

IN THE SENATE

SENATE BILL NO. 1137

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GARNISHMENTS; AMENDING SECTION 8-507, IDAHO CODE, TO REVISE
2 PROVISIONS RELATING TO SERVICE OF WRIT OF ATTACHMENT, EXECUTION OR GAR-
3 NISHMENT, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
4 SECTION 8-507A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE
5 ON A DEFENDANT AND THIRD PARTIES BY CERTAIN PERSONS; AMENDING SECTION
6 8-507C, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AVAILABILITY
7 OF CERTAIN FORMS AND TO REVISE A CERTAIN NOTICE FORM; AMENDING SECTION
8 8-507D, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SERVICE AND
9 MAILING CRITERIA OF CERTAIN DOCUMENTS AND RELATED DUTIES OF THE SHERIFF
10 AND SERVING ATTORNEY; AMENDING SECTION 8-508, IDAHO CODE, TO REVISE
11 PROVISIONS RELATING TO LIABILITY OF A GARNISHEE; AMENDING SECTION
12 8-509, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CONTINUING GAR-
13 NISHMENT; AMENDING SECTION 8-510, IDAHO CODE, TO REVISE PROVISIONS RE-
14 LATING TO NOTICE OF GARNISHMENT AND DISCHARGE OF A GARNISHEE AND TO MAKE
15 TECHNICAL CORRECTIONS; AMENDING SECTION 8-521, IDAHO CODE, TO PROVIDE
16 THAT NO SERVING ATTORNEY SHALL BE LIABLE TO BE SUMMONED AS A GARNISHEE;
17 AMENDING SECTION 11-102, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
18 THE FORM OF A CERTAIN WRIT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
19 SECTION 11-103, IDAHO CODE, TO PROVIDE THAT CERTAIN PROVISIONS APPLY
20 TO A SERVING ATTORNEY; AMENDING SECTION 11-107, IDAHO CODE, TO PROVIDE
21 THAT EXECUTIONS FOR CERTAIN GARNISHMENTS BE ISSUED TO CERTAIN PERSONS
22 AND TO REVISE PROVISIONS RELATING TO THE TIMING OF AN EXECUTION ISSUED
23 AGAINST EACH JUDGMENT DEBTOR IN EACH COUNTY; AMENDING SECTION 11-203,
24 IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CLAIM OF EXEMPTION BY DE-
25 FENDANT OR THIRD PARTY CLAIM, TO REVISE PROVISIONS RELATING TO A MOTION
26 TO CONTEST A CLAIM, TO REVISE PROVISIONS RELATING TO THE HOLDING AND
27 RELEASING OF PROPERTY BY A SHERIFF OR SERVING ATTORNEY AND TO MAKE TECH-
28 NICAL CORRECTIONS; AMENDING SECTION 11-206, IDAHO CODE, TO DEFINE TERMS
29 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-301, IDAHO CODE,
30 TO PROVIDE THAT CERTAIN PROCEEDS SHALL BE PAYED TO THE JUDGMENT CREDITOR
31 AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 32, TITLE 31,
32 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3203A, IDAHO CODE, TO
33 PROVIDE THAT A SERVING ATTORNEY MAY CHARGE REASONABLE FEES FOR SERVICES
34 AND MAY CHARGE A COMMISSION.
35

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

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

39 8-507. GARNISHMENT -- SERVICE OF WRIT OF ATTACHMENT, EXECUTION,
40 OR GARNISHMENT -- BANKS. (a) Upon receiving written directions from the
41 plaintiff judgment creditor or his attorney, that any person or corporation,
42 public or private, has in his or its possession or control, any credits or

1 other personal property belonging to the defendant, or is owing any debt
 2 to the defendant, the sheriff, a serving attorney or a serving attorney's
 3 employee or agent shall serve upon in the manner provided in section 8-507D,
 4 Idaho Code, any such person, or corporation identified in the plaintiff's
 5 judgment creditor's written directions all of the following documents:

- 6 (1) aA copy of the writ;
- 7 (2) aA notice that such credits, or other property, or debts, as the
 8 case may be, are attached in pursuance of such writ;
- 9 (3) aA 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) aA form for making a claim of exemption with two (2) preaddressed
 13 envelopes, one (1) to the sheriff or serving attorney and one (1) to the
 14 issuing court; and
- 15 (6) If the garnishee is a bank or depository institution, a search fee
 16 of five dollars (\$5.00) and the last known mailing address of the defen-
 17 dant and, if known, a tax identification number, that will enable the
 18 garnishee to identify the defendant on its records.

