

TITLE 28
COMMERCIAL TRANSACTIONS

CHAPTER 46
ADMINISTRATION

PART 1.
POWERS AND FUNCTIONS OF ADMINISTRATOR

28-46-101. SHORT TITLE. This chapter shall be known and may be cited as Idaho Credit Code - Administration.

[28-46-101, added 1983, ch. 119, sec. 3, p. 300.]

28-46-102. APPLICABILITY. This part applies to persons who in this state:

- (1) Make or solicit regulated consumer credit transactions, as defined in section [28-41-301](#), Idaho Code; or
- (2) Directly collect payments from or enforce rights against debtors arising from regulated consumer credit transactions, as defined in section [28-41-301](#), Idaho Code, wherever they are made; or
- (3) Are designated in this act as regulated lenders.

[28-46-102, added 1983, ch. 119, sec. 3, p. 300; am. 2013, ch. 54, sec. 13, p. 121.]

28-46-103. ADMINISTRATOR. "Administrator" means the director of the department of finance of the state of Idaho.

[28-46-103, added 1983, ch. 119, sec. 3, p. 300.]

28-46-104. POWERS OF ADMINISTRATOR -- RELIANCE ON RULES -- DUTY TO REPORT. (1) In addition to other powers granted by this act, the administrator within the limitations provided by law may:

- (a) Receive and act on complaints, take action designed to obtain voluntary compliance with this act, or commence proceedings on his own initiative;
- (b) Counsel persons and groups on their rights and duties under this act;
- (c) Establish programs for the education of debtors with respect to credit practices and problems;
- (d) Make studies appropriate to effectuate the purposes and policies of this act and make the results available to the public;
- (e) Adopt, amend, and repeal rules to carry out the specific provisions of this act, but not with respect to unconscionable agreements or fraudulent or unconscionable conduct; and
- (f) Appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the administrator in court.

(2) In addition to other powers granted by this act, the administrator shall have the power to enforce the Federal Consumer Credit Protection Act, except to the extent otherwise provided by law.

(3) Except for refund of an excess charge, no liability is imposed under this act for an act done or omitted in conformity with a rule, interpretation, or declaratory ruling of the administrator, notwithstanding that after the act or omission, the rule, interpretation, or ruling is amended or repealed or is determined by judicial or other authority to be invalid for any reason.

[28-46-104, added 1983, ch. 119, sec. 3, p. 300.]

28-46-105. ADMINISTRATIVE POWERS WITH RESPECT TO SUPERVISED FINANCIAL ORGANIZATIONS. (1) With respect to supervised financial organizations, the powers of examination and investigation, sections [28-46-106](#) and [28-46-305](#), Idaho Code, and administrative enforcement, section [28-46-108](#), Idaho Code, shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this act may be exercised by him with respect to a supervised financial organization including nationally chartered financial organizations.

(2) If the administrator receives a complaint or other information concerning noncompliance with this act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this act. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

[28-46-105, added 1983, ch. 119, sec. 3, p. 301.]

28-46-106. INVESTIGATORY POWERS. (1) If the administrator has cause to believe that a person has engaged in conduct or committed an act that is subject to action by the administrator, he may make an investigation to determine whether the person has engaged in the conduct or committed the act. To the extent necessary for this purpose, he may administer oaths or affirmations, and, upon his own motion or upon request of any party, subpoena witnesses, compel their attendance, adduce evidence, and require the production of, or testimony as to, any matter relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(2) If the person's records are located outside this state, the person at his option shall make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or his representative to examine them where they are located. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) Upon application by the administrator showing failure without lawful excuse to obey a subpoena or to give testimony, and upon reasonable no-

tice to all persons affected thereby, the court shall grant an order compelling compliance.

(4) The name or identity of a person whose acts or conduct the administrator investigates pursuant to this section or the facts disclosed in the investigation shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this act.

