

IN THE SENATE

SENATE BILL NO. 1321, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-209, IDAHO CODE, TO  
2 PROVIDE FOR A CLEAR AND CONVINCING EVIDENTIARY STANDARD WITH RESPECT TO  
3 INTENT TO HARM IN A CASE INVOLVING PHYSICAL AGGRESSION AND TO MAKE TECH-  
4 NICAL CORRECTIONS.  
5

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

7 SECTION 1. That Section 72-209, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 72-209. EXCLUSIVENESS OF LIABILITY OF EMPLOYER. (1) Subject to the  
10 provisions of section 72-223, Idaho Code, the liability of the employer  
11 under this law shall be exclusive and in place of all other liability of the  
12 employer to the employee, his spouse, dependents, heirs, legal representa-  
13 tives or assigns.

14 (2) The liability of an employer to another person who may be liable for  
15 or who has paid damages on account of an injury or occupational disease or  
16 death arising out of and in the course of employment of an employee of the  
17 employer and caused by the breach of any duty or obligation owed by the em-  
18 ployer to such other person, shall be limited to the amount of compensation  
19 for which the employer is liable under this law on account of such injury,  
20 disease, or death, unless such other person and the employer agree to share  
21 liability in a different manner.

22 (3) The exemption from liability given an employer by this section  
23 shall also extend to the employer's surety and to all officers, agents,  
24 servants and employees of the employer or surety, provided that such exemp-  
25 tions from liability shall not apply in any case where the injury or death is  
26 proximately caused by the ~~wilful~~ willful or unprovoked physical aggression  
27 of the employer, its officers, agents, servants or employees, which phys-  
28 ical aggression must include clear and convincing evidence the employer,  
29 its officers, agents, servants, or employees either specifically intended  
30 to harm the employee or engaged in conduct knowing that injury or death to  
31 the employee was substantially likely to occur. T~~he~~ the loss of such exemption  
32 applying applies only to the aggressor and shall not be imputable to the  
33 employer unless provoked or authorized by the employer, or the employer was  
34 a party thereto.