

IN THE SENATE

SENATE BILL NO. 1013

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-46-108, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING ADMINISTRATIVE ENFORCEMENT ORDERS
3 AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 28-46-113, IDAHO
4 CODE, RELATING TO CIVIL ACTIONS BY AN ADMINISTRATOR; AMENDING CHAPTER
5 46, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-46-113,
6 IDAHO CODE, TO PROVIDE THAT AN ADMINISTRATOR MAY PURSUE CERTAIN CIVIL
7 REMEDIES; AMENDING SECTION 28-46-302, IDAHO CODE, TO REVISE PROVISIONS
8 REGARDING A LICENSE TO MAKE REGULATED CONSUMER LOANS AND TO MAKE TECH-
9 NICAL CORRECTIONS; AMENDING SECTION 28-46-303, IDAHO CODE, TO REVISE
10 PROVISIONS REGARDING REVOCATION OR SUSPENSION OF A LICENSE AND TO MAKE
11 TECHNICAL CORRECTIONS; AMENDING SECTION 28-46-304, IDAHO CODE, TO RE-
12 VISE A PROVISION REGARDING THE FILING DATE OF AN ANNUAL REPORT; AMENDING
13 SECTION 28-46-403, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE QUAL-
14 IFICATIONS FOR A PAYDAY LOAN LICENSE AND TO MAKE TECHNICAL CORRECTIONS;
15 AND AMENDING SECTION 28-46-404, IDAHO CODE, TO REVISE PROVISIONS RE-
16 GARDING AN APPLICATION FOR A PAYDAY LOAN LICENSE.
17

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

19 SECTION 1. That Section 28-46-108, Idaho Code, be, and the same is
20 hereby amended to read as follows:

21 28-46-108. ADMINISTRATIVE ENFORCEMENT ORDERS. (1) ~~After notice and~~
22 ~~hearing the administrator may order a creditor or a person acting in his~~
23 ~~behalf to cease and desist from violating this act. A respondent aggrieved~~
24 ~~by an order of the administrator may obtain judicial review of the order and~~
25 ~~the administrator may obtain an order of the court for enforcement of his~~
26 ~~order in the district court. The proceeding for review or enforcement is~~
27 ~~initiated by filing a petition in the court. Copies of the petition shall be~~
28 ~~served upon all parties of record. If the administrator finds that a person~~
29 ~~subject to the Idaho credit code has violated or is violating the provisions~~
30 ~~of the Idaho credit code, or any rule promulgated or order issued thereun-~~
31 ~~der, the administrator may, after notice is given as required pursuant to~~
32 ~~section 67-5242, Idaho Code, order the person to cease and desist from the~~
33 ~~violations.~~

34 ~~(2) Within thirty (30) days after service of the petition for review~~
35 ~~upon the administrator, or within any further time the court allows, the ad-~~
36 ~~ministrator shall transmit to the court the original or a certified copy of~~
37 ~~the entire record upon which the order is based, including any transcript of~~
38 ~~testimony, which need not be printed. By stipulation of all parties to the~~
39 ~~review proceeding, the record may be shortened. After hearing, the court~~
40 ~~may:~~

1 ~~(a) Reverse or modify the order if the findings of fact of the admin-~~
 2 ~~istrator are clearly erroneous in view of the reliable, probative, and~~
 3 ~~substantial evidence on the whole record;~~

4 ~~(b) Grant temporary relief or restraining order it deems just; and~~

5 ~~(c) Enter an order enforcing, modifying and enforcing as modified, or~~
 6 ~~setting aside in whole or in part the order of the administrator, or re-~~
 7 ~~manding the case to the administrator for further proceedings.~~

8 ~~(3) An objection not urged at the hearing shall not be considered by~~
 9 ~~the court unless the failure to urge the objection is excused for good cause~~
 10 ~~shown. A party may move the court to remand the case to the administrator in~~
 11 ~~the interest of justice for the purpose of adducing additional specified and~~
 12 ~~material evidence and seeking findings thereon upon good cause shown for the~~
 13 ~~failure to adduce this evidence before the administrator.~~

14 ~~(4) The jurisdiction of the court shall be exclusive and its final judg-~~
 15 ~~ment or decree is subject to review by the supreme court in the same manner~~
 16 ~~and form and with the same effect as in appeals from a final judgment or de-~~
 17 ~~creed. The administrator's copy of the testimony shall be available at rea-~~
 18 ~~sonable times to all parties for examination without cost.~~

