

## Idaho Divorce Laws

### Title 32 Domestic Relations

#### Chapter 5 Annulment Of Marriage

##### **32-501. Grounds of annulment. -**

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabits with the other as husband or wife;
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;
4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;
5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;
6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable.

##### **32-502. Action to annul - Parties and limitations. -**

An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four (4) years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent;
2. For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife;
3. For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four; by the party injured, within four (4) years after the discovery of the facts constituting the fraud;
5. For causes mentioned in subdivision five; by the injured party, within four (4) years after the marriage;
6. For causes mentioned in subdivision six; by the injured party, within four (4) years after the marriage.

### **32-503. Legitimacy of children. -**

When a marriage [marriage] is annulled for any reason, other than for fraud in that the wife is pregnant with the child of a man other than the husband, children begotten before judgment are legitimate and succeed to the state [estate] of both parents. The court may at the time of granting the annulment or at any future time, make necessary orders for the support of said child or children as the circumstances and surroundings of the parents may require.

### **32-504. Custody of children. -**

The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

### **32-505. Conclusiveness of judgment. -**

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

## Chapter 6 Divorce - Grounds And Defenses

### **32-601. Dissolution of marriage. -**

Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

### **32-602. Effect of decree. -**

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

### **32-603. Causes for divorce. -**

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.

3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. When either the husband or wife has become permanently insane, as provided in sections 32-801 to 32-805, inclusive.
8. Irreconcilable differences.

**32-604. Adultery. -**

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

**32-605. Extreme cruelty. -**

Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

**32-606. Willful desertion. -**

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

**32-607. Willful neglect. -**

Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

**32-608. Habitual intemperance. -**

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

**32-609. Continuation of cause. -**

Willful desertion, willful neglect or habitual intemperance must continue for one (1) year before either is a ground for divorce.

**32-610. Separation without cohabitation. -**

When married persons have heretofore lived or shall hereafter live separate and apart for a period of five (5) years or more without cohabitation, either party to the marriage contract may sue for a divorce which shall be granted on proof of the continuous living separate and apart without cohabitation of the spouses during said period of five (5) years or more.

### **32-611. Denial of divorce. -**

Divorces must be denied upon showing:

1. Collusion;
2. Condonation;
3. Recrimination; or,
4. Limitation and lapse of time.

### **32-612. Collusion. -**

Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce, and is a bar to an action for such acts.

### **32-613. Recrimination. -**

Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

### **32-614. Condonation. -**

Condonation of a cause of divorce shown in the answer as a recriminatory defense, is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if two (2) years or more have elapsed after the condonation.

### **32-615. Limitations. -**

A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two (2) years after the commission of the act of adultery, or after its discovery by the injured party.
2. When the cause is conviction of felony, and the action is not commenced before the expiration of one (1) year after a pardon or the termination of the period of sentence.
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action.

### **32-616. Irreconcilable differences. -**

Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

## **Chapter 7 Divorce Actions**

### **32-701. Residence required by plaintiff. -**

A divorce must not be granted unless the plaintiff has been a resident of the state for six (6) full weeks next preceding the commencement of the action.

### **32-702. Domicil of parties. -**

In actions for divorce the presumption of law that the domicil of the husband is the domicil of the wife, does not apply. After separation each may have a separate domicil, depending for proof upon actual residence, and not upon legal presumptions.

### **32-703. Default and uncorroborated statements. -**

A divorce may be granted upon the default of the defendant, upon the uncorroborated statement, admission or testimony of the plaintiff.

### **32-704. Allowance of support money, court costs and attorney fees - Representation of child.**

1. While an action for divorce is pending, the court may, in its discretion, on the motion of either party and upon showing made in conformity with section 32-705 or section 32-706, Idaho Code, whichever be appropriate, order the payment of temporary maintenance of either spouse by the other or temporary support of a child of the marriage, in amounts and on terms just and proper under the circumstances.
2. The court may, in its discretion, on the motion of either party enter a decree of legal separation, providing for custody of children, division of property, payment of debts, payment of child support, and payment of spousal support as set forth in the statutes governing domestic relations.
3. The court may from time to time after considering the financial resources of both parties and the factors set forth in section 32-705, Idaho Code, order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.
4. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his or her support, custody, and visitation, but only in those instances where the court deems legal representation necessary beyond any court ordered and court related services previously authorized for the particular case. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both

parents, except, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county in which the action is pending.

**32-705. Maintenance.**

1. Where a divorce is decreed, the court may grant a maintenance order if it finds that the spouse seeking maintenance:

- (a) Lacks sufficient property to provide for his or her reasonable needs; and
- (b) Is unable to support himself or herself through employment.

