving attorney, which shall discharge such person
15 from any and all liability to the extent of such payment, and which shall be
16 held by the ~~officer~~ sheriff or the serving attorney subject to the orders of
17 the court out of which the writ issued.

18 SECTION 9. That Section 8-521, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 8-521. LIABILITY OF OFFICERS AND EXECUTORS AS GARNISHEES. No sheriff,
21 constable, servicing attorney or other officer charged with the collection of
22 money shall, prior to the return day of the execution upon which the same may
23 be made, be liable to be summoned as a garnishee, nor shall any county col-
24 lector or municipal corporation or any officer thereof, nor administrator or
25 executor of any estate, prior to the allowance of a demand found to be due by
26 his estate, or prior to an order of distribution or for the payment of debts
27 and legacies, be liable in their official capacities as garnishee.

28 SECTION 10. That Section 8-524, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 8-524. INVENTORY AND MEMORANDUM OF ATTACHED PROPERTY. The sheriff or
31 the servicing attorney must make a full inventory of the property attached,
32 and return the same with the writ. To enable him to make such return as to
33 the debts and credits attached, he must request, at the time of service, the
34 party owing the debt or having the credit to give him a memorandum, stating
35 the amount and description of each, and if such memorandum be refused, he
36 must return the fact of refusal with the writ. The party refusing to give the
37 memorandum may be required to pay the cost of any proceedings taken for the
38 purpose of obtaining information respecting the amounts and description of
39 such debt or credit.

40 SECTION 11. That Section 11-102, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 11-102. FORM OF WRIT. The writ of execution must be issued in the name
43 of the people, sealed with the seal of the court, and subscribed by the clerk,
44 and be directed to the sheriff or in the case of a bank garnishment, wage gar-

1 nishment or other money garnishment be directed to a serving attorney, and
2 it must intelligently refer to the judgment, stating the court, the county
3 where the judgment roll is filed, and if it be for money, the amount thereof,
4 and the amount actually due thereon, and if made payable in a specified kind
5 of money, or currency, the execution must also state the kind of money or cur-
6 rency in which the judgment is payable, and must require the sheriff or serv-
7 ing attorney substantially as follows:

8 (1) If it be against the property of the judgment debtor, it must re-
9 quire the sheriff to satisfy the judgment, with interest, out of the per-
10 sonal property of such debtor, and if sufficient personal property cannot
11 be found, then out of his real property; or if the judgment be a lien upon
12 real property, then out of the real property belonging to him on the day when
13 the judgment was docketed, or at any time thereafter; or if the execution be
14 issued to a county other than the one in which the judgment was recovered,
15 on the day when the transcript of the docket was filed in the office of the
16 recorder of such county, stating such day, or any time thereafter.

17 (2) If it be against real or personal property in the hands of the per-
18 sonal representatives, heirs, devisees, legatees, tenants, or trustees, it
19 must require the sheriff to satisfy the judgment, with interest, out of such
20 property.

21 (3) If it be against the person of the judgment debtor, it must require
22 the sheriff to arrest such debtor and commit him to the jail of the county un-
23 til he pay the judgment, with interest, or be discharged according to law.

24 (4) If it be issued on a judgment made payable in a specified kind of
25 money or currency, it must also require the sheriff or serving attorney to
26 satisfy the same in the kind of money or currency in which the judgment is
27 made payable, and the sheriff or serving attorney must refuse payment in any
28 other kind of money or currency; and in case of levy and sale of property of
29 the judgment debtor, he must refuse payment from any purchaser at such sale
30 in any other kind of money or currency than that specified in the execution.
31 The sheriff or serving attorney collecting money or currency in the manner
32 required by this chapter, must pay to the plaintiff or party entitled to re-
33 cover the same, the same kind of money or currency received by him, and in
34 case of neglect or refusal so to do, he shall be liable on his official bond
35 to the judgment creditor in three (3) times the amount of the money so col-
36 lected.

