

IN THE SENATE

SENATE BILL NO. 1314

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-401, IDAHO CODE, TO RE-  
2 VISE A DEFINITION AND TO ADD A DEFINITION; AMENDING SECTION 28-46-412,  
3 IDAHO CODE, TO REMOVE REFERENCE TO WRITTEN NOTICE TO THE BORROWER AND  
4 TO PROVIDE THAT A PAYDAY LENDER SHALL NOT MAKE MORE THAN TWO ELECTRONIC  
5 REPRESENTMENTS OF A BORROWER'S CHECK; AMENDING SECTION 28-46-413,  
6 IDAHO CODE, TO PROVIDE THAT A PAYDAY LOAN SHALL NOT EXCEED TWENTY-FIVE  
7 PERCENT OF A BORROWER'S GROSS MONTHLY INCOME, TO PROVIDE THAT A LENDER  
8 SHALL OBTAIN INFORMATION ON A BORROWER'S GROSS MONTHLY INCOME AND TO  
9 PROVIDE CORRECT CODE REFERENCES; AMENDING CHAPTER 46, TITLE 28, IDAHO  
10 CODE, BY THE ADDITION OF A NEW SECTION 28-46-414, IDAHO CODE, TO PRO-  
11 VIDE FOR EXTENDED PAYMENT PLANS AND THE PROVISIONS FOR EXTENDED PAYMENT  
12 PLANS; AND AMENDING CHAPTER 46, TITLE 28, IDAHO CODE, BY THE ADDITION OF  
13 A NEW SECTION 28-46-415, IDAHO CODE, TO PROVIDE FOR WRITTEN DISCLOSURES  
14 TO A BORROWER BEFORE FUNDS ARE DISBURSED.  
15

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

17 SECTION 1. That Section 28-46-401, Idaho Code, be, and the same is  
18 hereby amended to read as follows:

19 28-46-401. DEFINITIONS. (1) As used in this act, unless the context  
20 otherwise requires, "payday loan" means a transaction pursuant to a written  
21 agreement between a creditor and the maker of a check whereby the creditor:

22 (a) Accepts a check from the maker;

23 (b) Agrees to hold the check for a period of time prior to negotiation,  
24 deposit or presentment; and

25 (c) Pays to the maker of the check the amount of the check, less the fee  
26 permitted by this chapter.

27 (2) Payday loans are regulated consumer credit transactions, and all  
28 provisions of the Idaho credit code relating to regulated loans apply to pay-  
29 day loans and to persons engaged in the business of payday loans except for  
30 part 3, chapter 46, title 28, Idaho Code.

31 (3) As used in this ~~section part~~, "check" refers to a check or the elec-  
32 tronic equivalent of a check, including an authorization given by a borrower  
33 to a creditor to withdraw an agreed upon amount from any account held by the  
34 borrower.

35 (4) As used in this part, unless the context otherwise requires, "li-  
36 icensee" means a person licensed under this part and all persons required to  
37 be licensed under this part.

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

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

7           (2) The maximum principal amount of any payday loan is one thousand dol-  
8 lars (\$1000).

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

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

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

18           ~~(a) A payday loan is intended to address short-term, not long-term, fi-~~  
19 ~~nancial needs.~~

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

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

25           ~~(6)~~ (a) A payday loan may be made pursuant to a transaction whereby the  
26 licensee:

27           (i) Accepts a check from a borrower who is the maker of the check;  
28           and

29           (ii) Agrees not to negotiate, deposit or present the check for an  
30 agreed upon period of time and pays to the maker the amount of the  
31 check, less the fees permitted by this act.

32           (b) In such a transaction, the licensee may accept only one (1) post-  
33 dated check for each loan as security for the loan. Before the licensee  
34 may negotiate or present a check for payment, the check shall be en-  
35 dorsed with the actual name under which the licensee is doing business.  
36 The borrower shall have the right to redeem the check from the licensee  
37 at any time prior to the presentment or deposit of the check by making  
38 payment to the licensee of the full amount of the check in cash or imme-  
39 diately available funds.

40           ~~(76)~~ The amount advanced to the borrower by the licensee in a payday  
41 loan may be paid to the borrower in the form of cash, the licensee's busi-  
42 ness check, a money order, an electronic funds transfer to the borrower's ac-  
43 count, or other reasonable electronic payment mechanism, provided however,  
44 that no additional fee may be charged to the borrower by a licensee to access  
45 the proceeds of the payday loan.

46           ~~(87)~~ A payday loan may be repaid by the borrower in cash, by negotiation  
47 of the borrower's check in a transaction pursuant to subsection ~~(65)~~ of this  
48 section or, with the agreement of the licensee, a debit card, a cashier's  
49 check, an electronic funds transfer from the borrower's bank account, or

1 any other reasonable electronic payment mechanism to which the parties may  
2 agree.

3 (8) A payday lender shall not make more than two (2) electronic repre-  
4 sentments of a borrower's check to a depository institution.

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

7 28-46-413. PAYDAY LOAN BUSINESS PRACTICES. (1) No licensee or person  
8 related to a licensee by common control may have outstanding at any time to a  
9 single borrower a loan or loans with an aggregate principal balance exceed-  
10 ing one thousand dollars (\$1,000), plus allowable fees.

