

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLE DEALERS AND SALESMEN; AMENDING SECTION 49-1603,
2 IDAHO CODE, TO REMOVE PROVISIONS RELATING TO A NONVOTING MEMBER OF THE
3 DEALER ADVISORY BOARD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAP-
4 TER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608B,
5 IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE IDAHO CONSUMER AS-
6 SET RECOVERY FUND, TO ESTABLISH PROVISIONS RELATING TO EXPENDITURES
7 FROM SUCH FUND AND TO ESTABLISH PROVISIONS RELATING TO CLAIMS AGAINST
8 SUCH FUND; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION
9 OF A NEW SECTION 49-1608C, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING
10 TO THE CREATION OF THE IDAHO CONSUMER ASSET RECOVERY CONTROL BOARD AND
11 TO ESTABLISH PROVISIONS RELATING TO FEES; AMENDING CHAPTER 16, TITLE
12 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608D, IDAHO CODE,
13 TO ESTABLISH PROVISIONS RELATING TO CERTAIN APPLICANTS MAINTAINING A
14 LICENSE BOND AND TO ESTABLISH PROVISIONS RELATING TO THE SUSPENSION OF
15 FEES; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A
16 NEW SECTION 49-1608E, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO
17 THE SUBMISSION OF CLAIMS TO THE BOARD, TO ESTABLISH PROVISIONS RELATING
18 TO PAYMENT OF CLAIMS AND TO ESTABLISH PROVISIONS RELATING TO SERVICE;
19 AND AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW
20 SECTION 49-1608F, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE
21 PAYMENT OF CLAIMS, TO ESTABLISH PROVISIONS RELATING TO MAXIMUM AMOUNTS
22 OF CLAIMS, TO ESTABLISH PROVISIONS RELATING TO THE BOARD WITHHOLDING
23 PAYMENT OF CERTAIN CLAIMS, TO ESTABLISH PROVISIONS RELATING TO PRORAT-
24 ING CERTAIN CLAIMS, TO ESTABLISH PROVISIONS RELATING TO INSUFFICIENT
25 MONEYS IN THE FUND, TO ESTABLISH PROVISIONS RELATING TO CERTAIN REIM-
26 BURSEMENTS TO THE FUND, TO PROVIDE FOR LIMITATIONS OF THE APPLICATION OF
27 LAW AND TO PROVIDE FOR RULES.
28

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

30 SECTION 1. That Section 49-1603, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 49-1603. DEALER ADVISORY BOARD -- DUTIES. (1) There shall be a dealer
33 advisory board to consist of eleven (11) members to assist and advise the
34 department in the administration of the provisions of this chapter. Five
35 (5) members shall be appointed from licensed dealers selling new vehicles,
36 four (4) members appointed from licensed dealers selling used vehicles, one
37 (1) member shall be appointed from licensed dealers selling new recreational
38 vehicles and one (1) ~~nonvoting~~ member shall be appointed to represent new
39 and used motorcycle and ATV dealers. The governor shall appoint the board
40 with consideration to recommendations of the board of directors of the Idaho
41 ~~A~~automobile ~~D~~dealers ~~A~~association, recommendations of the board of direc-
42 tors of the ~~R~~recreational ~~V~~ehicle ~~D~~dealers ~~A~~association of Idaho and recom-

1 mendations of the ~~I~~independent ~~D~~dealer ~~A~~association representing used vehi-
 2 cle dealers. ~~The member who represents the new and used motorcycle and ATV~~
 3 ~~dealers shall be a nonvoting member of the board and shall not have a vote on~~
 4 ~~any question, matter or thing referred to the advisory board by the depart-~~
 5 ~~ment.~~ The term of office of each member shall be three (3) years. Vacancies
 6 occurring on the board other than by expiration of the term shall be filled
 7 for the unexpired term only, and each member of the board shall serve un-
 8 til his successor is appointed and qualified. Members of the advisory board
 9 shall be compensated as provided by section 59-509(b), Idaho Code, and pay-
 10 ments of compensation shall be paid from the state highway account as part of
 11 the expenses of administering the provisions of this chapter. A majority of
 12 the members of the advisory board shall constitute a quorum, the presence of
 13 which at any meeting duly called by the department shall have full and com-
 14 plete power to act upon and resolve in the name of the advisory board any mat-
 15 ter, thing or question referred to it by the department, or which by reason of
 16 any provisions of this chapter, it has power to determine.

17 (2) The advisory board on the first day of each July, or as soon there-
 18 after as practicable, shall elect a chairman, vice-chairman and secretary
 19 from among its members, who shall hold office until their successors are
 20 elected. As soon as the board has elected its officers, the secretary shall
 21 certify the results of the election to the department. The chairman shall
 22 preside at all meetings of the advisory board and the secretary shall make
 23 a record of their proceedings. All members of the advisory board, ~~except~~
 24 ~~for the nonvoting member who represents the new and used motorcycle and ATV~~
 25 ~~dealers,~~ shall be entitled to vote on any question, matter, or thing which
 26 properly comes before it.

