TITLE 72
WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 3
SECURITY FOR COMPENSATION

72-301. SECURITY FOR PAYMENT OF COMPENSATION. (1) Every employer shall secure the payment of compensation under this law in one (1) of the following ways:

(a) By insuring and keeping insured with a policy of worker's compensation insurance as defined in section 41-506(d), Idaho Code, the payment of compensation with any insurer, as defined in section 41-103, Idaho Code, authorized by the director of the department of insurance to transact such insurance, provided, that every public employer shall insure its liability for payment of compensation with the state insurance fund unless such fund shall refuse to accept the risk when the application for insurance is made; or

(b) An employer may become self-insured by obtaining the approval of the industrial commission and by depositing and maintaining in a custodial account with the state treasurer money or acceptable security instruments satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law. Such acceptable security instruments are bonds, treasury bills, interest-bearing notes or other obligations of the United States for which the full faith and credit of the United States is pledged for the payment of principal and interest. In lieu of such money or security instruments, the commission may allow or require such employer to file or maintain with the state treasurer a surety bond with any company authorized to transact surety insurance in Idaho. The commission shall adopt rules governing the qualifications of self-insured employers, the nature and amount of security to be deposited and maintained with the state treasurer, and the conditions under which an employer may continue to be self-insured.

(2) No insurer shall be permitted to transact worker's compensation insurance covering the liability of employers under this law unless it shall have been authorized to do business under the laws of this state and until it shall have received the approval of the commission. To the end that the workers secured under this law shall be adequately protected, the commission shall require such insurer to deposit and maintain in a custodial account with the state treasurer money or acceptable security instruments in an amount equal to the total amounts of all outstanding and unpaid compensation awards against such insurer. Acceptable security instruments are bonds, treasury bills, interest-bearing notes or other obligations of the United States for which the full faith and credit of the United States is pledged for the payment of principal and interest. Acceptable security instruments also include municipal bonds issued by the state of Idaho and its subdivisions, counties, cities, towns, villages and school districts. The insurer shall have the responsibility to monitor the ratings for its bonds. Bonds held by worker's compensation insurers in support of insurance obligations must have been assigned a credit rating grade not less than "single A minus" by one (1) or more credit rating providers registered with the United States securities and exchange commission as a nationally recognized statistical rating organization (NRSRO). If the credit rating assigned to the bond by

the NRSRO is downgraded below "single A minus," the worker's compensation insurer shall within thirty (30) days of the downgrade replace the bond with one that meets the credit quality requirement specified in this section. In lieu of such money or security instruments, the commission may allow or require such insurer to file or maintain with the state treasurer a surety bond of some company or companies authorized to do business in this state for and in the amounts equaling the total unpaid compensation awards against such insurer.

(3) When an insurer has been placed in liquidation, any security being held in a custodial account with the state treasurer under this section shall be converted into cash and transferred into the insolvent insurer fund created in subsection (4) of this section. Such funds shall continue to be held for the purpose of securing any future claims made against the insolvent insurer under this law or until released by the commission to the liquidator, if one exists, or to the insurer's state of domicile, as provided herein. Interest earned on moneys deposited in the insolvent insurer fund shall be credited, pro rata, to the account balance of security being held to answer claims made under this law against an insolvent insurer. Moneys deposited in the insolvent insurer fund may be used to pay the reasonable costs or expenses charged by any financial institution holding such funds on deposit for the state treasurer. Any balance in funds remaining on deposit in the insolvent insurer fund to answer the claims of an insolvent insurer after discharge of that insurer's liquidator may be transferred to the liquidator, if one still exists, or to the liquidated insurer's state of domicile, at such time as the commission determines that said security is no longer required to be held by the state treasurer for the purposes of this law.

(4) There is hereby created in the state treasury the insolvent insurer fund. Moneys in the fund are hereby continuously appropriated for the purposes set forth in the provisions of this section. Interest earned on moneys in the fund shall be returned to the fund.

(5) The approval by the commission of any insurer or self-insured employer may be withdrawn if it appears to the commission that workers secured thereby under this law are not fully protected.