19 The documents specified in paragraph (2) of this subsection shall contain,
 20 as part of the required notice, the following instructions:

21 "Only one (1) order of garnishment against earnings may be in effect
 22 against a judgment debtor at any given time. If there is an order of
 23 garnishment currently in effect, the employer shall return the enclosed
 24 order of garnishment to the sheriff or serving attorney, notifying the
 25 sheriff or serving attorney that there is currently a garnishment in
 26 effect. Upon returning the enclosed order, the employer shall identify
 27 the following:

- 28 1. The county issuing the garnishment that is in place;
- 29 2. The court issuing the garnishment that is in place;
- 30 3. The court case number that corresponds with the garnishment
 31 that is in place;
- 32 4. The balance remaining on the garnishment that is in place; and
- 33 5. The estimated date that the garnishment will be satisfied."

34 The documents specified in paragraphs (3) through (5) of this subsection
 35 shall be in a form substantially similar to the form provided in section
 36 8-507C, Idaho Code.

37 (b) In case of service upon a corporation including, but not limited to,
 38 any banking or trust corporation, the same may be had by ~~delivering~~ serving
 39 in the manner provided in section 8-507D, Idaho Code, a copy of the papers to
 40 be served, if upon a private corporation, to any officer, manager or desig-
 41 ated agent thereof, and if upon a public or municipal corporation, to the
 42 mayor, president of the council or board of trustees, or any presiding offi-
 43 cer, or to the secretary or clerk thereof.

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

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

8 If service of the attachment, execution or garnishment papers is not
 9 made on the designated office of the banking or trust corporation, but in-
 10 stead is made on another office of the banking or trust corporation located
 11 in the state of Idaho, then service of such papers shall be valid and effec-
 12 tive as to moneys to the defendant's credit in that particular office and as
 13 to other personal property belonging to the defendant held in the possession
 14 or control of that particular office, but shall only become valid and effec-
 15 tive as to moneys to the defendant's credit held in the possession or control
 16 of any of the bank or trust corporation's other offices upon receipt of the
 17 attachment, execution or garnishment papers by the designated office. Such
 18 banking or trust corporation may, but is under no obligation to, transmit
 19 the original or a copy of the papers from the particular office served to the
 20 designated office.

21 Service on any banking or trust corporation is effective as against the
 22 moneys and other personal property to the defendant's credit which are in the
 23 possession or control of the banking or trust corporation named in the gar-
 24 nishment, but not any affiliate, parent or subsidiary not named. If the gar-
 25 nishment fails to sufficiently distinguish the banking or trust corporation
 26 from any affiliate, parent or subsidiary thereof, such that it is not clear
 27 which entity is intended to be the garnishee, the garnishment may be returned
 28 unsatisfied.

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

32 (d) For the purposes of chapter 5, title 8, and chapters 1 through 3, ti-
 33 tle 11, Idaho Code, "serving attorney" and "employee or agent" have the same
 34 meanings as defined in section 11-206, Idaho Code.

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

37 8-507A. SERVICE ON DEFENDANT AND THIRD PARTIES BY SHERIFF OR SERVING
 38 ATTORNEY. Within two (2) business days after service of the writ and other
 39 documents as provided in section 8-507, Idaho Code, or if service is upon
 40 a bank or other depository institution, within one (1) business day, the
 41 sheriff, a serving attorney or a serving attorney's employee or agent shall
 42 serve in the manner provided in section 8-507D, Idaho Code, or hand deliver
 43 or mail to the defendant and any third party named in plaintiff's the judg-
 44 ment creditor's written directions as a co-owner or having an interest in
 45 the property or money to be levied upon, one (1) copy of all the documents
 46 and if the garnishee is a bank or depository institution, the search fee and
 47 other information specified in subsection (a) of section 8-507, Idaho Code.
 48 The plaintiff judgment creditor shall identify in the plaintiff's judgment
 49 creditor's written directions the last known mailing address of the defen-

1 dant and any third party to be served. The sheriff or serving attorney shall
 2 indicate on the return of the writ filed with the court the date and manner of
 3 service upon the defendant and any third party and shall indicate the docu-
 4 ments served.

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

9 SECTION 3. That Section 8-507C, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 8-507C. FORMS. The notice of exemptions, instructions to debtors and
 12 third parties, and the claim of exemption shall be in a form substantially
 13 similar to the form hereinafter provided. The forms shall be made available
 14 in English and Spanish language translations in the offices of each county
 15 sheriff and of each attorney who serves or processes garnishments. Notice,
 16 written in Spanish, of the availability of these documents in Spanish trans-
 17 lation shall be set forth on the notice of exemptions.

