

TITLE 28
COMMERCIAL TRANSACTIONS

CHAPTER 45
REMEDIES AND PENALTIES

PART 1.
LIMITATIONS ON CREDITORS' REMEDIES

28-45-101. SHORT TITLE. This chapter shall be known and may be cited as Idaho Credit Code -- Remedies and Penalties.

[28-45-101, added 1983, ch. 119, sec. 3, p. 294.]

28-45-102. SCOPE. This part applies to actions or other proceedings to enforce rights arising from regulated consumer credit transactions, to extortionate extensions of credit, section [28-45-109](#), Idaho Code, and to unconscionability, section [28-45-106](#), Idaho Code.

[28-45-102, added 1983, ch. 119, sec. 3, p. 294.]

28-45-103. RESTRICTIONS ON DEFICIENCY JUDGMENTS. (1) This section applies to a regulated consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was one thousand dollars (\$1,000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was one thousand dollars (\$1,000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open-end consumer credit, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests[,] section [28-43-303](#), Idaho Code.

(5) The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.

(6) If the seller elects to bring an action against the buyer for a debt arising from a regulated consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment:

- (a) He may not repossess the collateral; and
- (b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

[28-45-103, added 1983, ch. 119, sec. 3, p. 294.]

28-45-104. LIMITATION ON GARNISHMENT. (1) For the purposes of this part:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment to enforce payment of a judgment arising from a regulated consumer credit sale or regulated consumer loan may not exceed the lesser of:

(a) Twenty-five percent (25%) of his disposable earnings for that week; or

(b) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by section 6(a) (1) of the Fair Labor Standards Act of 1938, U.S.C. [title 29](#), section 206(a) (1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the director of the department of labor shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (b).

(3) No court may make, execute, or enforce an order or process in violation of this section.

[28-45-104, added 1983, ch. 119, sec. 3, p. 295; am. 1996, ch. 421, sec. 22, p. 1421; am. 2000, ch. 267, sec. 1, p. 754.]

28-45-105. NO DISCHARGE FROM EMPLOYMENT FOR GARNISHMENT. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a regulated consumer credit transaction.

[28-45-105, added 1983, ch. 119, sec. 3, p. 295.]

28-45-106. UNCONSCIONABILITY. (1) With respect to a regulated consumer credit sale, or regulated consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

[28-45-106, added 1983, ch. 119, sec. 3, p. 295.]

28-45-107. DEFAULT. An agreement of the parties to a regulated consumer credit transaction with respect to default on the part of the debtor is enforceable only to the extent that:

- (1) The debtor fails to make a payment as required by agreement; or
- (2) The prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

[28-45-107, added 1983, ch. 119, sec. 3, p. 296.]

28-45-108. CREDITOR'S RIGHT TO TAKE POSSESSION AFTER DEFAULT. Upon default by a debtor with respect to a regulated consumer credit transaction, unless the debtor voluntarily surrenders possession of the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

[28-45-108, added 1983, ch. 119, sec. 3, p. 296.]

28-45-109. EXTORTIONATE EXTENSIONS OF CREDIT. If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of the debtor(s) or of another person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

[28-45-109, added 1983, ch. 119, sec. 3, p. 296.]

