

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 460, As Amended

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS; AMENDING SECTION
2 11-102, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE FORM OF A WRIT;
3 AMENDING SECTION 11-103, IDAHO CODE, TO REVISE PROVISIONS REGARDING
4 EXECUTIONS AND RETURNS, AN EXECUTION BOOK, AND GARNISHMENT FOR CHILD
5 SUPPORT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-107,
6 IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN EXECUTIONS, TO
7 PROVIDE FOR THE ISSUANCE OF CERTAIN EXECUTIONS, AND TO DEFINE A TERM;
8 AMENDING SECTION 11-203, IDAHO CODE, TO REVISE PROVISIONS REGARDING
9 A CLAIM OF EXEMPTION BY A JUDGMENT DEBTOR OR THIRD PARTY, A MOTION TO
10 CONTEST CLAIM AND HEARING, AND THE HOLDING AND RELEASE OF PROPERTY AND
11 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 11-702, IDAHO CODE, TO
12 REVISE PROVISIONS REGARDING EXECUTIONS AND RETURNS AND AN EXECUTION
13 BOOK; AMENDING SECTION 11-703, IDAHO CODE, TO REVISE PROVISIONS RE-
14 GARDING GARNISHMENT, SERVICE OF A WRIT OF EXECUTION OR GARNISHMENT, AND
15 FINANCIAL INSTITUTIONS; AMENDING SECTION 11-704, IDAHO CODE, TO REVISE
16 PROVISIONS REGARDING EMPLOYERS AND CONTINUOUS GARNISHMENT; AMENDING
17 SECTION 11-705, IDAHO CODE, TO REVISE PROVISIONS REGARDING RETURNS
18 ON CONTINUOUS WAGE GARNISHMENT AND CONTINUOUS GARNISHMENT FOR CHILD
19 SUPPORT; AMENDING SECTION 11-706, IDAHO CODE, TO REVISE PROVISIONS RE-
20 GARDING DOCUMENTS TO BE PROVIDED BY JUDGMENT CREDITOR, DUTIES OF THE
21 SHERIFF, SERVICE AND MAILING CRITERIA, AND TIME COMPUTATION; AMENDING
22 SECTION 11-707, IDAHO CODE, TO REVISE PROVISIONS REGARDING FORMS FOR
23 NOTICE OF EXEMPTIONS, INSTRUCTIONS TO DEBTORS AND THIRD PARTIES, AND
24 A CLAIM OF EXEMPTION; AMENDING SECTION 11-709, IDAHO CODE, TO REVISE
25 PROVISIONS REGARDING SERVICE ON A JUDGMENT DEBTOR AND THIRD PARTIES
26 IN CERTAIN INSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-
27 TION 11-710, IDAHO CODE, TO REVISE PROVISIONS REGARDING SERVICE ON A
28 JUDGMENT DEBTOR AND THIRD PARTIES BY A FINANCIAL INSTITUTION; AMENDING
29 SECTION 11-714, IDAHO CODE, TO REVISE PROVISIONS REGARDING A FINANCIAL
30 INSTITUTION'S OBLIGATIONS WHEN SERVED WITH A WRIT OF GARNISHMENT AND
31 TO PROVIDE FOR THE FILING OF A NOTICE OF INTENT TO TERMINATE A WRIT OF
32 GARNISHMENT IN CERTAIN INSTANCES; AMENDING SECTION 11-715, IDAHO CODE,
33 TO REVISE PROVISIONS REGARDING THE LIABILITY OF A GARNISHEE; AMENDING
34 SECTION 11-716, IDAHO CODE, TO REVISE PROVISIONS REGARDING A NOTICE
35 OF GARNISHMENT AND DISCHARGE OF A GARNISHEE; AMENDING SECTION 11-728,
36 IDAHO CODE, TO REVISE A PROVISION REGARDING A CERTAIN FEE FOR AN EM-
37 PLOYER; AND AMENDING SECTION 11-729, IDAHO CODE, TO PROVIDE FOR CERTAIN
38 FEES FOR SERVICE.
39

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

41 SECTION 1. That Section 11-102, Idaho Code, be, and the same is hereby
42 amended to read as follows:

1 11-102. FORM OF WRIT. The writ of execution must be issued in the name
2 of the people, sealed with the seal of the court, and subscribed by the clerk,
3 ~~and be directed to the sheriff,~~ and it must intelligently refer to the judg-
4 ~~ment, stating the court, the county where the judgment roll is filed, and~~
5 ~~the judgment debtor's name, last known address, and, if known, other person-~~
6 ~~ally identifying information,~~ and if it be for money, the amount thereof, and
7 the amount actually due thereon, ~~and if made payable in a specified kind of~~
8 ~~money, or currency, the execution must also state the kind of money or cur-~~
9 ~~rency in which the judgment is payable,~~ and must require the sheriff substan-
10 tially as follows:

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

20 (2) If it be against real or personal property in the hands of the per-
21 sonal representatives, heirs, devisees, legatees, tenants, or trustees, it
22 must require the sheriff to satisfy the judgment, with interest, out of such
23 property.

