

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 16
PERIODIC PAYMENT OF JUDGMENTS -- LIMITATION ON CERTAIN TORT DAMAGES AND
LIABILITIES

6-1601. DEFINITIONS. As used in this act:

(1) "Charitable corporation or organization or charitable trust" means a corporation or organization or charitable trust including any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

(2) "Claimant" means any party to a civil action making a claim for relief, legal or equitable, compensatory or noncompensatory.

(3) "Economic damages" means objectively verifiable monetary loss, including, but not limited to, out-of-pocket expenses, loss of earnings, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, medical expenses, or loss of business or employment opportunities.

(4) "Future damages" means noneconomic damages and economic damages to be incurred after entry of a judgment.

(5) "Noneconomic damages" means subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party; emotional distress; loss of society and companionship; loss of consortium; or destruction or impairment of the parent-child relationship.

(6) "Nonprofit corporation or organization" means a charitable corporation or organization or charitable trust; any other corporation organized or existing under chapter 30, title 30, Idaho Code, or an equivalent provision of the law of another state; or an unincorporated association; which corporation, organization, charitable trust or unincorporated association is organized and existing exclusively for nonprofit purposes, and which:

(a) Either is tax exempt under section 501(c)(3) of the Internal Revenue Code or regularly bestows benefits to the community at large; and

(b) No part of the net income of which is distributable to its members, directors or officers.

(7) "Personal injury" means a physical injury, sickness or death suffered by an individual.

(8) "Property damage" means loss in value or in use of real or personal property, where such loss arises from physical damage to or destruction of such property.

(9) "Punitive damages" means damages awarded to a claimant, over and above what will compensate the claimant for actual personal injury and property damage, to serve the public policies of punishing a defendant for outrageous conduct and of deterring future like conduct.

[6-1601, added 1987, ch. 278, sec. 1, p. 572; am. 1990, ch. 105, sec. 1, p. 211; am. 2008, ch. 83, sec. 1, p. 213; am. 2017, ch. 58, sec. 1, p. 92.]

6-1602. PERIODIC PAYMENT OF JUDGMENTS -- EXCEPTIONS -- DISCRETIONS -- PROCEDURE. (1) In any civil action seeking damages for personal injury or property damages in which a verdict, award or finding for future damages exceeds the sum of one hundred thousand dollars (\$100,000), the court may, in the exercise of its sound discretion, and at the request of either party, enter a judgment which provides for the periodic payment of that portion of the verdict, award or finding which represents future damages.

(2) If, prior to the entry of judgment, either party requests that the judgment provide for the periodic payments of future damages, the court shall request each party to submit a proposal for such payment which, at a minimum, shall state:

(a) The reasons which demonstrate that the imposition of periodic payments is appropriate or inappropriate, according to the criteria provided in subsections (3), (4) and (5) of this section;

(b) The manner and method of proposed future periodic payments including:

(i) The name or names of each recipient of such payments;

(ii) The number, time, interval and dollar amount of all such payments;

(iii) The total amount to be paid over the course of such payments;

(iv) The present cash value of such payments as of the date when payment is to commence;

(v) The terms and conditions of any annuity policy, contract or investment which a party intends to rely upon as the means of facilitating such payments; and

(vi) The method by which such payments are secured.

(c) Any other factor the court deems appropriate under the prevailing circumstances.

(3) In determining whether periodic payments are appropriate in any given case, the court shall consider, receive evidence and enter findings of fact and conclusions of law on the following:

(a) The age, health, education, occupation experience, medical needs, capacity or incapacity, dependency, and any other special circumstances which, considering the best interests of the claimant, weigh in favor of periodic or lump sum payments;

(b) The financial capacity and resources of the judgment debtor, and any other factors which may affect such debtor's ability to pay the judgment in lump sum, or may otherwise substantially impair the future solvency of such debtor if periodic payments are not ordered;

(c) The degree to which the future damages, losses, expenses and needs are subject to ascertainment with reasonable certainty;

(d) The extent to which an order of future periodic payments may significantly risk that the judgment debtor will be required to pay more than the verdict award or finding, or that the claimant will not be fully and fairly compensated for the future damages;

(e) The existence and amount of any policy of insurance providing coverage, in whole or part, to the judgment debtor for the future damages of the claimant;

(f) The claimant's entitlement to future income, benefits, proceeds or payments from other sources which, with reasonable certainty, may supplement the claimant's future economic needs, damages or expenses;

(g) The extent to which the manner of payment may serve to discourage or deter the tortious, wrongful or otherwise unlawful conduct of the judgment debtor or others similarly situated;

(h) The availability of adequate security to insure that the claimant will receive the full value of the verdict, award or finding;

(i) The extent to which the claimant's attorney will be fully and adequately compensated pursuant to terms of the agreement for representation with the claimant; and

(j) The effect upon any taxes which the claimant will have to pay on the periodic payments.