(6) For the purposes of this section, the term "public employer" shall not include any single-purpose district organized or that may be organized as a local public body in accordance with the laws of the state of Idaho for the purpose of constructing or furnishing any municipal service. For the purposes of this section, a "public employer" includes a city, county, and school district. The provisions of this subsection shall be null, void, and of no force and effect on and after July 1, 2030. Prior to July 1, 2030, the legislature may evaluate the effectiveness of the provisions of this subsection, including whether to remove this subsection or revise the definition of "public employer" provided in this subsection to include cities, counties, and school districts.

[72-301, added 1971, ch. 124, sec. 3, p. 422; am. 1974, ch. 208, sec. 2, p. 1538; am. 2011, ch. 198, sec. 1, p. 581; am. 2014, ch. 96, sec. 1, p. 262; am. 2016, ch. 282, sec. 1, p. 780; am. 2025, ch. 105, sec. 1, p. 562.]

72-301A. ALTERNATIVE MEANS OF SECURING SELF-INSURANCE. The provisions of section 72-301, Idaho Code, with respect to security, shall be met alternatively, by the employer demonstrating to the commission that security for its self-insured worker's compensation program is covered by a cost reimbursement contract with the federal government for work performed in con-

nection with the Idaho national laboratory including research, development, demonstration, testing, national security, defense, environmental cleanup or waste management if the cost reimbursement contract provides for the payment as otherwise required in this chapter. An employer that becomes self-insured under this section is not required to provide and maintain a security deposit, is not required to have a payroll history and is not required to have excess insurance coverage. In addition, because of the federal government reimbursement, the employer's self-insurance program includes coverage for claims for events taking place before the effective date of the self-insured program, and no separate coverage or deposit for such claims is required.

The commission shall promulgate rules governing the administration of employer self-insurance under this section.

[72-301A, added 2014, ch. 96, sec. 2, p. 264.]

72-302. REGULATION OF DEPOSIT WITH STATE TREASURER. The securities so deposited with the state treasurer shall be an exclusive trust for the benefit of the employees of the employers whose compensation liability is so secured, to remain with the treasurer in trust to answer any default of any employer, self-insured employer or surety upon any such obligation established by final judgment upon which execution may lawfully be issued against the employer or surety; the surety, however, at all times shall have the right to collect the interest, dividends and profits upon the securities, and from time to time to withdraw the securities or a portion thereof, substituting therefor others of equally good character and value, to the satisfaction of the commission, and the securities shall not be sold under any process against the surety until after thirty (30) days' notice to the surety, supplying the date, place and manner of sale, and the process under which and the purpose for which the sale is to be made, accompanied by a copy of the process. The surety shall not be permitted to withdraw from the state treasurer the deposits of money or bonds or permit the surety bonds to lapse for a period of one (1) year after discontinuing business within this state, or while any suit is pending or while any judgment against the surety in this state, or award against an employer whose compensation liability is secured by the surety, shall remain unpaid. Securities which are used to satisfy the requirements of this chapter may be held in the federal reserve book-entry system, as defined in section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities.

[72-302, added I.C., sec. 72-302, as added by 1971, ch. 124, sec. 3, p. 422; am. 1986, ch. 247, sec. 2, p. 667.]

72-303. QUALIFICATION SUBJECT TO REGULATION. To the end that payment of compensation secured by this law shall be adequately protected, the commissioner of insurance is hereby authorized and empowered to make and change from time to time such reasonable regulations as he may deem necessary with reference to required capital stock, surplus and reserves of sureties securing payment of compensation under this law.

[72-303, added I.C., sec. 72-303, as added by 1971, ch. 124, sec. 3, p. 422.]

72-304. PROMPT COMPENSATION PAYMENTS REQUIRED -- RULES AND REGULATIONS. The commission is authorized to make and change from time to time such rules and regulations as it shall deem necessary to secure the prompt payment of compensation, and after affording the surety opportunity to be heard, may withdraw its approval of any employer or surety who unnecessarily delays payment of compensation, and the commissioner of insurance upon notification accordingly shall withdraw his authorization of a surety to insure or guarantee the payment of workmen's compensation liability of employers in this state.