24 (3) If it be against the person of the judgment debtor, it must require
25 the sheriff to arrest such debtor and commit him to the jail of the county un-
26 til he pay the judgment, with interest, or be discharged according to law.

27 (4) If it be issued on a judgment made payable in a specified kind of
28 money or currency, it must also require the sheriff to satisfy the same in the
29 kind of money or currency in which the judgment is made payable, and the sher-
30 iff must refuse payment in any other kind of money or currency; and in case of
31 levy and sale of property of the judgment debtor, he must refuse payment from
32 any purchaser at such sale in any other kind of money or currency than that
33 specified in the execution. The sheriff collecting money or currency in the
34 manner required by this chapter, must pay to the plaintiff or party entitled
35 to recover the same, the same kind of money or currency received by him, and
36 in case of neglect or refusal so to do, he shall be liable on his official bond
37 to the judgment creditor in three (3) times the amount of the money so col-
38 lected.

39 (5) If it be for the delivery of the possession of real or personal prop-
40 erty, it must require the sheriff to deliver the possession of the same, de-
41 scribing it, to the party entitled thereto, and may at the same time require
42 the sheriff to satisfy any costs, damages, rents or profits recovered by the
43 same judgment, out of the personal property of the person against whom it was
44 rendered, and the value of the property for which the judgment was rendered,
45 to be specified therein, if a delivery thereof cannot be had; and if suffi-
46 cient personal property cannot be found, then out of the real property, as
47 provided in subsection (1) of this section.

48 SECTION 2. That Section 11-103, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 11-103. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK -- CONTIN-
 2 UOUS EXECUTION OR GARNISHMENT FOR CHILD SUPPORT. (a~~1~~) Except as provided
 3 in subsection (b~~2~~) of this section, the execution may be made returnable
 4 at any time not less than ten (10) nor more than sixty (60) days after its
 5 ~~receipt by the sheriff,~~ issuance by the clerk of the court to the clerk with
 6 whom the judgment roll is filed. When the execution is returned, the clerk
 7 must attach it to the judgment roll. If any real estate be levied upon, the
 8 clerk must record the execution and the return thereto at large, and certify
 9 the same under his hand as true copies in a book to be called the "execution
 10 book," which book must be indexed with the names of the plaintiffs and de-
 11 fendants in execution alphabetically arranged, and kept open at all times
 12 during office hours for the inspection of the public without charge. It is
 13 evidence of the contents of the originals whenever they, or any part thereof,
 14 may be destroyed, mutilated or lost.

15 (b~~2~~) Where an execution or garnishment against earnings or unemploy-
 16 ment benefits for a delinquent child support obligation is served upon any
 17 person or upon the state of Idaho and there is in possession of such per-
 18 son or the state of Idaho any such earnings or any unemployment benefits of
 19 the judgment debtor, the execution and the garnishment shall operate con-
 20 tinuously and shall require such person or the state of Idaho to withhold
 21 the nonexempt portion of earnings or unemployment benefits at each succeed-
 22 ing earnings or unemployment benefits disbursement interval until released
 23 ~~by the sheriff at the written request of the judgment creditor~~ or until the
 24 judgment for child support debt, in the dollar amount specifically set forth
 25 on the writ of execution and subject to garnishment as of the date the writ
 26 of execution is issued, is discharged or satisfied in full; provided, how-
 27 ever, that interim returns on such continuous execution or garnishment shall
 28 be filed ~~by the sheriff~~ at intervals not to exceed fourteen (14) days, when-
 29 ever the amount collected in the fourteen (14) day period is at least equal
 30 to fifty dollars (\$50.00), but in any event, interim returns on such con-
 31 tinuous garnishment shall be filed ~~by the sheriff~~ at intervals not to exceed
 32 thirty (30) days. The proportion of earnings subject to garnishment as com-
 33 pared to total available earnings or unemployment benefits shall be limited
 34 to the percentage restrictions on garnishment of wages for child support as
 35 provided in section 11-207, Idaho Code.

36 SECTION 3. That Section 11-107, Idaho Code, be, and the same is hereby
 37 amended to read as follows:

38 11-107. EXECUTIONS DIRECTED TO SHERIFF OR JUDGMENT CREDITOR -- EXECU-
 39 TIONS IN DIFFERENT COUNTIES AT SAME TIME. (1) Where the execution is against
 40 the property of the judgment debtor it may be issued to the sheriff of any
 41 county in the state. Where ~~it~~ the execution requires the delivery of real or
 42 personal property it must be issued to the sheriff of the county where the
 43 property, or some part thereof, is situated. ~~Such e~~Executions on real or
 44 personal property may be issued at the same time to different counties.

45 (2) Where the execution is against money deposited within a financial
 46 institution as provided in section 11-703, Idaho Code, or against future
 47 moneys as may come due to said judgment debtor as a result of the judgment
 48 debtor's employment as provided in section 11-704, Idaho Code, it may be is-
 49 sued either to the sheriff of the county where such garnishee is located or to

1 the judgment creditor. If an execution is issued to the judgment creditor,
 2 he must use a serving attorney. "Serving attorney" means an attorney who is
 3 an active member of the Idaho state bar, as defined in section 3-405, Idaho
 4 Code.

