

IN THE SENATE

SENATE BILL NO. 1119

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO EARNED WAGE ACCESS SERVICES ACT; AMENDING TITLE 26,
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 38, TITLE 26, IDAHO CODE, TO
3 PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO REQUIRE A LICENSE FOR CERTAIN
4 ACTIVITIES, TO PROVIDE FOR EXEMPTIONS AND CONFLICTS WITH OTHER LAWS,
5 TO ESTABLISH PROVISIONS REGARDING LICENSE QUALIFICATIONS, LICENSE AP-
6 PPLICATIONS, APPROVAL OF LICENSE APPLICATIONS, AND LICENSE RENEWALS AND
7 LICENSE REINSTATEMENTS, TO PROVIDE FOR ANNUAL REPORTS, TO PROVIDE FOR
8 EXTRAORDINARY REPORTING REQUIREMENTS, TO REQUIRE REPORTS OF CHANGES IN
9 CONTROL OF A LICENSEE, TO PROVIDE FOR THE POWERS OF THE DIRECTOR OF THE
10 DEPARTMENT OF FINANCE, TO PROVIDE FOR THE MAINTENANCE OF RECORDS, TO
11 PROVIDE FOR THE CONFIDENTIALITY OF DATA SUBMITTED TO THE DIRECTOR AND
12 TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE SUSPENSION OR REVOCATION OF
13 LICENSES, TO ESTABLISH PROVISIONS REGARDING PROVIDER REQUIREMENTS AND
14 PROHIBITIONS, TO PROVIDE PROCEDURES FOR HEARINGS, TO PROVIDE FOR CIVIL
15 PENALTIES, TO PROVIDE FOR ENFORCEMENT, TO PROVIDE FOR CONSENT TO JURIS-
16 DICTION, TO PROVIDE FOR APPLICABILITY, AND TO PROVIDE FOR SEVERABILITY;
17 AND DECLARING AN EMERGENCY.
18

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

20 SECTION 1. That Title 26, Idaho Code, be, and the same is hereby amended
21 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
22 ter 38, Title 26, Idaho Code, and to read as follows:

23 CHAPTER 38
24 EARNED WAGE ACCESS SERVICES

25 26-3801. SHORT TITLE. This chapter shall be known and may be cited as
26 the "Idaho Earned Wage Access Services Act."

27 26-3802. DEFINITIONS. For the purpose of this chapter:

28 (1) "Applicant" means a person filing an application for a license un-
29 der the provisions of this chapter.

30 (2) "Consumer" means an individual who resides in Idaho.

31 (3) "Consumer-directed wage access services" means delivering to a
32 consumer access to earned but unpaid income that is based on the consumer's
33 representations and the provider's reasonable determination of the con-
34 sumer's earned but unpaid income.

35 (4) "Control" means direct or indirect ownership of, or the power to
36 vote, twenty-five percent (25%) or more of any class of securities or profit
37 interests of a person.

38 (5) "Department" means the Idaho department of finance.

39 (6) "Director" means the director of the department of finance.

1 (7) "Earned but unpaid income" means salary, wages, compensation,
2 or other income that a consumer or an employer has represented, and that
3 a provider has reasonably determined, has been earned or accrued to the
4 benefit of the consumer in exchange for the consumer's provision of ser-
5 vices to the employer or on behalf of the employer, including on an hourly,
6 project-based, piecework, or other basis and including circumstances in
7 which the consumer is acting as an independent contractor of the employer,
8 but has not, at the time of the payment of proceeds, been paid to the consumer
9 by the employer.

10 (8) "Earned wage access services" means providing consumer-directed
11 wage access services or employer-integrated wage access services, or both.

12 (9) (a) "Employer" means:

13 (i) A person who employs a consumer; or

14 (ii) Any other person who is contractually obligated to pay a con-
15 sumer earned but unpaid income in exchange for the consumer's pro-
16 vision of services to the employer or on behalf of the employer in-
17 cluding on an hourly, project-based, piecework, or other basis and
18 including circumstances in which the consumer is acting as an in-
19 dependent contractor with respect to the employer.