[28-46-106, added 1983, ch. 119, sec. 3, p. 301; am. 1990, ch. 213, sec. 24, p. 504; am. 2015, ch. 141, sec. 48, p. 417.]

28-46-107. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Except as otherwise provided, the Administrative Procedure Act applies to and governs all administrative action taken by the administrator pursuant to this chapter.

[28-46-107, added 1983, ch. 119, sec. 3, p. 302.]

28-46-108. ADMINISTRATIVE ENFORCEMENT ORDERS. (1) After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from violating this act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of his order in the district court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

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

- (a) Reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (b) Grant temporary relief or restraining order it deems just; and
- (c) Enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

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

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree is subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section shall be initiated within thirty (30) days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain an order of the court for enforcement of his order upon showing that his order

was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after a copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a regulated lender, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction, section [28-46-111](#), Idaho Code, or any other action which the administrator is authorized to bring under this act.

(7) With respect to unconscionable agreements or fraudulent or unconscionable conduct by an unlicensed person who is required to be licensed under section [28-46-301](#), Idaho Code, the administrator may issue a cease and desist order without prior notice or hearing, and may bring a civil action for an injunction, or any other action which the administrator is authorized to bring under this act.

[28-46-108, added 1983, ch. 119, sec. 3, p. 302; am. 2002, ch. 301, sec. 4, p. 862; am. 2006, ch. 122, sec. 4, p. 348.]

28-46-109. ASSURANCE OF DISCONTINUANCE. If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator, sections [28-46-108](#) and [28-46-303](#), Idaho Code, or by a court, sections [28-46-110](#), [28-46-111](#) and [28-46-112](#), Idaho Code, the administrator may accept an assurance in writing that the person will not engage in the same or similar conduct in the future. The assurance may include any of the following: stipulations for the voluntary payment by the creditor of the costs of investigation or of an amount to be held in escrow as restitution to debtors aggrieved by past or future conduct of the creditor or to cover costs of future investigation, or admissions of past specific acts by the creditor or that those acts violated this act or other statutes. A violation of an assurance of discontinuance is a violation of this act. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

[28-46-109, added 1983, ch. 119, sec. 3, p. 303.]

28-46-110. INJUNCTIONS AGAINST VIOLATIONS OF ACT. The administrator may bring a civil action to restrain any person from violating this act and for other appropriate relief including, but not limited to, the following: to prevent a person from using or employing practices prohibited by this act, to reform contracts to conform to this act and to rescind contracts into which a creditor has induced a debtor to enter by conduct violating this act, even though a debtor is not a party to the action. An action under this section may be joined with an action under the provisions on civil actions by the administrator, section [28-46-113](#), Idaho Code.

[28-46-110, added 1983, ch. 119, sec. 3, p. 303.]

28-46-111. INJUNCTIONS AGAINST UNCONSCIONABLE AGREEMENTS AND FRAUDULENT OR UNCONSCIONABLE CONDUCT INCLUDING DEBT COLLECTION. (1) The administrator may bring a civil action to restrain a person to whom this part applies from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of regulated consumer credit transactions;

(b) Fraudulent or unconscionable conduct in inducing debtors to enter into regulated consumer credit transactions;

(c) Conduct of any of the types specified in paragraph (a) or (b) of this subsection, with respect to transactions that give rise to or that lead persons to believe will give rise to regulated consumer credit transactions; or

(d) Fraudulent or unconscionable conduct in the collection of debts arising from regulated consumer credit transactions.

(2) In an action brought pursuant to this section, the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the respondent's agreements have caused or are likely to cause, or the conduct of the respondent has caused or is likely to cause, injury to debtors; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are consumer credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time regulated consumer credit transactions are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) In the case of regulated consumer credit sales, knowledge by the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of regulated consumer credit sales, gross disparity between the price of the property or services sold and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to regulated consumer credit sales or regulated consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

[28-46-111, added 1983, ch. 119, sec. 3, p. 304.]