2. The maintenance order shall be in such amounts and for such periods of time that the court deems just, after considering all relevant factors which may include:

- (a) The financial resources of the spouse seeking maintenance, including the marital property apportioned to said spouse, and said spouse's ability to meet his or her needs independently;
- (b) The time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to find employment;
- (c) The duration of the marriage;
- (d) The age and the physical and emotional condition of the spouse seeking maintenance;
- (e) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance;
- (f) The tax consequences to each spouse;
- (g) The fault of either party.

**32-706. Child support. -**

(1) In a proceeding for divorce or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support and education until the child is eighteen (18) years of age, without regard to marital misconduct, after considering all relevant factors which may include:

- (a) The financial resources of the child;
- (b) The financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist;
- (c) The standard of living the child enjoyed during the marriage;

- (d) The physical and emotional condition and needs of the child and his or her educational needs;
  - (e) The availability of medical coverage for the child at reasonable cost;
  - (f) The actual tax benefit recognized by the party claiming the federal child dependency exemption.
- (2) If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, and after considering all relevant factors which include those set forth in subsection (1) of this section, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.
- (3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.
- (4) In a proceeding for the support of a child or a minor parent the court may order the parent(s) of each minor parent to pay an amount reasonable or necessary for the support and education of the child born to the minor parent(s) until the minor parent is eighteen (18) years of age, after considering all relevant factors which may include:
- (a) The financial resources of the child;
  - (b) The financial resources of the minor parent;
  - (c) The financial resources, needs and obligations of the parent of the minor parent;
  - (d) The physical and emotional condition and needs of the child and his or her educational needs; and
  - (e) The availability of medical coverage for the child at reasonable cost.
- (5) The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification guidelines that utilize and implement the factors set forth in subsections (1) through (4) of this section to create a uniform procedure for reaching fair and adequate child support awards. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court. When adopting guidelines, the supreme court shall provide that in a proceeding to modify an existing award, children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered.

### **32-707. Security. -**

The court may require reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

### **32-708. What property liable. -**

When implementing and construing sections 32-705 through 32-707, Idaho Code, the court must resort, first, to the community property, then to the separate property of either party.

### **32-709. Modification of provisions for maintenance and support.**

(1) The provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of a substantial and material change of circumstances.

(2) The court may allow a credit against child support arrearages for periods of time exceeding one hundred twenty (120) days during which the minor children have lived primarily with the obligated parent with the knowledge and consent of the custodial parent.

### **32-710A. Support payments paid to the department of health and welfare. -**

A. Effective October 1, 1998, all payments for child support ordered pursuant to any decree of divorce or other order for support shall be paid, unless otherwise ordered by the court, to the department of health and welfare. The department shall keep a record of payments made under said order or decree and shall, within two (2) business days of receipt of such payment, transmit said payments to the person or persons entitled thereto by virtue of said order or decree. Whenever a child is in the physical care of a person or entity other than its parents and the department of health and welfare is providing child support services under title IV-D of the social security act, the department may, after written notice to the obligor and obligee and the opportunity for hearing set forth in paragraphs 1. through 3. of this subsection transmit payments under an order of support for said child to the person or entity who has physical care of said child, without further order of the court, whether or not such person or entity is the obligee under the support order.

1. The department shall send notice of its intent to transmit child support payments to the person or entity who has physical care of the child by registered or certified mail to the last known address of the obligor and obligee under an order for support of the child.

2. The obligor and obligee may file a written objection to the transmittal of child support payments with a court of proper jurisdiction within fourteen (14) days from the date the notice of transmittal is mailed. A copy of the written objection shall be sent to the department of health and welfare.

3. After hearing in a court of proper jurisdiction and entry of an order, or if no written objection is made by the obligor or obligee, the department may transmit the payments under an order of support for the child to the person or entity who has physical care of the child.

B. Any person entitled to receive child support payments pursuant to any decree of divorce or other order for support may make application for enforcement services to the department of health and welfare as provided in section 56-203A, Idaho Code, when child support is not being paid as ordered.

C. All child support orders shall provide that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

### **32-712. Community property and homestead - Disposition. -**

In case of divorce by the decree of a court of competent jurisdiction, the community property and the homestead must be assigned as follows:

1. The community property must be assigned by the court in such proportions as the court, from all the facts of the case and the condition of the parties, deems just, with due consideration of the following factors:

- (a) Unless there are compelling reasons otherwise, there shall be a substantially equal division in value, considering debts, between the spouses.
- (b) Factors which may bear upon whether a division shall be equal, or the manner of division, include, but are not limited to:
  - (1) Duration of the marriage;
  - (2) Any antenuptial agreement of the parties; provided, however, that the court shall have no authority to amend or rescind any such agreement;
  - (3) The age, health, occupation, amount and source of income, vocational skills, employability, and liabilities of each spouse;
  - (4) The needs of each spouse;
  - (5) Whether the apportionment is in lieu of or in addition to maintenance;
  - (6) The present and potential earning capability of each party; and
  - (7) Retirement benefits, including, but not limited to, social security, civil service, military and railroad retirement benefits.