19 ~~(5) A proceeding for review under this section shall be initiated~~
 20 ~~within thirty (30) days after a copy of the order of the administrator is~~
 21 ~~received. If no proceeding is so initiated, the administrator may obtain an~~
 22 ~~order of the court for enforcement of his order upon showing that his order~~
 23 ~~was issued in compliance with this section, that no proceeding for review was~~
 24 ~~initiated within thirty (30) days after a copy of the order was received, and~~
 25 ~~that the respondent is subject to the jurisdiction of the court.~~

26 ~~(62) With respect to unconscionable agreements or fraudulent or uncon-~~
 27 ~~scionable conduct by a regulated lender, the administrator may not issue an~~
 28 ~~order pursuant to this section but may bring a civil action for an injunc-~~
 29 ~~tion, under section 28-46-111, Idaho Code, or any other action which the ad-~~
 30 ~~ministrator is authorized to bring under this act.~~

31 ~~(73) With respect to unconscionable agreements or fraudulent or uncon-~~
 32 ~~scionable conduct by an unlicensed person who is required to be licensed un-~~
 33 ~~der section 28-46-301, Idaho Code, the administrator may issue a cease and~~
 34 ~~desist order without prior notice or hearing, and may bring a civil action~~
 35 ~~for an injunction, or any other action which the administrator is authorized~~
 36 ~~to bring under this act.~~

37 SECTION 2. That Section [28-46-113](#), Idaho Code, be, and the same is
 38 hereby repealed.

39 SECTION 3. That Chapter 46, Title 28, Idaho Code, be, and the same is
 40 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 41 ignated as Section 28-46-113, Idaho Code, and to read as follows:

42 28-46-113. CIVIL ACTIONS BY ADMINISTRATOR. If the administrator finds
 43 that any person subject to the Idaho credit code has engaged in any act or
 44 practice constituting a violation of any provision or any rule promulgated
 45 or order issued thereunder, the administrator may, in his discretion, bring
 46 an action in any court of competent jurisdiction and, upon a finding of a vio-
 47 lation, the court may grant any or all of the following:

1 (1) An order restraining or enjoining, temporarily or permanently, any
 2 act or practice violating any provision of the Idaho credit code, or any rule
 3 promulgated or order issued thereunder, and enforcing compliance with the
 4 Idaho credit code or any rule promulgated or order issued thereunder;

5 (2) An order that the person violating any provision of the Idaho credit
 6 code, or any rule promulgated or order issued thereunder, pay a civil penalty
 7 to the department in an amount not to exceed five thousand dollars (\$5,000)
 8 for each violation. To the extent that a series of violations was not inten-
 9 tional or resulted from a bona fide error that occurred despite the implemen-
 10 tation of procedures to avoid the error, the series of violations shall be
 11 considered one (1) violation. A bona fide error includes clerical, calcula-
 12 tion, computer malfunction, programming, and printing errors;

13 (3) An order allowing the administrator to recover costs that may in-
 14 clude investigative expenses and attorney's fees; and

15 (4) An order granting other appropriate remedies, including but not
 16 limited to restitution to borrowers for excess charges or actual damages.

17 SECTION 4. That Section 28-46-302, Idaho Code, be, and the same is
 18 hereby amended to read as follows:

19 28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The adminis-
 20 trator shall receive and act on all applications for a license to do business
 21 as a regulated lender. Applications shall be filed ~~in the manner~~ through an
 22 electronic system of licensing as prescribed by the administrator, ~~and~~ shall
 23 contain such information as the administrator may reasonably require, shall
 24 be updated as necessary to keep the information current, and shall be accom-
 25 panied by an application fee of three hundred fifty dollars (\$350). When an
 26 application for licensure is denied or withdrawn, the administrator shall
 27 retain all fees paid by the applicant. The administrator may deny an appli-
 28 cation for a license if the administrator finds that:

29 (a) The financial responsibility, character, and fitness of the appli-
 30 cant, ~~and of the officers and directors thereof (if the applicant is a~~
 31 ~~corporation),~~ managers, members, or other individuals in control of or
 32 with the authority to direct the affairs of the applicant are ~~not~~ such
 33 as to warrant belief that the business will not be operated honestly and
 34 fairly within the purposes of this act;

35 (b) ~~The applicant does not maintain at least thirty thousand dollars~~
 36 ~~(\$30,000) in liquid assets, as determined in accordance with generally~~
 37 ~~accepted accounting principles, available for the purpose of making~~
 38 ~~loans under this chapter;~~

39 ~~(c)~~ The applicant has had a license, substantially equivalent to a
 40 license under this chapter and issued by any state, denied, revoked or
 41 suspended under the law of such state;

42 ~~(d)~~ The applicant has filed an application for a license ~~which~~ that is
 43 false or misleading with respect to any material fact;

44 ~~(e)~~ The application does not contain all of the information required
 45 by the administrator; or

46 ~~(f)~~ The application is not accompanied by an application fee of three
 47 hundred fifty dollars (\$350).