28-46-112. TEMPORARY RELIEF. With respect to an action brought to enjoin violations of the act, section [28-46-110](#), Idaho Code, or unconscionable agreements or fraudulent or unconscionable conduct, section [28-46-111](#), Idaho Code, the administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

[28-46-112, added 1983, ch. 119, sec. 3, p. 305.]

28-46-113. CIVIL ACTIONS BY ADMINISTRATOR. (1) After demand, the administrator may bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one (1) or more debtors who have a right to recover explicitly granted by this act. In a civil action under this subsection, penalties may not be recovered by the administrator. The court shall order amounts recovered under this subsection to be paid to each debtor or set off against his obligation. A debtor's action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that debtor. A debtor's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator's action on behalf of a class of debtors takes precedence over a debtor's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a creditor in a civil action brought by a debtor is available to him in a civil action brought under this subsection.

(2) The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty of no more than five thousand dollars (\$5,000) for repeatedly and intentionally violating this act. A civil penalty pursuant to this subsection may not be imposed for a violation of this act occurring more than two (2) years before the action is brought.

[28-46-113, added 1983, ch. 119, sec. 3, p. 305; am. 2002, ch. 301, sec. 5, p. 863; am. 2006, ch. 122, sec. 5, p. 349.]

28-46-114. JURY TRIAL. The administrator has no right to trial by jury in an action brought by him under this act.

[28-46-114, added 1983, ch. 119, sec. 3, p. 305.]

28-46-115. DEBTORS' REMEDIES NOT AFFECTED. The grant of powers to the administrator in this chapter does not affect remedies available to debtors under this act or under other principles of law or equity.

[28-46-115, added 1983, ch. 119, sec. 3, p. 306.]

28-46-116. VENUE. The administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which the respondent resides or transacts business.

[28-46-116, added 1983, ch. 119, sec. 3, p. 306.]

PART 3.

REGULATED LENDERS -- LICENSING AND RELATED PROVISIONS

28-46-301. AUTHORITY TO MAKE REGULATED CONSUMER LOANS -- EXEMPTION FROM LICENSING. (1) The administrator shall receive and act on all applications for licenses to make regulated consumer loans under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. Unless a person is exempt under federal law or under this section or has first obtained a license from the administrator authorizing him to make regulated consumer loans, he shall not engage in the business of:

- (a) Making regulated consumer loans; or
- (b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from regulated consumer loans.

(2) Any "supervised financial organization," as defined in section [28-41-301](#), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) Mortgage lenders licensed under the Idaho residential mortgage practices act, [chapter 31, title 26](#), Idaho Code, shall be exempt from the licensing requirements of this section as to mortgage lending activities defined in [chapter 31, title 26](#), Idaho Code.

(4) Agencies of the United States and agencies of this state and its political subdivisions shall be exempt from the licensing requirements of this section.

[28-46-301, added 1983, ch. 119, sec. 3, p. 307; am. 1995, ch. 99, sec. 27, p. 324; am. 2006, ch. 122, sec. 7, p. 350; am. 2008, ch. 312, sec. 1, p. 861; am. 2013, ch. 54, sec. 3, p. 114.]

28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) The administrator shall receive and act on all applications for a license to do business as a regulated lender. Applications shall be filed in the manner prescribed by the administrator, shall contain such information as the administrator may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the administrator shall retain all fees paid by the applicant. The administrator may deny an application for a license if the administrator finds that:

- (a) The financial responsibility, character, and fitness of the applicant, and of the officers and directors thereof (if the applicant is a corporation) are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act;
- (b) The applicant does not maintain at least thirty thousand dollars (\$30,000) in liquid assets, as determined in accordance with generally accepted accounting principles, available for the purpose of making loans under this chapter;
- (c) The applicant has had a license, substantially equivalent to a license under this chapter and issued by any state, denied, revoked or suspended under the law of such state;
- (d) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

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

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

(2) A licensee under this chapter shall meet the requirements of subsection (1) of this section at all times while licensed pursuant to this chapter. The administrator is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (1) of this section.