2. If a homestead has been selected from the community property, it may be assigned to either party, either absolutely, provided such assignment is considered in distribution of the community property, or for a limited period, subject in the latter case to the future disposition of the court; or it may be divided or be sold and the proceeds divided.

3. If a homestead has been selected from the separate property of either, it must be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the other spouse.

### **32-713. Community property and homestead - Order for disposition. -**

The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

### **32-714. Community property and homestead - Revision on appeal. -**

The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

### **32-715. Jurisdiction of actions. -**

Exclusive original jurisdiction of all actions and proceedings under this chapter is in the district court, but a judge thereof at chambers may make all necessary orders to carry out the provisions of this chapter; and the powers and jurisdiction granted district judges by section 1-901 shall apply to proceedings under this chapter.

### **32-716. Reconciliation proceedings. -**

No hearing on the merits upon grounds for divorce shall be held in any action for divorce, and no final decree of a court of competent jurisdiction shall be entered in any such case, except as hereinafter provided, until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days, or at any time subsequent and prior to entry of final decree therein, the court, upon application of one (1) of the parties, may require a conference of the parties with a person or persons of his choosing, or persons selected by the court, in order to determine whether or not a reconciliation between the parties is practicable; provided, however, that nothing herein shall prevent the court from making such interim orders as may be just and equitable; provided, further, that nothing herein shall prevent the court from proceeding to try the matter on the merits and enter a final decree of divorce upon the agreement of both parties and with both parties present in person or represented by counsel at such trial.

In any action of divorce where grounds for divorce have been established, if the court finds that attempts at reconciliation are practicable and to the best interest of the family, the court may stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

The reconciliation procedures herein provided shall not be construed as a condonation on the part of either spouse of acts that may constitute grounds for divorce.

### **32-717. Custody of children - Best interest.**

(1) In an action for divorce the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. The court shall consider all relevant factors which may include:

- (a) The wishes of the child's parent or parents as to his or her custody;
- (b) The wishes of the child as to his or her custodian;
- (c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;

(d) The child's adjustment to his or her home, school, and community;

(e) The character and circumstances of all individuals involved;

(f) The need to promote continuity and stability in the life of the child; and

(g) Domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

(2) If the parent has a disability as defined in this section, the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Evaluations of parental fitness shall take into account the use of adaptive equipment and supportive services for parents with disabilities and shall be conducted by, or with the assistance of, a person who has expertise concerning such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(3) In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interests of the child.

(4) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(5) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what effect, if any, the court finds the disability has on the best interests of the child.

(6) With reference to this section, when an active member of the Idaho national guard has been ordered or called to duty as defined in section 46-409, Idaho Code, such military service thereunder shall not be a substantial or material and permanent change in circumstance to modify by reducing the member's previously decreed child custody and visitation privileges.

### **32-717A. Parents' access to records and information. -**

Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to, medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent. However, information concerning the minor child's address shall be deleted from such records to a parent, if the custodial parent has advised the records custodian in writing to do so.

### **32-717B. Joint custody. -**

(1) "Joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents. The court may award either joint physical custody or joint legal custody or both as between the parents or parties as the court determines is for the best interests of the minor child or children. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.

(2) "Joint physical custody" means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties.

Joint physical custody shall be shared by the parents in such a way to assure the child a frequent and continuing contact with both parents but does not necessarily mean the child's time with each parent should be exactly the same in length nor does it necessarily mean the child should be alternating back and forth over certain periods of time between each parent.

The actual amount of time with each parent shall be determined by the court.

(3) "Joint legal custody" means a judicial determination that the parents or parties are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of a child or children.

(4) Except as provided in subsection (5), of this section, absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody is in the best interests of a minor child or children.

(5) There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic violence as defined in section 39-6303, Idaho Code.

### **32-717C. Allegations of abuse - Investigation. -**

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the department of health and welfare. A final award of custody or visitation may not be rendered until a report on that

investigation is received by the court. That investigation shall be conducted by the department within thirty (30) days of the court's notice and request for investigation.

