

LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature

First Regular Session - 2009

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 172

BY BUSINESS COMMITTEE

AN ACT

RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-402, IDAHO CODE, TO PROVIDE THAT A LENDER WHICH IS NOT A SUPERVISED FINANCIAL ORGANIZATION MAY NOT DEPOSIT A CONSUMER'S CHECK, WITHDRAW FUNDS ELECTRONICALLY FROM A CONSUMER'S ACCOUNT OR OTHERWISE COLLECT THE PRINCIPAL OF, INTEREST ON, OR ANY FEES OR CHARGES FOR A LOAN SUBJECT TO THIS PART, IF AT THE TIME THE LENDER MAKES THE LOAN, THE LENDER DOES NOT HAVE A CURRENT AND VALID LICENSE TO MAKE LOANS IN THIS STATE; AMENDING SECTION 28-46-412, IDAHO CODE, TO REVISE PAYDAY LOAN PROCEDURES; AMENDING SECTION 28-46-413, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO PROVIDE PROCEDURES UPON THE THIRD RENEWAL OF A PAYDAY LOAN; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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(45), 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 lender which is not a supervised financial organization as defined in subsection (2) of this section may not deposit a consumer's check, withdraw funds electronically from a consumer's account or otherwise collect the principal of, interest on, or any fees or charges for a loan subject to this part, if at the time the lender makes the loan, the lender does not have a current and valid license to make loans in this state.

SECTION 2. That Section 28-46-412, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-412. PAYDAY LOAN PROCEDURES. (1) Each payday loan must be documented in a written agreement signed by the borrower. The loan agreement must include the name of the licensee, the loan date, the principal amount of the loan, and a statement of the total amount of fees charged as a condition of making the loan, expressed both as a dollar amount and as an annual percentage rate (APR).

1                   (2) The maximum principal amount of any payday loan is one thousand dollars (\$1000).

2                   (3) A licensee may charge a fee for each payday loan. Such fee shall be deemed fully  
3                   earned as of the date of the transaction and shall not be deemed interest for any purpose of law.  
4                   No other fee or charges may be charged or collected for the payday loan except as specifically  
5                   set forth in this act.

6                   (4) Each licensee shall conspicuously post in each licensed location a notice of the fees,  
7                   expressed as a dollar amount per one hundred dollars (\$100), charged for payday loans.

8                   (5) Before disbursing funds pursuant to a payday loan, a licensee shall provide written  
9                   notice to the borrower indicating the following:

10                  (a) A payday loan is intended to address short-term, not long-term, financial needs.

11                  (b) The borrower will be required to pay additional fees if the payday loan is renewed  
12                  rather than paid in full when due.

13                  (c) The borrower has the right to rescind the payday loan, at no cost, no later than the  
14                  end of the next business day following the day on which the payday loan is made.

15                  (d) The borrower should consider consulting with a licensed credit or debt counselor if  
16                  the borrower is having difficulty meeting financial obligations.

17                  (6) Before disbursing funds pursuant to a payday loan, a licensee shall give the  
18                  prospective borrower a written list setting forth the names, addresses and phone numbers  
19                  of all the credit and debt counselors permitted under chapter 22, title 26, Idaho Code, to  
20                  offer and deliver credit or debt counseling services in Idaho. The written list shall be  
21                  accessible on the website of the Idaho department of finance, and at the time of delivery to the  
22                  prospective borrower shall be current or dated no more than thirty (30) days prior to the date of  
23                  disbursement of funds pursuant to a payday loan.

24                  (7)(a) A payday loan may be made pursuant to a transaction whereby the licensee:

25                   (i) Accepts a check from a borrower who is the maker of the check; and  
26                   (ii) Agrees not to negotiate, deposit or present the check for an agreed upon  
27                  period of time and pays to the maker the amount of the check, less the fees  
28                  permitted by this act.