[72-304, added I.C., sec. 72-304, as aded by 1971, ch. 124, sec. 3, p. 422.]

72-305. CLAIMS SERVICES AND MEDICAL SUPERVISION. Each surety shall provide prompt claims services through its own adjusting offices or officers located within the state, or by independent, licensed, resident adjusters.

The surety shall provide medical supervision of cases from its insureds through medical consultants located within the state or near enough to provide prompt and continuous service.

[72-305, added I.C., sec. 72-305, as added by 1971, ch. 124, sec. 3, p. 422.]

72-306. RECITALS IN INSURANCE CONTRACTS. Every policy of insurance and every guaranty contract or surety bond covering the liability of the employer for compensation shall cover the entire compensation liability of the employer to his employees, and shall contain a provision setting forth the right of an employee to enforce in his own name, either by at any time filing a separate claim or by at any time making the surety a party to the original claim, the liability of the surety in whole or in part for the payment of such compensation, provided, that payment in whole or in part of such compensation by either the employer or the surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

[72-306, added I.C., sec. 72-306, as added by 1971, ch. 124, sec. 3, p. 422.]

72-306A. DEDUCTIBLE CONTRACT. (1) A surety issuing a worker's compensation insurance contract may offer deductibles optional to the policyholder for benefits payable thereunder so long as the director of the department of insurance approves the contract.

(2) The director of the department of insurance shall approve a contract containing such a deductible if, but only if, he finds the following standards have been met:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible;

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards;

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount;

(d) Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employees;

(e) The policyholder is liable to the surety for the deductible amount in regard to benefits paid for compensable claims;

(f) The surety pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount;

(g) Failure to reimburse deductible amounts by the policyholder to the surety is treated under the policy in the same manner as nonpayment of premiums; and

(h) Losses subject to the deductible shall be reported and recorded as losses for purposes of ratemaking and application of the experience rating plan on the same basis as losses under policies providing first dollar coverage; and

(i) The contract otherwise complies with the statutes of this state.

(3) The premium tax required to be paid pursuant to section 72-523, Idaho Code, shall be calculated based on premiums which would have been charged but for the deductible. For all other taxes and assessments, including residual market assessments, based on premium, the amount of premium shall be determined after application of the deductible.

[72-306A, added 1993, ch. 223, sec. 1, p. 759.]

72-307. KNOWLEDGE OF EMPLOYER TO AFFECT SURETY. Every such policy, contract or bond shall contain a provision that, as between the employee and the surety, the notice to or knowledge of the occurrence of accident causing an injury or manifestation of an occupational disease on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the surety, that the jurisdiction of the employer shall, for the purpose of this law, be the jurisdiction of the surety, and that the surety shall in all things be bound by and subject to the orders, findings, decisions, or awards of the commission rendered against the employer for the payment of compensation.

[72-307, added I.C., sec. 72-307, as added by 1971, ch. 124, sec. 3, p. 422.]

72-308. INSOLVENCY OF EMPLOYER NOT TO RELEASE SURETY. Every such policy, contract or bond shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries received or occupational diseases contracted or death sustained by an employee during the life of such policy or contract.

[72-308, added I.C., sec. 72-308, as added by 1971, ch. 124, sec. 3, p. 422.]

72-309. INSURANCE CONTRACT DEEMED REFORMED. Every such policy, contract or bond shall be deemed to be made subject to the provisions of this law and, if inconsistent with this law, shall be deemed to be reformed to conform to the provisions of this law.

[72-309, added I.C., sec. 72-309, as added by 1971, ch. 124, sec. 3, p. 422.]

72-310. MISREPRESENTATION NOT TO AFFECT EMPLOYEE'S RIGHTS. (1) No statement in an application for such a policy, contract or bond shall void the policy, contract or bond as between the surety and employer unless such statement shall be false and would materially have affected the acceptance of the risk if known by the surety. In no case shall the holding of the policy, contract or bond void between the surety and employer affect the surety's obligation to the employer's employees or their dependents to pay compensation and to discharge other obligations under this law. In such case, the surety shall have a right of action against the employer for any amounts for which the surety is liable under such policy, contract or bond.