PART 2. DEBTORS' REMEDIES

28-45-201. EFFECT OF VIOLATIONS ON RIGHTS OF PARTIES. (1) If a creditor has violated any provision of this act applying to collection of an excess charge or amount or enforcement of rights, subsection (4) of section [28-41-201](#), Idaho Code, authority to make regulated consumer loans, section [28-46-301](#), Idaho Code, restrictions on interests in land as security, section [28-43-309](#), Idaho Code, limitations on the schedule of payments or loan terms for regulated consumer loans, section [28-43-310](#), Idaho Code, attorney's fees, section [28-43-311](#), Idaho Code, receipts, statements of account, and evidences of payment, section [28-43-204](#), Idaho Code, form of insurance premium loan agreement, section [28-43-205](#), Idaho Code, security in sales, section [28-43-301](#), Idaho Code, no assignments of earnings, section [28-43-304](#), Idaho Code, certain negotiable instruments prohibited, section [28-43-306](#), Idaho Code, referral sales, section [28-43-308](#), Idaho Code, limitations on default charges, section [28-45-301](#), Idaho Code, assignees subject to claims and defenses, subsection (3) of section [28-45-302](#), Idaho Code, or assurance of discontinuance, section [28-46-109](#), Idaho Code, the debtor has a cause of action to recover actual damages and also a right in an action other than a class action, to recover from the person violating this act a penalty in an amount determined by the court not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). With respect to violations arising from consumer credit sales or consumer loans made pursuant to open-end credit, no action pursuant to this subsection may be

brought more than two (2) years after the violations occurred. With respect to violations arising from other regulated consumer credit transactions, no action pursuant to this subsection may be brought more than one (1) year after the scheduled or accelerated maturity of the debt.

(2) A debtor is not obligated to pay a charge in excess of that allowed by this act and has a right of refund of any excess charge paid. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(3) If a creditor has contracted for or received a charge in excess of that allowed by this act, or if a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable in an action other than a class action a penalty in an amount determined by the court not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). With respect to excess charges arising from consumer credit sales or consumer loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two (2) years after the violation or passage of a reasonable time for refund occurs. With respect to excess charges arising from other regulated consumer credit transactions, no action pursuant to this subsection may be brought more than one (1) year after the scheduled or accelerated maturity of the debt. For purposes of this subsection, a reasonable time is presumed to be thirty (30) days.

(4) Except as otherwise provided, a violation of this act does not impair rights on a debt.

(5) If an employer discharges an employee in violation of the provisions prohibiting discharge, section [28-45-105](#), Idaho Code, the employee within ninety (90) days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

(6) A creditor is not liable for a penalty under subsection (1) or (3) of this section if he notifies the debtor of a violation before the creditor receives from the debtor written notice of the violation or the debtor has brought an action under this section, and the creditor corrects the violation within forty-five (45) days after notifying the debtor. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the violation is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund. The administrator and any official or agency of this state having supervisory authority over a supervised financial organization shall give prompt notice to a creditor of any violation discovered pursuant to an examination or investigation of the transactions, business, records, and acts of the creditor, sections [28-46-305](#), [28-46-105](#) and [28-46-106](#), Idaho Code.

(7) A creditor may not be held liable in an action brought under this section for a violation of this act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(8) In an action in which it is found that a creditor has violated this act, the court shall award to the debtor the costs of the action and his attorney's fees. In determining the attorney's fees, the amount of the recovery on behalf of the debtor is not controlling.

[28-45-201, added 1983, ch. 119, sec. 3, p. 296; am. 2002, ch. 301, sec. 3, p. 860.]

28-45-202. DAMAGES OR PENALTIES AS SETOFF TO OBLIGATION. Damages or penalties to which a debtor is entitled pursuant to this part may be set off against the debtor's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this part.

[28-45-202, added 1983, ch. 119, sec. 3, p. 298.]

28-45-203. CIVIL LIABILITY FOR VIOLATION OF DISCLOSURE PROVISIONS. (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions of the Federal Consumer Credit Protection Act other than the provisions concerning advertising of credit terms, fails to disclose information to a person entitled to the information under this act is liable to that person to the same extent to which said creditor is liable to such person under the Federal Consumer Credit Protection Act.

(2) An obligor or debtor has all rights under this act that he has under the Federal Consumer Credit Protection Act concerning a right of rescission as to certain transactions. A creditor or other person has all liabilities and defenses under this section that he had under the Federal Consumer Credit Protection Act.

(3) An action may not be brought under this section more than one (1) year after the date of the occurrence of the violation.

