

IN THE SENATE

SENATE BILL NO. 1131

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GARNISHMENT; AMENDING SECTION 11-703, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING GARNISHMENT SEARCH FEES AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 11-710, IDAHO CODE, TO REVISE PROVISIONS
4 REGARDING CERTAIN FINANCIAL INSTITUTION FEES AND TO MAKE TECHNICAL
5 CORRECTIONS; AMENDING SECTION 11-714, IDAHO CODE, TO REVISE PROVISIONS
6 REGARDING FINANCIAL INSTITUTION OBLIGATIONS WHEN SERVED WITH A WRIT OF
7 GARNISHMENT; AND AMENDING SECTION 11-720, IDAHO CODE, TO REVISE PROVI-
8 SIONS REGARDING THE ANSWER OF A GARNISHEE.
9

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

11 SECTION 1. That Section 11-703, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 11-703. GARNISHMENT -- SERVICE OF WRIT OF EXECUTION OR GARNISHMENT --
14 FINANCIAL INSTITUTIONS.

15 (1) (a) Upon receiving written directions from the judgment creditor
16 or his attorney, that any person or corporation, public or private, has
17 in his or its possession or control, any credits or other personal prop-
18 erty belonging to the judgment debtor, or ~~is owing~~ owes any debt to the
19 judgment debtor, the sheriff shall serve upon any such person, or corpo-
20 ration identified in the judgment creditor's written directions all of
21 the following documents:

22 (a) A copy of the writ;

23 (b) A notice that such credits, or other property, or debts, as
24 the case may be, are attached in pursuance of such writ;

25 (c) A notice of exemptions available under federal and state
26 law;

27 (d) Instructions to debtors and third parties for asserting a
28 claim of exemption;

29 (e) A form for making a claim of exemption; and

30 (f) If the garnishee is a financial institution, a search fee
31 of ~~five~~ seven dollars (\$~~5~~7.00) and the last known mailing address
32 of the judgment debtor and, if known, a tax identification number
33 that will enable the garnishee to identify the judgment debtor on
34 its records.

35 (b) The documents specified in ~~paragraphs (c) through (e)~~ paragraph
36 (a) (iii) through paragraph (a) (v) of this subsection shall be in a form
37 as provided in section 11-707, Idaho Code.

38 (2) In case of service upon a corporation, including, but not limited
39 to, any financial institution, the same may be had by delivering a copy of the
40 papers to be served, if upon a private corporation, to any officer, manager
41 or designated agent thereof, and, if upon a public or municipal corporation,

1 to the mayor, president of the council or board of trustees, or any presiding
2 officer, or to the secretary or clerk thereof.

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

10 (4) If a financial institution operating more than one (1) office where
11 deposits are received has designated a particular office for the attachment,
12 execution, or garnishment, then service of such papers made on the office so
13 designated shall be valid and effective as to moneys to the judgment debtor's
14 credit held in the possession or control of any of the financial institu-
15 tion's branches or offices located within or outside the state of Idaho.

16 (5) If service of the attachment, execution or garnishment papers is
17 not made on the designated office of the financial institution, but instead
18 is made on another office of the financial institution located in the state
19 of Idaho, then service of such papers shall be valid and effective as to mon-
20 eys to the judgment debtor's credit in that particular office and as to other
21 personal property belonging to the judgment debtor held in the possession or
22 control of that particular office, but shall only become valid and effective
23 as to moneys to the judgment debtor's credit held in the possession or con-
24 trol of any of the financial institution's other offices upon receipt of the
25 attachment, execution or garnishment papers by the designated office. Such
26 financial institution may, but is under no obligation to, transmit the orig-
27 inal or a copy of the papers from the particular office served to the desig-
28 nated office.

29 (6) Service on any financial institution is effective as against the
30 moneys and other personal property to the judgment debtor's credit which are
31 in the possession or control of the financial institution named in the gar-
32 nishment, but not any affiliate, parent or subsidiary not named. If the gar-
33 nishment fails to sufficiently distinguish the financial institution from
34 any affiliate, parent or subsidiary thereof, such that it is not clear which
35 entity is intended to be the garnishee, the garnishment may be returned un-
36 satisfied.

37 (47) The provisions of this section and sections 11-706, 11-707, 11-709
38 and 11-710, Idaho Code, shall apply to any levy by execution pursuant to
39 chapter 5, title 8, Idaho Code.

40 SECTION 2. That Section 11-710, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 11-710. SERVICE ON JUDGMENT DEBTOR AND THIRD PARTIES BY A FINANCIAL
43 INSTITUTION. (1) If the writ and notice of garnishment are served upon a
44 financial institution holding money or accounts belonging to the judgment
45 debtor, the garnishee shall, within three (3) business days after such ser-
46 vice, mail or hand deliver a copy of all documents served upon it by the sher-
47 iff:

48 (1a) To the judgment debtor at the address to which account statements
49 or other pertinent account documentation are normally sent, or if the

1 money is not in an account, to the last known address of the judgment
2 debtor shown upon the records of the garnishee at the time of service
3 upon it of the writ; and

4 (2b) To any other person shown upon the records of the garnishee as a
5 co-owner or having an interest in the money or accounts garnished at the
6 last known address of the third party shown upon the records of the gar-
7 nishee at the time of service upon it of the writ.

