

LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature

First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 8

BY BUSINESS COMMITTEE

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-41-201, IDAHO CODE, TO CLARIFY WHAT CONSTITUTES ENGAGING IN BUSINESS IN THIS STATE FOR WHICH A CERTAIN LICENSE IS REQUIRED; AMENDING SECTION 28-41-301, IDAHO CODE, TO DEFINE A TERM, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-46-301, IDAHO CODE, TO PROVIDE FOR CERTAIN EXEMPTIONS AND TO REVISE A CODE REFERENCE; AMENDING SECTION 28-46-302, IDAHO CODE, TO PROVIDE CIRCUMSTANCES UNDER WHICH A LICENSE APPLICATION SHALL BE DEEMED WITHDRAWN AND VOID, TO PROVIDE FOR THE AUTOMATIC EXPIRATION OF CERTAIN LICENSES, TO PROVIDE CRITERIA FOR THE REINSTATEMENT OF AN EXPIRED LICENSE AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-46-404, IDAHO CODE, TO PROVIDE FOR THE AUTOMATIC EXPIRATION OF CERTAIN LICENSES, TO PROVIDE CIRCUMSTANCES UNDER WHICH A LICENSE APPLICATION SHALL BE DEEMED WITHDRAWN AND VOID, TO PROVIDE CRITERIA FOR THE REINSTATEMENT OF AN EXPIRED LICENSE AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-46-413, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO PAYDAY LOAN BUSINESS PRACTICES; AMENDING SECTION 28-46-508, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROHIBITED ACTIONS; AMENDING SECTION 26-2239, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-41-107, IDAHO CODE, TO REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-41-108, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 28-44-102, IDAHO CODE, TO REVISE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-44-107, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 28-46-102, IDAHO CODE, TO REVISE CODE REFERENCES; AMENDING SECTION 28-46-402, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 45-1604, IDAHO CODE, TO REVISE A CODE

REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 48-603, IDAHO CODE, TO REVISE A CODE REFERENCE; AND AMENDING SECTION 67-2751, IDAHO CODE, TO REVISE A CODE REFERENCE.

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

SECTION 1. That Section 28-41-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-201. TERRITORIAL APPLICATION. (1) Except as otherwise provided in this section, this act applies to sales and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales and loans, wherever made. For purposes of this act a sale, loan, or modification of a sale or loan is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means including, but not limited to, mail, brochure, telephone, print, radio, television, internet or any other electronic means.

(2) Notwithstanding subsection (1)(b) of this section, unless made subject to this act by agreement of the parties, a sale, loan, or modification of a sale or loan is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) The part on limitations on creditors' remedies, part 1 of the chapter on remedies and penalties, chapter 45, title 28, Idaho Code, applies to actions or other proceedings brought in this state to enforce rights arising from regulated credit sales or regulated loans, or extortionate extensions of credit, wherever made.

(4) If a regulated credit sale or regulated loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A seller, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the chapter on finance charges and related provisions; and

(b) A seller, lender, or assignee of his rights, may not enforce rights against the buyer or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices, part 3 of chapter 43, title 28, Idaho Code.

(5) Except as provided in subsection (3) of this section, a sale, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, loan or modification was made is valid and enforceable according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this act, the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this act does not apply if the buyer or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) This act applies if the buyer or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, the following agreements by a buyer or debtor are invalid with respect to regulated credit sales, regulated loans, or modifications thereof, to which this act applies:

(a) That the law of another state shall apply;

(b) That the buyer or debtor consents to the jurisdiction of another state; and

(c) That fixes venue.

[A> (9) Notwithstanding any other provision in this section, any person who, in this state, advertises, offers or solicits to make a loan for a consumer purpose, or arranges a payday loan for a third party lender, is engaging in business in this state for which a license is required under the Idaho credit code, unless exempt pursuant to section 28-46-301, Idaho Code. <A]

SECTION 2. That Section 28-41-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-301. GENERAL DEFINITIONS. (1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Administrator" means the administrator designated in section 28-46-103, Idaho Code.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products

thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" means the total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) In case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge, paragraph (b)(iii) of subsection (18); and

(c) In the case of a loan, to the extent that payment is, or payments are, deferred and the amount is not otherwise included and is authorized and disclosed to the debtor as required by law, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees.