(2) As between any such employee or his dependents and the surety no question as to breach of warranty or misrepresentation by the insured shall be raised by the surety in any proceeding or any appeal therefrom.

[72-310, added I.C., sec. 72-310, as added by 1971, ch. 124, sec. 3, p. 422.]

72-311. NOTICE OF SECURITY -- CANCELLATION OF SURETY CONTRACT. (1) The employer shall forthwith file with the commission in form prescribed by it, a notice of his security.

(2) No policy of insurance or guaranty contract or surety bond issued against liability arising under this act, where the policy, contract, or bond is intended to provide coverage of greater than one hundred eighty (180) days, shall be canceled or not renewed until at least sixty (60) days after notice of cancellation has been filed with the industrial commission, and also served on the other contracting party either personally or by certified mail to the last known address of the other contracting party. If cancellation is due to failure to pay premiums, material misrepresentations by the insured, substantial and unforeseen changes in the risk assumed, substantial breaches of contractual duties, conditions or warranties, or the policy is being canceled or not renewed at the request of the policyholder, then at least ten (10) days' notice of cancellation is required and the notice shall be filed as required in this section. For purposes of this section, service by certified mail is complete either on acknowledgement of receipt or refusal of the notice by the contracting party or the fifteenth day after the date the postal authority first attempts to deliver the certified mail as evidenced by P.S. form 3849 or other similar document.

(3) A contracting party may, by its own representations or actions, be estopped by the commission from relying on the time limitations set out herein.

[72-311, as added by 1971, ch. 124, sec. 3, p. 422; am. 1972, ch. 185, sec. 1, p. 472; am. 1987, ch. 278, sec. 16, p. 587; am. 1988, ch. 238, sec. 1, p. 466; am. 1994, ch. 178, sec. 1, p. 417; am. 2006, ch. 16, sec. 29, p. 65.]

72-312. POSTING OF NOTICE REGARDING INSURANCE -- PENALTY. Every employer who has complied with section 72-301 shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this law. Such notice shall contain the name and address of the surety, if any, with which the employer has secured payment of compensation.

An employer who fails to post and keep such notice conspicuously displayed shall be guilty of a misdemeanor.

[72-312, added I.C., sec. 72-312, as added by 1971, ch. 124, sec. 3, p. 422.]

72-313. PAYMENT PENDING DETERMINATION OF POLICY COVERAGE. Whenever any claim is presented and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer and a surety or between two (2) or more employers or sureties, the commission shall order payment of compensation to be made immediately by one or more of such employers or sureties. The commission may order any such employer or surety to deposit the amount of the award or to give such security thereof as may be deemed satisfactory. When the issue is finally resolved, an employer or surety held not liable shall be reimbursed for any such payments by the employer or surety held liable and any deposit or security so made shall be returned.

[72-313, added I.C., sec. 72-313, as added by 1971, ch. 124, sec. 3, p. 422.]

72-314. PAYMENT OF LIABILITY OF PUBLIC EMPLOYER. Any sums necessary to be paid under the provisions of this law by any public or quasi-public employer, which exercises taxing power, for compensation premiums or compensation shall be considered to be ordinary and necessary expenses of such employer, and its governing body shall make appropriation of and pay such sums whenever necessary, notwithstanding that it may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expense, appropriation, ordinance, or otherwise.

[72-314, added I.C., sec. 72-314, as added by 1971, ch. 124, sec. 3, p. 422.]

72-315. ERRONEOUS PAYMENT IN GOOD FAITH. Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim.

[72-315, added I.C., sec. 72-315, as added by 1971, ch. 124, sec. 3, p. 422.]

72-316. VOLUNTARY PAYMENTS OF INCOME BENEFITS. Any payments made by the employer or his insurer to a workman injured or afflicted with an occupational disease, during the period of disability, or to his dependents, which under the provisions of this law, were not due and payable when made, may, subject to the approval of the commission, be deducted from the amount yet owing and to be paid as income benefits; provided, that in case of disability such deduction shall be made by shortening the period during which income benefits must be paid, and not by reducing the amount of the weekly payments.