**32-717D. Parenting coordinator. -**

(1) Provided that a court has entered a judgment or an order establishing child custody in a case, the court may order the appointment of a parenting coordinator to perform such duties as authorized by the court, consistent with any controlling judgment or order of a court relating to the child or children of the parties, and as set forth within the order of appointment. The court shall direct the parenting coordinator to provide a status report to the court at a time and in a manner as determined by the court. Provided however, that the court shall require the parenting coordinator to provide a minimum of one (1) status report to the court at least once every six (6) months. At any time during the period of appointment, the court, on its own initiative, or upon request of the parenting coordinator or either party, may hold a status conference to review the continued appointment of the coordinator and/or the status of the case.

(2) Qualification, selection, appointment, termination of appointment, and prescribed duties and responsibilities of a parenting coordinator shall be based upon standards and criteria as adopted by the Idaho supreme court. Provided however, that standards and criteria for qualification and selection of a parenting coordinator, as adopted by the Idaho supreme court, shall not apply to a parenting coordinator selected and agreed to by the parties. In addition, as a condition of any appointment, a parenting coordinator shall:

(a) Be neutral to the dispute and to the parties;

(b) Be either selected pursuant to agreement of the parties or appointed by the court;

(c) Prior to any appointment, and at their own cost, have submitted to a criminal history check through any law enforcement office in the state providing such service. The criminal history check shall include a statewide criminal identification bureau, the federal bureau of investigation criminal history check, the national crime information center and the statewide sex offender register. A record of all background checks shall be maintained in the office of the supreme court of the state of Idaho with a copy going to the applicant and shall be available for review by the court considering a parenting coordinator appointment prior to an appointment; and

(d) Agree to appointment without requiring the parties to pay a retainer for services. Provided however, that any dispute regarding payment of the fees and costs of the parenting coordinator, shall be subject to review by the court upon request of the parenting coordinator or either party.

(3) In addition to those duties as authorized by the court pursuant to the order of appointment, the responsibilities of a parenting coordinator shall include collaborative dispute resolution in parenting. The parenting coordinator shall act to empower the parties in resuming parenting controls and decision-making, and minimize the degree of conflict between the parties for the best interests of the children.

(4) The court shall allocate the fees and costs of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable costs, fees and disbursements of the parenting coordinator.

**32-718. Vexatious or harassing modification proceedings. -**

Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification proceeding is vexatious and constitutes harassment.

### **32-719. Visitation rights of grandparents and great-grandparents. -**

The district court may grant reasonable visitation rights to grandparents or great-grandparents upon a proper showing that the visitation would be in the best interests of the child.

## **Chapter 8 Divorces For Insanity**

### **32-801. Insanity a ground for divorce. -**

A divorce may be granted for the cause of permanent insanity of the spouse: provided, that no divorce shall be granted under the provisions of this chapter unless such insane person shall have been duly and regularly confined in an insane asylum of this state, or of a sister state or territory, or foreign country for at least three (3) years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is permanent and incurable.

### **32-802. Appointment of guardian - Service of process. -**

The district courts of the several judicial districts of this state shall have jurisdiction of actions for divorce under the provisions of this chapter; and such action shall be brought in the county of this state in which the plaintiff resides. And the court in which such action is about to be commenced shall, upon the filing by the plaintiff of a petition, duly verified, showing that a cause of action exists under this chapter, appoint some person to act as guardian of such insane person in such action, and the summons and complaint in such action shall be served upon the defendant by delivering a copy of such summons and complaint to such guardian, and by delivering a copy thereof to the county attorney of the county in which such action is brought.

### **32-803. Prosecuting attorney to defend action. -**

It shall be the duty of the county attorney upon whom the summons and complaint in such action shall be served to appear for such defendant in such action and defend the same, and no divorce shall be granted under the provisions of this chapter except in the presence of the county attorney.

### **32-804. Maintenance - Distribution of property - Custody of children. -**

In any action brought under the provisions of this chapter the said courts and the judges thereof shall possess all the powers relative to the payment of maintenance and support, the distribution of property and the care and custody of children of the parties, that such courts now have, or may hereafter have, in other actions for divorce.

### **32-805. Costs and expenses to be paid by plaintiff. -**

All the costs of the court in such action, as well as the actual expenses of the county attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff; such expenses of the county attorney and

expenses and fees of the guardian shall be fixed and allowed by the court, and the court or the judge thereof may make such order as to the payment of such fees and expenses as to said court or judge may seem proper.

## **Chapter 9 Husband And Wife - Separate And Community Property**

### **32-901. Mutual obligations. -**

Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

### **32-903. Separate property of husband and wife. -**

All property of either the husband or the wife owned by him or her before marriage, and that acquired afterward by either by gift, bequest, devise or descent, or that which either he or she shall acquire with the proceeds of his or her separate property, by way of moneys or other property, shall remain his or her sole and separate property.