18 IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

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

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

24 The enclosed writ of execution and/or notice of garnishment has directed the
 25 sheriff or serving attorney to take custody by levying on your money and/or
 26 personal property in order to satisfy a court judgment.

27 The sheriff or serving attorney has levied on your money and/or personal
 28 property. You have FOURTEEN (14) DAYS after the date of mailing or personal
 29 service of these documents to file a claim of exemption with the sheriff or
 30 serving attorney. An exemption from levy entitles you to obtain the release
 31 of your money and personal property.

32 The following is a partial list of money and personal property that may be ex-
 33 empt from levy. EXEMPTIONS ARE PROVIDED BY IDAHO AND FEDERAL LAW AND CAN BE
 34 FOUND IN THE IDAHO CODE AND IN THE UNITED STATES CODE. MOST OF THE EXEMPTIONS
 35 PROVIDED BY THE STATE ARE CONTAINED IN CHAPTER 6, TITLE 11, IDAHO CODE. GOV-
 36 ERNMENTAL BENEFITS SUCH AS SOCIAL SECURITY, SSI, VETERANS, RAILROAD RETIRE-
 37 MENT, MILITARY, AND WELFARE ARE EXEMPT FROM LEVY IN MOST CASES UNDER FEDERAL
 38 LAW.

39 This list may not be complete and may not include all exemptions that apply
 40 in your case because of periodic changes in the law. Additionally, some of
 41 the exemptions may not apply in full or under all circumstances. There may be
 42 special requirements for child support. You or your attorney should read the

1 exemption statutes which apply to you.

2 If you believe the money or personal property that is being levied upon is ex-
 3 empt, you should immediately file a claim of exemption. If you fail to make
 4 a timely claim of exemption, the sheriff or serving attorney will release
 5 money to the plaintiff judgment creditor, or the property may be sold at an
 6 execution sale, perhaps at a price substantially below its value, and you may
 7 have to bring further court action to recover the money and property.

8 The sheriff, the serving attorney and the serving attorney's employee or
 9 agent cannot give you legal advice. Therefore, if you have any questions
 10 concerning your rights in this action, you should consult an attorney as soon
 11 as possible. You may contact the nearest office of Idaho legal aid services,
 12 inc. to inquire if you are eligible for their assistance.

13 SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

14 Type of Money and Property

- 15 1. Alimony, support, maintenance (money or property)
- 16 2. Appliances (household) (\$750 per item, up to \$7,500 gross)
- 17 3. Annuity contract payments
- 18 4. Bodily injury and wrongful death awards*
- 19 5. Books (professional) up to \$2,500
- 20 6. Burial plots
- 21 7. Child support payments*
- 22 8. Disability or illness benefits*
- 23 9. Furnishings (household) (\$750 per item, up to \$7,500 gross)
- 24 10. Health aids
- 25 11. Homestead, house, mobile home, and related structures
- 26 12. Jewelry (up to \$1,000)
- 27 13. Life insurance benefits payable to spouse or dependent*
- 28 14. Medical and/or hospital benefits
- 29 15. Military retirement and survivor's benefits
- 30 16. Motor vehicle: car, truck, motorcycle with a value of up to \$7,000
 31 per person
- 32 17. Pension: stock bonus, profit sharing annuity, or similar plans
- 33 18. Personal property: (\$750 per item, up to \$7,500 gross) (furnish-
 34 ings, appliances, one firearm, animals, musical instruments, books,
 35 clothes, family portraits and heirlooms)
- 36 19. Public assistance: federal, state, or local including: Aid to
 37 Aged, Blind and Disabled (AABD); Aid to Families with Dependent Chil-
 38 dren (AFDC); Aid to Permanently and Totally Disabled (APTD)
- 39 20. Public Employee's Benefits including Federal Civil Service Retire-
 40 ment, Idaho Retirement and Disability
- 41 21. Railroad Retirement Benefits
- 42 22. Retirement, pension or profit sharing plan qualified by IRS
- 43 23. Social Security Disability and Retirement Benefits
- 44 24. SSI (Supplemental Security Insurance Benefits)
- 45 25. Tools of trade and implements up to \$2,500
- 46 26. Unemployment benefits