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

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

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

If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the administrator for his reasonable and necessary expenses incurred as a result of the hearing. A request for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's finding supporting denial of the application or that objections have been filed and the substance thereof.

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

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

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

(7) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when:

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

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

(c) Posted by the director or his agent on the NMLSR if the license application was submitted through the NMLSR.

(8) On or before May 31 of each year, every licensee under this chapter shall pay a nonrefundable annual license renewal fee of one hundred fifty dollars (\$150) per licensed location, and shall file with the administrator a renewal form containing such information as the administrator may require. Notwithstanding the provisions of section [67-5254](#), Idaho Code, a license issued under this part automatically expires if not timely renewed according

to the requirements of this section. Notwithstanding the provisions of section [67-5254](#), Idaho Code, branch licenses issued under this part also expire upon the expiration, relinquishment or revocation of a license issued under this part to a licensee's designated home office.

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

- (a) A complete application for renewal;
- (b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and
- (c) A reinstatement fee of two hundred dollars (\$200).

[28-46-302, added 1983, ch. 119, sec. 3, p. 307; am. 1984, ch. 47, sec. 14, p. 85; am. 1998, ch. 74, sec. 1, p. 272; am. 1999, ch. 275, sec. 1, p. 689; am. 2006, ch. 122, sec. 8, p. 350; am. 2008, ch. 312, sec. 2, p. 862; am. 2013, ch. 54, sec. 4, p. 115.]

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

- (a) The licensee has repeatedly and willfully violated this act or any rule or order lawfully made pursuant to this act; or
- (b) Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions existed or been known to exist at the time the application for the license was made.

(2) No revocation or suspension of a license is lawful unless prior to institution of revocation or suspension proceedings by the administrator, notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

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

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

(5) Any person holding a license to make regulated consumer loans may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

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

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

[28-46-303, added 1983, ch. 119, sec. 3, p. 308; am. 2006, ch. 122, sec. 9, p. 352.]

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

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

[28-46-304, added 1983, ch. 119, sec. 3, p. 309; am. 1990, ch. 213, sec. 25, p. 504; am. 2006, ch. 122, sec. 10, p. 352; am. 2015, ch. 141, sec. 49, p. 417.]

28-46-305. EXAMINATIONS AND INVESTIGATIONS. (1) The administrator may examine periodically at intervals he deems appropriate, the loans and business records of every regulated lender. In addition, for the purpose of discovering violations of this act or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any regulated lender. For these purposes, he shall have free and reasonable access to the offices, places of business, and records of the lender. The administrator, for purposes of examination of licensees herein, shall be paid the cost of examination by the licensee, within thirty (30) days of demand for payment. The administrator shall, on July 1 of each year, fix such per diem examination cost.

(2) If the regulated lender's records are located outside this state, the regulated lender, at his option, shall make them available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the administrator may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and

location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

[28-46-305, added 1983, ch. 119, sec. 3, p. 309; am. 2006, ch. 122, sec. 11, p. 353.]

28-46-306. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT TO PART. Except as otherwise provided, the state Administrative Procedure Act, [chapter 52, title 67](#), Idaho Code, applies to and governs all administrative action taken by the administrator pursuant to this part.

[28-46-306, added 1983, ch. 119, sec. 3, p. 310.]

PART 4. PAYDAY LOANS

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

- (a) Accepts a check from the maker;
- (b) Agrees to hold the check for a period of time prior to negotiation, deposit or presentment; and
- (c) Pays to the maker of the check the amount of the check, less the fee permitted by this chapter.

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

(3) As used in this part, "check" refers to a check or the electronic equivalent of a check, including an authorization given by a borrower to a creditor to withdraw an agreed upon amount from any account held by the borrower.

(4) As used in this part, unless the context otherwise requires, "licensee" means a person licensed under this part and all persons required to be licensed under this part.