48 (2) A licensee under this chapter shall meet the requirements of sub-
 49 section (1) of this section at all times while licensed pursuant to this

1 chapter. The administrator is empowered to conduct investigations as he may
2 deem necessary, to enable him to determine the existence of the requirements
3 set out in subsection (1) of this section.

4 (3) Upon written request, the applicant is entitled to a hearing on the
5 question of his qualifications for a license if:

6 (a) The administrator has notified the applicant in writing that his
7 application has been denied, or objections filed; or

8 (b) The administrator has not issued a license within sixty (60) days
9 after the application for the license was filed.

10 ~~If a hearing is held, the applicant and those filing objections shall~~
11 ~~reimburse, pro rata, the administrator for his reasonable and necessary ex-~~
12 ~~penses incurred as a result of the hearing.~~ A request for a hearing may not be
13 made more than fifteen (15) days after the administrator has mailed a writing
14 to the applicant notifying him that the application has been denied and stat-
15 ing in substance the administrator's finding supporting denial of the appli-
16 cation or that objections have been filed and the substance thereof.

17 (4) The administrator may issue additional licenses to the same li-
18 censee upon application by the licensee, in the manner prescribed by the
19 administrator, and payment of the required application fee. A separate
20 license shall be required for each place of business. Each license shall
21 remain in full force and effect unless the licensee does not satisfy the
22 renewal requirements of subsection (8) of this section, or the license is
23 relinquished, suspended or revoked.

24 (5) No licensee shall change the location of any place of business, or
25 consolidate, or close any locations, without giving the administrator at
26 least fifteen (15) days' prior written notice.

27 (6) A licensee shall not engage in the business of making regulated con-
28 sumer loans at any place of business for which he does not hold a license nor
29 shall he engage in business under any other name than that in the license.

30 (7) A license application shall be deemed withdrawn and void if an ap-
31 plicant submits an incomplete license application and, after receipt of a
32 written notice of the application deficiency, fails to provide the direc-
33 tor with information necessary to complete the application within sixty (60)
34 days of receipt of the deficiency notice. A written deficiency notice shall
35 be deemed received by a license applicant when:

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

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

40 (c) Posted by the ~~director~~ administrator or his agent on the NMLSR ~~if~~
41 ~~the license application was submitted through the NMLSR or other elec-~~
42 ~~tronic system of licensing in use by the administrator.~~

43 (8) On or before ~~May~~ December 31 of each year, every licensee under this
44 chapter shall pay a nonrefundable annual license renewal fee of one hundred
45 fifty dollars (\$150) per licensed location, and shall file with the adminis-
46 trator a renewal form containing such information as the administrator may
47 require. Notwithstanding the provisions of section 67-5254, Idaho Code, a
48 license issued under this part automatically expires if not timely renewed
49 according to the requirements of this section. Notwithstanding the provi-
50 sions of section 67-5254, Idaho Code, branch licenses issued under this part

1 also expire upon the expiration, relinquishment or revocation of a license
2 issued under this part to a licensee's designated home office.

3 (9) For a period of time not to exceed sixty (60) days following license
4 expiration, the director may reinstate an expired license if he finds that
5 the applicant meets the requirements for licensure under this part and the
6 applicant has submitted to the director:

7 (a) A complete application for renewal;

8 (b) The fees required to apply for license renewal unless previously
9 paid for the period for which the license renewal applies; and

10 (c) A reinstatement fee of two hundred dollars (\$200).

11 SECTION 5. That Section 28-46-303, Idaho Code, be, and the same is
12 hereby amended to read as follows:

13 28-46-303. REVOCATION OR SUSPENSION OF LICENSE. (1) The administrator
14 may ~~issue to a person licensed to make regulated consumer loans an order to~~
15 ~~show cause why his license should not be revoked or suspended for a period not~~
16 ~~in excess of six (6) months. The order shall state the place for a hearing and~~
17 ~~set a time for the hearing that is no less than ten (10) days from the date of~~
18 ~~the order. After the hearing, the administrator shall revoke or suspend the~~
19 ~~license if he finds that:~~, after notice and a hearing, suspend or revoke any
20 license if the administrator finds that:

21 (a) Through a lack of due care, tThe licensee has ~~repeatedly and will-~~
22 ~~fully~~ violated any provision of this act or any rule or order lawfully
23 made pursuant to this act; ~~or~~

24 (b) Facts or conditions exist ~~which that~~ would clearly have justified
25 the administrator in refusing to grant a license had these facts or con-
26 ditions existed or been known to exist at the time the application for
27 the license was made;

28 (c) The licensee has knowingly, or through the lack of due care, failed
29 to pay any fee imposed by the administrator under the authority of the
30 Idaho credit code; or

31 (d) The licensee has committed any fraud, engaged in any dishonest ac-
32 tivities, or made any misrepresentation.