- 1 27. Veterans benefits and insurance
 2 28. Wages or salary:
 3 Consumer debts primarily for personal or household purposes: ex-
 4 emption is 30 times the federal minimum wage or 25% of disposable
 5 income, whichever is greater
 6 Nonconsumer debts: exemption is 30 times the federal minimum wage
 7 or 25% of disposable income, whichever is greater
 8 29. Worker's compensation
 9 30. An unmatured life insurance contract other than a credit life in-
 10 surance contract
 11 31. An aggregate interest, not to exceed \$5,000, in any accrued divi-
 12 dend or interest under, or loan value of, an unmatured life insurance
 13 contract under which the insured is the individual or a person of whom
 14 the individual is a dependent
 15 32. An aggregate interest in any tangible personal property, not to ex-
 16 ceed the value of \$800

17 *To the extent reasonably necessary for support of family and if not commin-
 18 gled with other funds.

19 INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

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

- 24 1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF OR
 25 SERVING ATTORNEY WHO LEVIED UPON YOUR MONEY AND/OR PERSONAL
 26 PROPERTY AND TO THE ISSUING COURT USING THE PREADDRESSED
 27 ENVELOPES INCLUDED WITH THESE INSTRUCTIONS AT (SHERIFF'S OR
 28 SERVING ATTORNEY'S AND COURT'S STREET ADDRESSES), WITHIN
 29 FOURTEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE
 30 INSTRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A
 31 CLAIM OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST
 32 BE RECEIVED BY THE SHERIFF OR SERVING ATTORNEY WITHIN THE
 33 FOURTEEN (14) DAY PERIOD.
- 34 2. The sheriff or serving attorney has to notify the ~~plaintiff~~
 35 ~~or~~ judgment creditor within one (1) business day, excluding
 36 weekends and holidays, that you filed a claim of exemption.
 37 The judgment creditor has five (5) business days, excluding
 38 weekends and holidays, after the date notice was provided
 39 that a claim of exemption was filed with the sheriff or
 40 serving attorney, to file a motion with the court contesting
 41 the claim of exemption.

- 1 Child support
- 2 Retirement, pension, or profit sharing benefits
- 3 Military or veterans benefits
- 4 Life insurance or other insurance
- 5 Disability, illness, medical or hospital benefits
- 6 Alimony, support or maintenance
- 7 Annuity contract benefits
- 8 Bodily injury or wrongful death awards
- 9 Other money (describe)
- 10 Wages (Do not check this box until you have first talked
- 11 to your employer to see if he correctly calculated your
- 12 exemption according to the formula under item 28 on
- 13 the form entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE
- 14 ENTITLED." Then check this box only if you believe your
- 15 employer's calculation is incorrect.)

16 b. Property:

- 17 Professional books
- 18 Burial plots
- 19 Health aids
- 20 Homestead, house, mobile home and related structures
- 21 Jewelry
- 22 Car, truck or motorcycle
- 23 Tools and implements
- 24 Appliances, furnishings, firearms, animals, musical
- 25 instruments, books, clothes, family portraits and
- 26 heirlooms
- 27 Other property (describe)

.....
Defendant or
Representative

31 SECTION 4. That Section 8-507D, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 8-507D. DOCUMENTS TO BE PROVIDED BY PLAINTIFF JUDGMENT CREDITOR --
34 DUTIES OF SHERIFF OR SERVING ATTORNEY -- SERVICE AND MAILING CRITERIA -- TIME
35 COMPUTATION. With respect to any attachment, garnishment or execution, the
36 plaintiff judgment creditor shall provide the sheriff or serving attorney
37 with sufficient copies of the writ and other documents required to be served
38 for service on the defendant and each additional party identified in the
39 plaintiff's judgment creditor's written directions and shall provide an

1 envelope addressed to each person required to be served. If the documents
2 are to be mailed, proper postage shall be affixed. The sheriff, serv
3 ing attorney or serving attorney's employee or agent shall not delay service for
4 lack of sufficient copies or postage and shall make any additional copies
5 and affix any additional postage necessary. The sheriff or serving attorney
6 may charge the plaintiff judgment creditor for the actual costs of any addi-
7 tional copies and postage required, which costs shall be in addition to the
8 fees permitted under sections 31-3203 and 31-3203A, Idaho Code.