20 (b) "Employer" does not include:

21 (i) A customer of an employer; or

22 (ii) Any other person whose obligation to make a payment of
23 salary, wages, compensation, or other income to a consumer is not
24 based on the provision of services by that consumer for or on be-
25 half of the person.

26 (10) "Employer-integrated wage access services" means delivering to
27 a consumer access to earned but unpaid income that is based on employment,
28 income, and/or attendance data obtained directly or indirectly from an em-
29 ployer or an employer's payroll service provider.

30 (11) "Executive officer" means the licensee's president, chief execu-
31 tive officer, treasurer, chief financial officer, or any other person who
32 performs similar functions.

33 (12) (a) "Fee" means:

34 (i) A fee imposed by a provider for the delivery or expedited de-
35 livery of proceeds to a consumer; or

36 (ii) A subscription or membership fee imposed by a provider for a
37 bona fide group of services that includes earned wage access ser-
38 vices.

39 (b) "Fee" does not include a voluntary tip, gratuity, or other dona-
40 tion.

41 (13) "Licensee" means a person licensed under the provisions of this
42 chapter.

43 (14) "Material litigation" means any litigation that, according to gen-
44 erally accepted accounting principles, is deemed significant to the finan-
45 cial health of a business and would be required to be referenced in the busi-
46 ness's annual audited financial statements, report to shareholders, or sim-
47 ilar documents.

48 (15) "Outstanding proceeds" means proceeds remitted to a consumer by a
49 provider that have not yet been repaid to the provider.

1 (16) "Person" means any individual, partnership, association, joint
2 stock association, limited liability company, trust, corporation, or other
3 business entity.

4 (17) "Proceeds" means a payment to a consumer by a provider that is based
5 on earned but unpaid income.

6 (18) (a) "Provider" means a person that is in the business of providing
7 earned wage access services to consumers.

8 (b) "Provider" does not include:

9 (i) A service provider, such as a payroll service provider, whose
10 role may include verifying the available earnings but who is not
11 contractually obligated to fund any proceeds delivered as part of
12 an earned wage access service; or

13 (ii) An employer that offers a portion of salary, wages, or com-
14 pensation directly to its employees or independent contractors
15 before the normally scheduled pay date.

16 (19) "State" means the state of Idaho.

17 26-3803. LICENSE REQUIRED. (1) On or after the effective date of this
18 chapter, no person except a person exempt pursuant to the provisions of sec-
19 tion 26-3804, Idaho Code, shall engage in the business of a provider without
20 a license in accordance with the provisions of this chapter.

21 (2) A licensee may conduct its business in this state at one (1) or more
22 physical locations, entirely online, or both at one (1) or more physical lo-
23 cations and online, pursuant to the single license granted to the licensee.

24 26-3804. EXEMPTIONS -- CONFLICTS WITH OTHER LAWS. (1) The provisions
25 of this chapter shall not apply to banks, credit unions, savings and loan as-
26 sociations, savings banks, or mutual banks organized under the laws of any
27 state or the United States.

28 (2) Earned wage access services offered and provided by a licensee
29 shall not be considered:

30 (a) In violation of or out of compliance with any law governing deduc-
31 tions from payroll, salary, wages, compensation, or other income or the
32 purchase, sale or assignment of, or an order for earned but unpaid in-
33 come;

34 (b) A loan or other form of credit or debt, nor shall the licensee be
35 considered a creditor, debt collector or collection agency, or lender
36 with respect thereto; or

37 (c) Money transmission, nor shall the licensee be considered a money
38 transmitter with respect to such services.

39 (3) Fees, voluntary tips, gratuities, or other donations paid in accor-
40 dance with this chapter to a licensee shall not be considered interest or fi-
41 nance charges.

42 (4) If there is a conflict between the provisions of this chapter and
43 the Idaho credit code or any other provision of law, the provisions of this
44 chapter shall prevail.

45 26-3805. LICENSE QUALIFICATIONS. Every corporate applicant, at the
46 time of filing of an application for a license under the provisions of this
47 chapter and at all times after a license is issued, shall be in good standing

1 in the state of its incorporation. All noncorporate applicants shall, at the
2 time of the filing of an application for a license under the provisions of
3 this chapter and at all times after a license is issued, have all necessary
4 registrations or qualifications to do business in this state.

