

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 510

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING CHAPTER 13, TITLE 72,  
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1318A, IDAHO CODE,  
3 TO DEFINE "DECISION"; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE,  
4 BY THE ADDITION OF A NEW SECTION 72-1318B, IDAHO CODE, TO DEFINE  
5 "DETERMINATION," "REVISED DETERMINATION," "REDETERMINATION" OR  
6 "SPECIAL REDETERMINATION"; AMENDING SECTION 72-1346, IDAHO CODE,  
7 TO ALLOW THE DIRECTOR TO DETERMINE THE METHOD OF PAYING BENEFITS AND  
8 REFUNDS; AMENDING SECTION 72-1349, IDAHO CODE, TO PROVIDE LIMITATIONS  
9 OF ACTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION  
10 72-1368, IDAHO CODE, TO REVISE APPELLATE PROCEDURE; AMENDING SECTION  
11 72-1369, IDAHO CODE, TO ALLOW THE DIRECTOR OF THE DEPARTMENT OF LABOR  
12 TO COMPROMISE OVERPAYMENTS, PENALTIES, INTEREST AND DISQUALIFICATION  
13 PERIODS; AND DECLARING AN EMERGENCY.  
14

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

16 SECTION 1. That Chapter 13, Title 72, Idaho Code, be, and the same is  
17 hereby amended by the addition thereto of a NEW SECTION, to be known and  
18 designated as Section 72-1318A, Idaho Code, and to read as follows:

19 72-1318A. DECISION. "Decision" means any written ruling made by the  
20 department's appeals bureau pursuant to section 72-1368(6), Idaho Code, or  
21 the commission pursuant to section 72-1368(7), Idaho Code.

22 SECTION 2. That Chapter 13, Title 72, Idaho Code, be, and the same is  
23 hereby amended by the addition thereto of a NEW SECTION, to be known and  
24 designated as Section 72-1318B, Idaho Code, and to read as follows:

25 72-1318B. DETERMINATION, REVISED DETERMINATION, REDETERMINATION  
26 OR SPECIAL REDETERMINATION. Except for determinations made pursuant  
27 to section 72-1349A(3), Idaho Code, and section 72-1382, Idaho Code,  
28 "determination," "revised determination," "redetermination" or "special  
29 redetermination" are written rulings by the department that include notice  
30 of appeal rights.

31 SECTION 3. That Section 72-1346, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 72-1346. EMPLOYMENT SECURITY FUND. (1) Establishment and Control.  
34 There is established in the state treasury, separate and apart from all  
35 other funds of this state, an "Employment Security Fund," which shall be  
36 perpetually appropriated to the director to be administered pursuant to the  
37 provisions of this chapter and the social security act. This fund shall  
38 consist of all contributions collected pursuant to this chapter, payments  
39 in lieu of contributions, interest earned upon any moneys in the fund, any

1 property or securities acquired through the use of moneys belonging to  
2 the fund, all earnings of such property or securities, moneys temporarily  
3 deposited in the clearing account, and all other moneys received for the fund  
4 from any other source.

5 (2) Accounts and Deposits. The state controller shall maintain within  
6 the fund three (3) separate accounts: (i) a clearing account, (ii) an  
7 unemployment trust fund account, and (iii) a benefit account. Upon receipt  
8 by the director, all moneys payable to the fund shall be promptly forwarded  
9 to the state treasurer for immediate deposit in the clearing account. After  
10 clearance, all moneys in the clearing account shall, except as otherwise  
11 provided, be deposited promptly with the secretary of the treasury of  
12 the United States to the credit of this state's account in the federal  
13 unemployment trust fund established and maintained pursuant to section 904  
14 of the social security act (42 U.S.C. 1104), any provisions of law in this  
15 state to the contrary notwithstanding. The benefit account shall consist  
16 of all moneys requisitioned for the payment of benefits from this state's  
17 account in the federal unemployment trust fund. Moneys in the clearing and  
18 benefit accounts may be deposited by the state treasurer under the direction  
19 of the director in any depository bank in which general funds of the state  
20 may be deposited, but no public deposit insurance charge or premium shall  
21 be paid out of the fund. Moneys in the clearing and benefit accounts shall  
22 not be commingled with other state funds and shall be maintained in separate  
23 accounts on the books of the depository bank. Such moneys shall be secured  
24 by the depository bank in the same manner as required by the general public  
25 depository law of this state and collateral pledged for this purpose shall  
26 be kept separate and distinct from collateral pledged to secure other funds  
27 of the state. The state treasurer shall be liable on his official bond for  
28 the faithful performance of his duties in connection with the employment  
29 security fund.