9 Personal service shall be accomplished in the same manner provided for
10 service of summons under the Idaho rules of civil procedure. Provided how-
11 ever, that in the case of garnishments the county sheriff, serv
12 ing attorney or serving attorney's employee or agent shall have the option of accom-
13 plishing personal service by United States certified mail, return receipt
14 requested, or United States first class mail with a facsimile acknowledgment
15 of such service by the garnishee. Unless otherwise provided to the contrary,
16 the date when an item is deposited in the United States mail shall constitute
17 the date of mailing and the date of service shall be the date when the gar-
18 nishee signs the return receipt for the certified mail or the date the gar-
19 nishee sends its facsimile acknowledgment of service. In computing any pe-
20 riod of time within which an act is to be accomplished, the day of the act af-
21 ter which the designated period of time begins to run is not to be included.
22 The last day of the period so computed is to be included, unless it falls on
23 a weekend or legal holiday, in which event the period runs until the close of
24 business of the first business day after the weekend or holiday, except that
25 this provision shall not extend the time within which hearing on a motion to
26 contest a claim of exemption or third party claim must be set as provided in
27 section 8-540, Idaho Code, and section 11-203, Idaho Code.

28 The sheriff, the serving attorney and the serving attorney's employee
29 or agent shall not be required to investigate or assure the accuracy and com-
30 pleteness of the addresses of the parties to be served or any other informa-
31 tion provided by the plaintiff judgment creditor.

32 SECTION 5. That Section 8-508, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 8-508. LIABILITY OF GARNISHEE. All persons having in their possession
35 or under their control, any credits or other personal property belonging to
36 the defendant, at the time of service upon them of a copy of the writ and no-
37 tice, as provided in the last two (2) sections, shall be, unless such prop-
38 erty be delivered up or transferred, or such debts be paid to the sheriff
39 or to the serving attorney, liable to the plaintiff judgment creditor for
40 the amount of such credits, property, or debts, until the attachment be dis-
41 charged or any judgment recovered by him be satisfied.

42 SECTION 6. That Section 8-509, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 8-509. EXAMINATION OF GARNISHEE. (a) Any person owing debts to the de-
45 fendant, or having in his possession or under his control, any credits or
46 other personal property belonging to the defendant, may be required to at-
47 tend before the court or judge, or a referee appointed by the court or judge,

1 and be examined on oath respecting the same. If the garnishee be a corpora-
 2 tion the officer or agent thereof having knowledge of the fact sought to be
 3 established may be required to attend and give evidence thereof. The defen-
 4 dant may also be required to attend for the purpose of giving information re-
 5 specting his property and may be examined on oath. The court or judge may,
 6 after such examination, order personal property capable of manual delivery
 7 to be delivered to the sheriff on such terms as may be just, having reference
 8 to any liens or claims against the same, and a memorandum to be given of all
 9 other personal property, containing the amount and description thereof.

10 (b) When the garnishee is the employer of the judgment debtor, the judg-
 11 ment creditor, upon application to the court, shall have issued by the ~~clerk~~
 12 ~~of court~~, a continuing garnishment directing the employer-garnishee to pay
 13 to the sheriff or to the serving attorney such future moneys coming due to
 14 the judgment debtor as may come due to said judgment debtor as a result of the
 15 judgment debtor's employment. This continuing garnishment shall continue
 16 in force and effect until the judgment is satisfied. The creditor shall be
 17 solely responsible for insuring that the amounts garnished do not exceed the
 18 amount due on the judgment. If additional garnishments are issued during
 19 the term of a continuing garnishment and the continuing garnishment is the
 20 maximum allowed under the provisions of section 11-207, Idaho Code, the ad-
 21 ditional garnishments cannot be served until the continuing garnishment is
 22 satisfied, or until the amount taken by the continuing garnishment is less
 23 than the maximum allowed; additional garnishments issued during the term of
 24 a continuing garnishment must be served in the order in which presented.

25 SECTION 7. That Section 8-510, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 8-510. NOTICE OF GARNISHMENT -- DISCHARGE OF GARNISHEE. Any person
 28 who has been served with a copy of the writ and notice as provided in sec-
 29 tions 8-506-- through 8-508, or 11-201, ~~16-603, 16-604, or 16-1104~~ Idaho
 30 Code, shall be deemed a garnishee, and service of copy of writ and the notice
 31 therein provided for, shall, for the purpose of sections 8-510-- through
 32 8-523, Idaho Code, be deemed to be notice of garnishment, and whenever any
 33 person shall have been served with notice of garnishment as herein defined,
 34 he may discharge himself by paying or delivering to the ~~officer~~ sheriff or
 35 the serving attorney all debts owing by him to the defendant, or a portion
 36 thereof sufficient to discharge the claim of the ~~plaintiff~~ judgment credi-
 37 tor, or any or all money of the defendant in his hands to a similar amount,
 38 taking a receipt therefor from the ~~officer~~ sheriff or the serving attorney,
 39 which shall discharge such person from any and all liability to the extent of
 40 such payment, and which shall be held by the ~~officer~~ sheriff or the serving
 41 attorney subject to the orders of the court out of which the writ issued.