33 (2) No revocation or suspension of a license is lawful unless, prior to
34 institution of revocation or suspension proceedings by the administrator,
35 notice is given to the licensee of the facts or conduct ~~which that~~ warrant
36 the intended action, ~~and the licensee is given an opportunity to show com-~~
37 ~~pliance with all lawful requirements for retention of the license. Notice~~
38 given pursuant to this subsection shall comply with the requirements of sec-
39 tion 67-5254, Idaho Code.

40 (3) If the administrator finds that probable cause for revocation of a
41 license exists and that enforcement of this act requires immediate suspen-
42 sion of the license pending investigation, he may, after a hearing upon five
43 (5) days' written notice, enter an order suspending the license for not more
44 than thirty (30) days.

45 (4) Whenever the administrator revokes or suspends a license, he shall
46 enter an order to that effect and forthwith notify the licensee of the revo-
47 cation or suspension. Within five (5) days after the entry of the order, he
48 shall deliver to the licensee a copy of the order and the findings supporting
49 the order.

1 (5) Any person holding a license to make regulated consumer loans may
 2 relinquish the license by notifying the administrator in writing of its
 3 relinquishment, but this relinquishment shall not affect his liability for
 4 acts previously committed or prohibit the administrator from entering an
 5 order suspending or revoking a license.

6 (6) No revocation, suspension, or relinquishment of a license shall im-
 7 pair or affect the obligation of any preexisting lawful contract between the
 8 licensee and any debtor.

9 (7) The administrator may reinstate a license, terminate a suspension,
 10 or grant a new license to a person whose license has been revoked or suspended
 11 if no fact or condition then exists ~~which that~~ clearly would have justified
 12 the administrator in refusing to grant a license.

13 SECTION 6. That Section 28-46-304, Idaho Code, be, and the same is
 14 hereby amended to read as follows:

15 28-46-304. RECORDS -- ANNUAL REPORTS. (1) Every regulated lender
 16 shall maintain records in conformity with generally accepted accounting
 17 principles and practices in a manner that will enable the administrator to
 18 determine whether the regulated lender is complying with the provisions of
 19 this act. The recordkeeping system of a regulated lender shall be sufficient
 20 if he makes the required information reasonably available. The records need
 21 not be kept in the place of business where regulated consumer loans are made,
 22 if the administrator is given free access to the records wherever located.
 23 The records pertaining to any loan need not be preserved for more than two (2)
 24 years after making the final entry relating to the loan, but in the case of an
 25 open-end account, the two (2) years is measured from the date of each entry.

26 (2) Concurrent with license renewal, on or before May 31⁵ of each year,
 27 every licensee shall file with the administrator a composite annual report
 28 for the prior calendar year in the form prescribed by the administrator re-
 29 lating to all regulated consumer loans made by him. Information contained in
 30 annual reports shall be subject to disclosure according to chapter 1, title
 31 74, Idaho Code, and may be published only in composite form.

32 SECTION 7. That Section 28-46-403, Idaho Code, be, and the same is
 33 hereby amended to read as follows:

34 28-46-403. QUALIFICATIONS FOR PAYDAY LOAN LICENSE. (1) To qualify for
 35 a payday loan license under this part, ~~an applicant shall satisfy the follow-~~
 36 ~~ing requirements:~~

37 ~~(a) The applicant shall have liquid assets of at least thirty thousand~~
 38 ~~dollars (\$30,000) determined in accordance with generally accepted~~
 39 ~~accounting principles, provided that applicants seeking to engage in~~
 40 ~~the business of payday loans at more than one (1) location in the state~~
 41 ~~shall have liquid assets of at least an additional five thousand dollars~~
 42 ~~(\$5,000) for each additional location in the state up to a maximum of~~
 43 ~~seventy-five thousand dollars (\$75,000) for all locations in the state;~~
 44 ~~and~~

45 ~~(b) The financial responsibility, financial condition, business ex-~~
 46 ~~perience, character and general fitness of the applicant shall reason-~~
 47 ~~ably warrant the administrator's belief that the applicant's business~~