(4) Unless otherwise agreed to by the claimant, periodic payments shall not be ordered in any case involving an intentional tort, or wrongful conduct perpetrated with or accompanied by fraud, dishonesty, malice, willfulness, gross negligence or which represents an extreme deviation from reasonable standards of conduct.

(5) Any unpaid balance of any judgment shall accrue and bear interest at the legal rate of interest specified in section 28-22-104(2), Idaho Code, except to the extent such judgment is for future damages. Judgments for future damages shall not bear interest unless such future damages have been reduced to present value in which case the court shall assign an interest rate which is consistent with the methodology used in reducing the amount of such verdict award or finding to present value.

(6) Adequate security shall be required on every judgment ordered payable by periodic means, including the provision of any one or combination of the following:

(a) An annuity contract issued by an insurance company with a financial rating acceptable to the court;

(b) Personal guarantees;

(c) Reinsurance contracts;

(d) Security instruments on real and personal property; or

(e) Such other collateral or security the court may determine appropriate and necessary to ensure full and timely payment of the judgment.

(7) If the court enters a judgment for periodic payments and any security required by the judgment is not given within sixty (60) days, the court shall enter judgment for payment of the future damage award in a lump sum, together with an award of reasonable costs and attorney fees incurred by the claimant relating to the request for periodic payments.

(8) If the court enters an order for periodic payments within sixty (60) days after entry of an order for periodic payments, the judgment debtor may elect not to make the periodic payments and satisfy the judgment for periodic payments by paying the full amount of damages awarded before the order for periodic payments.

(9) If at any time following entry of judgment for periodic payments, a judgment debtor fails to make any payment in full or in a timely fashion, or otherwise according to the terms of the judgment, the claimant may petition the court for an order requiring payment by the judgment debtor of the total remaining amount of the unpaid future damage award and, if necessary, an order allowing execution upon any security given for payment together with such additional penalties, including an award of costs and attorney fees, as the court deems appropriate. In ruling upon such petition the court may con-

sider whether the judgment debtor's failure to make full or timely payment was the result of his excusable inadvertence or the ministerial act of third parties beyond the control of the judgment debtor, together with all equitable considerations which favor granting or denying the petition.

(10) All judgments payable by periodic payments, as provided in this section, shall constitute a property right of the judgment creditor entitled to receive the payments, shall survive the death, disability or incapacity of the judgment creditor, and shall be inheritable, devisable, assignable and otherwise subject to disposition by the judgment creditor as any other form of intangible personal property; provided that nothing contained herein is intended to amend, modify or in any way alter any federal, state or local laws pertaining to taxes which may or may not be assessed against all or any portion of the judgment.

[6-1602, added 1987, ch. 278, sec. 1, p. 573.]

6-1603. LIMITATION ON NONECONOMIC DAMAGES. (1) In no action seeking damages for personal injury, including death, shall a judgment for noneconomic damages be entered for a claimant exceeding the maximum amount of two hundred fifty thousand dollars (\$250,000); provided, however, that beginning on July 1, 2004, and each July 1 thereafter, the cap on noneconomic damages established in this section shall increase or decrease in accordance with the percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage as computed pursuant to section 72-409(2), Idaho Code.

(2) The limitation contained in this section applies to the sum of: (a) noneconomic damages sustained by a claimant who incurred personal injury or who is asserting a wrongful death; (b) noneconomic damages sustained by a claimant, regardless of the number of persons responsible for the damages or the number of actions filed.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (1) of this section.

(4) The limitation of awards of noneconomic damages shall not apply to:

(a) Causes of action arising out of willful or reckless misconduct.

(b) Causes of action arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law.

[6-1603, added 1987, ch. 278, sec. 1, p. 575; am. 2003, ch. 122, sec. 2, p. 371.]

6-1604. LIMITATION ON PUNITIVE DAMAGES. (1) In any action seeking recovery of punitive damages, the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

(2) In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages. However, a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. A prayer for relief added pursuant to this section shall not be barred by lapse of time under any applicable limitation on the time in which

an action may be brought or claim asserted, if the time prescribed or limited had not expired when the original pleading was filed.

(3) No judgment for punitive damages shall exceed the greater of two hundred fifty thousand dollars (\$250,000) or an amount which is three (3) times the compensatory damages contained in such judgment. If a case is tried to a jury, the jury shall not be informed of this limitation. The limitations on noneconomic damages contained in section 6-1603, Idaho Code, are not applicable to punitive damages.

(4) Nothing in this section is intended to change the rules of evidence used by a trier of fact in finding punitive damages.

[6-1604, added 1987, ch. 278, sec. 1, p. 576; am. 2003, ch. 122, sec. 3, p. 371.]