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

44 8-521. LIABILITY OF OFFICERS AND EXECUTORS AS GARNISHEES. No sheriff,
 45 constable, serving attorney or other officer charged with the collection of
 46 money shall, prior to the return day of the execution upon which the same may
 47 be made, be liable to be summoned as a garnishee, nor shall any county col-

1 lector or municipal corporation or any officer thereof, nor administrator or
2 executor of any estate, prior to the allowance of a demand found to be due by
3 his estate, or prior to an order of distribution or for the payment of debts
4 and legacies, be liable in their official capacities as garnishee.

5 SECTION 9. That Section 11-102, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 11-102. FORM OF WRIT. The writ of execution ~~must~~ shall be issued in the
8 name of the people, sealed with the seal of the court, and subscribed by the
9 clerk, and be directed to the sheriff or in the case of a wage garnishment
10 may be directed to a serving attorney, and it ~~must~~ shall intelligently re-
11 fer to the judgment, stating the court, the county where the judgment roll
12 is filed, and if it be for money, the amount thereof, and the amount actually
13 due thereon, and if made payable in a specified kind of money, or currency,
14 the execution ~~must~~ shall also state the kind of money or currency in which the
15 judgment is payable, and ~~must~~ shall require the sheriff or serving attorney
16 substantially as follows:

17 (1) If it be against the property of the judgment debtor, it ~~must~~ shall
18 require the sheriff to satisfy the judgment, with interest, out of the per-
19 sonal property of such debtor, and if sufficient personal property cannot
20 be found, then out of his real property; or if the judgment be a lien upon
21 real property, then out of the real property belonging to him on the day when
22 the judgment was docketed, or at any time thereafter; or if the execution be
23 issued to a county other than the one in which the judgment was recovered,
24 on the day when the transcript of the docket was filed in the office of the
25 recorder of such county, stating such day, or any time thereafter.

26 (2) If it be against real or personal property in the hands of the per-
27 sonal representatives, heirs, devisees, legatees, tenants, or trustees, it
28 ~~must~~ shall require the sheriff to satisfy the judgment, with interest, out of
29 such property.

30 (3) If it be against the person of the judgment debtor, it ~~must~~ shall
31 require the sheriff to arrest such debtor and commit him to the jail of the
32 county until he pay the judgment, with interest, or be discharged according
33 to law.

34 (4) If it be issued on a judgment made payable in a specified kind of
35 money or currency, it ~~must also~~ shall require the sheriff or serving attorney
36 to satisfy the same in the kind of money or currency in which the judgment is
37 made payable, and the sheriff ~~must~~ or serving attorney shall refuse payment
38 in any other kind of money or currency; and in case of levy and sale of prop-
39 erty of the judgment debtor, he ~~must~~ shall refuse payment from any purchaser
40 at such sale in any other kind of money or currency than that specified in the
41 execution. The sheriff or serving attorney collecting money or currency in
42 the manner required by this chapter, ~~must~~ shall pay to the plaintiff judgment
43 creditor or party entitled to recover the same, the same kind of money or cur-
44 rency received by him, and in case of neglect or refusal so to do, he shall be
45 liable on his official bond to the judgment creditor in three (3) times the
46 amount of the money so collected.

47 (5) If it be for the delivery of the possession of real or personal
48 property, it ~~must~~ shall require the sheriff to deliver the possession of the
49 same, describing it, to the party entitled thereto, and may at the same time

1 require the sheriff to satisfy any costs, damages, rents or profits recov-
2 ered by the same judgment, out of the personal property of the person against
3 whom it was rendered, and the value of the property for which the judgment
4 was rendered, to be specified therein, if a delivery thereof cannot be had;
5 and if sufficient personal property cannot be found, then out of the real
6 property, as provided in subsection (1) of this section.