5 SECTION 4. That Section 11-203, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 11-203. CLAIM OF EXEMPTION BY DEFENDANT OR THIRD-PARTY CLAIM -- MO-
 8 TION TO CONTEST CLAIM AND HEARING -- HOLDING AND RELEASE OF PROPERTY BY SHER-
 9 IFF OR COURT. (1) The following procedures shall apply to a claim by the de-
 10 fendant or the defendant's representative that property levied upon is ex-
 11 empt and to any claim by a third party that property levied upon is his prop-
 12 erty or that he has a security interest therein. The defendant or the defen-
 13 dant's representative shall complete the claim of exemption form as provided
 14 in section 11-707, Idaho Code. A third-party claimant shall prepare a writ-
 15 ten claim setting forth the grounds upon which he claims the property, and in
 16 the case of a secured party, also stating the dollar amount of the claim. Ex-
 17 cept as provided in subsection (~~h~~11) of this section, a claim of exemption or
 18 third-party claim may be filed only if property has been levied upon.

19 (a2) The claim of exemption or third-party claim shall be delivered or
 20 mailed to the sheriff or court issuing the writ within fourteen (14) days
 21 after the date ~~the sheriff hand delivers or mails of service of~~ the documents
 22 required to be served upon the defendant and third parties under section
 23 11-709, Idaho Code. If the claim is mailed, it must be received by the sher-
 24 iff or court within the fourteen (14) day period. In computing the fourteen
 25 (14) day period, intervening weekends and legal holidays shall be counted,
 26 but if the last day of the period falls on a weekend or legal holiday, the pe-
 27 riod shall be deemed to run until the close of business of the first business
 28 day following the weekend or holiday.

29 (3) If the claim of exemption or third-party claim is delivered or
 30 mailed, wWithin one (1) business day after receiving a claim, the sheriff or
 31 court shall deliver or mail a copy thereof to the plaintiff or other person
 32 in whose favor the writ of execution runs. The sheriff or court may provide
 33 notification of the claim by telephone but must also mail a copy of the claim
 34 within one (1) business day as herein provided.

35 (~~b~~4) The plaintiff or other person in whose favor the writ of execution
 36 runs shall have five (5) business days after the date a copy of the claim is
 37 delivered or mailed to him ~~by the sheriff~~ within which to file a motion with
 38 the court stating the grounds upon which he contests the claim of exemption
 39 or third-party claim. If appropriate, wWhen the motion is filed, the plain-
 40 tiff shall lodge with the court a copy of the claim to which the motion per-
 41 tains. Hearing on the motion shall be set for a date within not less than
 42 five (5) nor more than twelve (12) days after the filing date of the motion
 43 and may be continued only at the request of the defendant. A copy of the mo-
 44 tion and notice of hearing shall be delivered or mailed to the defendant or
 45 third-party claimant on the date the motion is filed. The prevailing party
 46 at the hearing may be awarded costs pursuant to the Idaho rules of civil pro-
 47 cedure.

48 (5) If the writ be directed to the sheriff, wWithin the period for fil-
 49 ing a motion to contest, the moving party shall notify the sheriff that the

1 motion has been filed. Such notification may be by telephone but a copy of
2 the motion and notice of hearing shall also be mailed or hand delivered to the
3 sheriff within the filing period herein prescribed.

4 (e6) The sheriff or the plaintiff's serving attorney as defined in
5 section 11-107, Idaho Code, shall keep within his separate possession and
6 not deliver to the plaintiff or sell or otherwise disperse or dispose of the
7 property levied upon, except if perishable as provided by law, until the
8 period for filing a claim has elapsed. Any serving attorney keeping property
9 in his separate possession under this section must hold it in a client trust
10 account as described in the Idaho bar commission rules and the Idaho rules of
11 professional conduct. The sheriff or court shall refuse to accept or honor
12 a claim not filed with him within that period and the sheriff or plaintiff,
13 unless otherwise ordered by the court, shall, after such period has elapsed,
14 proceed to sell or, deliver, or otherwise disperse or dispose of the property
15 levied upon to the plaintiff or other person in whose favor the execution
16 runs satisfy the judgment. If, after notice from the sheriff of the filing
17 of a claim, the plaintiff or other person in whose favor the execution runs,
18 notifies the sheriff or issuing court that the claim will be uncontested or
19 fails to notify the sheriff or court within the time provided in subsection
20 (b2) of this section that the claim is being contested, the sheriff or plain-
21 tiff shall release the claimed property to the defendant or his agent.

22 (d7) If a plaintiff or other person in whose favor the execution runs
23 has failed to contest a claim of exemption within the time allowed by this
24 section or if property has been determined by a court to be exempt, and
25 the plaintiff or other person in whose favor the execution runs thereafter
26 levies upon or otherwise seeks to apply the property toward the satisfaction
27 of the same money judgment, the plaintiff or other person in whose favor the
28 execution runs is not entitled to recover the subsequent costs of collection
29 unless the property is applied to satisfaction of the judgment.

