

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 449

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO GARNISHMENTS; AMENDING SECTION 8-507, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE OF WRIT OF ATTACHMENT, EXECUTION OR GARNISHMENT, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-507A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SERVICE ON A DEFENDANT AND THIRD PARTIES BY CERTAIN PERSONS; AMENDING SECTION 8-507C, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AVAILABILITY OF CERTAIN FORMS, TO REVISE A CERTAIN NOTICE FORM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 8-507D, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SERVICE AND MAILING CRITERIA OF CERTAIN DOCUMENTS AND RELATED DUTIES OF THE SHERIFF AND SERVING ATTORNEY; AMENDING SECTION 8-508, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LIABILITY OF A GARNISHEE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-509, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CONTINUING GARNISHMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-510, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE OF GARNISHMENT AND DISCHARGE OF A GARNISHEE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 8-521, IDAHO CODE, TO PROVIDE THAT NO SERVING ATTORNEY SHALL BE LIABLE TO BE SUMMONED AS A GARNISHEE; AMENDING SECTION 11-102, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE FORM OF A CERTAIN WRIT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-103, IDAHO CODE, TO PROVIDE THAT CERTAIN PROVISIONS APPLY TO A SERVING ATTORNEY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-107, IDAHO CODE, TO PROVIDE THAT EXECUTIONS FOR CERTAIN GARNISHMENTS BE ISSUED TO CERTAIN PERSONS, TO REVISE PROVISIONS RELATING TO THE TIMING OF AN EXECUTION ISSUED AGAINST EACH JUDGMENT DEBTOR IN EACH COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-203, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CLAIM OF EXEMPTION BY DEFENDANT OR THIRD PARTY CLAIM, TO REVISE PROVISIONS RELATING TO A MOTION TO CONTEST A CLAIM, TO REVISE PROVISIONS RELATING TO THE HOLDING AND RELEASING OF PROPERTY BY A SHERIFF OR SERVING ATTORNEY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-206, IDAHO CODE, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-301, IDAHO CODE, TO PROVIDE THAT CERTAIN PROCEEDS SHALL BE PAID TO THE JUDGMENT CREDITOR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-605, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING CHAPTER 32, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3203A, IDAHO CODE, TO PROVIDE THAT A SERVING ATTORNEY MAY CHARGE CERTAIN FEES FOR SERVICES.

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

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

1        8-507. GARNISHMENT -- SERVICE OF WRIT OF ATTACHMENT, EXECUTION,  
 2 OR GARNISHMENT -- BANKS. (a) Upon receiving written directions from the  
 3 plaintiff judgment creditor or his attorney, that any person or corporation,  
 4 public or private, has in his or its possession or control, any credits or  
 5 other personal property belonging to the defendant, or is owing any debt to  
 6 the defendant, the sheriff or a serving attorney shall serve ~~upon~~ in the man-  
 7 ner provided in section 8-507D, Idaho Code, any such person, or corporation  
 8 identified in the plaintiff's judgment creditor's written directions all of  
 9 the following documents:

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

23 The documents specified in paragraphs (3) through (5) of this subsection  
 24 shall be in a form substantially similar to the form provided in section  
 25 8-507C, Idaho Code.

26        (b) In case of service upon a corporation including, but not limited to,  
 27 any banking or trust corporation, the same may be had by ~~delivering~~ serving  
 28 in the manner provided in section 8-507D, Idaho Code, a copy of the papers to  
 29 be served, if upon a private corporation, to any officer, manager or desig-  
 30 nated agent thereof, and if upon a public or municipal corporation, to the  
 31 mayor, president of the council or board of trustees, or any presiding offi-  
 32 cer, or to the secretary or clerk thereof.

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

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

47        If service of the attachment, execution or garnishment papers is not  
 48 made on the designated office of the banking or trust corporation, but in-  
 49 stead is made on another office of the banking or trust corporation located  
 50 in the state of Idaho, then service of such papers shall be valid and effec-

tive as to moneys to the defendant's credit in that particular office and as to other personal property belonging to the defendant held in the possession or control of that particular office, but shall only become valid and effective as to moneys to the defendant's credit held in the possession or control of any of the bank or trust corporation's other offices upon receipt of the attachment, execution or garnishment papers by the designated office. Such banking or trust corporation may, but is under no obligation to, transmit the original or a copy of the papers from the particular office served to the designated office.