7 SECTION 10. That Section 11-103, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 11-103. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK -- CONTINU-
10 OUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT. (a) Except as provided in
11 subsection (b) of this section, the execution may be made returnable at any
12 time not less than ten (10) nor more than sixty (60) days after its receipt by
13 the sheriff or serving attorney, to the clerk with whom the judgment roll is
14 filed. When the execution is returned, the clerk must attach it to the judg-
15 ment roll. If any real estate be levied upon, the clerk must record the ex-
16 ecution and the return thereto at large, and certify the same under his hand
17 as true copies in a book to be called the "execution book," which book must
18 be indexed with the names of the plaintiffs and defendants in execution al-
19 phabetically arranged, and kept open at all times during office hours for the
20 inspection of the public without charge. It is evidence of the contents of
21 the originals whenever they, or any part thereof, may be destroyed, muti-
22 lated or lost.

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

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

1 11-107. EXECUTIONS DIRECTED TO SHERIFF OR SERVING ATTORNEY -- EX-
2 ECUTIONS AGAINST EACH JUDGMENT DEBTOR AND IN DIFFERENT COUNTIES AT SAME
3 TIME. Where the execution is against the property of the judgment debtor it
4 may be issued to the sheriff of any county in the state. Where it requires
5 the delivery of real or personal property it must be issued to the sheriff
6 of the county where the property, or some part thereof, is situated. Where
7 the execution is for a bank garnishment or other money garnishment it shall
8 be issued to a sheriff in any county in the state. Where the execution is for
9 a wage garnishment it may be issued to a sheriff or to a serving attorney in
10 any county in the state. ~~An e~~Executions may be issued at the same time ~~to~~
11 ~~different counties~~ against each judgment debtor in each county.

12 SECTION 12. That Section 11-203, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 11-203. CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM -- MOTION
15 TO CONTEST CLAIM AND HEARING -- HOLDING AND RELEASE OF PROPERTY BY SHERIFF
16 OR SERVING ATTORNEY. The following procedures shall apply to a claim by the
17 defendant or the defendant's representative that property, as provided in
18 section 11-201, Idaho Code, levied upon is exempt and to any claim by a third
19 party that property levied upon is his property or that he has a security
20 interest therein. The defendant or the defendant's representative shall
21 complete the claim of exemption form as provided in section 8-507C, Idaho
22 Code. A third party claimant shall prepare a written claim setting forth the
23 grounds upon which he claims the property, and in the case of a secured party,
24 also stating the dollar amount of the claim. A claim of exemption or third
25 party claim may be filed only if property has been levied upon.

26 (a~~1~~) The claim of exemption or third party claim shall be delivered or
27 mailed to the sheriff or serving attorney and the issuing court within four-
28 teen (14) days after the date the sheriff or serving attorney hand delivers
29 or mails the documents required to be served upon the defendant and third
30 parties under section 8-507A, Idaho Code. If the claim is mailed, it must
31 be received by the sheriff or serving attorney within the fourteen (14) day
32 period. In computing the fourteen (14) day period, intervening weekends and
33 legal holidays shall be counted, but if the last day of the period falls on a
34 weekend or legal holiday, the period shall be deemed to run until the close of
35 business of the first business day following the weekend or holiday.

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

42 (b~~2~~) The ~~plaintiff~~ judgment creditor or other person in whose favor the
43 writ of execution runs shall have five (5) business days after the date a copy
44 of the claim is delivered or mailed to him by the sheriff or serving attorney
45 within which to file a motion with the court stating the grounds upon which
46 he contests the claim of exemption or third party claim. When the motion is
47 filed, the ~~plaintiff~~ judgment creditor shall lodge with the court a copy of
48 the claim to which the motion pertains. Hearing on the motion shall be set
49 for a date within not less than five (5) nor more than twelve (12) days af-

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

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

11 (e3) The sheriff or the serving attorney shall not deliver to the
12 plaintiff judgment creditor or sell the property levied upon, except if per-
13 ishable as provided by law, until the period for filing a claim has elapsed.
14 The sheriff or the serving attorney shall refuse to accept or honor a claim
15 not filed with him within that period and unless otherwise ordered by the
16 court, shall, after such period has elapsed, proceed to sell or deliver the
17 property levied upon to the plaintiff judgment creditor or other person in
18 whose favor the execution runs. If, after notice from the sheriff or from the
19 serving attorney of the filing of a claim, the plaintiff judgment creditor or
20 other person in whose favor the execution runs, notifies the sheriff or the
21 serving attorney that the claim will be uncontested or fails to notify the
22 sheriff or the serving attorney within the time provided in subsection (b2)
23 of this section that the claim is being contested, the sheriff or the serving
24 attorney shall release the claimed property to the defendant or his agent.