29                  (b) In such a transaction, the licensee may accept only one (1) postdated check for each  
30                  loan as security for the loan. Before the licensee may negotiate or present a check for  
31                  payment, the check shall be endorsed with the actual name under which the licensee is  
32                  doing business. The borrower shall have the right to redeem the check from the licensee  
33                  at any time prior to the presentment or deposit of the check by making payment to the  
34                  licensee of the full amount of the check in cash or immediately available funds.

35                  (78) The amount advanced to the borrower by the licensee in a payday loan may be paid  
36                  to the borrower in the form of cash, the licensee's business check, a money order, an electronic  
37                  funds transfer to the borrower's account, or other reasonable electronic payment mechanism,  
38                  provided however, that no additional fee may be charged to the borrower by a licensee to  
39                  access the proceeds of the payday loan.

40                  (89) A payday loan may be repaid by the borrower in cash, by negotiation of the  
41                  borrower's check in a transaction pursuant to subsection (67) of this section or, with the  
42                  agreement of the licensee, a debit card, a cashier's check, an electronic funds transfer from the  
43                  borrower's bank account, or any other reasonable electronic payment mechanism to which the  
44                  parties may agree.

45                  SECTION 3. That Section 28-46-413, Idaho Code, be, and the same is hereby amended  
46                  to read as follows:

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

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

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

12      (4) A licensee shall not threaten a borrower with criminal action as a result of any  
13 payment deficit.

14      (5) No licensee shall engage in unfair or deceptive acts, practices or advertising in the  
15 conduct of a payday loan business.

16      (6) A licensee may renew a payday loan no more than three (3) consecutive times,  
17 after which the payday loan shall be repaid in full by the borrower. A borrower may enter  
18 into a new loan transaction with the licensee at any time after a prior loan to the borrower is  
19 completed. A loan secured by a borrower's check is completed when the check is presented  
20 or deposited by the licensee or redeemed by the borrower pursuant to section 28-46-412(67),  
21 Idaho Code.

22      (7) A licensee and borrower may agree to a payment plan for a payday loan at any  
23 time. After three (3) successive loans and prior to default upon the last loan, each borrower  
24 may convert their payday loan to a payment plan. Each agreement for a loan payment plan  
25 must be in writing and acknowledged by both the borrower and the licensee. The licensee may  
26 charge the borrower, at the time both parties enter into the payment plan, a one (1) time fee for  
27 the payment plan. The licensee may not assess any other fee, interest charge or other charge  
28 on the borrower as a result of converting the loan into a payment plan. This payment plan  
29 must provide for the payment of the total of payments due on the shorter payment period. The  
30 borrower may pay the total payments at any time. The licensee may not charge any penalty,  
31 fee or charge to the borrower for prepayment of the loan payment plan by the borrower. Each  
32 licensee shall conspicuously disclose to each borrower in the payday loan agreement or loan  
33 note that the borrower has access to such a payment plan after three (3) successive loans. A  
34 licensee's violation of such a payment plan constitutes a violation of this part.

35      (8) The licensee may take postdated checks at the initiation of the payment plan for the  
36 payments agreed to under the plan. If any check accepted by the licensee as payment under the  
37 payment plan is dishonored, the licensee may collect as provided in part 1, chapter 22, title 28,  
38 Idaho Code.

39      (9) If the borrower defaults on the payment plan, the licensee may initiate action to  
40 collect the total of payments. The licensee may charge the borrower a one (1) time payment  
41 plan default fee of twenty-five dollars (\$25.00).

42      (10) If the licensee enters into a payment plan with the borrower through an accredited  
43 third party, with certified credit counselors, representing the borrower, the licensee's failure to  
44 comply with the terms of that payment plan constitutes a violation of this part.

1           (11) Other than a borrower's check in a transaction pursuant to section 28-46-412(~~67~~),  
2 Idaho Code, a licensee shall not accept any property, title to property, or other evidence of  
3 ownership as collateral for a payday loan.

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

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

11           SECTION 4. An emergency existing therefor, which emergency is hereby declared to  
12 exist, this act shall be in full force and effect on and after its passage and approval.