30 (e8) If a security agreement to the third-party claimant is in default,
31 rendering said claimant the legal right to possession, the claimant may file
32 with the sheriff or court an affidavit of release to the claimant executed by
33 the defendant-debtor, or his agent; or, in lieu of said affidavit of release,
34 the third-party claimant may file an affidavit setting forth the defendant-
35 debtor's default and claiming possession under default and a hold harmless
36 agreement in favor of the sheriff, supported by an undertaking qualifying
37 in the state of Idaho, indemnifying the sheriff and said defendant-debtor in
38 double the actual value of the property as stated in said third-party claim.
39 Upon receipt of either of the foregoing, the sheriff shall release said prop-
40 erty to the third-party claimant, taking receipt therefor; these proceed-
41 ings to be reported to the court by sheriff's return in the action.

42 (f9) Nothing in this section shall be construed to prevent the defen-
43 dant from pursuing his common law remedies.

44 (g10) Personal service shall be accomplished in the same manner pro-
45 vided for service of summons under the Idaho rules of civil procedure. Mail-
46 ing under this section shall be by first class mail. The date when an item is
47 deposited in the United States mails shall constitute the date of mailing.
48 In computing any period of time prescribed in this section, the day of the act
49 or event after which the designated period of time begins to run is not to be
50 included.

1 (11) At any time after the entry of a judgment that may be enforced by
 2 writ of execution as provided in section 11-104, Idaho Code, the judgment
 3 debtor, or any third party who claims a security interest or other interest
 4 in the property of the judgment debtor, may move the court for an order of ex-
 5 emption identifying the property for which the exemption is claimed and set-
 6 ting forth the grounds, arising under this title or common law, upon which he
 7 claims an exemption or, in the case of a third party, an interest in the prop-
 8 erty, and in the case of a secured party, also stating the dollar amount of
 9 such secured party's claim.

10 SECTION 5. That Section 11-702, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 11-702. TIME WHEN RETURNABLE -- RECORD IN EXECUTION BOOK. A garnish-
 13 ment execution may be made returnable at any time not less than ten (10) but
 14 not more than ~~ninety one hundred eighty-two~~ (90182) days after its receipt
 15 ~~by the sheriff,~~ issuance by the clerk of the court to the clerk with whom the
 16 judgment roll is filed. When the execution is returned, the clerk must at-
 17 tach it to the judgment roll and record the execution and the return thereto
 18 at large, and certify the same under his hand as true copies in a book to be
 19 called the "execution book," which book must be indexed with the names of
 20 the judgment creditors and judgment debtors in execution alphabetically ar-
 21 ranged, and kept open at all times during office hours for the inspection of
 22 the public without charge. It is evidence of the contents of the originals
 23 whenever they, or any part thereof, may be destroyed, mutilated or lost.

24 SECTION 6. That Section 11-703, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 11-703. GARNISHMENT -- SERVICE OF WRIT OF EXECUTION OR GARNISHMENT
 27 -- FINANCIAL INSTITUTIONS. (1) Upon receiving written directions from the
 28 judgment creditor or his attorney, ~~that any person or corporation, public or~~
 29 ~~private, has in his or its possession or control, any credits or other per-~~
 30 ~~sonal property belonging to the judgment debtor, or is owing any debt to the~~
 31 ~~judgment debtor~~ upon issuance of a writ by the clerk of the court pursuant to
 32 section 11-102, Idaho Code, the sheriff or creditor shall serve upon any such
 33 person, or corporation, public or private, that has in his or its possession
 34 or control any credits or other personal property belonging to the judgment
 35 debtor, or is owing any debt to the judgment debtor identified in the judg-
 36 ~~ment creditor's written directions~~ all of the following documents:

- 37 (a) A copy of the writ;
 38 (b) A notice that such credits, or other property, or debts, as the case
 39 may be, are attached in pursuance of such writ;
 40 (c) A notice of exemptions available under federal and state law;
 41 (d) Instructions to debtors and third parties for asserting a claim of
 42 exemption;
 43 (e) A form for making a claim of exemption with two (2) pre-addressed
 44 envelopes, one (1) to the sheriff or creditor serving the above docu-
 45 ments and one (1) to the issuing court; and
 46 (f) If the garnishee is a financial institution, a search fee of five
 47 dollars (\$5.00) and the last known mailing address of the judgment

1 debtor and, if known, a tax identification number that will enable the
2 garnishee to identify the judgment debtor on its records.

3 The documents specified in paragraphs (c) through (e) of this subsection
4 shall be in a form as provided in section 11-707, Idaho Code.

5 (2) In case of service upon a corporation including, but not limited to,
6 any financial institution, the same may be had by delivering a copy of the
7 papers to be served, if upon a private corporation, to any officer, manager
8 or designated agent or designated electronic filing service thereof, and if
9 upon a public or municipal corporation, to the mayor, president of the coun-
10 cil or board of trustees, or any presiding officer, or to the secretary or
11 clerk thereof.