37 (5) If it be for the delivery of the possession of real or personal prop-
38 erty, it must require the sheriff to deliver the possession of the same, de-
39 scribing it, to the party entitled thereto, and may at the same time require
40 the sheriff to satisfy any costs, damages, rents or profits recovered by the
41 same judgment, out of the personal property of the person against whom it was
42 rendered, and the value of the property for which the judgment was rendered,
43 to be specified therein, if a delivery thereof cannot be had; and if suffi-
44 cient personal property cannot be found, then out of the real property, as
45 provided in subsection (1) of this section.

46 SECTION 12. That Section 11-103, Idaho Code, be, and the same is hereby
47 amended to read as follows:

48 11-103. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK -- CONTINU-
49 OUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT. (a) Except as provided in

1 subsection (b) of this section, the execution may be made returnable at any
2 time not less than ten (10) nor more than sixty (60) days after its receipt by
3 the sheriff or serving attorney, to the clerk with whom the judgment roll is
4 filed. When the execution is returned, the clerk must attach it to the judg-
5 ment roll. If any real estate be levied upon, the clerk must record the ex-
6 ecution and the return thereto at large, and certify the same under his hand
7 as true copies in a book to be called the "execution book," which book must
8 be indexed with the names of the plaintiffs and defendants in execution al-
9 phabetically arranged, and kept open at all times during office hours for the
10 inspection of the public without charge. It is evidence of the contents of
11 the originals whenever they, or any part thereof, may be destroyed, muti-
12 lated or lost.

13 (b) Where an execution or garnishment against earnings or unemployment
14 benefits for a delinquent child support obligation is served upon any person
15 or upon the state of Idaho and there is in possession of such person or the
16 state of Idaho any such earnings or any unemployment benefits of the judg-
17 ment debtor, the execution and the garnishment shall operate continuously
18 and shall require such person or the state of Idaho to withhold the nonex-
19 empt portion of earnings or unemployment benefits at each succeeding earn-
20 ings or unemployment benefits disbursement interval until released by the
21 sheriff or serving attorney at the written request of the judgment creditor
22 or until the judgment for child support debt, in the dollar amount specif-
23 ically set forth on the writ of execution and subject to garnishment as of
24 the date the writ of execution is issued, is discharged or satisfied in full;
25 provided, however, that interim returns on such continuous execution or gar-
26 nishment shall be filed by the sheriff or serving attorney at intervals not
27 to exceed fourteen (14) days, whenever the amount collected in the fourteen
28 (14) day period is at least equal to fifty dollars (\$50.00), but in any event,
29 interim returns on such continuous garnishment shall be filed by the sheriff
30 or by the serving attorney at intervals not to exceed thirty (30) days. The
31 proportion of earnings subject to garnishment as compared to total avail-
32 able earnings or unemployment benefits shall be limited to the percentage
33 restrictions on garnishment of wages for child support as provided in sec-
34 tion 11-207, Idaho Code.

35 SECTION 13. That Section 11-107, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 11-107. EXECUTIONS DIRECTED TO SHERIFF OR SERVING ATTORNEY -- EXECU-
38 TIONS IN DIFFERENT COUNTIES AT SAME TIME. Where the execution is against the
39 property of the judgment debtor it may be issued to the sheriff of any county
40 in the state or to a serving attorney. Where it requires the delivery of real
41 or personal property it must be issued to the sheriff of the county where the
42 property, or some part thereof, is situated, except in the case of an execu-
43 tion for a bank garnishment, wage garnishment or other money garnishment, in
44 which case it may be issued to a serving attorney. Executions may be issued
45 at the same time to different counties.

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

1 11-203. CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM -- MOTION
2 TO CONTEST CLAIM AND HEARING -- HOLDING AND RELEASE OF PROPERTY BY SHERIFF
3 OR SERVING ATTORNEY. The following procedures shall apply to a claim by the
4 defendant or the defendant's representative that property levied upon is ex-
5 empt and to any claim by a third party that property levied upon is his prop-
6 erty or that he has a security interest therein. The defendant or the defen-
7 dant's representative shall complete the claim of exemption form as provided
8 in section 8-507C, Idaho Code. A third party claimant shall prepare a writ-
9 ten claim setting forth the grounds upon which he claims the property, and in
10 the case of a secured party, also stating the dollar amount of the claim. A
11 claim of exemption or third party claim may be filed only if property has been
12 levied upon.