[72-316, added I.C., sec. 72-316, as added by 1971, ch. 124, sec. 3, p. 422.]

72-317. PERIODICAL PAYMENTS. The commission, upon the application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize income benefits to be paid biweekly or monthly instead of weekly.

[72-317, added I.C., sec. 72-317, as added by 1971, ch. 124, sec. 3, p. 422.]

72-318. INVALID AGREEMENTS -- PENALTY. (1) No agreement by an employee to pay any portion of the premiums paid by his employer for workmen's compensation, or to contribute to the cost or other security maintained for or carried for the purpose of securing the payment of workmen's compensation, or to contribute to a benefit fund or department maintained by the employer, or any contract, rule, regulation or device whatever designed to relieve the employer in whole or in part from any liability created by this law, shall be valid. Any employer who makes a deduction for such purpose from the remuneration of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

(2) No agreement by an employee to waive his rights to compensation under this act shall be valid.

[72-318, added I.C., sec. 72-318, as added by 1971, ch. 124, sec. 3, p. 422.]

72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. (1) Any employer required to secure the payment of compensation under this law who fails to secure the payment thereof shall be guilty of a misdemeanor. In any case where the employer is a corporation or a limited liability company, any officer or employee of the corporation or member, manager, or employee of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or limited liability company and failed to do so shall individually be guilty of a misdemeanor.

(2) Such officer, employee, member, or manager shall be personally liable jointly and severally with such corporation or limited liability company for any compensation that may accrue under this law in respect to any injury or occupational disease suffered by any employee of such corporation or limited liability company while it shall so fail to secure the payment of compensation.

(3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property or records belonging to such employer, after one (1) of its employees has been afflicted by an injury or occupational disease, with intent to avoid the payment of compensation to such employee or his dependents, shall be guilty of a misdemeanor. In any case where such employer is a corporation or limited liability company, any officer, employee, member, or manager thereof, if knowingly participating or acquiescing in any such act, shall also be individually guilty of a misdemeanor.

(4) Any employer required to secure the payment of compensation under this law who fails to do so may be liable for a penalty of either two dollars ($2.00) for each employee for each day or twenty-five dollars ($25.00) for each day during which such failure continues, whichever is greater, and in cases where the employer is a corporation or limited liability company and is unable to pay the fine, any officer or employee of the corporation or member or manager of a limited liability company who had authority to secure pay-

ment of compensation on behalf of the corporation or a limited liability company and failed to do so shall be liable for a like penalty, to be recovered for the time during which such failure continued, but for not more than three (3) consecutive years, in an action brought by the commission in the name of the state of Idaho; any amount so collected shall be paid into the industrial administration fund; for this purpose, the district court of any county in which the employer carries on any part of its trade or occupation shall have jurisdiction. In determining whether penalties should be assessed or collected for the employer's failure to secure the payment of compensation, the commission may consider the following factors:

(a) When the employer was notified that such employer's worker's compensation insurance coverage had been canceled or that such insurance was required;

(b) The length of time that elapsed between when the employer was notified that worker's compensation insurance coverage was required, or that such employer's coverage had been canceled, and the date that such coverage was put into effect;

(c) Whether the employer is able to document attempts to secure worker's compensation insurance coverage during the period of time that such employer was without such coverage;

(d) Whether there were prior instances in which the employer failed to keep worker's compensation insurance in effect or such coverage was canceled and the reasons for such failure or cancellation;

(e) The reasons that the employer is unable to obtain or keep in effect worker's compensation insurance coverage;

The above factors are not exclusive and the commission may consider any other relevant factor.

(5) If any employer required to secure the payment of compensation under this law is or has been in default under section 72-301, Idaho Code, the employer may be enjoined by the district court of any county in which such employer carries on any part of its trade or occupation from carrying on such business while any default under section 72-301, Idaho Code, exists. All proceedings in the courts under this section are to be brought by the industrial commission in the name of the state of Idaho.