5 26-3806. LICENSE APPLICATION. (1) Every applicant for a license under
6 this chapter shall file an application through an electronic system of li-
7 censing prescribed by the director that shall include:

- 8 (a) The name of the applicant and:
9 (i) If the applicant is a corporation, a list of its officers and
10 directors and their addresses;
11 (ii) If the applicant is a partnership, a list of the partners and
12 their addresses; or
13 (iii) If the applicant is a limited liability company, a list of
14 its members or managers and their addresses;
15 (b) The street address of the applicant's principal location, if any,
16 in this state or a statement that the applicant will operate in this
17 state entirely online;
18 (c) All names by which the applicant offers or provides earned wage ac-
19 cess services in this state;
20 (d) A complete description of the business to be conducted, or plan of
21 operation contemplated, by the applicant in this state;
22 (e) If the applicant is a corporation, limited liability company, part-
23 nership, or limited liability partnership, a duly authenticated copy of
24 its articles of incorporation, articles of organization, partnership
25 agreement, or operating agreement;
26 (f) The name and business address of the applicant's agent for service
27 of process located in this state;
28 (g) A nonrefundable application fee of three hundred fifty dollars
29 (\$350);
30 (h) An agreement of consent authorizing the director to examine any and
31 all of the applicant's financial accounts used for business activities
32 under this chapter; and
33 (i) Such other information concerning the applicant as the director may
34 reasonably require.

35 (2) The application shall be executed and verified on oath by the ap-
36 plicant. Information required at the time of application, except for adver-
37 tisements and solicitations, shall be updated and filed with the director as
38 necessary to keep the information current.

39 (3) A license application shall be deemed withdrawn and void if an ap-
40 plicant submits an incomplete license application and, after receipt of a
41 written notice of the application deficiency, fails to provide the direc-
42 tor with information necessary to complete the application within sixty (60)
43 days of receipt of the deficiency notice. A written deficiency notice shall
44 be deemed received by a license applicant when:

- 45 (a) Placed in regular United States mail by the director or his agent
46 using an address provided by the applicant on the license application;
47 (b) Emailed to the applicant using an email address provided by the ap-
48 plicant on the license application; or

1 (c) Posted by the director or his agent on the electronic system of li-
2 censing as prescribed by the director.

3 26-3807. APPROVAL OF LICENSE APPLICATION. (1) The director shall act
4 upon all applications for a license under this chapter. If the director de-
5 termines that the requirements of this chapter have been met and all applica-
6 ble fees paid, and the applicant is not otherwise unqualified for licensure,
7 the director shall issue a license to the applicant.

8 (2) Upon written request, an applicant is entitled to a hearing on the
9 questions of his qualifications for a license if:

10 (a) The director has notified the applicant in writing that his appli-
11 cation has been denied or objections have been filed to the application;
12 or

13 (b) The director has not issued the applicant a license within sixty
14 (60) days after the license application was filed by the applicant.

15 (3) Each license issued under this section shall remain in full force
16 and effect unless the licensee fails to satisfy the renewal requirements of
17 this chapter, or the license is relinquished, suspended, terminated, or re-
18 voked.

19 26-3808. RENEWAL OF LICENSE -- REINSTATEMENT. (1) On or before Decem-
20 ber 31 of each year, each licensee shall pay to the director a nonrefund-
21 able license renewal fee of one hundred fifty dollars (\$150) and shall file,
22 through an electronic system of licensing as prescribed by the director, a
23 license renewal application providing complete information as required by
24 the director.

25 (2) Failure to fully comply with the license renewal requirements of
26 this section by December 31 of each year shall result in automatic expiration
27 of the license as of that date.

