

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 399

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2222, IDAHO CODE, TO  
2 REVISE A DEFINITION AND TO DEFINE A TERM; AMENDING SECTION 26-2223A,  
3 IDAHO CODE, TO REMOVE PROVISIONS REGARDING THE DESIGNATION OF A RESPON-  
4 SIBLE PERSON; AMENDING SECTION 26-2224, IDAHO CODE, TO REVISE PROVI-  
5 SIONS REGARDING LICENSE APPLICATION; AMENDING SECTION 26-2227, IDAHO  
6 CODE, TO REMOVE A PROVISION REGARDING A SUPERVISOR OF AN APPLICANT'S  
7 OFFICE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-2229A,  
8 IDAHO CODE, TO AUTHORIZE A COLLECTION AGENCY TO COLLECT CERTAIN FEES,  
9 CHARGES, OR EXPENSES AND TO MAKE TECHNICAL CORRECTIONS; REPEALING  
10 SECTION 26-2230, IDAHO CODE, RELATING TO BRANCH OFFICES; AMENDING SEC-  
11 TION 26-2231, IDAHO CODE, TO REVISE PROVISIONS REGARDING RENEWAL OF  
12 LICENSES; AMENDING SECTION 26-2240, IDAHO CODE, TO REMOVE PROVISIONS  
13 REGARDING AN AGENT LIST AND AN ACCOMPANYING FEE; AND AMENDING SECTION  
14 26-2246, IDAHO CODE, TO PROVIDE NOTICE REGARDING LICENSED BRANCH LOCA-  
15 TIONS AND TO MAKE TECHNICAL CORRECTIONS.  
16

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

18 SECTION 1. That Section 26-2222, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 26-2222. DEFINITIONS. As used in this act:

21 (1) "Agent" means any person who, for compensation or gain, or in the  
22 expectation of compensation or gain, contacts persons in Idaho in connection  
23 with the business activities of a licensee or person required to be licensed  
24 under this act.

25 (2) "Business funds" means all moneys belonging to or due a licensee or  
26 person required to be licensed in connection with the business activities  
27 authorized under this act.

28 (3) "Collection activities" means the activities enumerated in subsec-  
29 tions (2) through (6) of section 26-2223, Idaho Code.

30 (4) "Collection agency" means a person who engages in any of the activ-  
31 ities enumerated in subsections (2) through (6) of section 26-2223, Idaho  
32 Code.

33 (5) "Credit repair organization" means any person engaged in any of the  
34 activities enumerated in subsection (8) of section 26-2223, Idaho Code. A  
35 credit repair organization does not include:

36 (a) A consumer reporting agency, as defined in 15 U.S.C. ~~section~~  
37 1681a(f), that provides consumer reports based on information fur-  
38 nished by creditors or any affiliate or subsidiary of such consumer  
39 reporting agency as defined by rule promulgated by the director;

40 (b) A person who has an ongoing contractual arrangement with a consumer  
41 reporting agency, as described in ~~subsection (5)~~ paragraph (a) of this

1 subsection, to obtain consumer reports from a consumer reporting agency  
2 for the purposes of:

3 (i) Reselling such report, or any information contained in or de-  
4 rived from such report, to a consumer; or

5 (ii) Monitoring information in such report on behalf of a con-  
6 sumer; or

7 (c) A person to the extent that such person advertises, markets,  
8 provides or facilitates consumer access to the products or services  
9 offered or provided by:

10 (i) An entity described in ~~subsection (5)~~ paragraph (a) of this  
11 subsection; or

12 (ii) A person described in ~~subsection (5)~~ paragraph (b) of this  
13 subsection.

14 (6) "Creditor" means any person who offers or extends credit creating a  
15 debt or to whom a debt is owed.

16 (7) "Creditor client" means any person who transfers or assigns to a  
17 collection agency licensee or person required to be so licensed under this  
18 act, any account, bill, claim or other indebtedness for collection purposes.