12 (3) In the event a financial institution operates more than one (1) of-
13 fice where deposits are received within the state of Idaho, the banking or
14 trust corporation may, by notifying the Idaho department of finance, desig-
15 nate a particular office or electronic filing service for the service of at-
16 tachment, execution and garnishment papers. Such office may be located ei-
17 ther within or outside the state of Idaho. The Idaho department of finance
18 shall post the list of such designated offices and electronic filing ser-
19 vices on its web page for access by the public.

20 If a financial institution operating more than one (1) office where de-
21 posits are received has designated a particular office or electronic filing
22 service for the attachment, execution, or garnishment, then service of such
23 papers made on the office or electronic filing service so designated shall be
24 valid and effective as to moneys to the judgment debtor's credit held in the
25 possession or control of any of the financial institution's branches or of-
26 fices located within or outside the state of Idaho.

27 If service of the attachment, execution or garnishment papers is not
28 made on the designated office or electronic filing service of the financial
29 institution, but instead is made on another office of the financial institu-
30 tion located in the state of Idaho, then service of such papers shall be valid
31 and effective as to moneys to the judgment debtor's credit in that particular
32 office and as to other personal property belonging to the judgment debtor
33 held in the possession or control of that particular office, but shall only
34 become valid and effective as to moneys to the judgment debtor's credit held
35 in the possession or control of any of the financial institution's other of-
36 fices upon receipt of the attachment, execution or garnishment papers by the
37 designated office or electronic filing service. Such financial institution
38 may, but is under no obligation to, transmit the original or a copy of the
39 papers from the particular office served to the designated office.

40 Service on any financial institution is effective as against the moneys
41 and other personal property to the judgment debtor's credit which are in the
42 possession or control of the financial institution named in the garnishment,
43 but not any affiliate, parent or subsidiary not named. If the garnishment
44 fails to sufficiently distinguish the financial institution from any affil-
45 iate, parent or subsidiary thereof, such that it is not clear which entity is
46 intended to be the garnishee, the garnishment may be returned unsatisfied.

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

1 SECTION 7. That Section 11-704, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 11-704. EMPLOYER -- CONTINUOUS GARNISHMENT. When the garnishee is the
4 employer of the judgment debtor, the judgment creditor, upon application to
5 the court, shall have issued by the clerk of court, a continuing garnishment
6 directing the employer-garnishee to pay ~~to the sheriff~~ such future moneys
7 coming due to the judgment debtor as may come due to said judgment debtor
8 as a result of the judgment debtor's employment. This continuing garnish-
9 ment shall continue in force and effect until the judgment is satisfied.
10 The judgment creditor shall be solely responsible for ensuring that the
11 amounts garnished do not exceed the amount due on the judgment. If addi-
12 tional garnishments are issued during the term of a continuing garnishment
13 and the continuing garnishment is the maximum allowed under the provisions
14 of section 11-712, Idaho Code, the employer is not to pay the additional gar-
15 nishments cannot be served until the continuing garnishment is satisfied, or
16 until unless the amount taken by the continuing garnishment is less than the
17 maximum allowed. Additional garnishments shall be satisfied in the order
18 in which they are served on the employer. Additional garnishments issued
19 during the term of a continuing garnishment must be ~~served in the order in~~
20 ~~which presented~~ returned to the court as unsatisfied if no payments are made
21 on the additional garnishments within one hundred eighty-two (182) days of
22 its issuance by the clerk of the court.

23 SECTION 8. That Section 11-705, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 11-705. ~~SHERIFF'S~~ RETURNS ON CONTINUOUS WAGE GARNISHMENT AND CONTIN-
26 UOUS GARNISHMENT FOR CHILD SUPPORT. (1) In the case of continuing garnish-
27 ments for wages, ~~the sheriff shall file~~ interim returns shall be filed at in-
28 tervals not to exceed fourteen (14) days, whenever the amount collected in
29 the fourteen (14) day period is at least one hundred dollars (\$100), but in
30 any event, interim returns on such continuous garnishment shall be filed ~~by~~
31 ~~the sheriff~~ at intervals not to exceed sixty (60) days.

32 (2) Where an execution or garnishment against earnings or unemployment
33 benefits for a delinquent child support obligation is served upon any person
34 or upon the state of Idaho and there is in possession of such person or the
35 state of Idaho any such earnings or any unemployment benefits of the judg-
36 ment debtor, the execution and the garnishment shall operate continuously
37 and shall require such person or the state of Idaho to withhold the nonex-
38 empt portion of earnings or unemployment benefits at each succeeding earn-
39 ings or unemployment benefits disbursement interval until released ~~by the~~
40 ~~sheriff at the written request of the judgment creditor~~ or until the judgment
41 for child support debt, in the dollar amount specifically set forth on the
42 writ of execution and subject to garnishment as of the date the writ of exe-
43 cution is issued, is discharged or satisfied in full; provided however, that
44 interim returns on such continuous execution or garnishment shall be filed
45 ~~by the sheriff~~ at intervals not to exceed fourteen (14) days, whenever the
46 amount collected in the fourteen (14) day period is at least equal to fifty
47 dollars (\$50.00), but in any event, interim returns on such continuous gar-
48 nishment shall be filed ~~by the sheriff~~ at intervals not to exceed thirty (30)

1 days. The proportion of earnings subject to garnishment as compared to to-
 2 tal available earnings or unemployment benefits shall be limited to the per-
 3 centage restrictions on garnishment of wages for child support as provided
 4 in section 11-712, Idaho Code.