(4) The liability of a creditor under this section is in lieu of and not in addition to his liability under the Federal Consumer Credit Protection Act. An action by a person with respect to a violation may not be maintained pursuant to this section if a final judgment has been rendered for or against that person with respect to the same violation pursuant to the Federal Consumer Credit Protection Act. If a final judgment has been rendered in favor of a person pursuant to this section and thereafter a final judgment with respect to the same violation is rendered in favor of the same person pursuant to the Federal Consumer Credit Protection Act, a creditor liable under both judgments has a cause of action against that person for appropriate relief to the extent necessary to avoid double liability with respect to the same violation.

[28-45-203, added 1983, ch. 119, sec. 3, p. 298.]

PART 3. LIMITATIONS ON DEBTORS' LIABILITIES

28-45-301. LIMITATION ON DEFAULT CHARGES. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a regulated consumer credit transaction may not provide for any charges as a result of default by the debtor except those authorized by this act. A provision in violation of this section is unenforceable.

[28-45-301, added 1983, ch. 119, sec. 3, p. 298.]

28-45-302. ASSIGNEE SUBJECT TO CLAIMS AND DEFENSES. (1) With respect to a regulated consumer credit sale, an assignee of the rights of the seller is subject to all claims and defenses of the debtor against the seller arising from the sale of property or services, notwithstanding that:

(a) There is an agreement to the contrary; or

(b) The assignee is a holder in due course of a negotiable instrument issued in violation of the provisions on prohibition of certain negotiable instruments, section [28-43-306](#), Idaho Code.

(2) The assignee's liability under subsection (1) of this section may not exceed the amount owing to the assignee with respect to the sale at the time the assignee has notice of a claim or defense of the buyer. If debts arising from two (2) or more regulated consumer credit sales, other than pursuant to an open-end credit account, are consolidated, payments received after the consolidation are deemed, for the purpose of determining the amount owing the assignee with respect to a sale, to have been first applied to the payment of debts arising from the sales first made; if the debts consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest debt. Payments received upon an open-end consumer credit account are deemed, for the purpose of determining the amount owing the assignee with respect to a sale, to have been first applied 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) An agreement may not provide for greater rights for an assignee than this section permits.

[28-45-302, added 1983, ch. 119, sec. 3, p. 299.]

PART 4. CRIMINAL PENALTIES

28-45-401. WILLFUL AND KNOWING VIOLATIONS. (1) A regulated lender who willfully and knowingly makes charges in excess of those permitted by the chapter on finance charges and related provisions, [chapter 42, title 28](#), Idaho Code, applying to regulated consumer loans is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five hundred dollars (\$500) or to imprisonment not exceeding one (1) year, or both.

(2) A person who, in violation of the provisions of this act applying to authority to make regulated consumer loans, section [28-46-301](#), Idaho Code, willfully and knowingly engages in the business of making regulated consumer loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against debtors arising from regulated consumer loans, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to imprisonment not exceeding one (1) year, or both.

[28-45-401, added 1983, ch. 119, sec. 3, p. 299; am. 2006, ch. 122, sec. 3, p. 347.]

28-45-402. DISCLOSURE VIOLATIONS. (1) A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five

thousand dollars (\$5,000), or to imprisonment not exceeding one (1) year, or both, if he willfully and knowingly:

(a) Gives false or inaccurate information or fails to provide information which he is required to disclose under the Federal Consumer Credit Protection Act;

(b) Uses any rate table or chart, the use of which is authorized by the provisions of the Federal Consumer Credit Protection Act, in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(c) Otherwise fails to comply with any requirement of the provisions on disclosure of the Federal Consumer Credit Protection Act.

(2) The criminal liability of a person under this section is in lieu of and not in addition to his criminal liability under the Federal Consumer Credit Protection Act; no prosecution of a person with respect to the same violation may be maintained pursuant to both this section and the Federal Consumer Credit Protection Act.

[28-45-402, added 1983, ch. 119, sec. 3, p. 300.]