19 (8) "Creditor funds" means all funds due and owing a creditor by a li-  
20 censee or person required to be licensed under this act.

21 (9) "Debt counselor" or "credit counselor" means any person engaged in  
22 any of the activities enumerated in subsection (7) of section 26-2223, Idaho  
23 Code.

24 (10) "Department" means the Idaho department of finance.

25 (11) "Director" means the director of the Idaho department of finance.

26 (12) "Licensee" means a person who has obtained a license under this  
27 act.

28 (13) "Nationwide mortgage licensing system and registry" or "NMLSR"  
29 means a licensing system for all entities required to be licensed under this  
30 chapter developed and maintained by the conference of state bank supervisors  
31 and the American association for residential mortgage regulators.

32 (14) "Net collections" means all funds that are due to creditors from  
33 the licensee pursuant to the contract between the licensee and creditor, or  
34 licensee and debtor without taking into account any offset or funds due from  
35 the creditor to the licensee, because of the creditor having collected any  
36 part of the account due, plus all funds that the licensee agreed to return to  
37 debtors or that were not to be applied to debts.

38 (145) "Person" means any individual, corporation, association, part-  
39 nership, limited liability partnership, trust, company, limited liability  
40 company, or unincorporated association.

41 SECTION 2. That Section 26-2223A, Idaho Code, be, and the same is hereby  
42 amended to read as follows:

43 26-2223A. COLLECTION AGENCY OFFICE REQUIREMENTS ~~— DESIGNATION OF RE-~~  
44 ~~SPONSIBLE PERSON.~~ (1) Each licensee shall maintain a home office licensed  
45 under this act as the licensee's principal location for collection activi-  
46 ties. Each licensee must maintain a listed telephone number and must be open  
47 to the public during normal business hours on each business day, provided,  
48 however, that the director may in his discretion approve a request for open-  
49 ing during hours other than normal business hours or a portion of a business

1 day. A business day within the meaning of this section does not include Sat-  
 2 urdays, Sundays, or legal holidays.

3 ~~(2) Each licensee shall designate a natural person, who meets the ex-~~  
 4 ~~perience requirement of section 26-2224(6), Idaho Code, to be responsible~~  
 5 ~~for the collection activities carried on at each office of the licensee. If~~  
 6 ~~the person designated by the licensee for such purpose is not normally avail-~~  
 7 ~~able at the licensee's designated location, then the licensee's collection~~  
 8 ~~activities in Idaho must begin with a written notice to each debtor setting~~  
 9 ~~forth a mailing address and a toll-free telephone number whereby a debtor may~~  
 10 ~~contact the designated responsible person during normal business hours.~~

11 SECTION 3. That Section 26-2224, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 26-2224. LICENSE APPLICATION. (1) Every applicant for a license under  
 14 this act shall file with the director, through the NMLSR, an application ~~in a~~  
 15 ~~form prescribed by the director~~ that shall include:

16 (1a) The name of the applicant; if the applicant is a corporation, a  
 17 list of its officers and directors and their addresses; if the applicant  
 18 is a partnership, a list of the partners and their addresses; or if the  
 19 applicant is a limited liability company, a list of its members or man-  
 20 agers and their addresses.

21 (2b) The street address of the applicant's principal location.

22 (3c) All names by which the applicant engages in collection activities.

23 (4d) The names of all persons and organizations with which the appli-  
 24 cant is affiliated, and the location of the principal office or place of  
 25 business of each such affiliate.

26 (5e) A complete description of the business to be conducted, or plan of  
 27 operation contemplated, by the applicant in this state.

28 ~~(6) The name, address and qualifications of a natural person possessing~~  
 29 ~~a minimum of three (3) years of experience related to the business to be~~  
 30 ~~conducted under this act who will supervise the applicant's office lo-~~  
 31 ~~cations from which business activities in this state will be conducted.~~

32 (7f) Copies of all contracts, forms, form letters, and advertisements  
 33 or solicitations to be used by the applicant in its business activities  
 34 under this act, which must accompany the application and be identified  
 35 as exhibits by number.