5 SECTION 9. That Section 11-706, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 11-706. DOCUMENTS TO BE PROVIDED BY JUDGMENT CREDITOR -- DUTIES OF
 8 SHERIFF -- SERVICE AND MAILING CRITERIA -- TIME COMPUTATION. ~~With respect to~~
 9 ~~any garnishment or execution~~ If the issued writ is directed to the sheriff,
 10 the judgment creditor shall provide the sheriff with sufficient copies of
 11 the writ and other documents required to be served for service on the judg-
 12 ment debtor and each additional party identified in the judgment creditor's
 13 written directions and shall provide an envelope addressed to each person
 14 required to be served. If the documents are to be mailed, proper postage
 15 shall be affixed. The sheriff shall not delay service for lack of sufficient
 16 copies or postage and shall make any additional copies and affix any addi-
 17 tional postage necessary. The sheriff may charge the judgment creditor for
 18 the actual costs of any additional copies and postage required, which costs
 19 shall be in addition to the fees permitted under section 11-729, Idaho Code.

20 Personal service shall be accomplished in the same manner provided for
 21 service of summons under the Idaho rules of civil procedure. Provided how-
 22 ever, that in the case of garnishments ~~the county sheriff shall have the op-~~
 23 ~~tion of accomplishing,~~ personal service may be accomplished by United States
 24 certified mail, return receipt requested, or United States first class mail
 25 with a facsimile or electronic mail acknowledgment of such service by the
 26 garnishee. Unless otherwise provided to the contrary, the date when an item
 27 is deposited in the United States mail shall constitute the date of mailing
 28 and the date of service shall be the date when the garnishee signs the return
 29 receipt for the certified mail or the date the garnishee sends its facsimi-
 30 ile or electronic mail acknowledgment of service. In computing any period of
 31 time within which an act is to be accomplished, the day of the act after which
 32 the designated period of time begins to run is not to be included. The last
 33 day of the period so computed is to be included, unless it falls on a weekend
 34 or legal holiday, in which event the period runs until the close of business
 35 of the first business day after the weekend or holiday, except that this pro-
 36 vision shall not extend the time within which hearing on a motion to contest
 37 a claim of exemption or third-party claim must be set as provided in section
 38 8-540, Idaho Code, and section 11-203, Idaho Code.

39 If the issued writ is directed to the sheriff to serve, ~~t~~The sheriff
 40 shall not be required to investigate or assure the accuracy and completeness
 41 of the addresses of the parties to be served or any other information pro-
 42 vided by the judgment creditor.

43 SECTION 10. That Section 11-707, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 11-707. FORMS FOR NOTICE OF EXEMPTIONS, INSTRUCTIONS TO DEBTORS AND
 46 THIRD PARTIES AND CLAIM OF EXEMPTION. The forms used for notice of exemp-
 47 tions, instructions to debtors and third parties and claims of exemption

1 shall be those prescribed by rules promulgated or orders issued by the
2 supreme court and posted on the website of the supreme court. The forms shall
3 be made available in English and Spanish language translations in the courts
4 as well as the offices of each county sheriff and on the court's website. No-
5 tice, written in Spanish, of the availability of these documents in Spanish
6 translation shall be set forth on the notice of exemptions.

7 SECTION 11. That Section 11-709, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 11-709. SERVICE ON JUDGMENT DEBTOR AND THIRD PARTIES BY SHER-
10 IFF. Within two (2) business days after service of the writ and other
11 documents as provided in section 11-703, Idaho Code, or if service is upon a
12 financial institution, within one (1) business day, the sheriff or judgment
13 creditor shall hand deliver or mail to the judgment debtor and any third
14 party named in the judgment creditor's written directions as a co-owner, or
15 having an interest in the property or money to be levied upon, one (1) copy
16 of all the documents and, if the garnishee is a financial institution, the
17 search fee and other information specified in section 11-703(1), Idaho Code.
18 The judgment creditor shall identify in the judgment creditor's written di-
19 rections the last known mailing address of the judgment debtor and any third
20 party to be served. The sheriff return of the writ filed with the court shall
21 indicate ~~on the return of the writ filed with the court~~ the date and manner of
22 service upon the judgment debtor and any third party and shall indicate the
23 documents served.

24 If at the time of service of the writ the sheriff or judgment creditor
25 receives written answer from the garnishee stating that it has no money or
26 other personal property belonging or owing to the judgment debtor, compli-
27 ance with the provisions of this section shall not be required.