28 (3) The director may reinstate an expired license within sixty (60)
29 days immediately following license expiration if the director finds that the
30 applicant meets the requirements for licensure under this chapter and after
31 submission to the director of:

32 (a) A complete application for renewal;

33 (b) The fee required to apply for license renewal, unless previously
34 paid; and

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

36 26-3809. ANNUAL REPORT. (1) Each licensee shall file with the direc-
37 tor an annual report, in a form prescribed by the director. The form shall be
38 sent by the director to each licensee no later than three (3) months immedi-
39 ately preceding June 30 of each year or as the director in his discretion may
40 determine. The licensee must include each of the following in its annual re-
41 port:

42 (a) A list of any physical locations within this state and any websites
43 from which business regulated by the provisions of this chapter is being
44 conducted by the licensee;

45 (b) Gross revenue from consumers attributable to the licensee's earned
46 wage access services;

1 (c) The total number of transactions in which the licensee provided
2 proceeds to consumers;

3 (d) The total number of unique consumers to whom the licensee provided
4 proceeds;

5 (e) The total dollar amount of proceeds the licensee provided to con-
6 sumers;

7 (f) The total dollar amount of fees, voluntary tips, gratuities, or
8 other donations the licensee received from consumers; and

9 (g) Any other information related to the earned wage access services
10 activities of the licensee that the director reasonably requires.

11 (2) A licensee that has not filed an annual report by the renewal fil-
12 ing deadline and has not been granted an extension of time to do so by the di-
13 rector shall be notified by the director, in writing, that a hearing will be
14 scheduled at which time the licensee will be required to show cause why its
15 license should not be suspended pending compliance with the provisions of
16 this section.

17 26-3810. EXTRAORDINARY REPORTING REQUIREMENTS. Within fifteen (15)
18 days of the occurrence of any one (1) of the events listed below, a licensee
19 shall file a written report with the director describing such event:

20 (1) The filing for bankruptcy or reorganization by the licensee;

21 (2) The institution of revocation or suspension proceedings against
22 the licensee by any state or government authority with regard to the li-
23 censee's earned wage access services activities;

24 (3) Any felony indictment, complaint, or information of the licensee or
25 any of its key executives or directors; or

26 (4) Any felony conviction of the licensee or any of its key executives
27 or directors.

28 26-3811. CHANGES IN CONTROL OF A LICENSEE. (1) Within fifteen (15)
29 days of a change or acquisition of control of a licensee that is a publicly
30 traded corporation or is a direct or indirect subsidiary of a publicly traded
31 corporation, the licensee shall provide notice of such event to the director
32 in writing.

33 (2) Licensees other than publicly traded corporations or direct or in-
34 direct subsidiaries of publicly traded corporations must notify the direc-
35 tor in writing thirty (30) days prior to a change of control.

36 26-3812. POWERS OF THE DIRECTOR. (1) For the purpose of discovering
37 violations of this chapter or rules adopted under this chapter or securing
38 information lawfully required under this chapter, the director may at any
39 time, either personally or by designee, investigate or examine the business
40 and wherever located, the books, accounts, records, papers, documents,
41 files, and other information used in the earned wage access services-related
42 business of every applicant, licensee, and of every person who is engaged in
43 the business of a provider, whether the person acts or claims to act under
44 or without the authority of this chapter. For these purposes, the direc-
45 tor or designated representative shall have free access to the offices and
46 places of business, books, accounts, papers, documents, other information,
47 records, files, safes, and vaults of all such persons. The director or the

1 director's designee may require the attendance of and examine under oath all
2 persons whose testimony may be required about the business or the subject
3 matter of any investigation, examination, or hearing and may require such
4 person to produce books, accounts, papers, documents, records, files, and
5 any other information the director or the director's designee declares is
6 relevant to the inquiry. The director may:

7 (a) Require the production of original books, accounts, papers, docu-
8 ments, records, files, and other information;

9 (b) Require that such original books, accounts, papers, documents,
10 records, files, and other information be copied; or

11 (c) Make copies himself or by designee of such original books, ac-
12 counts, papers, documents, records, files, or other information.

13 (2) The director or director's designee may issue a subpoena or sub-
14 poena duces tecum requiring attendance or compelling production of the
15 books, accounts, papers, documents, records, files, or other information.
16 Should the director conclude that an on-site examination of a licensee is
17 necessary, the licensee, subject to the provisions of subsection (3) of this
18 section, shall pay all the actual costs of such examination. If the director
19 determines, based on the licensee's financial statements and past history
20 of operations in the state, that an on-site examination is unnecessary, the
21 on-site examination may be conducted electronically or in conjunction with
22 examinations to be performed by representatives of agencies of another state
23 or states. The director, in lieu of an on-site or electronic examination,
24 may accept the examination report of an agency of another state, or a report
25 prepared by an independent accounting firm, and reports so accepted are con-
26 sidered for all purposes as an official report of the director.