13 (a1) The claim of exemption or third party claim and two (2) postage
14 prepaid envelopes, to serve copies on the judgment creditor and the sher-
15 iff or serving attorney, shall be delivered or mailed to the sheriff court in
16 which the judgment was entered within fourteen (14) days after the date the
17 sheriff or serving attorney hand delivers or mails the documents required to
18 be served upon the defendant and third parties under section 8-507A, Idaho
19 Code. If the claim is mailed, it must be received by the sheriff court within
20 the fourteen (14) day period. In computing the fourteen (14) day period, in-
21 tervening weekends and legal holidays shall be counted, but if the last day
22 of the period falls on a weekend or legal holiday, the period shall be deemed
23 to run until the close of business of the first business day following the
24 weekend or holiday.

25 Within one (1) business day after receiving a claim, the sheriff court
26 shall deliver or mail a copy thereof to the plaintiff or other person in whose
27 favor the writ of execution runs and to the sheriff or serving attorney. The
28 sheriff court may provide notification of the claim by telephone but must
29 also mail a copy of the claim within one (1) business day as herein provided.

30 (b2) The plaintiff or other person in whose favor the writ of execution
31 runs shall have five (5) business days after the date a copy of the claim is
32 delivered or mailed to him by the sheriff court within which to file a motion
33 with the court stating the grounds upon which he contests the claim of ex-
34 emption or third party claim. When the motion is filed, the plaintiff shall
35 lodge with the court a copy of the claim to which the motion pertains. Hear-
36 ing on the motion shall be set for a date within not less than five (5) nor
37 more than twelve (12) days after the filing date of the motion and may be con-
38 tinued only at the request of the defendant. A copy of the motion and no-
39 tice of hearing shall be delivered or mailed to the defendant or third party
40 claimant on the date the motion is filed. The prevailing party at the hearing
41 may be awarded costs pursuant to the Idaho rules of civil procedure.

42 Within the period for filing a motion to contest, the moving party shall
43 notify the sheriff or the serving attorney that the motion has been filed.
44 Such notification may be by telephone but a copy of the motion and notice of
45 hearing shall also be mailed or hand delivered to the sheriff or serving at-
46 torney within the filing period herein prescribed.

47 (c3) The sheriff or the serving attorney shall not deliver to the plain-
48 tiff or sell the property levied upon, except if perishable as provided by
49 law, until the period for filing a claim has elapsed. The sheriff or the
50 serving attorney shall refuse to accept or honor a claim not filed with him

1 within that period and unless otherwise ordered by the court, shall, after
2 such period has elapsed, proceed to sell or deliver the property levied upon
3 to the plaintiff or other person in whose favor the execution runs. If, af-
4 ter notice from the sheriff or from the serving attorney of the filing of a
5 claim, the plaintiff or other person in whose favor the execution runs, no-
6 tifies the sheriff or the serving attorney that the claim will be uncontested
7 or fails to notify the sheriff or the serving attorney within the time pro-
8 vided in subsection (~~b~~2) of this section that the claim is being contested,
9 the sheriff or the serving attorney shall release the claimed property to the
10 defendant or his agent.

11 (~~a~~4) If a plaintiff or other person in whose favor the execution runs
12 has failed to contest a claim of exemption within the time allowed by this
13 section or if property has been determined by a court to be exempt, and
14 the plaintiff or other person in whose favor the execution runs thereafter
15 levies upon or otherwise seeks to apply the property toward the satisfaction
16 of the same money judgment, the plaintiff or other person in whose favor the
17 execution runs is not entitled to recover the subsequent costs of collection
18 unless the property is applied to satisfaction of the judgment.