6-1605. LIMITATION ON LIABILITY OF VOLUNTEERS, OFFICERS AND DIRECTORS OF NONPROFIT CORPORATIONS AND ORGANIZATIONS AND TRUSTEES OF CHARITABLE TRUSTS. (1) In any nonprofit corporation or organization or charitable trust as defined in section 6-1601(6), Idaho Code, officers, directors, and volunteers who serve the nonprofit corporation or organization without compensation and trustees of the charitable trust who serve without compensation shall be personally immune from civil liability arising out of their conduct as an officer, director, trustee or volunteer, if such conduct is within the course and scope of the duties and functions of the individual officer, director, trustee or volunteer and at the direction of the corporation or organization or charitable trust. The provisions of this section shall not eliminate or limit, and no immunity is hereby granted for the liability of an officer, director, trustee or volunteer:

(a) For conduct which is willful, wanton, or which involves fraud or knowing violation of the law;

(b) To the extent of coverage for such conduct under a policy of liability insurance, whether the policy is purchased by the corporation or organization or charitable trust, the individual officer, director, trustee, volunteer or some third party;

(c) For any intentional breach of a fiduciary duty or duty of loyalty owed by the officer, director or volunteer to the corporation, organization or the members thereof, or owed by the trustee to the charitable trust or the members thereof;

(d) For acts or omissions not in good faith or which involve intentional misconduct, fraud or a knowing violation of law;

(e) For any transaction from which the officer, director, trustee or volunteer derived an improper personal benefit;

(f) For any violation of the provisions of section 30-3-82, Idaho Code; or

(g) For damages which result from the operation of a motor vehicle.

(2) Reimbursement of an officer, director or volunteer of a nonprofit corporation or organization or of a trustee of a charitable trust for costs and expenses actually incurred shall not be considered compensation.

(3) Nothing in this section shall be construed to supersede, abrogate, or limit any immunities or limitation of liability otherwise provided by law.

[6-1605, added 1987, ch. 278, sec. 1, p. 576; am. 1990, ch. 105, sec. 2, p. 212; am. 2003, ch. 59, sec. 1, p. 205; am. 2008, ch. 83, sec. 2, p. 214.]

6-1606. PROHIBITING DOUBLE RECOVERIES FROM COLLATERAL SOURCES. In any action for personal injury or property damage, a judgment may be entered for the claimant only for damages which exceed amounts received by the claimant from collateral sources as compensation for the personal injury or property damage, whether from private, group or governmental sources, and whether contributory or noncontributory. For the purposes of this section, collateral sources shall not include benefits paid under federal programs which by law must seek subrogation, death benefits paid under life insurance contracts, benefits paid by a service corporation organized under chapter 34, title 41, Idaho Code, and benefits paid which are recoverable under subrogation rights created under Idaho law or by contract. Evidence of payment by collateral sources is admissible to the court after the finder of fact has rendered an award. Such award shall be reduced by the court to the extent the award includes compensation for damages which have been compensated independently from collateral sources.

[6-1606, added 1990, ch. 131, sec. 1, p. 304.]

6-1607. EMPLOYER LIABILITY FOR EMPLOYEE TORTS. (1) No employer shall be directly or indirectly liable in tort based upon an employer/employee relationship for any act or omission of an employee which occurs after the termination of the employee's employment unless it is shown by clear and convincing evidence that the acts or omissions of the employer itself constitute gross negligence or reckless, willful and wanton conduct as those standards are defined in section 6-904C, Idaho Code, and were a proximate cause of the damage sustained.

(2) There shall be a presumption that an employer is not liable in tort based upon an employer/employee relationship for any act or omission of a current employee unless the employee was wholly or partially engaged in the employer's business, reasonably appeared to be engaged in the employer's business, was on the employer's premises when the allegedly tortious act or omission of the employee occurred, or was otherwise under the direction or control of the employer when the act or omission occurred. This presumption may be rebutted only by clear and convincing evidence that the employer's acts or omissions constituted gross negligence or, reckless, willful and wanton conduct as those standards are defined in section 6-904C, Idaho Code, and were a proximate cause of the damage sustained.

(3) In every civil action to which this section applies, an employer shall have the right (pursuant to pretrial motion and after opportunity for discovery) to a hearing before the court in which the person asserting a claim against an employer must establish a reasonable likelihood of proving facts at trial sufficient to support a finding that liability for damages should be apportioned to the employer under the standards set forth in this section. If the court finds that this standard is not met, the claim against the employer shall be dismissed and the employer shall not be included on a special verdict form.

(4) Nothing in this section shall be construed to expand any rights of recovery under the common law or to limit any person's rights under any other statute including, but not limited to, chapter 59, title 67, Idaho Code, and title 72, Idaho Code.

[6-1607, added 2000, ch. 210, sec. 2, p. 537.]