27 (3) In the case of refusal to obey a subpoena issued to any person, any
28 court of competent jurisdiction, upon application by the director, may issue
29 to that person an order requiring that person to appear before the director
30 or the director's designee to produce documentary evidence if so ordered or
31 to give evidence relating to the matter under investigation or in question.
32 Any failure to obey such order of the court may be punished by the court as a
33 contempt of court. When the director examines a licensee within this state,
34 the licensee shall pay all the actual costs of such examination, up to a max-
35 imum of one thousand dollars (\$1,000).

36 (4) The director may promulgate rules, subject to legislative ap-
37 proval, necessary for the administration of this chapter. All rules promul-
38 gated by the director pursuant to authority conferred in this chapter will be
39 in accordance with the Idaho administrative procedure act, chapter 52, title
40 67, Idaho Code.

41 26-3813. MAINTENANCE OF RECORDS. (1) Each licensee shall make, keep,
42 and preserve books, accounts, and other records for a period of three (3)
43 years following the provision of proceeds to a consumer.

44 (2) Maintenance of documents as required in this section in a photo-
45 graphic, digital, or other similar form shall constitute compliance with the
46 provisions of this section.

47 (3) Records may be maintained at a location other than at a location
48 within this state as long as they are made accessible to the director on seven
49 (7) days' written notice.

1 26-3814. CONFIDENTIALITY OF DATA SUBMITTED TO THE DIRECTOR. (1)
2 All information or reports obtained by the director from an applicant or
3 licensee are confidential trade secrets and may not be disclosed or dis-
4 tributed outside the department in accordance with the provisions of chapter
5 1, title 74, Idaho Code, by the director or any officer or employee of the
6 department. Such information is confidential whether obtained through re-
7 ports, applications, examinations, audits, investigations, or otherwise,
8 and includes but is not limited to:

9 (a) All information contained in or related to applications, examina-
10 tions, investigations, and operating or condition reports reported by,
11 on behalf of, or for the use of the director; and

12 (b) Business plans or metrics, financial statements, or balance
13 sheets.

14 (2) Notwithstanding the provisions of subsection (1) of this section,
15 the director may provide for the release of information to representatives
16 of state or federal agencies who state in writing that they shall maintain
17 the confidentiality of such information or if the director finds that the re-
18 lease is reasonably necessary for the protection of the public and in the in-
19 terests of justice.

20 (3) Nothing in this section shall prohibit the director from releasing
21 to the public a list of persons licensed under the provisions of this chapter
22 or to release aggregated, anonymized financial data on such licensees.

23 26-3815. SUSPENSION OR REVOCATION OF LICENSES. After notice and op-
24 portunity for hearing, the director may suspend or revoke a licensee's li-
25 cense if the director finds that:

26 (1) Any fact or condition exists that, if it had existed at the time when
27 the licensee applied for a license, would have been grounds for denying such
28 application;

29 (2) The licensee violated any provisions of this chapter or any rule or
30 order of the director under the provisions of this chapter;

31 (3) The licensee is conducting its business in an unsafe or unsound man-
32 ner;

33 (4) The licensee is insolvent;

34 (5) The licensee has suspended payment of its obligations, has made an
35 assignment for the benefit of its creditors, or has admitted in writing its
36 inability to pay its debts as they become due;

37 (6) The licensee has applied for an adjudication of bankruptcy, reorga-
38 nization, arrangement, or other relief under any bankruptcy;

39 (7) The licensee refuses to permit the director to make any examination
40 authorized in this chapter; or

41 (8) The licensee willfully fails to make any report required in this
42 chapter.