### **32-904. Separate property of wife - Management. -**

During the continuance of the marriage, the wife has the management, control and absolute power of disposition of her separate property, and may bargain, sell and convey her real and personal property, and may enter into any contract with reference to the same, in the same manner, and to the same extent, and with like effect, as a married man may in relation to his real and personal property: provided, that the husband shall be bound by such contracts to no greater extent or effect than his wife under similar circumstances would be bound by his contracts.

### **32-905. Separate property of wife - Marriage settlement not affected. -**

Nothing in the two (2) preceding sections contained shall invalidate, alter or change any marriage settlement now made or to be made hereafter.

### **32-906. Community property - Income from separate and community property - Conveyance between spouses.**

(1) All other property acquired after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(2) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 32-912, Idaho Code; provided, however, that the income, including the rents, issues and profits, from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

### **32-906A. Community property conveyed in a revocable trust remains community property. -**

Where community property, before or after the effective date [March 13, 1973], of this section, is transferred by the husband and wife to a trust, regardless of the identity of the trustee, which trust originally or as amended prior or subsequent to such transfer (a) is revocable in whole or in part during their joint lives, (b) provides that the property after transfer to the trust shall remain community property and any withdrawal therefrom shall be their community property, and (c) is subject to amendment or alteration during their joint lifetime upon their joint consent, the property so transferred to such trust, and the interests of the spouses in such trust, shall be community property during the continuance of the marriage, unless the trust otherwise expressly provides. Nothing in this section shall be deemed to affect community property which, before or after the effective date of this section, is transferred in a manner other than as described in this section or to a trust containing different provisions than those set forth in this section; nor shall this section be construed to prohibit the trustee from conveying any trust property, real or personal, in accordance with the provisions of the trust without the consent of the husband or wife unless the trust expressly required the consent of one or both spouses.

### **32-907. Inventory of wife's property. -**

A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

### **32-908. Effect of filing inventory. -**

The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife.

### **32-909. Earnings of wife living separate from husband. [Unconstitutional.] -**

The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband are the separate property of the wife.

### **32-910. Liability for antenuptial debts. -**

The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

### **32-911. Wife's liability for personal debts. -**

The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

### **32-912. Control of community property. -**

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or

the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal. All deeds, conveyances, bills of sale, or evidences of debt heretofore made in conformity herewith are hereby validated.

### **32-913. Payments from employee benefit plans - Adverse claims. -**

Whenever payment or refund is made to an employee, former employee, or such person's beneficiary or heirs, legatees or estate pursuant to a written retirement, death, stock, or other employee benefit plan or savings plan such payment or refund shall fully discharge the employer, former employer, and any trustee or insurance company making such payment or refund from all adverse claims thereto unless such payment or refund is made within twenty (20) days following the death of such employee or former employee or unless before such payment or refund is made, the employer or former employer, where the payment or refund is made by the employer or former employer, has received at its principal place of business within this state or home office, written or oral notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment or refund, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state. Should said payment or refund be comprised in whole or in part of stock of any corporation, such corporation may accept said stock for transfer as directed by the employer, former employer, or the trustee making such payment or refund, and shall be entitled to treat the transferee as the owner of said stock for all purposes unless the corporation has received, at its home office, written or oral notice by or on behalf of some other person that such other person claims to be entitled to such stock or to some interest therein. This section shall not affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer or former employer and the trustee or insurance company making such payment or refund or the corporation accepting such stock for transfer.

### **32-914. Curtesy and dower abolished. -**

No estate is allowed the husband tenant by curtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

### **32-916. Property rights governed by chapter. -**

The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement agreement entered into during marriage containing stipulations contrary thereto.

### **32-917. Formalities required of marriage settlements.**

All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as conveyances of land are required to be executed and acknowledged or proved.

### **32-918. Marriage settlements - Record. -**

(1) When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

(2)(a) A summary of the contract may be recorded in lieu of the contract, under this chapter or the laws of this state, if the requirements of this section are substantially met.

(b) A summary of the contract shall be signed and acknowledged by all parties to the original contract. The summary of the contract shall clearly state:

(i) The names of the parties to the original contract;

(ii) The complete mailing address of all parties;

(iii) The title and date of the contract;

(iv) A description of the interest or interests in real property created by the contract; and

(v) The legal description of the property.

(c) Other elements of the contract may be stated in the summary.