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

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

(d) For the purposes of chapter 5, title 8, and chapters 1 through 3, title 11, Idaho Code, "serving attorney" has the same meaning as defined in section 11-206, Idaho Code.

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

8-507A. SERVICE ON DEFENDANT AND THIRD PARTIES BY SHERIFF OR SERVING ATTORNEY. Within two (2) business days after service of the writ and other documents as provided in section 8-507, Idaho Code, or if service is upon a bank or other depository institution, within one (1) business day, the sheriff or a serving attorney shall serve in the manner provided in section 8-507D, Idaho Code, or hand deliver ~~or mail~~ to the defendant and any third party named in ~~plaintiff's~~ the judgment creditor's written directions as a co-owner or having an interest in the property or money to be levied upon, one (1) copy of all the documents and if the garnishee is a bank or depository institution, the search fee and other information specified in subsection (a) of section 8-507, Idaho Code. The ~~plaintiff~~ judgment creditor shall identify in the ~~plaintiff's~~ judgment creditor's written directions the last known mailing address of the defendant and any third party to be served. The sheriff or serving attorney shall indicate on the return of the writ filed with the court the date and manner of service upon the defendant and any third party and shall indicate the documents served.

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

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

1 8-507C. FORMS. The notice of exemptions, instructions to debtors and  
 2 third parties, and the claim of exemption shall be in a form substantially  
 3 similar to the form hereinafter provided. The forms shall be made available  
 4 in English and Spanish language translations in the offices of each county  
 5 sheriff and of each attorney who serves or processes garnishments. Notice,  
 6 written in Spanish, of the availability of these documents in Spanish trans-  
 7 lation shall be set forth on the notice of exemptions.

8 IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

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

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

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

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

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

29 This list may not be complete and may not include all exemptions that apply  
 30 in your case because of periodic changes in the law. Additionally, some of  
 31 the exemptions may not apply in full or under all circumstances. There may be  
 32 special requirements for child support. You or your attorney should read the  
 33 exemption statutes which apply to you.

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

40 The sheriff or the serving attorney cannot give you legal advice. Therefore,  
 41 if you have any questions concerning your rights in this action, you should

consult an attorney as soon as possible. You may contact the nearest office of Idaho legal aid services, inc. to inquire if you are eligible for their assistance.

#### SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

##### Type of Money and Property

1. Alimony, support, maintenance (money or property)
2. Appliances (household) (\$750 per item, up to \$7,500 gross)
3. Annuity contract payments
4. Bodily injury and wrongful death awards\*
5. Books (professional) up to \$2,500
6. Burial plots
7. Child support payments\*
8. Disability or illness benefits\*
9. Furnishings (household) (\$750 per item, up to \$7,500 gross)
10. Health aids
11. Homestead, house, mobile home, and related structures
12. Jewelry (up to \$1,000)
13. Life insurance benefits payable to spouse or dependent\*
14. Medical and/or hospital benefits
15. Military retirement and survivor's benefits
16. Motor vehicle: car, truck, motorcycle with a value of up to \$7,000 per person
17. Pension: stock bonus, profit sharing annuity, or similar plans
18. Personal property: (\$750 per item, up to \$7,500 gross) (furnishings, appliances, one firearm, animals, musical instruments, books, clothes, family portraits and heirlooms)
19. Public assistance: federal, state, or local including: Aid to Aged, Blind and Disabled (AABD); Aid to Families with Dependent Children (AFDC); Aid to Permanently and Totally Disabled (APTD)
20. Public Employee's Benefits including Federal Civil Service Retirement, Idaho Retirement and Disability
21. Railroad Retirement Benefits
22. Retirement, pension or profit sharing plan qualified by IRS
23. Social Security Disability and Retirement Benefits
24. SSI (Supplemental Security Insurance Benefits)
25. Tools of trade and implements up to \$2,500
26. Unemployment benefits
27. Veterans benefits and insurance
28. Wages or salary:
  - Consumer debts primarily for personal or household purposes: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
  - Nonconsumer debts: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
29. Worker's compensation
30. An unmaturred life insurance contract other than a credit life insurance contract