(6) "Billing cycle" means the time interval between periodic billing statement dates.

(7) "Business purpose" means any purpose except a consumer purpose. For purposes of this act, a credit transaction:

(a) Engaged in by a debtor for an agricultural purpose; or

(b) Engaged in by a debtor for an investment purpose; or

(c) Creating a debt secured by a first mortgage or first deed of trust on real property; or

(d) In which the debtor is an organization, rather than a natural person; is considered to be for a business purpose.

(8) "Card issuer" means a person who issues a credit card.

(9) "Cardholder" means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance to or use of the card by another person.

(10) "Cash price" means the price of goods, services, or an interest in land at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, except as the administrator may otherwise prescribe by rule, and may include:

(a) Applicable sales, use, and excise and documentary stamp taxes;

(b) The cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements; and

(c) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

The cash price stated by the seller to the buyer pursuant to the provisions

on disclosure, part 2 of chapter 43, title 28, Idaho Code, is presumed to be the cash price.

(11) "Conspicuous" means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer purpose" means primarily a personal, family or household purpose. For purposes of this act, consumer purpose does not include a credit transaction:

- (a) Engaged in by a debtor for an agricultural purpose; or
- (b) Engaged in by a debtor for an investment purpose; or
- (c) Creating a debt secured by a first mortgage or first deed of trust on real property; or
- (d) In which the debtor is an organization, rather than a natural person.

(13) "Credit" means the right granted by a creditor to a debtor to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

(14) "Credit card" means a card or device issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise. A transaction is "pursuant to a credit card" only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely in that transaction to:

- (a) Identify the cardholder or evidence his credit-worthiness and credit is not obtained according to the terms of the arrangement;
- (b) Obtain a guarantee of payment from the cardholder's deposit account, whether or not the payment results in a credit extension to the cardholder by the card issuer; or
- (c) Effect an immediate transfer of funds from the cardholder's deposit account by electronic or other means, whether or not the transfer results in a credit extension to the cardholder by the card issuer.

(15) "Creditor" means the person who grants credit in a regulated credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not itself impose on an assignee any obligation of his assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer and not another person honoring the credit card.

(16) "Debtor" means the person to whom credit is granted in a regulated credit transaction.

(17) "Earnings" means compensation paid or payable by an employer to an employee, or for his account, for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(18) "Finance charge":

(a) Except as provided in paragraph (b) of this subsection, "finance charge" means the sum of any of the following types of charges payable directly or indirectly by the debtor and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, as applicable:

(i) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(ii) Time-price differential, credit service, service, carrying, or other charge, however denominated;

(iii) Premium or other charge for any guarantee or insurance protecting the creditor against the debtor's default or other credit loss; and

(iv) Charges incurred for investigating credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

(b) The term does not include:

(i) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence, unless the parties agree that these charges are finance charges; a charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account that is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or of a specified amount is required when billed, and in the ordinary course of business the debtor is permitted to continue to have purchases or other debts debited to the account after imposition of the charge;

(ii) Deferral charges, section 28-42-302, Idaho Code; or

(iii) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(19) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(20) "Insurance premium loan" means a regulated consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one (1) or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the

unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract financed.

(21) "Lender," except as otherwise provided, includes an assignee of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

(22) "Lender credit card" means a credit card issued by a regulated lender.

(23) (a) "Loan" means, except as provided in paragraph (b) of this subsection:

(i) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor;

(ii) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or his assignees;

(iii) The creation of debt by a cash advance to a debtor pursuant to a seller credit card;

(iv) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and

(v) The forbearance of debt arising from a loan.

(b) "Loan" does not include:

(i) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale and results from use of a seller credit card; or

(ii) The forbearance of debt arising from a sale.

(24) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) [A> "Nationwide mortgage licensing system and registry" or "NMLSR" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage brokers, mortgage lenders, mortgage loan originators and other consumer financial service providers. <A]

[A> (26) <A] "Open-end credit" means an arrangement pursuant to which:

(a) A creditor may permit a debtor, from time to time, to purchase on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically;
and

(d) Either the debtor has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to purchase on credit.