(3) If the requirements of this section are met, the summary of the contract may be recorded under the provisions of this chapter and, as to the contents of the summary only, it shall have the same force and effect as if the original contract had been recorded, and constructive notice shall be deemed to be given concerning the contents of the summary and the existence of the contract to any subsequent purchasers, mortgagees, or other persons or entities that acquire an interest in the real property.

### **32-919. Marriage settlements - Effect of record. -**

The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a conveyance of real property.

### **32-920. Marriage settlements - Capacity of minor. -**

A minor capable of contracting marriage may make a valid marriage settlement.

### **32-921. Definitions. -**

As used in this act:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

### **32-922. Formalities. -**

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration. The premarital agreement shall be executed and acknowledged or proved as provided in sections 32-917 through 32-919, Idaho Code.

**32-923. Content. -**

(1) Parties to a premarital agreement may contract with respect to:

(a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) The modification or elimination of spousal support;

(e) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) The ownership rights in and disposition of the death benefit from a life insurance policy;

(g) The choice of law governing the construction of the agreement; and

(h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

**32-924. Effect of marriage - Amendment - Revocation. -**

A premarital agreement becomes effective upon marriage. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

**32-925. Enforcement. -**

(1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) That party did not execute the agreement voluntarily; or

(b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

### **32-926. Enforcement - Void marriage. -**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

### **32-927. Limitation of actions. -**

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled as to the premarital agreement during the marriage of the parties. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

### **32-928. Application and construction. -**

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

### **32-929. Short title. -**

This act may be cited as the "Uniform Premarital Agreement Act."

## **Chapter 10 Parent And Child**

### **32-1001. Allowance to parent for support of child. -**

The proper court may direct an allowance to be made to the parent of a child, out of its property for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

### **32-1002. Reciprocal duties of support. -**

It is the duty of the father, the mother and the child or children of any poor person who is unable to maintain himself or herself by work, to maintain such poor person to the extent of his or her ability. Whenever any person shall apply for aid to any county within this state under its indigent laws, and it shall at any time appear to the county commissioners that

said poor person has a father, mother, child or children who is able to maintain him or her, but fails so to do, it shall be the duty of the said commissioners to furnish all necessary aid and said commissioners may bring a civil suit against such father, mother, child or children to recover the amount so expended, in the name of the county. The promise of an adult child to pay for necessaries previously furnished to such parents is binding.

### **32-1003. Liability of parent for child's necessities. -**

If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

### **32-1005. Custody of children after separation of parents. -**

(1) When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

(2) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the affect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(3) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. If a parent has a disability as defined in this chapter the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what affect, if any, the court finds the disability has on the best interests of the child.

## Chapter 12 Mandatory Income Withholding For Child Support

### 32-1201. Statement of legislative intent.

The legislature of the state of Idaho finds that a significant number of people who are owed child support are not paid in accordance with the terms of their child support orders; and that income withholding is an effective remedy to insure compliance with child support orders. The following legislation is enacted to ensure that all child support orders will include in them the authority necessary to permit wage withholding. The legislation also includes provisions for the establishment of a support order to insure that all dependent children are adequately supported, regardless of the past or current marital status of the parents. This chapter shall be liberally construed to assure that all dependent children are adequately supported.

### 32-1202. Definitions. -

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- (1) "Business day" means a day on which state offices are open for regular business.
- (2) "Child support services" means support enforcement or collection and disbursement services.
- (3) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.
- (4) "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.
- (5) "Department" means the department of health and welfare.
- (6) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.
- (7) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.
- (8) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.
- (9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
- (10) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes income to the obligor.

(11) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(a) Unemployment compensation payments made under chapter 13, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-1365, Idaho Code, and chapter 12, title 7, Idaho Code;

(b) Worker's compensation payments made under chapter 8, title 72, Idaho Code, shall be exempt from the provisions of this chapter, and shall only be withheld pursuant to the provisions of section 72-802, Idaho Code, and chapter 12, title 7, Idaho Code;

(c) Public assistance payments made under title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(12) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(13) "Obligor" means any person obligated by order to pay child or spousal support.

(14) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(15) "Support order" means a judgment, decree, or order issued by a magistrate or district court of the state of Idaho creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction in another state or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable in this state.

### **32-1203. Remedies in addition to other remedies. -**

(1) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(2) The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents.

### **32-1204. Notice of immediate income withholding. -**

(1) The court shall order income withholding in all support orders effective the date of the order unless an exception is granted by the court pursuant to subsection (2) of this section. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

(2) Immediate income withholding shall not be ordered if:

(a) One (1) of the parties demonstrates and the court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(b) A written agreement is reached between the obligor and obligee and the department in cases where the department is providing child support services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

(3) Failure to provide for income withholding does not affect the validity of the support order.