9 INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF OR  
SERVING ATTORNEY WHO LEVIED UPON YOUR MONEY AND/OR PERSONAL  
PROPERTY AND TO THE ISSUING COURT USING THE PREAMBITED  
ENVELOPES INCLUDED WITH THESE INSTRUCTIONS AT (SHERIFF'S OR  
SERVING ATTORNEY'S AND COURT'S STREET ADDRESSES), WITHIN  
FOURTEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE  
INSTRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A  
CLAIM OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST  
BE RECEIVED BY THE SHERIFF OR SERVING ATTORNEY WITHIN THE  
FOURTEEN (14) DAY PERIOD.

3. If the judgment creditor notifies the sheriff or serving attorney that he will not object to the claim of exemption or does not file a motion with the court contesting the claim of exemption, the sheriff or serving attorney will immediately return the money and/or personal property or notify the bank or depository institution to release the money and/or personal property which has been levied upon.

4. IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT  
CONTESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR  
OR ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE  
MOTION AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN  
NOT LESS THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER  
THE FILING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO  
EXPLAIN THE GROUNDS FOR CLAIMING THE EXEMPTION IN COURT  
ON THE DATE AND TIME SET FOR THE HEARING. YOU SHOULD BRING  
WHATEVER DOCUMENTS YOU HAVE TO SUPPORT YOUR CLAIM.

5. This is a notice, not legal advice. If you have any questions  
concerning your rights in this action, you should contact  
an attorney as soon as possible. If you are low income and  
cannot afford an attorney you may contact the nearest office  
of Idaho Legal Aid Services, Inc. to inquire if they can  
assist you.

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

.....,	)	
Plaintiff(s),	)	CASE NO.
vs	)	CLAIM OF EXEMPTION
.....,	)	
Defendant(s).	)	
.....	)	

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

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

- .... Public assistance of any kind
- .... Social security or SSI
- .... Worker's compensation
- .... Unemployment benefits
- .... Child support
- .... Retirement, pension, or profit sharing benefits
- .... Military or veterans benefits
- .... Life insurance or other insurance
- .... Disability, illness, medical or hospital benefits
- .... Alimony, support or maintenance

11           .... Professional books  
12           .... Burial plots  
13           .... Health aids  
14           .... Homestead, house, mobile home and related structures  
15           .... Jewelry  
16           .... Car, truck or motorcycle  
17           .... Tools and implements  
18           .... Appliances, furnishings, firearms, animals, musical  
19           instruments, books, clothes, family portraits and  
20           heirlooms  
21           .... Other property (describe)

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

8-507D. DOCUMENTS TO BE PROVIDED BY PLAINTIFF JUDGMENT CREDITOR -- DUTIES OF SHERIFF OR SERVING ATTORNEY -- SERVICE AND MAILING CRITERIA -- TIME COMPUTATION. With respect to any attachment, garnishment or execution, the plaintiff judgment creditor shall provide the sheriff or serving attorney with sufficient copies of the writ and other documents required to be served for service on the defendant and each additional party identified in the plaintiff's judgment creditor's written directions and shall provide an envelope addressed to each person required to be served. If the documents are to be mailed, proper postage shall be affixed. The sheriff or serving attorney shall not delay service for lack of sufficient copies or postage and shall make any additional copies and affix any additional postage necessary. The sheriff or serving attorney may charge the plaintiff judgment creditor for the actual costs of any additional copies and postage required, which costs shall be in addition to the fees permitted under sections 31-3203 and 31-3203A, Idaho Code.