[28-46-401, added 2003, ch. 182, sec. 1, p. 491; am. 2014, ch. 270, sec. 1, p. 674.]

28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section [28-41-301](#), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency

of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.

[28-46-402, added 2003, ch. 182, sec. 1, p. 491; am. 2006, ch. 122, sec. 12, p. 354; am. 2009, ch. 175, sec. 1, p. 555; am. 2013, ch. 54, sec. 14, p. 121.]

28-46-403. QUALIFICATIONS FOR PAYDAY LOAN LICENSE. (1) To qualify for a license, an applicant shall satisfy the following requirements:

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

(b) The financial responsibility, financial condition, business experience, character and general fitness of the applicant shall reasonably warrant the administrator's belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this act, the administrator may review:

(i) The relevant business records and the capital adequacy of the applicant;

(ii) The competence, experience, integrity and financial ability of any applicant, and if the applicant is an entity, of any person who is a member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant; and

(iii) Any record of conviction, on the part of the applicant, or any person referred to in subparagraph (ii) of this paragraph, of any criminal activity; any fraud or other act of personal dishonesty; any act, omission or practice which constitutes a breach of a fiduciary duty; or any suspension, revocation, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

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

[28-46-403, added 2003, ch. 182, sec. 1, p. 491; am. 2006, ch. 122, sec. 13, p. 354.]

28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application for a license shall be in writing and under oath to the administrator, in a form prescribed by the administrator, and shall include at least the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is an entity, of every member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant;

(b) The location at which the principal place of business of the applicant is located; and

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

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

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

(4) Within sixty (60) days of the filing of an application in a form prescribed by the administrator, accompanied by the fee required in subsection (2) of this section, the administrator shall investigate to ascertain whether the qualifications prescribed by subsection (1) of section [28-46-403](#), Idaho Code, have been satisfied. If the administrator finds that the qualifications have been satisfied and approves the documents, the administrator shall issue to the applicant a license to engage in the payday loan business.

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

(6) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when:

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

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

(c) Posted by the director or his agent on the NMLSR if the license application was submitted through the NMLSR.

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

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

- (a) A complete application for renewal;
- (b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and
- (c) A reinstatement fee of two hundred dollars (\$200).

[28-46-404, added 2003, ch. 182, sec. 1, p. 492; am. 2006, ch. 122, sec. 14, p. 355; am. 2013, ch. 54, sec. 5, p. 116.]

28-46-405. DENIAL OF LICENSE. (1) If the administrator determines that an applicant is not qualified to receive a license, the administrator shall notify the applicant in writing that the application has been denied, and shall state the basis for denial.

(2) If the administrator denies an application, or if the administrator fails to act on an application within sixty (60) days after the filing of a properly completed application, the applicant may make written demand to the administrator for a hearing on the question of whether the license should be granted. Written demand for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating the basis for denial. In the event of a hearing, the administrator shall reconsider the application and, after the hearing, issue a written order granting or denying the application.

[28-46-405, added 2003, ch. 182, sec. 1, p. 492.]

28-46-406. NONTRANSFERABILITY -- CHANGE IN CONTROL. (1) Other than the transfer of a license to a new location as set forth in subsection (3) of this section, a license issued pursuant to this chapter is not transferable or assignable.

(2) The prior written approval of the administrator is required for the continued operation of a payday loan business whenever a change in control of a licensee is proposed. Control in the case of an entity means direct or indirect ownership, or the right to vote or otherwise control, twenty-five percent (25%) or more of the governance interests of the entity, or the ability of any person to elect a majority of the directors. The administrator may require information deemed necessary to determine whether a new application is required. Costs incurred by the administrator in investigating a change of control request shall be paid by the licensee requesting such approval.

(3) A licensee shall notify the administrator in writing at least fifteen (15) days before any proposed changes in the licensee's business location or name.

[28-46-406, added 2003, ch. 182, sec. 1, p. 493.]