**32-1205. Income withholding upon a delinquency. -**

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

**32-1206. Judicial proceedings for income withholding. -**

(1) A proceeding to enforce a duty of support is commenced:

(a) By filing a petition or complaint for an original action; or

(b) By motion in an existing action or under an existing case number.

(2) Venue for the action is in the district court of the county where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child.

(3) A filing fee shall not be assessed in cases brought on behalf of the state of Idaho.

(4) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to section 32-1204 or 32-1205, Idaho Code, and:

(a) The name, address, and social security number of the obligor;

(b) A copy of the support order;

(c) The name and address of the obligor's employer;

(d) The amount of any delinquency; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(5) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to section 32-1204 or 32-1205, Idaho Code, to the employer and shall provide a form for an answer to the income withholding order which shall be returned to the court within ten (10) days. The court shall also order the employer to remit the amount withheld to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the obligor. The department shall supply each county with forms for income withholding orders and answers that comply with the rules promulgated by the department, and which include:

(a) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement; and

(b) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any;

(c) The amount of arrearage payments specified in the support order, if any.

(6) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the department.

(7) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable.

### **32-1207. Administrative proceedings for income withholding. -**

Upon application by any obligee or obligor, the department may order income withholding pursuant to this chapter for payment of current support, any delinquency, and costs or fees pursuant to a support order as follows:

(1) If the support order provides for immediate income withholding pursuant to section 32-1204, Idaho Code, the department shall commence income withholding.

(2) If the support order does not provide for immediate income withholding, the department shall commence income withholding upon a delinquency, and shall also notify the obligor:

(a) of the amount of the delinquency owed and the amount of income withheld;

(b) That the provision applies to all subsequent employers;

(c) of the right to request an administrative review; and

(d) That the review is limited to mistakes of fact, which means an error in the amount of current support or delinquency, or the identity of the alleged obligor, and that no issues may be considered that have been litigated previously. If the

obligor requests an administrative review within fourteen (14) days from the day the notice was mailed, the collection of arrears by income withholding shall be stayed. The department shall review the income withholding order within thirty-five (35) days, issue a decision and amend or void the income withholding order, if necessary. Any amounts which are found to have been withheld in error due to a mistake of fact will be returned to the obligor or credited towards the obligor's future payments.

### **32-1212. Identifying information - Filing with tribunal and child support services. -**

Obligors and obligees shall file with the court or the department, if the department is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of their employer. Obligors and obligees shall provide written notification of any changes within thirty (30) days after such change.

### **32-1213. Order for payment of medical expenses. -**

(1) A proceeding to enforce a support order directing the payment of medical expenses of a dependent child may be commenced as provided in section 32-1206, Idaho Code.

(2) The petition or motion may be filed by an obligee when medical expenses not otherwise covered by insurance have been incurred in the amount of one hundred dollars (\$100) or more, or when insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is claimed to be due from the obligor equal or exceed one hundred dollars (\$100). The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the order, including:

- (a) An itemization of the medical expenses, including a specific reference to any insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is sought from the obligor;
- (b) Whether such expenses have been submitted to any applicable insurance carrier or other third party payer and the results of such submission;
- (c) That the obligor, stating his or her name, residence and social security number has failed or refused to pay the medical expenses or to reimburse the obligee therefor;
- (d) A description of the terms of the support order requiring payment of the medical expenses claimed to be due.

(3) Upon the filing of a petition or motion and affidavit containing the information required in subsection (2) of this section, the clerk of the court shall set a hearing thereon. The obligee shall serve a copy of the petition or motion, accompanying affidavit and notice of hearing on the obligor at least ten (10) days before the date set for hearing, by personal service or certified mail, pursuant to the Idaho rules of civil procedure.

(4) After hearing, the court shall enter its order directing payment of the specific sums, if any, for which the obligor is found to be liable for previously incurred medical expenses. In addition, if the court determines that some or all of the medical expenses of the dependent child are of an ongoing or recurring nature and the anticipated amounts thereof are capable of determination to the satisfaction of the court, the court may order payment to the obligee of a specific sum per month toward such expenses.

(5) For purposes of this section "medical expenses" means any and all costs and expenses related to the health care of a dependent child, including insurance premiums and any deductible amounts, all or a portion of which are ordered to be paid by the obligor in addition to any amount awarded as child support, pursuant to a support order.

### **32-1214B. Definitions.**

For the purposes of this chapter, the following definitions apply:

(1) "Child" means any child including an adopted minor child, of a participant in a health benefit plan, recognized under a medical child support order as having a right to enrollment under a health benefit plan.