28 SECTION 12. That Section 11-710, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 11-710. SERVICE ON JUDGMENT DEBTOR AND THIRD PARTIES BY A FINANCIAL
31 INSTITUTION. If the writ and notice of garnishment are served upon a finan-
32 cial institution holding money or accounts belonging to the judgment debtor,
33 the garnishee shall, within three (3) business days after such service, mail
34 or hand deliver a copy of all documents served upon it ~~by the sheriff~~:

35 (1) To the judgment debtor at the address to which account statements or
36 other pertinent account documentation are normally sent, or if the money is
37 not in an account, to the last known address of the judgment debtor shown upon
38 the records of the garnishee at the time of service upon it of the writ; and

39 (2) To any other person shown upon the records of the garnishee as a
40 co-owner or having an interest in the money or accounts garnished at the last
41 known address of the third party shown upon the records of the garnishee at
42 the time of service upon it of the writ.

43 The financial institution shall be entitled to deduct a single fee of
44 not to exceed ten dollars (\$10.00) from the money transferred ~~to the sher-~~
45 ~~iff~~ pursuant to the garnishment to cover the costs associated with the pro-
46 cessing and service of the documents. The fee herein provided shall be the
47 only processing and service fee to which the financial institution is enti-

1 tled, regardless of the number of parties to which documents are sent, and
 2 is in addition to the search fee specified in section 11-703(1) (f), Idaho
 3 Code. Upon ~~being notified by the sheriff that money transferred pursuant to~~
 4 ~~notification of the release of the garnishment has been released~~ as a result
 5 of a court determination that the money is exempt or a failure by the judgment
 6 creditor to contest the claim of exemption, the garnishee shall recredit the
 7 fee to the judgment debtor's account or reimburse the judgment debtor there-
 8 for and the judgment creditor shall reimburse the garnishee for the fee.

9 The garnishee shall indicate in the answer to interrogatories as pro-
 10 vided in section 11-708, Idaho Code, the date and manner of service of the
 11 documents upon the judgment debtor and any third party as herein required but
 12 shall not be required to disclose the names or addresses of any third party
 13 served.

14 The garnishee shall only be required to serve on the judgment debtor,
 15 and any ~~third-party~~ third party, copies of those documents served upon it ~~by~~
 16 ~~the sheriff~~.

17 SECTION 13. That Section 11-714, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 11-714. FINANCIAL INSTITUTION OBLIGATIONS WHEN SERVED WITH WRIT OF
 20 GARNISHMENT. (1) If a notice of garnishment is served upon a financial insti-
 21 tution that has an account or accounts of the judgment debtor, the financial
 22 institution shall conduct a garnishment review of all accounts in the name of
 23 the judgment debtor before taking any action that may affect funds in those
 24 accounts.

25 (2) The garnishment review shall be limited to the ~~sixty-four two (642)~~
 26 ~~day month~~ period immediately preceding the date of service upon the finan-
 27 cial institution of the garnishment. Solely for purposes of the garnish-
 28 ment review, any balance in the accounts on the ~~sixty-fourth day immediately~~
 29 ~~preceding the date of service upon the financial institution of the garnish-~~
 30 ~~ment~~ corresponding date of the month two (2) months earlier, or on the last
 31 date of the month two (2) months earlier if the corresponding date does not
 32 exist, shall be deemed to be exempt. If the financial institution deter-
 33 mines, solely from information transmitted to the financial institution by
 34 the payor, that one (1) or more payments of exempt funds as described in sec-
 35 tion 11-713(1), (2) or (3), Idaho Code, were deposited by direct or elec-
 36 tronic deposit payment in an account of the debtor, the total balance of de-
 37 posited exempt funds in the debtor account is not subject to garnishment.

38 (3) The financial institution conducting the garnishment review need
 39 only review information transmitted to the financial institution by the
 40 payor of direct or electronic deposit payments in making its determination
 41 that funds in the accounts are of the types of payments described in section
 42 11-713(1), (2) or (3), Idaho Code. The financial institution conducting
 43 the garnishment review shall have no obligation to inquire into the source
 44 of funds or examine any deposit item made by any means other than direct or
 45 electronic deposit, even if such review would disclose that the funds so
 46 deposited may be exempt from garnishment as described in section 11-713(1),
 47 (2) or (3), Idaho Code.

48 (4) If a notice of right to garnish federal benefits from the United
 49 States government or from a state child support enforcement agency is at-

1 tached to or included in the garnishment as provided in 31 CFR 212, the finan-
 2 cial institution shall not conduct a garnishment account review under this
 3 section and shall proceed on the garnishment.

4 (5) A financial institution conducting a garnishment review as re-
 5 quired by this section is immune from civil liability to the garnishor,
 6 judgment debtor or account owner from any act or omission with respect to the
 7 garnishment review, including without limitation, any incorrect determina-
 8 tion made after applying good faith methods for determining whether funds in
 9 an account are exempt. If a court determines that a financial institution
 10 erred in its identification of funds in an account as exempt or nonexempt,
 11 the sole remedy in exemption proceedings shall be issuance of an order of the
 12 court that the financial institution must adjust its actions with respect to
 13 a writ of execution as soon as possible. A financial institution is not li-
 14 able to an account holder or garnishor, and may not be assessed any penalty,
 15 by reason of any action or inaction in good faith including:

16 (a) Failure to deliver any funds;

17 (b) Failure to refuse to deliver any funds;

18 (c) Failure to provide the required notices to an account holder;

19 (d) Customary clearing and settlement adjustments made to a judgment
 20 debtor's account that affect the balance in the debtor's account; and

21 (e) Any bona fide errors that occur despite reasonable procedures im-
 22 plemented by the financial institution to prevent those errors.