1        Personal service shall be accomplished in the same manner provided for  
 2 service of summons under the Idaho rules of civil procedure. Provided how-  
 3 ever, that in the case of garnishments the county sheriff or serving attor-  
 4 ney shall have the option of accomplishing personal service by United States  
 5 certified mail, return receipt requested, or United States first class mail  
 6 with a facsimile acknowledgment of such service by the garnishee. Unless  
 7 otherwise provided to the contrary, the date when an item is deposited in the  
 8 United States mail shall constitute the date of mailing and the date of ser-  
 9 vice shall be the date when the garnishee signs the return receipt for the  
 10 certified mail or the date the garnishee sends its facsimile acknowledgment  
 11 of service. In computing any period of time within which an act is to be ac-  
 12 complished, the day of the act after which the designated period of time be-  
 13 gins to run is not to be included. The last day of the period so computed  
 14 is to be included, unless it falls on a weekend or legal holiday, in which  
 15 event the period runs until the close of business of the first business day  
 16 after the weekend or holiday, except that this provision shall not extend the  
 17 time within which hearing on a motion to contest a claim of exemption or third  
 18 party claim must be set as provided in section 8-540, Idaho Code, and section  
 19 11-203, Idaho Code.

20        The sheriff or the serving attorney shall not be required to investigate  
 21 or assure the accuracy and completeness of the addresses of the parties to be  
 22 served or any other information provided by the plaintiff judgment creditor.

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

25        8-508. LIABILITY OF GARNISHEE. All persons having in their possession  
 26 or under their control, any credits or other personal property belonging to  
 27 the defendant, at the time of service upon them of a copy of the writ and no-  
 28 tice, as provided in ~~the last two (2) sections 8-506 and 8-507, Idaho Code,~~  
 29 shall be, unless such property be delivered up or transferred, or such debts  
 30 be paid to the sheriff or to the serving attorney, liable to the plaintiff  
 31 judgment creditor for the amount of such credits, property, or debts, until  
 32 the attachment be discharged or any judgment recovered by him be satisfied.

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

35        8-509. EXAMINATION OF GARNISHEE. (a) Any person owing debts to the de-  
 36 fendant, or having in his possession or under his control, any credits or  
 37 other personal property belonging to the defendant, may be required to at-  
 38 tend before the court or judge, or a referee appointed by the court or judge,  
 39 and be examined on oath respecting the same. If the garnishee be a corpora-  
 40 tion the officer or agent thereof having knowledge of the fact sought to be  
 41 established may be required to attend and give evidence thereof. The defen-  
 42 dant may also be required to attend for the purpose of giving information re-  
 43 specting his property and may be examined on oath. The court or judge may,  
 44 after such examination, order personal property capable of manual delivery  
 45 to be delivered to the sheriff on such terms as may be just, having reference  
 46 to any liens or claims against the same, and a memorandum to be given of all  
 47 other personal property, containing the amount and description thereof.

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

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

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

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

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

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

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

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

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

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

(4) If it be issued on a judgment made payable in a specified kind of money or currency, it ~~must also~~ shall require the sheriff or serving attorney to satisfy the same in the kind of money or currency in which the judgment is made payable, and the sheriff ~~must~~ or serving attorney shall refuse payment in any other kind of money or currency; and in case of levy and sale of property of the judgment debtor, he ~~must~~ shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff or serving attorney collecting money or currency in the manner required by this chapter, ~~must~~ shall pay to the ~~plaintiff~~ judgment creditor or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, ~~he~~ the sheriff shall be liable on his official bond to the judgment creditor in three (3) times the amount of the money so collected or, in the case of a serving attorney, the serving attorney shall be subject to civil liability to the judgment creditor in three (3) times the amount of the money so collected plus reasonable attorney's fees and court costs as determined by the court in addition to any criminal liability, and the judgment debtor is entitled to a setoff for any amounts collected.

(5) If it be for the delivery of the possession of real or personal property, it ~~must~~ shall require the sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment, ~~out of the personal property of the person against~~

1 whom it was rendered, and the value of the property for which the judgment  
 2 was rendered, to be specified therein, if a delivery thereof cannot be had;  
 3 and if sufficient personal property cannot be found, then out of the real  
 4 property, as provided in subsection (1) of this section.