(2) "Department" means the department of health and welfare.

(3) "Health benefit plan" means a group or individual health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child.

(4) "Insurer" means every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or annuity.

(5) "Medical child support order" means any order, including those that meet the requirements of 29 U.S.C. section 1169, or notice issued by either a court or administrative agency that requires a plan administrator, or if none, the employer, to enroll an eligible child in a health benefit plan.

(6) "Obligee" means a party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child.

(7) "Obligor" means the parent ordered by the court to carry or provide health insurance benefits for the parties' minor child.

(8) "Party" means the department, grandparent or any person who is the custodian, other than the parent who owes a duty of medical support.

(9) "Plan administrator" means a person or entity, designated under the terms of the health benefit plan or health insurance policy or related contract or agreement, responsible for the administration of plan duties. If no plan administrator is designated under the terms of the policy, contract or agreement, the plan administrator is the plan sponsor.

(10) "Plan sponsor" means an employer, employee organization, association, committee, joint board of trustees, or other similar group, including a state or local government agency or church, that establishes or maintains an employee benefit plan.

### **32-1214C. Medical support order.**

(1) A medical support notice issued to an employer or plan administrator is a qualified medical support order as defined by 29 U.S.C. § 1169(a) through (c).

(2) Upon receipt of a national medical support notice, if the employer has one (1) health benefit plan, the employer shall respond within twenty (20) business days and confirm that the child will be enrolled or explain that one (1) of the conditions identified in section 32-1214D, Idaho Code, exists. The employer shall provide the national medical support notice to the plan administrator within twenty (20) business days.

(3) Upon receipt of a national medical support notice from an employer, the plan administrator shall notify the department or other obligee within forty (40) business days that a health benefit plan will become available for the child, or explain that one (1) of the conditions identified in section 32-1214D, Idaho Code, exists. The plan administrator shall also notify the department or other obligee of any additional steps that need to be taken to complete enrollment. The plan administrator shall notify the department or other obligee when the notice has not been properly filled out, listing the specific deficiencies.

(4) If more than one (1) plan is available, the child shall be enrolled in the obligor's plan. If the obligor has not chosen a health benefit plan, the plan administrator or employer shall provide plan descriptions to the department or other obligee within twenty (20) business days. If the department is enforcing the medical support order, the department shall notify the other obligee of the opportunity to choose the health benefit plan within twenty (20) business days. If for any reason the other obligee does not or is not available to choose, the department shall choose the least expensive health benefit plan available to the obligor.

(5) The employer shall withhold any required premium from the obligor's income or wages. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 11-207, Idaho Code. The employer shall forward the premium withheld to the insurer. If the amount of income taken for child support along with the amount taken for medical support exceeds the amount specified in section 11-207, Idaho Code, child support shall be paid first.

(6) The plan administrator or employer shall provide the department or other obligee with the name of the insurer, the extent of coverage available and other necessary information, and shall make available any necessary claim forms or enrollment membership cards.

(7) An insurer shall not impose requirements on a state agency, which has been assigned the rights of an individual who is eligible for medical assistance, that are different than the requirements that apply to an agent or assignee of any other covered individual.

(8) A child covered by a qualified medical child support order, or the child's custodial parent, legal guardian, or the provider of services to the child, or a state agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

(9) An insurer shall not consider the availability or eligibility for medical assistance under medicaid, 42 U.S.C. § 1396a., in this or any other state when considering eligibility for health benefits or making payments under its plan. To the extent that payment has been made by medicaid, the department is subrogated to the rights of the individual to payment by any other third party for covered health care items or services.

### **32-1215. Termination of income withholding upon obligor's request. -**

(1) An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the

income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee at least five (5) days before the date set for the hearing, by personal service or certified mail, pursuant to the Idaho rules of civil procedure.

(2) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(3) If an income withholding order has been in operation for twelve (12) consecutive months and the obligor's support obligation is current, the court may terminate the order upon motion of the obligor, unless the obligee can show good cause as to why the income withholding order should remain in effect.

(4) No order to quash, modify, or terminate an income withholding order shall be issued unless the obligor provides proof to the court that the obligee has been served with a copy of the motion and notice for hearing five (5) days prior to the hearing, or that service is impossible because the obligee has moved and failed to provide the court with a current address, as required by section 32-1212, Idaho Code.

### **32-1216. Termination or modification of income withholding upon obligee's request. -**

The court may quash, modify or terminate an income withholding order upon written request therefor by the obligee, unless the court finds that the termination would not be in the best interests of the dependent child.

### **32-1217. Termination of income withholding by the court in a judicial proceeding. -**

If the clerk is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the obligor.

**Note:** Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.