30 (3) Withdrawals. Moneys requisitioned by the director through the  
31 treasurer from this state's account in the federal unemployment trust  
32 fund shall be used exclusively for the payment of benefits and for refunds  
33 pursuant to section 72-1357, Idaho Code, except that Reed act moneys  
34 credited to this state's account pursuant to section 903 of the social  
35 security act (42 U.S.C. 1103), shall be used exclusively as provided in  
36 subsection (4) of this section. The director through the treasurer shall  
37 requisition from the federal unemployment trust fund such amounts, not  
38 exceeding the amounts standing to this state's account therein, as he  
39 deems necessary for the payment of benefits and refunds for a reasonable  
40 period. Upon receipt, such moneys shall be deposited in the benefit  
41 account. Expenditures of moneys in the benefit and clearing accounts shall  
42 not require the approval of the board of examiners or be subject to any  
43 provisions of law requiring specific appropriations or other formal release  
44 by state officers of money in their custody. The residual daily balance in  
45 the benefit account may be invested in accordance with the cash management  
46 improvement act of 1990, and earnings on those investments may be used to pay  
47 the related banking costs of maintaining the benefit account. Any earnings  
48 in excess of the related banking costs shall be returned to the state's  
49 account in the federal unemployment trust fund annually. All warrants  
50 issued for the payment of benefits and refunds shall bear the signature of

1 the director. Upon agreement between the director and state controller,  
 2 amounts in the benefit account may be transferred to a revolving account  
 3 established and maintained in a depository bank from which the director may  
 4 ~~issue checks~~ provide for the payment of benefits and refunds. Moneys so  
 5 transferred shall be deposited subject to the same requirements as provided  
 6 with respect to moneys in the clearing and benefit accounts in subsection  
 7 (2) of this section. Any balance of moneys requisitioned from the federal  
 8 unemployment trust fund which remains unclaimed or unpaid in the benefit  
 9 account or revolving account after the expiration of the period for which  
 10 such sums were requisitioned, may be utilized for the payment of benefits and  
 11 refunds during succeeding periods, or, in the discretion of the director,  
 12 shall be redeposited with the secretary of the treasury of the United States  
 13 to the credit of this state's account in the federal unemployment trust fund.

14 (4) Reed Act Moneys. Reed act moneys credited to this state's account  
 15 in the federal unemployment trust fund by the secretary of the treasury  
 16 of the United States pursuant to section 903 of the social security act  
 17 (42 U.S.C. 1103) may be requisitioned and used for the payment of benefits  
 18 and for the payment of expenses incurred for the administration of this  
 19 chapter. Moneys may only be requisitioned and used for the payment of  
 20 expenses incurred for the administration of this chapter if the expenses are  
 21 incurred and the money is requisitioned after the enactment of a specific  
 22 appropriation by the legislature which specifies the purposes for which  
 23 such money is appropriated and the amounts appropriated therefor. Such  
 24 appropriation is subject to the following conditions:

25 (a) Such money may not be obligated after the close of the two (2) year  
 26 period which began on the date of the enactment of the appropriation  
 27 law; and

28 (b) The amount which may be obligated at any time may not exceed  
 29 the amount by which the aggregate of the amounts transferred to the  
 30 account of this state pursuant to section 903 of the social security  
 31 act (42 U.S.C. 1103) exceeds the aggregate of the amounts used by this  
 32 state and charged against the amounts transferred to the account of  
 33 this state. For the purposes of this subsection, amounts obligated  
 34 for administrative purposes pursuant to an appropriation shall be  
 35 chargeable against transferred amounts at the exact time the obligation  
 36 is entered into.

37 (5) Reed act moneys requisitioned for the payment of benefits shall  
 38 be deposited in the benefit account established in this section. Reed act  
 39 moneys requisitioned for the payment of administrative expenses pursuant  
 40 to a specific appropriation shall be deposited in the employment security  
 41 administration fund, section 72-1347, Idaho Code, except that moneys  
 42 appropriated for the purchase of lands and buildings shall be deposited  
 43 in the state employment security administrative and reimbursement fund in  
 44 accordance with section 72-1348, Idaho Code. Money so deposited shall,  
 45 until expended, remain part of the employment security fund and, if not  
 46 expended, shall be promptly returned to this state's account in the federal  
 47 unemployment trust fund.