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

7 11-103. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK -- CONTINU-  
 8 OUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT. (a) Except as provided in  
 9 subsection (b) of this section, the execution may be made returnable at any  
 10 time not less than ten (10) nor more than sixty (60) days after its receipt by  
 11 the sheriff or serving attorney, to the clerk with whom the judgment roll is  
 12 filed. When the execution is returned, the clerk must attach it to the judg-  
 13 ment roll. If any real estate be levied upon, the clerk must record the ex-  
 14 ecution and the return thereto at large, and certify the same under his hand  
 15 as true copies in a book to be called the "execution book," which book must  
 16 be indexed with the names of the plaintiffs and defendants in execution al-  
 17 phabetically arranged, and kept open at all times during office hours for the  
 18 inspection of the public without charge. It is evidence of the contents of  
 19 the originals whenever they, or any part thereof, may be destroyed, muti-  
 20 lated or lost.

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

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

45 11-107. EXECUTIONS DIRECTED TO SHERIFF OR SERVING ATTORNEY -- EX-  
 46 ECUTIONS AGAINST EACH JUDGMENT DEBTOR AND IN DIFFERENT COUNTIES AT SAME  
 47 TIME. Where the execution is against the property of the judgment debtor, it

1 may be issued to the sheriff of any county in the state. Where it requires  
 2 the delivery of real or personal property, it must be issued to the sheriff  
 3 of the county where the property, or some part thereof, is situated. Where  
 4 the execution is for a bank garnishment or other money garnishment, it shall  
 5 be issued to a sheriff in any county in the state. Where the execution is for  
 6 a wage garnishment, it may be issued to a sheriff or to a serving attorney  
 7 in any county in the state. An eExecutions may be issued at the same time to  
 8 different counties against each judgment debtor in each county.

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

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

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

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

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

1 filed. The prevailing party at the hearing may be awarded costs pursuant to  
2 the Idaho rules of civil procedure.

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

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

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

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

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

46 (g7) Personal service shall be accomplished in the same manner provided  
47 for service of summons under the Idaho rules of civil procedure. Mailing  
48 shall be by first class mail. The date when an item is deposited in the United  
49 States mails shall constitute the date of mailing. In computing any period

1 of time prescribed in this section, the day of the act or event after which  
2 the designated period of time begins to run is not to be included.

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

5 11-206. DEFINITIONS. For the purpose of section 11-207, Idaho Code,  
6 the term:

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

11 (2-) "Disposable earnings" means that part of the earnings of any indi-  
12 vidual remaining after the deduction from those earnings of any amounts re-  
13 quired by law to be withheld.

14 (3-) "Garnishment" means any legal or equitable procedure through  
15 which the earnings of any individual are required to be withheld for payment  
16 of any debt.

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

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

21 11-301. EXECUTION OF WRIT. (1) The sheriff must execute the writ  
22 against the property of the judgment debtor by levying on a sufficient amount  
23 of property if there be sufficient; collecting or selling the things in ac-  
24 tion, and selling the other property, and paying to the plaintiff judgment  
25 creditor or his attorney so much of the proceeds as will satisfy the judg-  
26 ment. Any excess in the proceeds over the judgment and accruing costs must be  
27 returned to the judgment debtor unless otherwise directed by the judgment or  
28 order of the court. When there is more property of the judgment debtor than  
29 is sufficient to satisfy the judgment and accruing costs within the view of  
30 the sheriff, he must levy only on such part of the property as the judgment  
31 debtor may indicate, if the property indicated be amply sufficient to sat-  
32 isfy the judgment and costs.

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

35 SECTION 15. That Section 11-605, Idaho Code, be, and the same is hereby  
36 amended to read as follows:

37 11-605. EXEMPTIONS OF PERSONAL PROPERTY AND DISPOSABLE EARNINGS SUB-  
38 JECT TO VALUE LIMITATIONS. (1) An individual is entitled to exemption of the  
39 following property to the extent of a value not exceeding seven hundred fifty  
40 dollars (\$750) on any one (1) item of property and not to exceed a total value  
41 of seven thousand five hundred dollars (\$7,500) for all items exempted under  
42 this subsection:

43 (a) Household furnishings, household goods, and appliances held pri-  
44 marily for the personal, family, or household use of the individual or a  
45 dependent of the individual;

1 (b) If reasonably held for the personal use of the individual or a de-  
2 pendent, wearing apparel, animals, books, and musical instruments; and

3 (c) Family portraits and heirlooms of particular sentimental value to  
4 the individual.