19 (~~e~~5) If a security agreement to the third party claimant is in default,
20 rendering said claimant the legal right to possession, the claimant may file
21 with the sheriff or with the serving attorney an affidavit of release to the
22 claimant executed by the defendant-debtor, or his agent; or, in lieu of said
23 affidavit of release, the third party claimant may file an affidavit setting
24 forth the defendant-debtor's default and claiming possession under default
25 and a hold harmless agreement in favor of the sheriff or serving attorney,
26 supported by an undertaking qualifying in the state of Idaho, indemnifying
27 the sheriff or the serving attorney and said defendant-debtor in double the
28 actual value of the property as stated in said third party claim. Upon re-
29 ceipt of either of the foregoing, the sheriff or the serving attorney shall
30 release said property to the third party claimant, taking receipt therefor;
31 these proceedings to be reported to the court by the sheriff's or serving at-
32 torney's return in the action.

33 (~~f~~6) Nothing in this section shall be construed to prevent the defen-
34 dant from pursuing his common law remedies.

35 (~~g~~7) Personal service shall be accomplished in the same manner provided
36 for service of summons under the Idaho rules of civil procedure. Mailing
37 shall be by first class mail. The date when an item is deposited in the United
38 States mails shall constitute the date of mailing. In computing any period
39 of time prescribed in this section, the day of the act or event after which
40 the designated period of time begins to run is not to be included.

41 SECTION 15. That Section 11-206, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 11-206. DEFINITIONS. For the purpose of section 11-207, Idaho Code,
44 the term:

45 (~~1~~7) "Earnings" means compensation paid or payable for personal
46 services, whether denominated as wages, salary, commission, bonus, or oth-
47 erwise, and includes periodic payments pursuant to a pension or retirement
48 program.

1 ~~(2-)~~ "Disposable earnings" means that part of the earnings of any indi-
2 vidual remaining after the deduction from those earnings of any amounts re-
3 quired by law to be withheld.

4 ~~(3-)~~ "Garnishment" means any legal or equitable procedure through
5 which the earnings of any individual are required to be withheld for payment
6 of any debt.

7 (4) "Serving attorney" means an attorney who is an active member of the
8 Idaho state bar and his or her duly authorized employee or agent over whom the
9 attorney has direct supervision.

10 SECTION 16. That Section 11-301, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 11-301. EXECUTION OF WRIT. (1) The sheriff, or the serving attorney in
13 the case of a bank garnishment, wage garnishment or other money garnishment,
14 must execute the writ against the property of the judgment debtor by levy-
15 ing on a sufficient amount of property if there be sufficient; collecting
16 or selling the things in action, and selling the other property, and pay-
17 ing to the plaintiff or his attorney so much of the proceeds as will sat-
18 isfy the judgment. Any excess in the proceeds over the judgment and accruing
19 costs must be returned to the judgment debtor unless otherwise directed by
20 the judgment or order of the court. When there is more property of the judg-
21 ment debtor than is sufficient to satisfy the judgment and accruing costs
22 within the view of the sheriff or of the serving attorney, he must levy only
23 on such part of the property as the judgment debtor may indicate, if the prop-
24 erty indicated be amply sufficient to satisfy the judgment and costs.

25 (2) The provisions of sections 8-507 through 8-507D, Idaho Code, shall
26 apply to a levy upon personal property.

27 SECTION 17. That Chapter 32, Title 31, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 31-3203A, Idaho Code, and to read as follows:

30 31-3203A. SERVING ATTORNEY GARNISHMENT FEES. A serving attorney, as
31 defined in section 8-507, Idaho Code, may charge a reasonable fee for ser-
32 vices. In addition, a serving attorney may charge a commission for receiving
33 and paying over money on execution equal to one and one-half percent (1 1/2%)
34 on the first one thousand dollars (\$1,000), and one-half percent (1/2%) on
35 all sums over such amount, but not to exceed seventy-five dollars (\$75.00)
36 in any case. Such fees for the levy of an execution and percentage for mak-
37 ing or collecting the money on execution shall be collected from the judgment
38 debtor as an additional amount added to the writ of execution.