11 (2) A payday lender shall not make a payday loan that exceeds twenty-  
12 five percent (25%) of the gross monthly income of the borrower when the loan  
13 is made.

14 (3) A payday lender shall obtain income information from a borrower  
15 consistent with subsection (4) of this section not less than once every  
16 twelve (12) months.

17 (4) A payday lender shall not be in violation of subsection (2) of this  
18 section if the borrower presents evidence of his gross monthly income to the  
19 payday lender or represents to the payday lender in writing that the pay-  
20 day loan does not exceed twenty-five percent (25%) of the borrower's gross  
21 monthly income when the loan is made.

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

25 (36) If the borrower's check is returned unpaid to the licensee from a  
26 payor financial institution, the licensee shall have the right to collect  
27 charges authorized by section 28-22-105, Idaho Code, provided such charges  
28 are disclosed in the loan agreement. A licensee may not charge treble dam-  
29 ages. If the borrower's obligation is assigned to any third party for col-  
30 lection, the provisions of this section shall apply to such third party col-  
31 lector.

32 (47) A licensee, or person required to be licensed pursuant to this  
33 part, shall not threaten a borrower with criminal action as a result of any  
34 payment deficit.

35 (58) No licensee, or person required to be licensed pursuant to this  
36 part, shall engage in unfair or deceptive acts, practices or advertising in  
37 the conduct of a payday loan business.

38 (69) A licensee may renew a payday loan no more than three (3) consec-  
39 utive times, after which the payday loan shall be repaid in full by the bor-  
40 rower. A borrower may enter into a new loan transaction with the licensee at  
41 any time after a prior loan to the borrower is completed. A loan secured by  
42 a borrower's check is completed when the check is presented or deposited by  
43 the licensee or redeemed by the borrower pursuant to section 28-46-412 (65),  
44 Idaho Code.

45 (710) Other than a borrower's check in a transaction pursuant to section  
46 28-46-412 (65), Idaho Code, a licensee shall not accept any property, title  
47 to property, or other evidence of ownership as collateral for a payday loan.

1           (~~§11~~) A licensee may conduct other business at a location where it en-  
2 gages in payday lending unless it carries on such other business for the pur-  
3 pose of evading or violating the provisions of this act.

4           (~~§12~~) A borrower may rescind the payday loan at no cost at any time prior  
5 to the close of business on the next business day following the day on which  
6 the payday loan was made by paying the principal amount of the loan to the li-  
7 censee in cash or other immediately available funds.

8           SECTION 4. That Chapter 46, Title 28, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 28-46-414, Idaho Code, and to read as follows:

11           28-46-414. EXTENDED PAYMENT PLANS. A payday lender shall allow the  
12 borrower, upon request, to enter into an extended payment plan that meets the  
13 requirements of this section once during any consecutive twelve (12) month  
14 period, subject to the following provisions:

15           (1) A payday lender is not required to enter into an extended payment  
16 plan with a borrower more than one (1) time during any consecutive twelve  
17 (12) month period.

18           (2) An extended payment plan shall be in writing and must be executed  
19 not later than the day the payday loan is due. The plan shall provide a pay-  
20 ment schedule that allows at least four (4) equal payments over a time period  
21 of not less than sixty (60) days and shall include the disclosures required  
22 under section 28-46-415, Idaho Code.

23           (3) A borrower's obligations under an extended payment plan shall be  
24 not greater than the amount owed under the terms of the original payday loan.

25           (4) A payday lender shall not charge interest or additional fees as part  
26 of an extended payment plan, except as permitted in section 28-46-413(6),  
27 Idaho Code. If a borrower defaults under the extended payment plan, the pay-  
28 day lender may terminate the extended payment plan and accelerate the re-  
29 quirement to pay the amount owed.

30           (5) A payday lender shall not initiate collection activities against a  
31 borrower for a payday loan that is subject to an extended payment plan so long  
32 as the borrower is in compliance with the terms of the extended payment plan.

33           SECTION 5. That Chapter 46, Title 28, Idaho Code, be, and the same is  
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
35 ignated as Section 28-46-415, Idaho Code, and to read as follows:

36           28-46-415. DISCLOSURES. Before disbursing funds pursuant to a payday  
37 loan, a payday lender shall provide written notice in not less than twelve  
38 (12) point bold type and in all capitalized letters to the borrower stating  
39 the following:

40           "1. Payday loans are intended to address short-term, not  
41 long-term, financial needs.

42           2. You will be required to pay additional fees if the payday loan is  
43 renewed rather than paid in full when due.

44           3. You have the right to rescind the payday loan at no cost no later  
45 than the end of the next business day following the day on which the  
46 payday loan is made.

- 1       4. Payday loans may contain high-cost features, and borrowers  
2       should consider alternative lower-cost loans.
- 3       5. If you believe that the lender has violated the law, you may file  
4       a written complaint with the Idaho Department of Finance. Filing a  
5       complaint does not limit nor impair any rights you may have against  
6       the lender.
- 7       6. You have a one-time right during any consecutive twelve (12)  
8       month period to convert a payday loan into an extended payment  
9       plan."