36 (8g) If the applicant is a corporation, a limited liability company,  
 37 partnership, or limited liability partnership, a copy of its articles  
 38 of incorporation, articles of organization, partnership agreement, or  
 39 operating agreement, duly authenticated.

40 (9h) A list of the names, business addresses and telephone numbers of  
 41 all agents who will contact persons or solicit business for the appli-  
 42 cant in this state.

43 (10i) The name and business address of the applicant's agent for ser-  
 44 vice of process located in this state.

45 (11j) A nonrefundable application fee of ~~one~~ three hundred fifty dol-  
 46 lars (\$1350).

47 (12k) An agreement of consent authorizing the director to examine any  
 48 and all of the applicant's financial accounts used for business activi-  
 49 ties under this act.

1        ~~(131)~~ Such other information concerning the applicant as the director  
 2 may reasonably require. Such application shall be executed and veri-  
 3 fied on oath by the applicant. Information required at the time of ap-  
 4 plication, except for advertisements and solicitations, shall be up-  
 5 dated and filed with the director as necessary to keep the information  
 6 current.

7        (2) A separate license shall be required for each additional place of  
 8 business from which any business activities authorized under this chapter  
 9 are directly or indirectly conducted. The additional places of business  
 10 shall be considered branches. The director may issue branch licenses to the  
 11 same licensee upon compliance with all of the provisions of this section  
 12 governing the issuance of a single license.

13        (3) A license application shall be deemed withdrawn and void if an ap-  
 14 applicant submits an incomplete license application and, after receipt of a  
 15 written notice of the application deficiency, fails to provide the direc-  
 16 tor with information necessary to complete the application within sixty (60)  
 17 days of receipt of the deficiency notice. A written deficiency notice shall  
 18 be deemed received by a license applicant when:

19        (a) Placed in regular U.S. mail by the director or his agent using an  
 20 address provided by the applicant on the license application;

21        (b) E-mailed to the applicant using an e-mail address provided by the  
 22 applicant on the license application; or

23        (c) Posted by the director or his agent on the NMLSR.

24        SECTION 4. That Section 26-2227, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26        26-2227. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) An applica-  
 27 tion for a license may be denied or, after notice and the opportunity for a  
 28 hearing, a license may be suspended or revoked by the director if he finds  
 29 that facts or conditions exist ~~which that~~ would have justified the director  
 30 in refusing to grant a license had such facts or conditions been known to ex-  
 31 ist at the time the license was issued, or that the licensee or the applicant,  
 32 or any officer, member, owner, manager or agent of a licensee or applicant:

33        (a) Has violated any provision of this act, the federal fair debt col-  
 34 lection practices act, 15 U.S.C. ~~section~~ 1692, et seq., as amended, or  
 35 any rule or order of the director under this act;

36        (b) Is not legally qualified to do business in this state;

37        ~~(c) Has failed to retain a natural person with three (3) years of ex-~~  
 38 ~~perience related to the type of business conducted by the licensee un-~~  
 39 ~~der this act to supervise each office from which business activities are~~  
 40 ~~conducted under this act;~~

41 ~~(d) Has failed, refused or neglected to pay or remit to any creditor~~  
 42 ~~client the agreed portion of any sum collected by the applicant or li-~~  
 43 ~~cencee on any bill, claim, account or other indebtedness entrusted to~~  
 44 ~~such applicant or licensee for collection;~~

45        ~~(e)~~ Has failed to return to a debtor an amount that was not owed on his  
 46 debt;

47        ~~(f)~~ Has made a material misstatement in the application for such li-  
 48 cense or renewal;

1 (g) Has obtained or attempted to obtain a license or renewal by fraud  
2 or misrepresentation;