23 (6) (a) If the financial institution has filed an answer and no fur-
 24 ther filing concerning the writ of garnishment is made within one hun-
 25 dred twenty (120) days after the filing of the answer, the garnishee may
 26 file, at any time thereafter, a notice of intent to terminate the writ of
 27 garnishment. The notice shall:

28 (i) Contain a statement that a party may object to termination of
 29 the writ by filing a response within thirty (30) days after ser-
 30 vice; and

31 (ii) Be served on the judgment debtor and the judgment creditor.

32 (b) If no response is filed within thirty (30) days after service, the
 33 financial institution may file a termination of the garnishment, which
 34 shall release the financial institution from any further obligation to
 35 hold property of the debtor.

36 SECTION 14. That Section 11-715, Idaho Code, be, and the same is hereby
 37 amended to read as follows:

38 11-715. LIABILITY OF GARNISHEE. All persons having in their posses-
 39 sion or under their control, any credits or other personal property belong-
 40 ing to the judgment debtor, at the time of service upon them of a copy of the
 41 writ and notice, as provided in sections 11-711 and 11-712, Idaho Code, shall
 42 be, unless such property be delivered up or transferred, or such debts be
 43 paid to the sheriff or judgment creditor, liable to the judgment creditor for
 44 the amount of such credits, property, or debts, until the garnishment be dis-
 45 charged or ~~any the judgment recovered by him~~ be satisfied.

46 SECTION 15. That Section 11-716, Idaho Code, be, and the same is hereby
 47 amended to read as follows:

1 11-716. NOTICE OF GARNISHMENT -- DISCHARGE OF GARNISHEE. Any person
2 who has been served with a copy of the writ and notice as provided in sec-
3 tions 8-506, 11-706, 11-707, 11-709, 11-710 and 11-715, Idaho Code, shall be
4 deemed a garnishee, and service of copy of writ and the notice therein pro-
5 vided for, shall, for the purpose of sections 11-708, 11-711, 11-716, 11-719
6 through 11-727, 11-730 and 11-731, Idaho Code, be deemed to be notice of gar-
7 nishment, and whenever any person garnishee shall have been served with no-
8 tice of garnishment as herein defined, he may discharge himself by paying
9 or delivering to the ~~officer~~ sheriff or judgment creditor all debts owing by
10 him to the judgment debtor, or a portion thereof sufficient to discharge the
11 claim of the judgment creditor, or any or all money of the judgment debtor
12 in his hands to a similar amount, taking a receipt therefor from the ~~officer~~
13 sheriff or judgment creditor, that shall discharge such person from any and
14 all liability to the extent of such payment, and that shall be held by the
15 ~~officer~~ sheriff or judgment creditor subject to the orders of the court out
16 of which the writ issued.

17 SECTION 16. That Section 11-728, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 11-728. FEE FOR EMPLOYER -- GARNISHEE. When the garnishee is the em-
20 ployer of the judgment debtor, the garnishee may deduct a onetime fee to
21 cover the costs associated with administering the garnishment. The fee to
22 be deducted shall not exceed ten dollars (\$10.00) and shall be deducted from
23 the employer's first answer to the writ from money remitted to the sheriff or
24 judgment creditor.

25 SECTION 17. That Section 11-729, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 11-729. SHERIFF FEES FOR SERVICE. (1) The board of county commission-
28 ers of each respective county shall have the power to set sheriff's fees by
29 resolution of the board for serving an initial order of garnishment and writ
30 of execution. The board may also set an additional lesser fee for making an
31 interim return on a continuing garnishment to show disbursement of moneys
32 held by the sheriff for return service, including for receiving and paying
33 over money from any money garnishment, and including wage garnishment or fi-
34 nancial institution garnishment. These fees shall be established using cri-
35 teria determined by the board not to exceed actual costs directly incurred
36 for order of garnishment and writ of execution service.

37 (2) At the time of adoption of the resolution establishing any fee au-
38 thorized in this section, the board shall annually publish on the county web-
39 site all the criteria used to establish the total fee and the value of each
40 criterion's proportionate share of the total fee. The initial garnishment
41 and continuing service fee herein allowed shall be collected from the judg-
42 ment debtor.

43 (3) A judgment creditor may charge fees for serving a writ and levying
44 of an execution. Such fee shall not exceed the actual costs directly in-
45 curring, up to a maximum of twenty dollars (\$20.00). If service is done elec-
46 tronically, a judgment creditor may not charge a fee. A judgment creditor
47 may charge a fee of two dollars (\$2.00) for copying and making each interim

1 return on a continuing garnishment to show disbursement of moneys held by the
2 judgment creditor. The fees shall be collected from the judgment debtor as
3 an additional amount added to the writ of execution.