48 SECTION 4. That Section 72-1349, Idaho Code, be, and the same is hereby  
 49 amended to read as follows:

1           72-1349. PAYMENT OF CONTRIBUTIONS -- LIMITATION OF ACTIONS. (1)  
2 Contributions shall be reported and paid to the department on taxable wages  
3 for each calendar year equal to the amount determined in accordance with  
4 section 72-1350, Idaho Code. Contributions on wages paid to an individual  
5 under another state unemployment insurance law, or paid by an employer's  
6 predecessor during the calendar year, shall be counted in complying with  
7 this provision.

8           (2) Contributions shall accrue and become reportable and payable to the  
9 department by each covered employer for each calendar quarter with respect  
10 to wages for covered employment. Such contributions shall become due and  
11 be paid by each covered employer to the director for the employment security  
12 fund and shall not be deducted from the wages of individuals employed by such  
13 employer. All moneys required to be paid by a covered employer pursuant to  
14 this chapter shall immediately, upon becoming due and payable, become or be  
15 deemed money belonging to the state, and every covered employer shall hold  
16 or be deemed to hold said money separately, aside, or in trust from any other  
17 funds, moneys or accounts, for the state of Idaho for payment in the manner  
18 and at the times provided by law.

19           (3) The contributions reportable and payable to the department by each  
20 covered employer, with respect to covered employment, accruing in each  
21 calendar quarter, shall be reported and paid to the department on or before  
22 the last day of the month following the close of said calendar quarter.

23           (4) The director may, for good cause shown by a covered employer, extend  
24 the time for payment of his contributions or any part thereof, but no such  
25 extension of time shall postpone the due date more than sixty (60) days.  
26 Contributions with respect to which an extension of time for payment has  
27 been granted shall be paid on or before the last day of the period of the  
28 extension.

29           (5) Whenever it appears to be essential to the proper administration  
30 of this chapter that collection of the contributions of a covered employer  
31 must be made more often than quarterly, the director shall have authority to  
32 demand payment of the contributions forthwith.

33           (6) In accordance with rules the director may prescribe, any person or  
34 persons entering into a formal contract with the state, any county, city,  
35 town, school or irrigation district, or any quasi-public corporation of the  
36 state, for the construction, alteration, or repair of any public building  
37 or public work, the contract price of which exceeds the sum of one thousand  
38 dollars (\$1,000) may be required before commencing such work, to execute a  
39 surety bond in an amount sufficient to cover contributions when due. If the  
40 director, who shall approve said bond, determines that said bond has become  
41 insufficient, he may require that a new bond be provided in the amount he  
42 directs. Failure on the part of the employer covered by the bond to pay the  
43 full amount of his contributions when due shall render the surety liable  
44 on said bond as though the surety was the employer and subject to the other  
45 provisions of this chapter.

46           (7) In the payment of any contributions a fractional part of a dollar  
47 shall be disregarded unless it amounts to fifty cents (50¢) or more, in which  
48 case it shall be increased to one dollar (\$1.00).

49           (8) The director may commence administrative proceedings to enforce  
50 the provisions of this section by issuing a determination at any time

1 within five (5) years of the due date of a quarterly report or the date  
 2 a quarterly report is filed, whichever is later. The limitation period  
 3 of this subsection (8) is tolled during any period in which the employer  
 4 absconds from the state, during any period of the employer's concealment, or  
 5 during any period when the department's ability to commence administrative  
 6 proceedings to enforce the provisions of this section is stayed by legal  
 7 proceedings.

8 SECTION 5. That Section 72-1368, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 72-1368. CLAIMS FOR BENEFITS ~~AND -- APPELLATE PROCEDURE -- LIMITATION~~  
 11 ~~OF ACTIONS.~~ (1) Claims for benefits shall be made in accordance with such  
 12 rules as the director may prescribe.

13 (2) Each employer shall post and maintain in places readily accessible  
 14 to individuals performing services for him printed statements concerning  
 15 benefit rights under this chapter which shall be provided by the department  
 16 without cost to the employer.