(6) An employer who fails to secure the payment of compensation and who has been assessed a penalty within the previous three (3) years pursuant to section 72-319(4), Idaho Code, shall be liable for the following penalty in addition to the penalty provided by section 72-319(4), Idaho Code:

(a) Five hundred dollars ($500) for the second failure to secure the payment of compensation;

(b) One thousand dollars ($1,000) for the third and any subsequent failure to secure the payment of compensation.

[72-319, added 1971, ch. 124, sec. 3, p. 422; am. 1973, ch. 112, sec. 1, p. 203; am. 1988, ch. 239, sec. 1, p. 467; am. 1990, ch. 322, sec. 1, p. 880; am. 1992, ch. 308, sec. 1, p. 919; am. 1997, ch. 304, sec. 1, p. 906; am. 2025, ch. 66, sec. 1, p. 316.]

72-320. COMPENSATION PREFERRED AS WAGES. All rights of compensation granted by this law shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of labor.

[72-320, added I.C., sec. 72-320, as added by 1971, ch. 124, sec. 3, p. 422.]

72-321. STATUTORY AGENT OF EMPLOYER WHO HAS NO BUSINESS LOCALE. If an employer maintains no place of business in this state, he shall be deemed to have appointed the secretary of state as his agent for the purpose of acceptance of service of process, or of any order, directive, decision or award of the commission or of notice of any proceeding commenced by any party pursuant to this law.

[72-321, added I.C., sec. 72-321, as added by 1971, ch. 124, sec. 3, p. 422.]

72-322. ASSIGNED RISK. The director of the department of insurance, after consultation with sureties authorized to issue worker's compensation policies and guaranty contracts in this state, may put into effect a reasonable system for the equitable apportionment among such sureties of applicants for such policies or guaranty contracts who are in good faith entitled to but are unable to procure the same through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on worker's compensation premiums, shall, following his application to the assigned risk system and tender of required premium, be covered by worker's compensation insurance or his coverage guaranteed. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no surety shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such surety during the preceding year bears to the total compensation premiums written in the state by all such sureties during the preceding calendar year. Provided however, that domestic reciprocal insurers which insure only worker's compensation risks shall be exempt from participation in this system. Premium charges for the assigned risk plan shall not be excessive, inadequate, nor unfairly discriminatory and shall produce sufficient revenue to make the plan self-sustaining and self-supporting.

[72-322, added 1971, ch. 124, sec. 3, p. 422; am. 1996, ch. 220, sec. 2, p. 724; am. 1996, ch. 305, sec. 4, p. 1003.]

72-323. CREATION OF INDUSTRIAL SPECIAL INDEMNITY FUND. A fund is hereby created to be known as the industrial special indemnity fund, which shall consist of payments made to it as in sections 72-327 and 72-420, and as may hereafter be provided.

[72-323, added I.C., sec. 72-323, as added by 1971, ch. 124, sec. 3, p. 422.]

72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND. There is hereby created in the department of administration the office of manager of the industrial special indemnity fund, elsewhere in this chapter referred to as manager, whose duties shall be to administer the fund without liability on the part of the state or the manager beyond the amount of such fund. Among the powers of the manager shall be the power to evaluate, investigate, adjust claims made against the fund and make agreements, subject to the approval of

the industrial commission, for compensation for injuries and occupational diseases in accordance with the provisions of this act, including the power to order payment from the fund for such medical, hospital and nursing care charges as injured persons or those suffering from occupational diseases may be entitled to from the fund.

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

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

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

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

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

[72-324, added 1978, ch. 264, sec. 2, p. 577; am. 1997, ch. 206, sec. 1, p. 620.]

72-325. STATE TREASURER CUSTODIAN OF FUND -- DUTIES. The state treasurer shall be custodian of the industrial special indemnity fund.

[72-325, added I.C., sec. 72-325, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 3, p. 578.]

72-326. DEPOSIT AND INVESTMENT OF FUND -- INTEREST. The state treasurer shall deposit or, on order of the manager of the industrial special indemnity fund, invest any portion of the industrial special indemnity fund not needed for immediate or currently anticipated use, in the manner and subject to all the provisions of law respecting the depositing and investing of state funds by him. Interest earned by such portion of the fund so invested shall be collected by the state treasurer and placed to the credit of the fund.