3 (h) Has misappropriated or converted to his own use or improperly  
4 withheld moneys collected or held for any other person, except that a  
5 collection agency licensee may convert into business funds his portion  
6 of any moneys collected on behalf of a creditor client, pursuant to a  
7 written agreement with the creditor client and in compliance with this  
8 act;

9 (i) Has falsely represented himself as a licensee for the purpose of  
10 soliciting for or representing any business covered in this act;

11 (j) Has been convicted of, or a court of competent jurisdiction has en-  
12 tered a withheld judgment for any felony, or for a misdemeanor involving  
13 financial wrongdoing or moral turpitude;

14 (k) Has had a license substantially equivalent to a license under this  
15 act issued by another state revoked, suspended or denied; or

16 (l) Demonstrates a lack of fitness to engage in business activities  
17 authorized for a licensee under this act.

18 (2) The director may, after notice and the opportunity for a hearing,  
19 impose upon any licensee, or person required to be licensed under this act, a  
20 civil penalty of not more than five thousand dollars (\$5,000) for each viola-  
21 tion of this act.

22 (3) The director may, after notice and the opportunity for a hearing,  
23 impose upon a licensee, or person required to be licensed under this act, any  
24 sanction authorized by this section if the director finds that an agent of  
25 the licensee, or person required to be licensed under this act, has violated  
26 any provision of this act.

27 (4) The director may, in his discretion, and by an order issued in ac-  
28 cordance with chapter 52, title 67, Idaho Code, prohibit a licensee from us-  
29 ing an individual as an agent if the individual has violated any provision of  
30 this act, or any similar statute or rule of another state.

31 (5) Any denial, suspension or revocation of any license issued under  
32 this act shall be governed by chapter 52, title 67, Idaho Code.

33 SECTION 5. That Section 26-2229A, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING -- PROHIBITED  
36 PRACTICES. (1) Every licensee or person required to be licensed under this  
37 act and its agents shall deal openly, fairly, and honestly without deception  
38 in the conduct of its business activities in this state under this act.

39 (2) When not inconsistent with the statutes of this state, the provi-  
40 sions of the federal fair debt collection practices act, 15 U.S.C. ~~section~~  
41 1692, et seq., as amended, may be enforced by the director against collection  
42 agencies licensed or required to be licensed under the provisions of this  
43 act.

44 (3) In every instance where a collection agency licensee has a manage-  
45 rial or financial interest in a creditor client, or where a creditor client  
46 has a managerial or financial interest in a collection agency licensee, dis-  
47 closure of such interest must be made on each and every contact with a debtor  
48 in seeking to make a collection of any account, claim, or other indebtedness.

1 (4) No collection agency licensee, or collection agency required to be  
 2 licensed under this act, or agent of such collection agency shall collect or  
 3 attempt to collect any interest or other charges, fees, or expenses inci-  
 4 dental to the principal obligation unless such interest or incidental fees,  
 5 charges, or expenses:

6 (a) Are expressly authorized by statute;

7 (b) Are allowed by court ruling against the debtor;

8 (c) Are expressly authorized by the agreement creating the debt, except  
 9 as otherwise prohibited by law. Provided however, that no person li-  
 10 icensed or required to be licensed under this act, or their agents, shall  
 11 collect, attempt to collect, or threaten to collect or assess any attor-  
 12 ney's fees or litigation costs:

13 (i) Prior to obtaining a judgment on an account, unless such at-  
 14 torney's fees or litigation costs are reasonable and for actual  
 15 attorney services performed as prescribed by the director in rule  
 16 and are limited to those costs actually incurred and allowed as a  
 17 matter of right pursuant to rule 54 of the Idaho rules of civil pro-  
 18 cedure; or

19 (ii) Upon obtaining a judgment, unless such attorney's fees and  
 20 litigation costs have been awarded by a court of competent juris-  
 21 isdiction in accordance with applicable court rules and statutes  
 22 governing the award of attorney's fees and litigation costs;

23 (d) Have been judicially determined;

24 (de) Are provided for in a written form agreement, signed by both the  
 25 debtor and the licensee, and which has the prior approval of the direc-  
 26 tor with respect to the terms of the agreement and amounts of the fees,  
 27 interest, charges and expenses; or

28 (ef) Reasonably relate to the actual cost associated with processing a  
 29 demand draft or other form of electronic payment on behalf of a debtor  
 30 for a debt payment, provided that the debtor has preauthorized the  
 31 method of payment and has been notified in advance that such payment may  
 32 be made by reasonable alternative means that will not result in addi-  
 33 tional charges, fees or expenses to the debtor.