(2 [D] 6 <D] [A] 7 <A]) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(2 [D] 7 <D] [A] 8 <A]) "Payable in installments" means that payment is required or permitted by agreement to be made in:

(a) Two (2) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which a finance charge is made;

(b) Four (4) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which no finance charge is made; or

(c) Two (2) or more periodic payments with respect to a debt arising from a regulated consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two (2) or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the regulated consumer credit sale or regulated consumer loan is "payable in installments."

(2 [D] 8 <D] [A] 9 <A]) "Person" includes a natural person or an individual, and an organization.

([D] 29 <D] [A] 30 <A]) "Person related to" with respect to an individual means:

(a) The spouse of the individual;

(b) A brother, brother-in-law, sister or sister-in-law of the individual;

(c) An ancestor or lineal descendant of the individual or his spouse; and

(d) Any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) A person directly or indirectly controlling, controlled by or under common control with the organization;

(b) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) The spouse of a person related to the organization; and

(d) A relative by blood or marriage of a person related to the organization who shares the same home with him.

(3 [D] 0 [A] 1) "Precomputed credit transaction" means a credit transaction in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the [D] F [A] f ederal [D] C [A] c onsumer [D] C [A] c redit [D] P [A] p rotection [D] A [A] a ct does not in itself make a finance charge or transaction precomputed.

(3 [D] 1 [A] 2) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(3 [D] 2 [A] 3) "Regulated consumer credit sale" means a regulated credit sale, subsection (3 [D] 5 [A] 6) of this section, and for a consumer purpose, subsection (12) of this section.

(3 [D] 3 [A] 4) "Regulated consumer credit transaction" means a regulated credit transaction, subsection (3 [D] 6 [A] 7) of this section, and for a consumer purpose, subsection (12) of this section.

(3 [D] 4 [A] 5) "Regulated consumer loan" means a regulated loan, subsection (3 [D] 8 [A] 9) of this section, and for a consumer purpose, subsection (12) of this section.

(3 [D] 5 [A] 6) "Regulated credit sale" means a sale of goods, services, or an interest in land in which:

(a) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind; and

(b) The debt is payable in installments or a finance charge is made. A "regulated credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(3 [D] 6 [A] 7) "Regulated credit transaction" means a regulated credit sale or regulated loan or a refinancing or consolidation thereof.

(3 [D] 7 [A] 8) "Regulated lender" means a person authorized to make, or take assignments of, regulated consumer loans, as a regular business, under section 28-46-301, Idaho Code.

(3 [D] 8 [A] 9) "Regulated loan" means a loan made by a creditor regularly engaged in the business of making loans in which the debt is payable in installments or a finance charge is made. A "regulated loan" does not include a sale in which the seller allows the buyer to purchase pursuant to a seller credit card.

([D] 39 [A] 40) "Sale of goods" includes an agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option

to become, the owner of the goods upon full compliance with the terms of the agreement.

(4 [D] 0 [D] [A] 1 [A]) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(4 [D] 1 [D] [A] 2 [A]) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(4 [D] 2 [D] [A] 3 [A]) "Seller" includes, except as otherwise provided, an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

(4 [D] 3 [D] [A] 4 [A]) "Seller credit card" means either:

(a) A credit card issued primarily for the purpose of giving the cardholder the privilege of using the card to purchase property or services from the card issuer, persons related to the card issuer, or persons licensed or franchised to do business under the card issuer's business or trade name or designation, or both from any of these persons and from other persons; or

(b) A credit card issued by a person except a regulated lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase property or services from at least one hundred (100) persons not related to the card issuer.

(4 [D] 4 [D] [A] 5 [A]) "Services" includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(4 [D] 5 [D] [A] 6 [A]) "Supervised financial organization" means a person, except an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of this state or of the United States that authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

SECTION 3. That Section 28-46-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-301. AUTHORITY TO MAKE REGULATED CONSUMER LOANS [A] -- EXEMPTION FROM

LICENSING. <A] (1) The administrator shall receive and act on all applications for licenses to make regulated consumer loans under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. Unless a person is exempt under federal law or under this section or has first obtained a license from the administrator authorizing him to make regulated consumer loans, he shall not engage in the business of:

(a) Making regulated consumer loans; or

(b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from regulated consumer loans.

(2) Any "supervised financial organization," as defined in section 28-41-301 [D] (45) <D], Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) Mortgage lenders licensed under the Idaho residential mortgage practices act, chapter 31, title 26, Idaho Code, shall be exempt from the licensing requirements of this section as to mortgage lending activities defined in chapter 31, title 26, Idaho Code.