25 (d4) If a plaintiff judgment creditor or other person in whose favor
26 the execution runs has failed to contest a claim of exemption within the time
27 allowed by this section or if property has been determined by a court to be
28 exempt, and the plaintiff judgment creditor or other person in whose favor
29 the execution runs thereafter levies upon or otherwise seeks to apply the
30 property toward the satisfaction of the same money judgment, the plaintiff
31 judgment creditor or other person in whose favor the execution runs is not
32 entitled to recover the subsequent costs of collection unless the property
33 is applied to satisfaction of the judgment.

34 (e5) If a security agreement to the third party claimant is in default,
35 rendering said claimant the legal right to possession, the claimant may
36 file with the sheriff an affidavit of release to the claimant executed by
37 the defendant-debtor, or his agent; or, in lieu of said affidavit of re-
38 lease, the third party claimant may file an affidavit setting forth the
39 defendant-debtor's default and claiming possession under default and a hold
40 harmless agreement in favor of the sheriff, supported by an undertaking
41 qualifying in the state of Idaho, indemnifying the sheriff and said defen-
42 dant-debtor in double the actual value of the property as stated in said
43 third party claim. Upon receipt of either of the foregoing, the sheriff
44 shall release said property to the third party claimant, taking receipt
45 therefor; these proceedings to be reported to the court by the sheriff's
46 return in the action.

47 (f6) Nothing in this section shall be construed to prevent the defen-
48 dant from pursuing his common law remedies.

49 (g7) Personal service shall be accomplished in the same manner provided
50 for service of summons under the Idaho rules of civil procedure. Mailing

1 shall be by first class mail. The date when an item is deposited in the United
 2 States mails shall constitute the date of mailing. In computing any period
 3 of time prescribed in this section, the day of the act or event after which
 4 the designated period of time begins to run is not to be included.

5 SECTION 13. That Section 11-206, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 11-206. DEFINITIONS. For the purpose of section 11-207, Idaho Code,
 8 the term:

9 (1-) "Earnings" means compensation paid or payable for personal
 10 services, whether denominated as wages, salary, commission, bonus, or oth-
 11 erwise, and includes periodic payments pursuant to a pension or retirement
 12 program.

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.

16 (3-) "Employee or agent" means a person who is employed or directly su-
 17 pervised by a serving attorney who possesses the authority to control the de-
 18 tails of the activities to be performed by the employee or agent on behalf
 19 of the serving attorney, including how such activities will be performed and
 20 whether such activities will continue or cease.

21 (4) "Garnishment" means any legal or equitable procedure through which
 22 the earnings of any individual are required to be withheld for payment of any
 23 debt.

24 (5) "Serving attorney" means an attorney who is an active member of the
 25 Idaho state bar, as defined in section 3-405, Idaho Code.

26 SECTION 14. That Section 11-301, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 11-301. EXECUTION OF WRIT. (1) The sheriff must execute the writ
 29 against the property of the judgment debtor by levying on a sufficient amount
 30 of property if there be sufficient; collecting or selling the things in ac-
 31 tion, and selling the other property, and paying to the ~~plaintiff~~ judgment
 32 creditor or his attorney so much of the proceeds as will satisfy the judg-
 33 ment. Any excess in the proceeds over the judgment and accruing costs must be
 34 returned to the judgment debtor unless otherwise directed by the judgment or
 35 order of the court. When there is more property of the judgment debtor than
 36 is sufficient to satisfy the judgment and accruing costs within the view of
 37 the sheriff, he must levy only on such part of the property as the judgment
 38 debtor may indicate, if the property indicated be amply sufficient to sat-
 39 isfy the judgment and costs.

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

42 SECTION 15. That Chapter 32, Title 31, Idaho Code, be, and the same is
 43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 44 ignated as Section 31-3203A, Idaho Code, and to read as follows:

1 31-3203A. SERVING ATTORNEY GARNISHMENT FEES. A serving attorney,
2 as defined in section 11-206, Idaho Code, may charge reasonable fees for
3 services, provided that such fees shall not exceed the fees charged by the
4 sheriff of the county wherein the services take place. In addition to such
5 fees, a serving attorney may charge a commission for receiving and paying
6 over money on execution equal to one and one-half percent (1 1/2%) on the
7 first one thousand dollars (\$1,000), and one-half percent (1/2%) on all
8 sums over such amount, but not to exceed seventy-five dollars (\$75.00) in
9 any case. Such fees for the levy of an execution and percentage for making
10 or collecting the money on execution shall be collected from the judgment
11 debtor as an additional amount added to the writ of execution.