34 (5) No person shall sell, distribute or make use of solicitations, col-  
 35 lection letters, demand forms or other printed matter ~~which~~ that are made  
 36 similar to or resemble governmental forms or documents, or legal forms used  
 37 in civil or criminal proceedings.

38 (6) No person shall use any trade name, address, insignia, picture, em-  
 39 blem or any other means ~~which~~ that creates any impression that such person is  
 40 connected with or is an agency of government.

41 (7) No person licensed, or required to be licensed under this act, shall  
 42 misappropriate, transfer, or convert to his own use or benefit, funds be-  
 43 longing to or held for another person in connection with business activities  
 44 authorized under this act.

45 (8) No credit repair organization licensed, or required to be licensed  
 46 under this act, shall charge or receive money or other valuable considera-  
 47 tion for the performance of any service, which the credit repair organiza-  
 48 tion has agreed to perform for any consumer, before such service is fully  
 49 performed.

1 (9) No person licensed or required to be licensed under this act shall  
 2 make a representation or statement of material fact, or omit to state a mate-  
 3 rial fact, in connection with the offer, sale or performance of any service  
 4 authorized under this act, if the representation, statement or omission is  
 5 false or misleading or has the tendency or capacity to be misleading.

6 SECTION 6. That Section 26-2230, Idaho Code, be, and the same is hereby  
 7 repealed.

8 SECTION 7. That Section 26-2231, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 26-2231. RENEWAL OF LICENSE. (1) On or before ~~the fifteenth day of~~  
 11 ~~March~~ December 31 of each year, each licensee shall pay to the director,  
 12 through the NMLSR, a nonrefundable license renewal fee of one hundred fifty  
 13 dollars (\$1050) and shall file with the director, through the NMLSR or as  
 14 otherwise prescribed by the director, a license renewal form providing  
 15 complete information as required by the director. Notwithstanding the pro-  
 16 visions of section 67-5254, Idaho Code, a license issued under this chapter  
 17 shall automatically expire if not timely renewed according to the require-  
 18 ments of this section, and branch licenses issued under this chapter shall  
 19 also expire upon the expiration, relinquishment, or revocation of a license  
 20 issued to a licensee's designated home office.

21 (2) ~~Failure to fully comply with the~~ The director may reinstate an ex-  
 22 pired license renewal requirements of this section by the fifteenth day of  
 23 March of each year shall result in automatic during the time period of Jan-  
 24 uary 1 through February 28 immediately following expiration of the license  
 25 as of that date if the director finds that the applicant meets the require-  
 26 ments for licensure under this chapter and after submission to the director  
 27 of:

- 28 (a) A complete application for renewal;  
 29 (b) The fees required to apply for license renewal, unless previously  
 30 paid; and  
 31 (c) A reinstatement fee of two hundred dollars (\$200).

