

TITLE 28
COMMERCIAL TRANSACTIONS

CHAPTER 43
REGULATION OF AGREEMENTS AND PRACTICES

PART 1.
GENERAL PROVISIONS

28-43-101. SHORT TITLE. This chapter shall be known and may be cited as the Idaho Credit Code -- Regulation of Agreements and Practices.

[28-43-101, added 1983, ch. 119, sec. 3, p. 281.]

PART 2.
DISCLOSURE

28-43-201. COMPLIANCE WITH FEDERAL CONSUMER CREDIT PROTECTION ACT. A person upon whom the Federal Consumer Credit Protection Act, including regulations promulgated pursuant thereto, imposes duties or obligations, shall make or give to the debtor the disclosures, information, and notices required of him by that act and in all respects comply with that act. This section imposes the duty on a creditor to comply with the terms of the Federal Consumer Credit Protection Act only with respect to those credit transactions to which the Federal Consumer Credit Protection Act by its terms applies.

[28-43-201, added 1983, ch. 119, sec. 3, p. 282.]

28-43-202. NOTICE OF ASSIGNMENT. A debtor may pay the original creditor until he receives notification of assignment of rights to payment pursuant to a regulated consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee shall seasonably furnish reasonable proof that the assignment has been made and unless he does so, the debtor may pay the original creditor.

[28-43-202, added 1983, ch. 119, sec. 3, p. 282.]

28-43-203. CHANGE IN TERMS OF OPEN-END CONSUMER CREDIT ACCOUNTS. Whether or not a change is authorized by prior agreement, a creditor may change the terms of an open-end consumer credit account applying to any balance incurred before or after the effective date of the change.

[28-43-203, added 1983, ch. 119, sec. 3, p. 282.]

28-43-204. RECEIPTS -- STATEMENTS OF ACCOUNT -- EVIDENCE OF PAYMENT. (1) The creditor shall deliver or mail to the debtor, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a regulated consumer credit transaction. A periodic statement showing a payment received by mail complies with this subsection.

(2) Upon written request of a debtor, the person to whom an obligation is owed pursuant to a regulated consumer credit transaction, except one pursuant to open-end consumer credit, shall provide a written statement of the

dates and amounts of payments made within the twelve (12) months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested, the creditor may make a reasonable charge not in excess of ten dollars (\$10.00) for each additional statement.

(3) After a debtor has fulfilled all obligations with respect to a regulated consumer credit transaction, except one pursuant to open-end consumer credit, the person to whom the obligation was owed, upon request of the debtor, shall deliver or mail to the debtor written evidence acknowledging payment in full of all obligations with respect to the transaction.

[28-43-204, added 1983, ch. 119, sec. 3, p. 282.]

28-43-205. FORM OF INSURANCE PREMIUM LOAN AGREEMENT. An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of, and premium for, each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be cancelled if payment is not made in accordance with the agreement. If a policy or contract has not been issued by the time the agreement is signed, the agreement may provide that the insurance agent or broker may insert the appropriate information in the agreement and, if he does so, shall furnish the information promptly in writing to the insured.

[28-43-205, added 1983, ch. 119, sec. 3, p. 283.]

PART 3.

LIMITATIONS ON AGREEMENTS AND PRACTICES IN REGULATED CONSUMER CREDIT TRANSACTIONS

28-43-301. SECURITY IN SALES. (1) With respect to a regulated consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is one thousand dollars (\$1,000) or more, or, in the case of a security interest in goods, the debt secured is one hundred dollars (\$100) or more. Except as provided with respect to cross-collateral, section [28-43-302](#), Idaho Code, a seller may not otherwise take a security interest in property to secure the debt arising from a regulated consumer credit sale.

(2) A security interest taken in violation of this section is void.

[28-43-301, added 1983, ch. 119, sec. 3, p. 283.]

28-43-302. CROSS-COLLATERAL. (1) In addition to contracting for a security interest pursuant to the provisions on security in sales, section [28-43-301](#), Idaho Code, a seller in a regulated consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if, as a result of a prior sale, the seller has an existing security interest in the other property. The seller may also contract for a

security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on finance charge on consolidation, subsection (2) of section [28-42-304](#), Idaho Code. The seller has a reasonable time after so contracting in which to make any adjustments required by this section.

[28-43-302, added 1983, ch. 119, sec. 3, p. 283.]

28-43-303. DEBT SECURED BY CROSS-COLLATERAL. (1) If debts arising from two (2) or more regulated consumer credit sales, except sales pursuant to open-end credit, are secured by cross-collateral, section [28-43-302](#), Idaho Code, or consolidated into one (1) debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

(2) Payments received by the seller upon an open-end consumer credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two (2) or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the smallest debt.

[28-43-303, added 1983, ch. 119, sec. 3, p. 283.]

28-43-304. NO ASSIGNMENT OF EARNINGS. (1) A creditor may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a regulated consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit a debtor from authorizing deductions from his earnings in favor of his creditor if the authorization is revocable, the debtor is given a complete copy of the writing evidencing the authorization at the time he signs it, and the writing contains on its face a conspicuous notice of the debtor's right to revoke the authorization.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

[28-43-304, added 1983, ch. 119, sec. 3, p. 284.]

28-43-305. AUTHORIZATION TO CONFESS JUDGMENT PROHIBITED. A debtor may not authorize any person to confess judgment on a claim arising out of a regulated consumer credit transaction. An authorization in violation of this section is void.

[28-43-305, added 1983, ch. 119, sec. 3, p. 284.]