43 26-3816. PROVIDER REQUIREMENTS AND PROHIBITIONS. (1) A provider
44 shall:

45 (a) Develop and implement policies and procedures to respond to ques-
46 tions raised by consumers and address complaints from consumers in an
47 expedient manner;

1 (b) Whenever it offers a consumer the option to receive proceeds for a
2 fee or solicits an optional tip, gratuity, or other donation, offer to
3 the consumer at least one (1) reasonable option to obtain proceeds at no
4 cost to the consumer and clearly explain how to elect such no-cost op-
5 tion;

6 (c) Before entering into an agreement with a consumer for the provision
7 of earned wage access services:

8 (i) Inform the consumer of the consumer's rights under the agree-
9 ment; and

10 (ii) Fully and clearly disclose all fees associated with the
11 earned wage access services;

12 (d) Inform the consumer of any material changes to the terms and con-
13 ditions of the earned wage access services before implementing those
14 changes for that consumer;

15 (e) Allow the consumer to cancel use of the provider's earned wage ac-
16 cess services at any time, without incurring a cancellation fee imposed
17 by the provider;

18 (f) Comply with all applicable local, state, and federal privacy and
19 information security laws;

20 (g) If a provider solicits, charges, or receives a tip, gratuity, or
21 other donation from a consumer:

22 (i) Clearly and conspicuously disclose to the consumer immedi-
23 ately prior to each transaction that a tip, gratuity, or other do-
24 nation amount may be zero (0) and is voluntary; and

25 (ii) Clearly and conspicuously disclose in its service contract
26 with the consumer and elsewhere that tips, gratuities, or dona-
27 tions are voluntary and that the offering of earned wage access
28 services, including the amount of proceeds a consumer is eligible
29 to request and the frequency with which proceeds are provided to a
30 consumer, is not contingent on whether the consumer pays any tip,
31 gratuity, or other donation or on the size of the tip, gratuity, or
32 other donation;

33 (h) Provide proceeds to a consumer by any means mutually agreed upon by
34 the consumer and the provider; and

35 (i) If the provider will seek repayment of outstanding proceeds or pay-
36 ment of fees or other amounts owed, including voluntary tips, gratu-
37 ities, or other donations, in connection with the activities covered
38 by this chapter, from a consumer's account at a depository institution,
39 including by means of electronic fund transfer:

40 (i) Comply with applicable provisions of the federal electronic
41 fund transfer act, 15 U.S.C. 1693 et seq., and regulations adopted
42 thereunder; and

43 (ii) Reimburse the consumer for the full amount of any overdraft
44 or non-sufficient funds fees imposed on a consumer by the con-
45 sumer's depository institution that were caused by the provider
46 attempting to seek payment of any outstanding proceeds, fees, or
47 other payments in connection with the activities covered by this
48 chapter, including voluntary tips, gratuities, or other dona-
49 tions, on a date before, or in an incorrect amount from, the date
50 or amount disclosed to the consumer. However, the provider is not

1 subject to the requirements of this subparagraph with respect to
2 payments of outstanding proceeds or fees incurred by a consumer
3 through fraudulent or other unlawful means.

4 (2) A provider shall not:

5 (a) Share with an employer a portion of any fees, voluntary tips, gra-
6 tuities, or other donations that were received from or charged to a con-
7 sumer for earned wage access services;

8 (b) Require a consumer's credit report or a credit score provided or is-
9 sued by a consumer reporting agency to determine a consumer's eligibil-
10 ity for earned wage access services;

11 (c) Accept payment of outstanding proceeds, fees, voluntary tips, gra-
12 tuities, or other donations from a consumer by means of a credit card or
13 charge card;

14 (d) Charge a consumer a late fee, deferral fee, interest, or any other
15 penalty or charge for failure to pay outstanding proceeds, fees, volun-
16 tary tips, gratuities, or other donations;

17 (e) Report to a consumer reporting agency or debt collector any infor-
18 mation about the consumer regarding the inability of the provider to
19 be repaid outstanding proceeds, fees, voluntary tips, gratuities, or
20 other donations;

21 (f) Compel or attempt to compel payment by a consumer of outstanding
22 proceeds, fees, voluntary tips, gratuities, or other donations to the
23 provider through any of the following means:

24 (i) A suit against the consumer in a court of competent jurisdic-
25 tion;

26 (ii) Use of a third party to pursue collection from the consumer on
27 the provider's behalf; or

28 (iii) Sale of outstanding proceeds, fees, voluntary tips, gratu-
29 ities, or other donations to a third-party collector or debt buyer
30 for collection from a consumer; or

31 (g) If the provider solicits, charges, or receives tips, gratuities,
32 or other donations from a consumer, mislead or deceive a consumer about
33 the voluntary nature of the tips, gratuities, or donations or represent
34 that they will benefit any specific individuals or group of individu-
35 als.