1 will be conducted lawfully and fairly. In determining whether this
 2 qualification has been met, and for the purpose of investigating com-
 3 pliance with this act, the administrator may review:

4 ~~(i)a~~) The relevant business records and the capital adequacy of the ap-
 5 plicant;

6 ~~(i)b~~) The competence, experience, integrity, and financial ability of
 7 any applicant, and, if the applicant is an entity, of any person who is
 8 a member, partner, director, senior officer, or ~~twenty-five percent~~
 9 ~~(25%) or more equity owner~~ other individual in control of or with the
 10 authority to direct the affairs of the applicant; and

11 ~~(i)ic~~) Any record of conviction, on the part of the applicant, or any
 12 person referred to in subparagraph ~~(i)b~~) of this ~~paragraph~~, subsection
 13 of any criminal activity; any fraud or other act of personal dishon-
 14 esty; any act, omission, or practice ~~which that~~ constitutes a breach of
 15 a fiduciary duty; or any suspension, revocation, removal, or adminis-
 16 trative action by any agency or department of the United States, or any
 17 state, from participation in the conduct of any business.

18 (2) The requirements set forth in subsection (1) of this section are
 19 continuing in nature. A licensee shall meet the requirements of this section
 20 at all times while licensed pursuant to this part 4.

21 SECTION 8. That Section 28-46-404, Idaho Code, be, and the same is
 22 hereby amended to read as follows:

23 28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application
 24 for a payday loan license shall be in writing and under oath to the adminis-
 25 trator, ~~in a form~~. Applications shall be filed through an electronic system
 26 of licensing as prescribed by the administrator, and shall ~~include~~ contain
 27 such information as the administrator may reasonably require, including at
 28 least the following:

29 (a) The legal name, residence, and business address of the applicant
 30 and, if the applicant is an entity, of every member, partner, director,
 31 senior officer, or ~~twenty-five percent (25%) or more equity owner~~ other
 32 individual in control of or with the authority to direct the affairs of
 33 the applicant;

34 (b) The location at which the principal place of business of the appli-
 35 cant is located; and

36 (c) Other data and information the administrator may require with re-
 37 spect to the applicant, and, if the applicant is an entity, such data and
 38 information of its members, partners, directors, senior officers, or
 39 ~~twenty-five percent (25%) or more equity owners~~ of the applicant.

40 (2) Each application for a license shall be accompanied by an applica-
 41 tion fee in the amount of three hundred fifty dollars (\$350). Such fee shall
 42 not be subject to refund.

43 (3) The fee set forth in subsection (2) of this section shall be re-
 44 quired for each location for which an application is submitted.

45 (4) Within sixty (60) days of the filing of an application in a form pre-
 46 scribed by the administrator, and accompanied by the fee required in subsec-
 47 tion (2) of this section, the administrator shall investigate to ascertain
 48 whether the qualifications prescribed by subsection (1) of section 28-46-
 49 403, Idaho Code, have been satisfied. If the administrator finds that the

1 qualifications have been satisfied and approves the documents, the adminis-
2 trator shall issue to the applicant a license to engage in the payday loan
3 business.

4 (5) Notwithstanding the provisions of section 67-5254, Idaho Code, a
5 license issued pursuant to this part automatically expires if not timely
6 renewed according to the requirements of subsection (7) of this section,
7 or the license is relinquished, suspended, or revoked pursuant to this
8 act. Notwithstanding the provisions of section 67-5254, Idaho Code, branch
9 licenses issued under this part also expire upon the expiration, relin-
10 quishment, or revocation of a license issued under this part to a licensee's
11 designated home office.

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

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

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

22 (c) Posted by the director or his agent on the NMLSR ~~if the license ap-~~
23 ~~plication was submitted through the NMLSR~~ or other electronic system of
24 licensing in use by the administrator.

25 (7) On or before ~~May~~ December 31 of each year, every licensee under this
26 part 4 shall pay a nonrefundable annual license renewal fee of one hundred
27 fifty dollars (\$150) per licensed location, and shall file with the adminis-
28 trator a renewal form containing such information as the administrator may
29 require.

30 (8) For a period of time not to exceed sixty (60) days following license
31 expiration, the director may reinstate an expired license if he finds that
32 the applicant meets the requirements for licensure under this part and the
33 applicant has submitted to the director:

34 (a) A complete application for renewal;

35 (b) The fees required to apply for license renewal unless previously
36 paid for the period for which the license renewal applies; and

37 (c) A reinstatement fee of two hundred dollars (\$200).