8 (2) The financial institution shall be entitled to deduct a single fee
9 of not to exceed ~~ten~~ twelve dollars (\$~~10~~2.00) from the money transferred
10 to the sheriff pursuant to the garnishment to cover the costs associated
11 with the processing and service of the documents. The fee herein pro-
12 vided shall be the only processing and service fee to which the financial
13 institution is entitled, regardless of the number of parties to which doc-
14 uments are sent, and is in addition to the search fee specified in section
15 11-703(1)~~(f)~~(a)(vi), Idaho Code. Upon being notified by the sheriff that
16 money transferred pursuant to the garnishment has been released as a result
17 of a court determination that the money is exempt or a failure by the judgment
18 creditor to contest the claim of exemption, the garnishee shall recredit the
19 fee to the judgment debtor's account or reimburse the judgment debtor there-
20 for, and the judgment creditor shall reimburse the garnishee for the fee.

21 (3) The garnishee shall indicate in the answer to interrogatories as
22 provided in section 11-708, Idaho Code, the date and manner of service of the
23 documents upon the judgment debtor and any third party as herein required but
24 shall not be required to disclose the names or addresses of any third party
25 served.

26 (4) The garnishee shall only be required to serve on the judgment
27 debtor, and any ~~third-party~~ third party, copies of those documents served
28 upon it by the sheriff.

29 SECTION 3. That Section 11-714, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 11-714. FINANCIAL INSTITUTION OBLIGATIONS WHEN SERVED WITH WRIT OF
32 GARNISHMENT. (1) If a notice of garnishment is served upon a financial
33 institution that has an account or accounts of the debtor, the financial
34 institution shall conduct a garnishment review of all accounts in the name of
35 the debtor before taking any action that may affect funds in those accounts.

36 (2) The garnishment review shall be limited to the ~~sixty-four (64) day~~
37 two (2) month period immediately preceding the date of service upon the fi-
38 nancial institution of the garnishment. Solely for purposes of the garnish-
39 ment review, any balance in the accounts on the ~~sixty-fourth day immediately~~
40 ~~preceding the date of service upon the financial institution of the garnish-~~
41 ~~ment~~ corresponding date of the month two (2) months earlier, or on the last
42 date of the month two (2) months earlier if the corresponding date does not
43 exist, shall be deemed to be exempt. If the financial institution deter-
44 mines, solely from information transmitted to the financial institution by
45 the payor, that one (1) or more payments of exempt funds as described in sec-
46 tion 11-713(1), (2) or (3), Idaho Code, were deposited by direct or elec-
47 tronic deposit payment in an account of the debtor, the total balance of de-
48 posited exempt funds in the debtor account is not subject to garnishment.

1 (3) The financial institution conducting the garnishment review need
2 only review information transmitted to the financial institution by the
3 payor of direct or electronic deposit payments in making its determination
4 that funds in the accounts are of the types of payments described in section
5 11-713(1), (2) or (3), Idaho Code. The financial institution conducting
6 the garnishment review shall have no obligation to inquire into the source
7 of funds or examine any deposit item made by any means other than direct or
8 electronic deposit, even if such review would disclose that the funds so
9 deposited may be exempt from garnishment as described in section 11-713(1),
10 (2) or (3), Idaho Code.

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

16 (5) A financial institution conducting a garnishment review as re-
17 quired by this section is immune from civil liability to the garnishor,
18 debtor or account owner from any act or omission with respect to the gar-
19 nishment review, including without limitation, any incorrect determination
20 made after applying good faith methods for determining whether funds in an
21 account are exempt. If a court determines that a financial institution erred
22 in its identification of funds in an account as exempt or nonexempt, the sole
23 remedy in exemption proceedings shall be issuance of an order of the court
24 that the financial institution must adjust its actions with respect to a writ
25 of execution as soon as possible. A financial institution is not liable to an
26 account holder or garnishor, and may not be assessed any penalty, by reason
27 of any action or inaction in good faith including:

- 28 (a) Failure to deliver any funds;
29 (b) Failure to refuse to deliver any funds;
30 (c) Failure to provide the required notices to an account holder;
31 (d) Customary clearing and settlement adjustments made to a debtor's
32 account that affect the balance in the debtor's account; and
33 (e) Any bona fide errors that occur despite reasonable procedures im-
34 plemented by the financial institution to prevent those errors.

35 SECTION 4. That Section 11-720, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 11-720. EXCEPTION TO ANSWER -- AMENDMENT. The judgment creditor may,
38 within thirty (30) days of the answer of the garnishee, except to the answer
39 of the garnishee for insufficiency, and if adjudged insufficient, the court
40 may allow him to amend it in such time and on such terms as shall be just.