

IN THE SENATE

SENATE BILL NO. 1151

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-402, IDAHO CODE,  
 2 TO PROVIDE THAT A PAYDAY LOAN MADE IN THIS STATE IN VIOLATION  
 3 OF THE LICENSING REQUIREMENT OF THE DEPARTMENT OF FINANCE IS  
 4 VOID, UNCOLLECTIBLE AND UNENFORCEABLE, TO PROVIDE THAT FOR  
 5 ANY SUCH PAYDAY LOAN THE DEBTOR IS NOT OBLIGATED TO PAY THE  
 6 PRINCIPAL OR ANY FEE ASSOCIATED WITH SUCH PAYDAY LOAN, TO  
 7 PROVIDE PROCEDURES, AND TO PROVIDE FOR CEASE AND DESIST ACTIONS  
 8 BY THE DIRECTOR OF THE DEPARTMENT OF FINANCE.  
 9

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

11 SECTION 1. That Section 28-46-402, Idaho Code, be, and the same is hereby amended  
 12 to read as follows:

13 28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of  
 14 payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in  
 15 a payday loan transaction without having first obtained a license under this chapter. A separate  
 16 license shall be required for each location from which such business is conducted.

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

22 (3) A payday loan made in this state in violation of the licensing requirement of this  
 23 section is void, uncollectible and unenforceable. For any such payday loan the debtor is not  
 24 obligated to pay the principal or any fee associated with such payday loan. If a debtor has  
 25 paid any part of the principal or fee, the debtor has a right to recover the payment from  
 26 the person violating the provisions of this section or from an assignee of that person's rights  
 27 who undertakes direct collection of payments or enforcement of rights arising from the debt.  
 28 In the event the administrator initiates an administrative or civil action against a person who  
 29 has violated the provisions of this section, the administrator shall be entitled to recover the  
 30 principal and fees received by such person in a payday loan transaction made in violation of the  
 31 provisions of this section.

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