27 SECTION 2. That Chapter 16, Title 49, Idaho Code, be, and the same is
 28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 29 ignated as Section 49-1608B, Idaho Code, and to read as follows:

30 49-1608B. IDAHO CONSUMER ASSET RECOVERY FUND ESTABLISHED -- EXPENDI-
 31 TURES AUTHORIZED. (1) There is hereby created in the state treasury an ac-
 32 count to be known as the "Idaho consumer asset recovery fund" (ICAR), here-
 33 inafter referred to as the "fund." Moneys in the fund are hereby continuously
 34 appropriated to the department and shall be used exclusively to satisfy un-
 35 paid judgments as provided for in section 49-1608C, Idaho Code. The fund
 36 shall consist of moneys appropriated by the legislature and other moneys as
 37 provided for in law. All interest earned on investment by the department of
 38 moneys in the fund shall be returned to the fund.

39 (2) Except as provided for in subsection (3) of this section, moneys
 40 paid out of the fund shall be known as expenditures and shall be limited to
 41 awards based upon claims or final judgments of fraud, fraudulent representa-
 42 tion or any violation of: provisions of this chapter; provisions of chapter
 43 6, title 48, Idaho Code; provisions of chapter 5, title 49, Idaho Code; pro-
 44 visions of section 49-1418, Idaho Code; or provisions of federal motor vehi-
 45 cle safety standards or odometer fraud as provided for in this chapter. All
 46 expenditures from the fund by the board pursuant to the provisions of this
 47 act, including expenditures provided for in subsection (3) of this section,
 48 shall be paid out on warrants drawn by the department upon presentation of

1 proper vouchers approved by the Idaho consumer asset recovery control board
2 as established in section 49-1608C, Idaho Code.

3 (3) Notwithstanding any other provision of this act, no expenditures
4 shall be made from the fund until the fund has accumulated one (1) full year
5 of fees. When the fund reaches or exceeds two million dollars (\$2,000,000),
6 the fee provided for in section 49-1608C, Idaho Code, shall be temporarily
7 suspended upon approval of the Idaho consumer asset recovery control board.

8 (4) Claims made against a dealer with an existing bond, pursuant to sec-
9 tion 49-1608, Idaho Code, shall first be paid by the bond before claims may be
10 approved for payment by the board from the fund. From July 1, 2013, through
11 June 30, 2014, all dealers shall be required to maintain the surety bond re-
12 quired pursuant to the provisions of 49-1608, Idaho Code.

13 SECTION 3. That Chapter 16, Title 49, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 49-1608C, Idaho Code, and to read as follows:

16 49-1608C. CREATION OF BOARD AND FEES. (1) The Idaho consumer asset re-
17 covery fund (ICAR) shall be administered by the Idaho consumer asset recov-
18 ery control board, hereinafter referred to as the "board." The board shall
19 be comprised of the director of the Idaho transportation department or his
20 designee, the state attorney general's designee representing the office of
21 consumer protection and the dealer advisory board or their designee(s), as
22 established by section 49-1603, Idaho Code.

23 (2) In addition to fees authorized pursuant to section 49-1607, Idaho
24 Code, and in addition to any fees authorized elsewhere in this chapter, the
25 Idaho consumer asset recovery control board shall establish a fee to be col-
26 lected from each applicant for a new or renewing license issued pursuant to
27 this chapter. The fee provided for in this section shall be charged for each
28 applicant for a motor vehicle dealer's license and the amount of such fee
29 shall be set annually by the board. In setting the amount of the fee, the
30 board shall take into consideration the balance of the fund and expenditures
31 of moneys from the fund by all required participants. All fees collected
32 pursuant to the provisions of this section shall be paid into the Idaho con-
33 sumer asset recovery fund as established in section 49-1608B, Idaho Code.
34 The department shall maintain an accurate record of all transactions involv-
35 ing the fund and report to the board at each meeting.

36 SECTION 4. That Chapter 16, Title 49, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 49-1608D, Idaho Code, and to read as follows:

39 49-1608D. NEW APPLICANTS AND SUSPENSION OF FEES. In addition to the
40 fees collected pursuant to section 49-1608C, Idaho Code, applicants for an
41 initial motor vehicle dealer's license shall maintain a license bond pur-
42 suant to section 49-1608, Idaho Code, for three (3) consecutive years. If
43 the fee has been temporarily suspended pursuant to section 49-1608B(3),
44 Idaho Code, the new dealer shall pay the last set fee into the fund during the
45 initial three (3) year licensing period. Only those renewing licensees who
46 have not been the subject of a claim against their bond or against the fund
47 for three (3) consecutive years shall be exempt from the requirement to main-

1 tain such bond as required pursuant to the provisions of section 49-1608,
2 Idaho Code.