5 (2) An individual is entitled to exemption of jewelry, not exceeding  
6 one thousand dollars (\$1,000) in aggregate value, if held for the personal  
7 use of the individual.

8 (3) An individual is entitled to exemption, not exceeding two thousand  
9 five hundred dollars (\$2,500) in aggregate value, of implements, profes-  
10 sional books, business equipment and tools of the trade; and to an exemption  
11 of one (1) motor vehicle to the extent of a value not exceeding seven thousand  
12 dollars (\$7,000).

13 (4) An individual is entitled to an exemption of provisions of food or  
14 water together with storage containers and shelving, sufficient for twelve  
15 (12) months for use of the individual or a dependent or dependents of the in-  
16 dividual.

17 (5) All courthouses, jails, public offices and buildings, school-  
18 houses, lots, grounds and personal property appertaining thereto, the  
19 fixtures, furniture, books, papers and appurtenances belonging and pertain-  
20 ing to the courthouse, jail and public offices belonging to any county of  
21 this state, or for the use of schools, and all cemeteries, public squares,  
22 parks and places, public buildings, town halls, markets, buildings for the  
23 use of fire departments and military organizations, and the lots and grounds  
24 thereto belonging and appertaining, owned or held by any town or incorpo-  
25 rated city, or dedicated by such town or city to health, ornament or public  
26 use, or for the use of any fire or military company organized under the laws  
27 of this state. No article or species of property mentioned in this section is  
28 exempt from execution issued upon a judgment recovered for its price or upon  
29 a mortgage thereon.

30 (6) All arms, uniforms and accouterments required for the use of an in-  
31 dividual as a peace officer, a member of the national guard or military ser-  
32 vice.

33 (7) A water right not to exceed one hundred sixty (160) inches of wa-  
34 ter used for the irrigation of lands actually cultivated by the individual,  
35 and the crop or crops growing or grown on fifty (50) acres of land, leased,  
36 owned or possessed by an individual cultivating the same, provided, that the  
37 amount of the crops so exempted shall not exceed the value of one thousand  
38 dollars (\$1,000).

39 (8) An individual is entitled to exemption of one (1) firearm valued at  
40 seven hundred fifty dollars (\$750), or less.

41 (9) Any unmaturred life insurance contract owned by an individual, other  
42 than a credit life insurance contract.

43 (10) An individual's aggregate interest, not to exceed five thousand  
44 dollars (\$5,000) in any accrued dividend or interest under, or loan value of,  
45 any unmaturred life insurance contract owned by the individual under which  
46 the insured is the individual or a person of whom the individual is a depen-  
47 dent.

48 (11) An individual's aggregate interest in any tangible personal prop-  
49 erty, not to exceed the value of eight hundred dollars (\$800).



1       (12) An individual is entitled to an exemption for his disposable earn-  
2       ings as defined in subsection (2-) of section 11-206, Idaho Code, wages,  
3       salaries, and compensation for personal services rendered, to the extent  
4       such earnings, wages, salaries, and compensation have been earned but have  
5       not been paid to the individual, not to exceed one thousand five hundred  
6       dollars (\$1,500) in a calendar year. This exemption shall not affect the ap-  
7       plication or operation of the garnishment restrictions set forth in section  
8       11-207, Idaho Code.

9       SECTION 16. That Chapter 32, Title 31, Idaho Code, be, and the same is  
10      hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11      ignated as Section 31-3203A, Idaho Code, and to read as follows:

12      31-3203A. SERVING ATTORNEY SERVICES FEE. A serving attorney, as de-  
13      fined in section 11-206, Idaho Code, may charge fees for services. The fee  
14      for serving a wage garnishment, levying of an execution and receiving and  
15      paying over money shall not exceed forty dollars (\$40.00) in any case, and  
16      five dollars (\$5.00) for copying and making each interim return on a continu-  
17      ing garnishment to show disbursement of moneys held by the serving attorney.  
18      The fees shall be collected from the judgment debtor as an additional amount  
19      added to the writ of execution.