[A] (4) Agencies of the United States and agencies of this state and its political subdivisions shall be exempt from the licensing requirements of this section. <A]

SECTION 4. That Section 28-46-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The administrator shall receive and act on all applications for a license to do business as a regulated lender. Applications shall be filed in the manner prescribed by the administrator, shall contain such information as the administrator may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the administrator shall retain all fees paid by the applicant. The administrator may deny an application for a license if the administrator finds that:

(a) The financial responsibility, character, and fitness of the applicant, and of the officers and directors thereof (if the applicant is a corporation) are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act;

(b) The applicant does not maintain at least thirty thousand dollars (\$30,000) in liquid assets, as determined in accordance with generally accepted accounting principles, available for the purpose of making loans under this chapter;

(c) The applicant has had a license, substantially equivalent to a license under this chapter and issued by any state, denied, revoked or suspended under

the law of such state;

(d) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

(e) The application does not contain all of the information required by the administrator; or

(f) The application is not accompanied by an application fee of three hundred fifty dollars (\$350).

(2) A licensee under this chapter shall meet the requirements of subsection (1) of this section at all times while licensed pursuant to this chapter. The administrator is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (1) of this section.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The administrator has notified the applicant in writing that his application has been denied, or objections filed; or

(b) The administrator has not issued a license within sixty (60) days after the application for the license was filed.

If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the administrator for his reasonable and necessary expenses incurred as a result of the hearing. A request for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's finding supporting denial of the application or that objections have been filed and the substance thereof.

(4) The administrator may issue additional licenses to the same licensee upon application by the licensee, in the manner prescribed by the administrator, and payment of the required application fee. A separate license shall be required for each place of business. Each license shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of subsection ([D] 7 <D] [A] 8 <A]) of this section, or the license is relinquished, suspended or revoked.

(5) No licensee shall change the location of any place of business, or consolidate, or close any locations, without giving the administrator at least fifteen (15) days' prior written notice.

(6) A licensee shall not engage in the business of making regulated consumer loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that in the license.

[A] (7) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when: <A]

[A> (a) Placed in regular U.S. mail by the director or his agent using an address provided by the applicant on the license application; or <A]

[A> (b) E-mailed to the applicant using an e-mail address provided by the applicant on the license application; or <A]

[A> (c) Posted by the director or his agent on the NMLSR if the license application was submitted through the NMLSR. <A]

[A> (8) <A] On or before May 31 of each year, every licensee under this chapter shall pay a nonrefundable annual license renewal fee of one hundred fifty dollars (\$150) per licensed location, and shall file with the administrator a renewal form containing such information as the administrator may require. [A> Notwithstanding the provisions of section 67-5254, Idaho Code, a license issued under this part automatically expires if not timely renewed according to the requirements of this section. Notwithstanding the provisions of section 67-5254, Idaho Code, branch licenses issued under this part also expire upon the expiration, relinquishment or revocation of a license issued under this part to a licensee's designated home office. <A]

[A> (9) For a period of time not to exceed sixty (60) days following license expiration, the director may reinstate an expired license if he finds that the applicant meets the requirements for licensure under this part and the applicant has submitted to the director: <A]

[A> (a) A complete application for renewal; <A]

[A> (b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and <A]

[A> (c) A reinstatement fee of two hundred dollars (\$200). <A]

SECTION 5. That Section 28-46-404, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application for a license shall be in writing and under oath to the administrator, in a form prescribed by the administrator, and shall include at least the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is an entity, of every member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant;

(b) The location at which the principal place of business of the applicant is located; and

(c) Other data and information the administrator may require with respect to the applicant, and if the applicant is an entity, such data and information of its members, partners, directors, senior officers, or twenty-five percent (25%) or more equity owners of the applicant.

(2) Each application for a license shall be accompanied by an application fee in the amount of three hundred fifty dollars (\$350). Such fee shall not be subject to refund.

(3) The fee set forth in subsection (2) of this section shall be required for each location for which an application is submitted.

(4) Within sixty (60) days of the filing of an application in a form prescribed by the administrator, accompanied by the fee required in subsection (2) of this section, the administrator shall investigate to ascertain whether the qualifications prescribed by subsection (1) of section 28-46-403, Idaho Code, have been satisfied. If the administrator finds that the qualifications have been satisfied and approves the documents, the administrator shall issue to the applicant a license to engage in the payday loan business.