17 (3) ~~(a) A representative of the department hereinafter referred to as~~  
 18 ~~a claims examiner shall examine~~ Following the filing of a claim filed  
 19 pursuant to subsection (1) of this section ~~and, on the basis of the~~  
 20 ~~facts found by him, shall determine whether the claimant is eligible for~~  
 21 ~~benefits and, if eligible, the department shall:~~

22 (i) Verify the claimant's monetary eligibility pursuant to  
 23 the requirements of section 72-1367, Idaho Code, and issue a  
 24 determination. If monetarily eligible, the department shall  
 25 establish the date ~~his~~ the claimant's benefit year begins, the  
 26 weekly benefit amount, the total benefit amount, the base period  
 27 wages, and the base period covered employers.

28 (ii) If a claimant is monetarily eligible, the department shall  
 29 verify, based on information provided by the claimant, whether the  
 30 week claimed is a compensable week as defined in section 72-1312,  
 31 Idaho Code. To receive benefits, a claimant must certify that each  
 32 week claimed is a compensable week. In the event of a denial of the  
 33 week claimed is not a compensable week, the department shall issue  
 34 a determination denying benefits, the determination and shall  
 35 include the reasons for the ineligibility.

36 (b) If the department has reason to believe at any time within five  
 37 (5) years from the week ending date for any week in which benefits were  
 38 paid that a claimant was not eligible for benefits, the department  
 39 may investigate the claim and on the basis of facts found issue a  
 40 determination denying or allowing benefits for the week(s) in question.  
 41 If the department determines a claimant was not entitled to benefits  
 42 received, the department shall issue a determination requiring  
 43 repayment of the overpaid benefits, and assess any applicable penalties  
 44 and interest.

45 (c) Before ~~the~~ a determination provided for in subsection (3) of this  
 46 section becomes final or an appeal is filed, the ~~claims examiner~~  
 47 department, on ~~his~~ its own motion, may issue a revised determination.  
 48 The determination or revised determination shall become final unless,  
 49 within fourteen (14) days after notice, as provided in subsection (5)

1 of this section, an appeal is filed by an interested party with the  
2 department.

3 (4) (a) Upon appeal of a determination or revised determination, the  
4 director shall transfer the appeal directly to an appeals examiner  
5 pursuant to subsection (6) of this section, unless the director  
6 finds, in his sole discretion, that a redetermination should be  
7 issued affirming, reversing or modifying the determination or revised  
8 determination. The redetermination shall become final unless, within  
9 fourteen (14) days after notice as provided in subsection (5) of this  
10 section, an appeal is filed by an interested party with the department  
11 in accordance with the department's rules.

12 (b) The director may, in his sole discretion, make a special  
13 redetermination whenever he finds that a departmental error has  
14 occurred in connection with a determination, revised determination  
15 or redetermination that has become final, or that additional wages  
16 of the claimant or other facts pertinent to such final determination,  
17 revised determination or redetermination have become available or  
18 have been newly discovered, or that benefits have been allowed or  
19 denied or the amount of benefits fixed on the basis of nondisclosure  
20 or misrepresentation of fact. The special redetermination must be  
21 made within one (1) year from the date of the original determination,  
22 revised determination or redetermination became final, except that  
23 a special redetermination involving a finding that benefits have  
24 been allowed or denied or the amount of benefits fixed on the basis  
25 of nondisclosures or misrepresentations of fact may be made within  
26 two (2) years from the date of the original determination, revised  
27 determination or redetermination became final. Subject to the same  
28 limitations and for the same reasons, the director may make a special  
29 redetermination in any case in which the final decision has been  
30 rendered by an appeals examiner, the commission, or a court and may  
31 apply to the appeal tribunal which rendered such final decision to issue  
32 a revised decision. In the event that an appeal involving an original  
33 determination is pending as of the date a special redetermination is  
34 issued, the appeal, unless withdrawn, shall be treated as an appeal from  
35 the special redetermination.

36 (5) All interested parties shall be entitled to prompt service of  
37 notice of determinations, revised determinations, redeterminations,  
38 special redeterminations and decisions. A notice shall be deemed served  
39 if delivered to the person being served, ~~or~~ if mailed to his last known  
40 address or if electronically transmitted to him at his request and with the  
41 department's approval. Service by mail shall be deemed complete on the date  
42 of mailing. Service by electronic transmission shall be deemed complete on  
43 the date notice is electronically transmitted.