[72-326, added I.C., sec. 72-326, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 4, p. 578.]

72-327. ASSESSMENT -- METHOD OF CALCULATION AND PRORATION -- TIME FOR PAYMENT. (1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days subsequent to September 1 and April 1 of each year, pay to the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:

(a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;

(b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the total gross amount of indemnity benefits paid on Idaho worker's compensation claims during the applicable reporting period;

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

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

(3) For the purposes of this section, the responsible entities or persons shall report to the industrial commission their total gross indemnity benefits paid during the twelve (12) month period from January 1 through December 31 no later than March 3 of the next succeeding year.

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

(5) The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder on or before April 1, 1998, and thereafter on or before September 1 and April 1 of each succeeding year.

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

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

[72-327, added 1997, ch. 206, sec. 3, p. 621; am. 2000, ch. 42, sec. 1, p. 83; am. 2006, ch. 247, sec. 1, p. 755; am. 2007, ch. 8, sec. 1, p. 7.]

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

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

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

[72-328, added 1997, ch. 206, sec. 4, p. 623.]

72-329. DISBURSEMENTS. All disbursements from the industrial special indemnity fund shall be paid by the treasurer upon orders of the manager. Disbursements to beneficiaries not payable in a lump sum shall be made monthly.

[72-329, added I.C., sec. 72-330, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 6, p. 579.]

72-330. LEGAL REPRESENTATION OF FUND. The attorney general shall appoint a member of his staff, if requested by the manager, pursuant to section 72-324, Idaho Code, to represent and conduct on behalf of the industrial special indemnity fund all suits, actions and proceedings whatsoever involving the fund.

[72-330, added I.C., sec. 72-330, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 7, p. 579.]

72-331. PAYMENT OF ADMINISTRATIVE EXPENSES. The manager shall have the authority to pay from the industrial special indemnity fund necessary ex-

penses of administration involving the industrial special indemnity fund, including secretarial help, equipment and supplies, medical and other experts, witnesses, legal counsel, and similar aid and services.

[72-331, added I.C., sec. 72-331, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 8, p. 579.]

72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY ACCOUNT. (1) If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.

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

[72-332, added I.C., sec. 72-332, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 9, p. 579; am. 1981, ch. 261, sec. 2, p. 553; am. 1991, ch. 155, sec. 1, p. 371.]

72-333. PERPETUAL APPROPRIATION. All moneys which may come into the industrial special indemnity fund are hereby perpetually appropriated to the department of administration to be expended by it for the purposes stated in sections 72-331 and 72-332, Idaho Code.

[72-333, added I.C., sec. 72-333, as added by 1971, ch. 124, sec. 3, p. 422; am. 1978, ch. 264, sec. 10, p. 580.]

72-334. FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY FUND -- TIME FOR FILING -- RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM -- JURISDICTIONAL EFFECT. Any claimant, employer or surety making a claim for benefits with the industrial special indemnity fund shall file a notice of claim with the manager not less than sixty (60) days prior to the date of filing of a complaint against the industrial special indemnity fund with the industrial commission seeking benefits from the industrial special indemnity fund. Such notice of claim shall include, but not be limited to, a detailed statement describing the disability claim and supporting documentation including relevant medical and vocational rehabilitation records. Failure to timely file a notice of claim with the manager shall require the involuntary dismissal of any complaint against the industrial special indemnity fund re-

garding the claim for benefits which the party seeking to join the industrial special indemnity fund may cause to be filed with the industrial commission. The manager shall evaluate the notice of claim and shall approve or deny the claim or make an offer of settlement within the sixty (60) day period. If, in the discretion of the manager, the notice of claim is determined to be incomplete, the manager may, upon written notice to the party seeking to join the industrial special indemnity fund, extend the time period for evaluation of the claim for a maximum of thirty (30) days in order to request the necessary documents and records. The manager shall approve or deny the claim or make an offer of settlement within the extended period.

[72-334, added 1997, ch. 303, sec. 1, p. 906.]