[A] (5) Notwithstanding the provisions of section 67-5254, Idaho Code, a [D] A [D] license issued pursuant to this [D] section shall remain in full force and effect unless the licensee does not satisfy [D] [A] part automatically expires if not timely renewed according to [A] the [D] renewal [D] requirements of subsection ([D] 6 [D] [A] 7 [A]) of this section, or the license is relinquished, suspended or revoked pursuant to this act. [A] Notwithstanding the provisions of section 67-5254, Idaho Code, branch licenses issued under this part also expire upon the expiration, relinquishment or revocation of a license issued under this part to a licensee's designated home office. [A]

[A] (6) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when: [A]

[A] (a) Placed in regular U.S. mail by the director or his agent using an address provided by the applicant on the license application; or [A]

[A] (b) E-mailed to the applicant using an e-mail address provided by the applicant on the license application; or [A]

[A] (c) Posted by the director or his agent on the NMLSR if the license application was submitted through the NMLSR. [A]

[A] (7) [A] On or before May 31 of each year, every licensee under this part 4 shall pay a nonrefundable annual license renewal fee of one hundred fifty dollars (\$150) per licensed location, and shall file with the administrator a renewal form containing such information as the administrator may require.

[A] (8) For a period of time not to exceed sixty (60) days following license expiration, the director may reinstate an expired license if he finds that the applicant meets the requirements for licensure under this part and the applicant has submitted to the director: [A]

[A] (a) A complete application for renewal; [A]

[A] (b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and [A]

[A] (c) A reinstatement fee of two hundred dollars (\$200). [A]

SECTION 6. That Section 28-46-413, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-413. PAYDAY LOAN BUSINESS PRACTICES. (1) No licensee or person related to a licensee by common control may have outstanding at any time to a single borrower a loan or loans with an aggregate principal balance exceeding one thousand dollars (\$1,000), plus allowable fees.

(2) No payday loan shall be repaid by the proceeds of another payday loan made by the same licensee or a person related to the licensee by common control.

(3) If the borrower's check is returned unpaid to the licensee from a payor financial institution, the licensee shall have the right to collect charges authorized by section 28-22-105, Idaho Code, provided such charges are disclosed in the loan agreement. A licensee may not charge treble damages. If the borrower's obligation is assigned to any third party for collection, the provisions of this section shall apply to such third party collector.

(4) A licensee [A> , or person required to be licensed pursuant to this part, <A] shall not threaten a borrower with criminal action as a result of any payment deficit.

(5) No licensee [A> , or person required to be licensed pursuant to this part, <A] shall engage in unfair or deceptive acts, practices or advertising in the conduct of a payday loan business.

(6) A licensee may renew a payday loan no more than three (3) consecutive times, after which the payday loan shall be repaid in full by the borrower. A borrower may enter into a new loan transaction with the licensee at any time after a prior loan to the borrower is completed. A loan secured by a borrower's check is completed when the check is presented or deposited by the licensee or redeemed by the borrower pursuant to section 28-46-412(6), Idaho Code.

(7) Other than a borrower's check in a transaction pursuant to section 28-46-412(6), Idaho Code, a licensee shall not accept any property, title to property, or other evidence of ownership as collateral for a payday loan.

(8) A licensee may conduct other business at a location where it engages in payday lending unless it carries on such other business for the purpose of evading or violating the provisions of this act.

(9) A borrower may rescind the payday loan at no cost at any time prior to the close of business on the next business day following the day on which the payday loan was made by paying the principal amount of the loan to the licensee in cash or other immediately available funds.