44 (6) To hear and decide appeals from determinations and, revised  
45 determinations, redeterminations, and special redeterminations, the  
46 director shall appoint appeals examiners. Unless the appeal is withdrawn,  
47 the appeals examiner shall affirm, modify, set aside or reverse the  
48 determination ~~or,~~ revised determination, redetermination, or special  
49 redetermination involved, after affording the interested parties  
50 reasonable opportunity for a fair hearing, or may refer a matter back

1 to the ~~claims examiner~~ department for further action. The appeals examiner  
2 shall notify the interested parties of his decision by serving notice in  
3 the same manner as provided in subsection (5) of this section. The decision  
4 shall set forth findings of fact and conclusions of law. The appeals  
5 examiner may, either upon application for rehearing by an interested party  
6 or on his own motion, rehear, affirm, modify, set aside or reverse any prior  
7 decision on the basis of the evidence previously submitted or on the basis  
8 of additional evidence; provided, that such application or motion be made  
9 within ten (10) days after the date of service of the decision. A complete  
10 record shall be kept of all proceedings in connection with an appealed  
11 claim. All testimony at any hearing shall be recorded. If a claim for  
12 review of the appeals examiner's decision is filed with the commission, the  
13 testimony shall be transcribed if ordered by the commission. Witnesses  
14 subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed  
15 by the director. If any interested party to a hearing formally requests the  
16 appeals examiner to issue a subpoena for a witness whose evidence is deemed  
17 necessary, the appeals examiner shall promptly issue the subpoena, unless  
18 such request is determined to be unreasonable. Unless an interested party  
19 shall within fourteen (14) days after service of the decision of the appeals  
20 examiner file with the commission a claim for review or unless an application  
21 or motion is made for a rehearing of such decision, the decision of the  
22 appeals examiner shall become final.

23 (7) The commission shall decide all claims for review filed by any  
24 interested party in accordance with its own rules of procedure not in  
25 conflict herewith. The record before the commission shall consist of the  
26 record of proceedings before the appeals examiner, unless it appears to  
27 the commission that the interests of justice require that the interested  
28 parties be permitted to present additional evidence. In that event, the  
29 commission may, in its sole discretion, conduct a hearing or may remand the  
30 matter back to the appeals examiner for an additional hearing and decision.  
31 On the basis of the record of proceedings before the appeals examiner as well  
32 as additional evidence, if allowed, the commission shall affirm, reverse,  
33 modify, set aside or revise the decision of the appeals examiner or may  
34 refer the matter back to the appeals examiner for further proceedings. The  
35 commission shall file its decision and shall promptly serve notice of its  
36 decision to all interested parties. A decision of the commission shall  
37 be final and conclusive as to all matters adjudicated by the commission  
38 upon filing the decision in the office of the commission; provided, within  
39 twenty (20) days from the date of filing the decision, any party may move for  
40 reconsideration of the decision or the commission may rehear or reconsider  
41 its decision on its own initiative. The decision shall be final upon denial  
42 of a motion for rehearing or reconsideration or the filing of the decision on  
43 reconsideration.

44 (8) No person acting on behalf of the director or any member of the  
45 commission shall participate in any case in which he has a direct or indirect  
46 personal interest.

47 (9) An appeal may be made to the Supreme Court from decisions and orders  
48 of the commission within the times and in the manner prescribed by rule of the  
49 Supreme Court.

1 (10) (a) Benefits shall be paid promptly in accordance with any decision  
2 allowing benefits, regardless of:

3 (i) The pendency of a time period for filing an appeal or  
4 petitioning for commission review; or

5 (ii) The pendency of an appeal or petition for review.

6 (b) Such payments shall not be withheld until a subsequent appeals  
7 examiner decision or commission decision modifies or reverses the  
8 previous decision, in which event benefits shall be paid or denied in  
9 accordance with such decision.

10 (11) (a) Any right, fact, or matter in issue, directly based upon or  
11 necessarily involved in a determination, redetermination, decision  
12 of the appeals examiner or decision of the commission which has become  
13 final, shall be conclusive for all the purposes of this chapter as  
14 between the interested parties who had notice of such determination,  
15 redetermination or decision. Subject to appeal proceedings and  
16 judicial review by the Supreme Court as set forth in this section, any  
17 determination, redetermination or decision as to rights to benefits  
18 shall be conclusive for all purposes of this chapter and shall not be  
19 subject to collateral attack irrespective of notice.

20 (b) No finding of fact or conclusion of law contained in a decision or  
21 determination rendered pursuant to this chapter by an appeals examiner,  
22 the industrial commission, a court, or any other person authorized  
23 to make such determinations shall have preclusive effect in any other  
24 action or proceeding, except proceedings that are brought (i) pursuant  
25 to this chapter, (ii) to collect unemployment insurance contributions,  
26 (iii) to recover overpayments of unemployment insurance benefits, or  
27 (iv) to challenge the constitutionality of provisions of this chapter  
28 or administrative proceedings under this chapter.