36 (3) The limitations set forth in subsection (2) (f) of this section do
37 not preclude the use by a provider of any of the methods specified in sub-
38 section (2) (f) of this section to compel payment of outstanding proceeds or
39 fees incurred by a consumer through fraudulent or other unlawful means, nor
40 do they preclude a provider from pursuing an employer for breach of its con-
41 tractual obligations to the provider.

42 (4) A provider may use the mailing address or state of residence pro-
43 vided to it by a person or a person's employer to determine the person's state
44 of residence for purposes of this chapter.

45 26-3817. HEARINGS -- PROCEDURES. The provisions of the Idaho adminis-
46 trative procedure act, chapter 52, title 67, Idaho Code, shall apply to any
47 hearing afforded pursuant to the provisions of this chapter.

1 26-3818. CIVIL PENALTIES. (1) If, after notice and hearing, the di-
2 rector finds that a person has violated the provisions of this chapter or a
3 rule adopted under the provisions of this chapter, the director may order
4 the person to pay to the director a civil penalty in an amount specified by
5 the director, not to exceed one thousand dollars (\$1,000) for each violation
6 or, in the case of a continuing violation, one thousand dollars (\$1,000) for
7 each day that the violation continues, but not to exceed twenty-five thou-
8 sand dollars (\$25,000) in the aggregate. The provisions of the Idaho admin-
9 istrative procedure act, chapter 52, title 67, Idaho Code, shall apply to
10 such hearing.

11 (2) The director, in the director's discretion, is authorized to com-
12 promise, settle, and collect civil penalties with any person for violations
13 of any provision of this chapter, or of any rule or order issued or promul-
14 gated pursuant to the provisions of this chapter.

15 26-3819. ENFORCEMENT. (1) If it appears to the director that any per-
16 son has committed or is about to commit a violation of any provision of this
17 chapter or of any rule or order of the director, the director may:

18 (a) Issue a cease and desist order ordering such person to cease and de-
19 sist violating or continuing to violate any provision of this chapter or
20 any rule or order issued in accordance with this chapter; or

21 (b) Apply to the district court for an order enjoining such person from
22 violating or continuing to violate any provision of this chapter or any
23 rule or order and for injunctive or such other relief as the nature of
24 the case may require.

25 (2) The director may enter into consent orders at any time with any per-
26 son to resolve any matter arising under the provisions of this chapter. A
27 consent order must be signed by the person to whom it is issued and must indi-
28 cate agreement to the terms contained therein. A consent order need not con-
29 stitute an admission by any person that any provision of this chapter or any
30 rule or order promulgated or issued thereunder has been violated nor need it
31 constitute a finding by the director that such person has violated any provi-
32 sion of this chapter or any rule or order promulgated or issued thereunder.

33 (3) Notwithstanding the issuance of a consent order, the director may
34 seek civil or compromise civil penalties concerning matters encompassed by
35 the consent order unless the consent order by its terms expressly precludes
36 the director from so doing.

37 26-3820. CONSENT TO JURISDICTION. Any licensee or other person who
38 knowingly engages in business activities that are regulated under the pro-
39 visions of this chapter, with or without filing an application, is deemed
40 to have consented to the jurisdiction of the courts of this state for all
41 actions arising under the provisions of this chapter.

42 26-3821. APPLICABILITY. A person who was acting as a provider in Idaho
43 on January 1, 2025, may continue to act as a provider if the person applies
44 for a license in accordance with the provisions of this chapter within six
45 (6) months of the date that the department makes an application available to
46 potential applicants, and complies with the requirements of this chapter,

1 until such time as the department grants or denies the person's application
2 for a license under this chapter.

3 26-3822. SEVERABILITY. The provisions of this act are hereby declared
4 to be severable and if any provision of this act or the application of such
5 provision to any person or circumstance is declared invalid for any reason,
6 such declaration shall not affect the validity of the remaining portions of
7 this act.

8 SECTION 2. An emergency existing therefor, which emergency is hereby
9 declared to exist, this act shall be in full force and effect on and after its
10 passage and approval.