SECTION 7. That Section 28-46-508, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-508. PROHIBITED ACTIONS. [D> A <D] [A> No <A] title lender [A> licensee under this part or person required under this part to have such license <A] shall [D> not <D] :

(1) Enter into a title loan agreement with a person less than eighteen (18) years of age, or with anyone who appears to be intoxicated;

(2) Make any agreement giving the title lender any recourse against the debtor other than the title lender's right to take possession of the titled personal property and certificate of title upon the debtor's default, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of chapter 9, title 28, Idaho Code, except where the debtor prevented repossession of the vehicle, damaged or committed or permitted waste on the vehicle or committed fraud;

(3) Enter into a title loan agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title loan agreements the debtor has with the same lender secured by any single titled personal property, exceeds the retail value of the titled personal property as determined by common motor vehicle appraisal guides;

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a debtor under this chapter;

(5) Fail to exercise reasonable care to protect from loss or damage the certificate of title in the physical possession of the title lender;

(6) Purchase titled personal property used as security for a title loan made by the title lender;

(7) Enter into a title loan agreement unless the debtor presents a clear title to titled personal property at the time that the loan is made. If the title lender files a lien against such titled personal property without possession of a clear title to such property, the resulting lien shall be void;

(8) Capitalize or add any accrued interest or fee to the original principal of the title loan agreement during any renewal of the agreement;

(9) Require a debtor to provide any additional guaranty as a condition to entering into a title loan agreement;

(10) Use any device or agreement, including agreements with affiliated title lenders, with the intent to obtain greater charges than otherwise would be authorized by this part; or

(11) Violate the provisions of this part or any rule promulgated pursuant thereto.

SECTION 8. That Section 26-2239, Idaho Code, be, and the same is hereby amended to read as follows:

26-2239. EXEMPTIONS. The provisions of this act shall not apply to the following:

(1) Persons licensed to practice law in this state, to the extent that they are retained by their clients to engage in activities authorized by this act, and such activities are incidental to the practice of law. Such exemption shall not apply to an attorney engaged in a separate business conducting the activities authorized by this act;

(2) Any regulated lender as defined in section 28-41-301 [D] (37) <D] , Idaho Code, and its subsidiary, affiliate or agent to the extent that the

regulated lender, subsidiary, affiliate or agent collects for the regulated lender or engages in acts governed by this act which are incidental to the business of a regulated lender;

(3) Any bank, trust company, credit union, insurance company or industrial loan company authorized to do business in this state;

(4) Any federal, state or local governmental agency or instrumentality;

(5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state while engaged in acts authorized by his real estate license;

(6) Any person authorized to engage in escrow business in this state while engaged in authorized escrow business;

(7) Any mortgage company engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code, except a mortgage company engaged in a separate business conducting the activities authorized by this act;

(8) Any court appointed trustee, receiver or conservator;

(9) Any telephone corporation, as defined in subsection (10) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent;

(10) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom he is so related or affiliated and if the principal business of such person is not the collection of debts.

SECTION 9. That Section 28-41-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-107. EFFECT OF ACT ON POWERS OF ORGANIZATIONS. (1) This act prescribes maximum charges for all creditors, except those excluded under section 28-41-202, Idaho Code, extending credit as a regular business, including regulated credit sales, [D> subsection (34) of <D] [A> as defined in <A] section 28-41-301, Idaho Code, and regulated loans, [D> subsection (37) of <D] [A> as defined in <A] section 28-41-301, Idaho Code, and displaces existing limitations on the powers of those creditors based on maximum charges, except in insurance matters as prescribed by rule [D> or regulation <D] of the department of insurance.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, finance companies, sales finance companies, industrial banks and loan companies, and commercial banks, this act displaces existing limitations on their powers based solely on amount or duration of credit, except the insurance matters as prescribed by rule or regulation of the department of insurance.

(3) Except as provided in subsection (1) [A] of this section [A], this act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) [A] of this section [A], this act does not displace:

(a) Limitations on powers of supervised financial organizations, [D] subsection (44) of [D] [A] as defined in [A] section 28-41-301, Idaho Code, with respect to the amount of a loan to a single borrower, the ratio of the loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

(5) Notwithstanding the provisions of chapter 1, title 57, Idaho Code, and chapter 27, title 67, Idaho Code, any supervised financial organization which intentionally fails to comply with the provisions of this act shall not be entitled to receive deposits from state or public depositing units.

SECTION 10. That Section 28-41-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-108. TRANSACTIONS SUBJECT TO ACT BY AGREEMENT. Parties to a credit transaction or modification thereof that is not a regulated consumer credit transaction, [D] subsection (33) of [D] [A] as defined in [A] section 28-41-301, Idaho Code, may agree in a writing signed by them that the transaction is subject to the provisions of this act applying to regulated consumer credit transactions. If the parties so agree, the transaction is a regulated consumer credit transaction for the purposes of this act.