32 SECTION 8. That Section 26-2240, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 26-2240. AGENT IDENTIFICATION -- QUARTERLY NOTICE -- FEE. Each appli-  
 35 cant for a license under this act, with its initial license application, and  
 36 each licensee at annual renewal, shall file with the director a list of all  
 37 agents including the name of each agent and any other identifying informa-  
 38 tion the director may require. A fee of twenty dollars (\$20.00) for each  
 39 listed agent shall accompany the list. ~~Each licensee shall notify the di-~~  
 40 ~~rector in writing of any additions to its agent list no less often than ev-~~  
 41 ~~ery calendar quarter. A fee of twenty dollars (\$20.00) shall be paid to the~~  
 42 ~~director for each additionally identified agent in the quarterly notifica-~~  
 43 ~~tion of additions to a licensee's agent list. An agent is not required to be~~  
 44 ~~listed, nor the fee paid therefor, unless the agent acted for the licensee~~  
 45 ~~for more than thirty (30) business days.~~

1 SECTION 9. That Section 26-2246, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 26-2246. CLOSURE OR DISCONTINUANCE OF OPERATIONS -- REQUIREMENTS. (1)  
4 Whenever the operations of a collection agency licensee, or of a licensed  
5 branch location, under this act are closed or discontinued due to revoca-  
6 tion, termination, or relinquishment of a collection agency license, or  
7 for any other reason, the collection agency shall, within thirty (30) days  
8 following the closure or discontinuance of operations, furnish the director  
9 with sufficient proof in a form to be determined by the director that:

10 (a) The collection agency has remitted to all of its creditor clients  
11 all moneys collected on their behalf and due such creditor clients;

12 (b) All collection accounts, judgments obtained, and other accounts  
13 have been returned to the creditor clients or other proper parties,  
14 and, if appropriate, assigned by the collection agency to its creditor  
15 clients or other proper parties; and

16 (c) All valuable papers, documents, judgments and other property pro-  
17 vided to the collection agency by its creditor clients or other parties  
18 in connection with the collection agency's collection activities have  
19 been returned to the creditor clients or other proper parties.

20 (2) A collection agency which holds a license issued pursuant to this  
21 act, upon closure or discontinuance of its operations, shall maintain the  
22 bonds required of such licensee to conduct a collection agency business un-  
23 til a final accounting of its affairs, as set forth in subsection (1) of this  
24 section, has been filed with and approved by the director.

25 (3) Whenever the operations of a collection agency are closed or dis-  
26 continued as set forth in subsection (1) of this section, in the event the  
27 collection agency does not complete all requirements of such subsection  
28 within thirty (30) days following the closure or discontinuance of opera-  
29 tions, upon demand by the director, the collection agency shall permit the  
30 director to take possession of its business records, bank accounts, includ-  
31 ing creditor client trust accounts, other property belonging to its creditor  
32 clients or third parties, and its assets. The director may then liquidate  
33 the collection agency's business, return any moneys owed to the collection  
34 agency's creditor clients, return the collection agency's accounts to its  
35 creditor clients, return or assign any judgments to the agency's creditor  
36 clients, and take any other actions ~~which~~ that are reasonably necessary to  
37 cause the collection agency to liquidate its assets and to comply with sub-  
38 section (1) of this section.

39 (4) If a collection agency refuses to permit the director to take pos-  
40 session of its business records, bank accounts, creditor client trust ac-  
41 counts, other property belonging to its creditor clients or third parties,  
42 and its assets, as set forth in subsection (3) of this section, the director  
43 may apply to a court of competent jurisdiction in the county of the collec-  
44 tion agency's principal place of business for the appointment of a receiver  
45 or conservator as set forth in section 26-2245(1), Idaho Code. Such receiver  
46 or conservator may be the director.

47 (5) The expenses of the receiver or conservator and attorney's fees,  
48 and all expenses necessarily incurred in liquidation of the collection  
49 agency, shall be paid out of the funds in the control of the director or



1 conservator, to the extent those funds exceed any sums due and owing to the  
2 collection agency's creditor clients or other proper parties. To the extent  
3 funds in the control of the receiver are not sufficient to pay all sums due  
4 and owing to the collection agency's creditor clients or other proper par-  
5 ties and to pay the costs of a receiver or conservator and of liquidation of  
6 the collection agency, the collection agency and its owners, shareholders,  
7 or interest holders shall be responsible for the balance of any reasonably  
8 necessary costs and fees of liquidation.