29 (12) The provisions of the Idaho administrative procedure act, chapter  
30 52, title 67, Idaho Code, regarding contested cases and judicial review of  
31 contested cases are inapplicable to proceedings involving claimants under  
32 the provisions of this chapter.

33 SECTION 6. That Section 72-1369, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND  
36 WAIVER. (1) Any person who received benefits to which he was not entitled  
37 under the provisions of this chapter or under an unemployment insurance  
38 law of any state or of the federal government shall be liable to repay  
39 the benefits and the benefits shall, for the purpose of this chapter, be  
40 considered to be overpayments.

41 (2) Civil penalties. The director shall assess the following monetary  
42 penalties for each determination in which the claimant is found to have made  
43 a false statement, misrepresentation, or failed to report a material fact to  
44 the department:

45 (a) Twenty-five percent (25%) of any resulting overpayment for the  
46 first determination;

47 (b) Fifty percent (50%) of any resulting overpayment for the second  
48 determination; and



1 (c) One hundred percent (100%) of any resulting overpayment for the  
2 third and any subsequent determination.

3 (3) Any overpayment, civil penalty and/or interest which has not been  
4 repaid may, in addition to or alternatively to any other method of collection  
5 prescribed in this chapter, including the creation of a lien as provided  
6 by section 72-1360, Idaho Code, be collected with interest thereon at the  
7 rate prescribed in section 72-1360(2), Idaho Code. The director may also  
8 file a civil action in the name of the state of Idaho. In bringing such  
9 civil actions for the collection of overpayments, penalties and interest,  
10 the director shall have all the rights and remedies provided by the laws  
11 of this state, and any person adjudged liable in such civil action for  
12 any overpayments shall pay the costs of such action. A civil action filed  
13 pursuant to this subsection (3) shall be commenced within five (5) years  
14 from the date of the final determination establishing liability to repay.  
15 Any judgment obtained pursuant to this section shall, upon compliance with  
16 the requirements of chapter 19, title 45, Idaho Code, become a lien of the  
17 same type, duration and priority as if it were created pursuant to section  
18 72-1360, Idaho Code.

19 (4) Collection of overpayments.

20 (a) Overpayments, other than those resulting from a false statement,  
21 misrepresentation, or failure to report a material fact by the  
22 claimant, which have not been repaid or collected, may, at the  
23 discretion of the director, be deducted from any future benefits  
24 payable to the claimant under the provisions of this chapter. Such  
25 overpayments not recovered within five (5) years from the date of the  
26 final determination establishing liability to repay may be deemed  
27 uncollectible.

28 (b) Overpayments resulting from a false statement, misrepresentation,  
29 or failure to report a material fact by the claimant which have  
30 not been recovered within eight (8) years from the date of the  
31 final determination establishing liability to repay may be deemed  
32 uncollectible.

33 (5) The director may waive the requirement to repay an overpayment,  
34 other than one resulting from a false statement, misrepresentation, or  
35 failure to report a material fact by the claimant, and interest thereon, if:

36 (a) The benefit payments were made solely as a result of department  
37 error or inadvertence and made to a claimant who could not reasonably  
38 have been expected to recognize the error; or

39 (b) Such payments were made solely as a result of an employer  
40 misreporting wages earned in a claimant's base period and made to a  
41 claimant who could not reasonably have been expected to recognize an  
42 error in the wages reported. ~~The director, in his sole discretion, may~~  
43 ~~also compromise a civil penalty assessed under subsection (2) of this~~  
44 ~~section and/or interest.~~

45 (6) Neither the director nor any of his agents or employees shall  
46 be liable for benefits paid to persons not entitled to the same under the  
47 provisions of this chapter if it appears that such payments have been  
48 made in good faith and that ordinary care and diligence have been used in  
49 the determination of the validity of the claim or claims under which such  
50 benefits have been paid.

1       (7) The director may, in his sole discretion, compromise any or  
2 all of an overpayment, civil penalty, interest or fifty-two (52) week  
3 disqualification assessed under subsections (1) and (2) of this section and  
4 section 72-1366(12), Idaho Code, when the director finds it is in the best  
5 interest of the department.

6       SECTION 7. An emergency existing therefor, which emergency is hereby  
7 declared to exist, this act shall be in full force and effect on and after its  
8 passage and approval.