SECTION 11. That Section 28-44-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-44-102. SCOPE -- RELATION TO CREDIT INSURANCE ACT -- APPLICABILITY TO PARTIES. (1) Except as provided in subsection (2) of this section, this chapter applies to insurance provided or to be provided in relation to a regulated consumer credit transaction, [D] subsection 33 of [D] [A] as defined in [A] section 28-41-301 [D]) [D], Idaho Code.

(2) The provision on cancellation by a creditor, section 28-44-304, Idaho Code, applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) This chapter supplements and does not repeal the [D] C [D] [A] c [A] redit [D] I [D] [A] i [A] nsurance [D] A [D] [A] a [A] ct, chapter 23, title 41, Idaho Code. The provisions of this act concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, as defined by title 41, Idaho Code, or rules [D] and regulations [D] prescribed by the director of the department of insurance.

SECTION 12. That Section 28-44-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-44-107. MAXIMUM CHARGE BY CREDITOR FOR INSURANCE. (1) Except as provided

in subsection (2) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the director of the department of insurance.

(2) A creditor who provides credit insurance in relation to open-end consumer credit, [D> subsection (25) of <D] [A> as defined in <A] section 28-41-301, Idaho Code, may calculate the charge to the debtor in each billing cycle by applying the current premium rate to:

(a) The average daily unpaid balance of the debt in the cycle;

(b) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge, section 28-42-201, Idaho Code, but the specified range shall be the range used for that purpose; or

(c) The unpaid balances of principal calculated according to the actuarial method.

SECTION 13. That Section 28-46-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-102. APPLICABILITY. This part applies to persons who in this state:

(1) Make or solicit regulated consumer credit transactions, [D> subsection (33) of <D] [A> as defined in <A] section 28-41-301, Idaho Code; or

(2) Directly collect payments from or enforce rights against debtors arising from regulated consumer credit transactions, [D> subsection (33) of <D] [A> as defined in <A] section 28-41-301, Idaho Code, wherever they are made; or

(3) Are designated in this act as regulated lenders.

SECTION 14. That Section 28-46-402, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section 28-41-301 [D> (45) <D] , Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee

associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.

SECTION 15. That Section 45-1604, Idaho Code, be, and the same is hereby amended to read as follows:

45-1604. EXCLUSIONS. The provisions of this chapter shall not apply to:

(1) Regulated lenders, as defined in section 28-41-301 [D> (37) <D] , Idaho Code;

(2) Any person licensed or chartered under the laws of any state or of the United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms "bank," "trust company," "savings and loan association," "credit union" and "industrial loan company" shall include affiliates or [D> wholly-owned <D] [A> wholly owned <A] subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections 26-3101 et seq., Idaho Code;

(4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and

(5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, "family member or members" means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood, adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

SECTION 16. That Section 48-603, Idaho Code, be, and the same is hereby amended to read as follows:

48-603. UNFAIR METHODS AND PRACTICES. The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;

(13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;

(14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;

(15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;

(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in [D> subsection (37) of <D] section 28-41-301, Idaho Code;

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

(a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;

(b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;

(c) The duration of the disaster or emergency declaration. Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

SECTION 17. That Section 67-2751, Idaho Code, be, and the same is hereby amended to read as follows:

67-2751. DEFINITIONS. As used in sections 67-2750 through 67-2762, Idaho Code:

(1) "Act" or "Idaho Financial Fraud Prevention Act" means sections 67-2750 through 67-2762, Idaho Code.

(2) "Department" means the Idaho department of finance.

(3) "Director" means the director of the Idaho department of finance or his designee.

(4) "Financial institution" means any state or federally chartered bank, savings bank, savings and loan association, thrift institution, holding company, credit union, credit union service organization, "regulated lender" as defined in section 28-41-301 [D> (37) <D] , Idaho Code, collection agency licensed under the Idaho collection agency act, mortgage lender, mortgage broker, or loan originator licensed under the Idaho residential mortgage practices act, licensee under the Idaho money transmitters act, escrow agency, or broker-dealer or investment advisor licensed under the Idaho securities act or federal law, or such an institution licensed under the laws of another state, and doing business in Idaho.

(5) "Person" means a natural person, firm, partnership, association, corporation, limited liability company, limited liability partnership, trust, or any other association of individuals, however organized, and whether or not citizens or residents of this state.