28-43-306. CERTAIN NEGOTIABLE INSTRUMENTS PROHIBITED. With respect to a regulated consumer credit sale, the creditor may not take a negotiable instrument other than a check dated not later than ten (10) days after its issuance as evidence of the obligation of the debtor.

[28-43-306, added 1983, ch. 119, sec. 3, p. 284.]

28-43-307. BALLOON PAYMENTS. (1) Except as provided in subsection (2) of this section, if any scheduled payment of a regulated consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance, without penalty, the amount of that payment at the time it is due. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original transaction.

(2) This section does not apply to:

(a) A transaction pursuant to open-end credit;

(b) A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the debtor;

(c) A transaction of a class defined by rule of the administrator as not requiring for the protection of the debtor his right to refinance as provided in this section; or

(d) A transaction secured by a second deed of trust or mortgage on a one (1) to four (4) family dwelling occupied by the debtor.

[28-43-307, added 1983, ch. 119, sec. 3, p. 284.]

28-43-308. REFERRAL SALES. With respect to a regulated consumer credit sale, the seller may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the debtor as an inducement for a sale for the debtor giving to the seller the names of prospective buyers, or otherwise aiding the seller in making a sale to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event after the time the debtor agrees to buy. If a debtor is induced by a violation of this section to enter into a regulated consumer credit sale, the agreement is unenforceable by the seller and the debtor, at his option, may rescind the agreement or retain the property delivered and the benefit of any services performed, without any obligation to pay for them.

[28-43-308, added 1983, ch. 119, sec. 3, p. 285.]

28-43-309. RESTRICTIONS ON INTEREST IN LAND AS SECURITY. With respect to a regulated consumer loan in which the principal is one thousand dollars (\$1,000) or less, a regulated lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

[28-43-309, added 1983, ch. 119, sec. 3, p. 285.]

28-43-310. REGULAR SCHEDULE OF PAYMENTS -- MAXIMUM LOAN TERM. Regulated consumer loans, not made pursuant to open-end credit and in which the principal is one thousand dollars (\$1,000) or less, shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and:

(1) Over a period of not more than thirty-seven (37) months if the principal is more than three hundred dollars (\$300), or

(2) Over a period of not more than twenty-five (25) months if the principal is three hundred dollars (\$300) or less.

[28-43-310, added 1983, ch. 119, sec. 3, p. 285.]

28-43-311. LIMITATION ON ATTORNEY FEES. With respect to a regulated consumer loan in which the principal is one thousand dollars (\$1,000) or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

[28-43-311, added 1983, ch. 119, sec. 3, p. 285.]

28-43-312. ATTORNEY'S FEES. Except as provided by the provisions on limitations on attorney's fees as to certain regulated consumer loans, section [28-43-311](#), Idaho Code, with respect to a regulated consumer credit transaction the agreement may provide for the payment by the debtor of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the creditor. A provision in violation of this section is unenforceable.

[28-43-312, added 1983, ch. 119, sec. 3, p. 285.]

PART 4. HOME SOLICITATION SALES

28-43-401. HOME SOLICITATION SALE DEFINED. "Home solicitation sale" means a regulated consumer credit sale of goods or services, in which the seller or a person acting for him personally solicits the sale, and the buyer's agreement or offer to purchase is given to the seller or a person acting for him, at his residence. It does not include a sale made pursuant to a preexisting open-end credit account with the seller or pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale which is subject to the provisions of the Federal Consumer Credit Protection Act on the consumer's right to rescind certain transactions.

[28-43-401, added 1983, ch. 119, sec. 3, p. 286.]

28-43-402. BUYER'S RIGHT TO CANCEL. (1) In addition to any right otherwise to revoke an offer, the buyer may cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part 4.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is properly addressed with postage prepaid and deposited in a mailbox.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

[28-43-402, added 1983, ch. 119, sec. 3, p. 286.]

28-43-403. FORM OF AGREEMENT OR OFFER -- STATEMENT OF BUYER'S RIGHTS. (1) In a home solicitation sale, the seller shall present to the buyer and obtain his signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs, and contains a statement of the buyer's rights that complies with subsection (2) of this section. A copy of any writing required by this subsection to be signed by the buyer, completed at least as to the date of the transaction and the name and mailing address of the seller, shall be given to the buyer at the time he signs the writing.

(2) The statement shall either:

(a) Comply with any notice of cancellation or similar requirement of any trade regulation rule of the Federal Trade Commission which by its terms applies to the home solicitation sale; or

(b) Appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL," and read as follows: "If you decide you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to:" (insert name and mailing address of seller)

(3) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

[28-43-403, added 1983, ch. 119, sec. 3, p. 286.]

28-43-404. RESTORATION OF DOWN PAYMENT. (1) Within ten (10) days after a notice of cancellation has been received by the seller or an offer to purchase has been otherwise revoked, the seller shall tender to the buyer any payments made by the buyer, any note or other evidence of indebtedness, and any goods traded in. A provision permitting the seller to keep all or any part of any goods traded in, payment, note or evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

[28-43-404, added 1983, ch. 119, sec. 3, p. 287.]

28-43-405. DUTY OF BUYER -- NO COMPENSATION FOR SERVICES BEFORE CANCELLATION. Except as provided by the provisions on retention of goods by the buyer, subsection (3) of section [28-43-404](#), Idaho Code, and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, a reasonable time is presumed to be forty (40) days.

[28-43-405, added 1983, ch. 119, sec. 3, p. 287.]