3 SECTION 5. That Chapter 16, Title 49, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 49-1608E, Idaho Code, and to read as follows:

6 49-1608E. SUBMISSION OF CLAIMS. (1) Except as otherwise provided in
7 this section, whenever any person is awarded a final judgment certified in a
8 court of competent jurisdiction in the state of Idaho for:

9 (a) Any actual loss or damage in connection with the purchase or lease
10 of a motor vehicle by reason of any fraud practiced on him or fraudulent
11 representation made to him by a licensed motor vehicle dealer; or

12 (b) Any actual loss or damage by reason of a violation by a dealer of any
13 of the provisions of chapter 6, title 48, Idaho Code, chapter 5, title
14 49, Idaho Code, or section 49-1418, Idaho Code, in connection with the
15 purchase or lease of a motor vehicle on or after July 1, 2014, the judg-
16 ment creditor may file a verified claim with the board requesting pay-
17 ment from the fund of the amount unpaid on the judgment subject to the
18 following conditions:

19 (i) Unless the judgment has been appealed, the claim shall be
20 filed with the department, acting on behalf of the board, no sooner
21 than forty-five (45) days and no later than one (1) year after the
22 judgment becomes final.

23 (ii) The board shall not consider claims submitted by motor ve-
24 hicle dealers, financial institutions or institutions providing
25 floorplans for motor vehicle dealers.

26 (2) To be eligible to receive any payment from the fund, any action in-
27 stituted by a person against a licensee that may become a claim against the
28 fund shall be served to the board in a manner consistent with the provisions
29 of section 48-613, Idaho Code.

30 SECTION 6. That Chapter 16, Title 49, Idaho Code, be, and the same is
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
32 ignated as Section 49-1608F, Idaho Code, and to read as follows:

33 49-1608F. PAYMENT OF CLAIMS -- MAXIMUM. (1) The maximum claim of one
34 (1) judgment creditor against the fund, based on an unpaid certified judg-
35 ment arising out of any loss or damage by reason of a claim submitted pursuant
36 to section 49-1608E, Idaho Code, involving a single transaction, shall be
37 limited to fifty thousand dollars (\$50,000), regardless of the amount of the
38 unpaid certified final judgment of one (1) judgment creditor.

39 (2) The aggregate of claims against the fund based on unpaid final judg-
40 ments arising out of any loss or damage by reason of a claim submitted pur-
41 suant to section 49-1608E, Idaho Code, involving more than one (1) transac-
42 tion shall be limited to one hundred twenty thousand dollars (\$120,000) per
43 licensee, regardless of the total amounts of the unpaid certified judgments
44 of judgment creditors.

45 (3) If a claim has been made against the fund, and the board has rea-
46 son to believe that there may be additional claims against the fund from
47 other transactions involving the same licensee, the board may withhold any

1 payment from the fund involving the licensee for a period not to exceed the
2 end of the relevant license period. After this period, if the aggregate of
3 claims against the licensee exceeds one hundred twenty thousand dollars
4 (\$120,000), a total of one hundred twenty thousand dollars (\$120,000) shall
5 be prorated among the claimants and paid from the fund in proportion to the
6 amounts of their unpaid certified judgments against the licensee.

7 (4) (a) Claims against motor vehicle dealers or their salespersons par-
8 ticipating in the Idaho consumer asset recovery fund pursuant to sec-
9 tion 49-1608E, Idaho Code, shall be prorated when the aggregate exceeds
10 one hundred twenty thousand dollars (\$120,000) against one (1) dealer.

11 (b) Claims shall be prorated only after the dealer's twenty thousand
12 dollar (\$20,000) bond has been exhausted and utilized first. Such addi-
13 tional claims shall be prorated when the aggregate exceeds one hundred
14 thousand dollars (\$100,000) against one (1) dealer.

15 (5) Upon receipt of a certified judgment filed in support of a claim
16 against the fund, the board shall send written notice to the licensee who is
17 the subject of the unpaid judgment that a claim has been filed and that the
18 licensee should satisfy the unpaid judgment. If the unpaid judgment is not
19 fully satisfied within thirty (30) days following the date of the written no-
20 tice by the board, the board shall make payment from the fund subject to the
21 other limitations provided for in this act.

22 (6) If at any time the fund is insufficient to fully satisfy any claims
23 or claim filed with the board and authorized by this act, the board shall pay
24 such claim, claims or portion thereof to the claimants in the order that the
25 claims were filed with the board.

26 (7) On payment by the board to a claimant from the fund, the board shall,
27 within five (5) business days, notify the licensee in writing of the board's
28 payment to the claimant and request full reimbursement be made to the board
29 within thirty (30) days of the notification. Failure to reimburse the fund
30 in full within the specified period shall be grounds for suspension or revo-
31 cation of the license pursuant to title 49, chapter 16, Idaho Code. Any per-
32 son whose license is revoked shall not be eligible to apply for a license as
33 a motor vehicle dealer or for a license as a salesperson until the person has
34 repaid in full the amount paid from the fund on his account, plus interest to
35 be calculated pursuant to the provisions of section 28-22-104, Idaho Code.

36 (8) Nothing contained in this article shall limit the authority of the
37 department to take disciplinary action against any licensee for any viola-
38 tion of this chapter or any rule promulgated thereunder, nor shall full re-
39 payment of the amount paid from the fund on a licensee's account nullify or
40 modify the effect of any disciplinary action against that licensee for any
41 violation.

42 (9) The department is authorized (9) to promulgate reasonable rules not in-
43 consistent with this chapter for the purpose of carrying out the provisions
44 of this section.