28-46-407. SUSPENSION OR REVOCATION OF LICENSE. (1) The administrator may, after notice and hearing, suspend or revoke any license if the administrator finds that the licensee:

- (a) Has knowingly or through the lack of due care failed to pay any fee imposed by the administrator under the authority of this act;
- (b) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;
- (c) Has violated any provision of this act or any rule or order lawfully made pursuant to this act or has violated any other law in the course of the licensee's dealing as a licensee;
- (d) Has made a materially false statement in the application for the license or failed to give a true reply to a question in the application; or
- (e) Has demonstrated incompetence or untrustworthiness to act as a licensee.

(2) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the administrator may revoke or suspend all licenses issued to a licensee.

[28-46-407, added 2003, ch. 182, sec. 1, p. 493; am. 2006, ch. 122, sec. 15, p. 355.]

28-46-408. REPORTS TO ADMINISTRATOR. Within fifteen (15) days of the occurrence of any of the events listed below, a licensee shall file a written report with the administrator describing such events and their expected impact on the activities of the licensee in the state:

- (1) The filing for bankruptcy or reorganization by the licensee;
- (2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;
- (3) Any felony indictment of the licensee and, if the licensee is an entity, of any of its members, partners, directors, senior officers or twenty-five percent (25%) or more equity owners;
- (4) Any felony conviction of the licensee and, if the licensee is an entity, of any of its members, partners, directors, senior officers or twenty-five percent (25%) or more equity owners; and
- (5) Such other events as the administrator may determine and identify by rule.

[28-46-408, added 2003, ch. 182, sec. 1, p. 493.]

28-46-409. RECORDS -- ANNUAL REPORTS. (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this act. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where payday loans are made if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two (2) years after the due date of the loan.

(2) On or before May 31 of each year, every licensee shall file with the administrator a composite annual report for the prior calendar year in the form prescribed by the administrator relating to all payday loans made by him. Information contained in annual reports shall be subject to disclosure

according to [chapter 1, title 74](#), Idaho Code, and may be published only in composite form.

[28-46-409, added 2003, ch. 182, sec. 1, p. 494; am. 2015, ch. 141, sec. 50, p. 417.]

28-46-410. EXAMINATIONS AND INVESTIGATIONS. (1) The administrator shall examine periodically, at intervals he deems appropriate, the loans and business records of every payday lender. In addition, for the purpose of discovering violations of this act or securing information lawfully required, the administrator may at any time investigate the loans, business and records of any payday lender. For these purposes, the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. The administrator, for purposes of examination of licensees herein, shall be paid the cost of examination by the licensee within thirty (30) days of demand for payment. The administrator shall, on July 1 of each year, fix such per diem examination cost.

(2) If the lender's records are located outside this state, the lender, at his option, shall make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the administrator may administer oaths or affirmations and, upon his own motion or upon request of any party, may subpoena witnesses, compel the attendance of witnesses, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

[28-46-410, added 2003, ch. 182, sec. 1, p. 494.]

28-46-411. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Except as otherwise provided, the Idaho administrative procedure act, as set forth in [chapter 52, title 67](#), Idaho Code, applies to and governs all administrative action taken by the administrator pursuant to this act.

[28-46-411, added 2003, ch. 182, sec. 1, p. 495.]

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

(2) The maximum principal amount of any payday loan is one thousand dollars (\$1000).

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

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

(5) (a) A payday loan may be made pursuant to a transaction whereby the licensee:

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

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

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

(6) The amount advanced to the borrower by the licensee in a payday loan may be paid to the borrower in the form of cash, the licensee's business check, a money order, an electronic funds transfer to the borrower's account, or other reasonable electronic payment mechanism, provided however, that no additional fee may be charged to the borrower by a licensee to access the proceeds of the payday loan.

(7) A payday loan may be repaid by the borrower in cash, by negotiation of the borrower's check in a transaction pursuant to subsection (5) of this section or, with the agreement of the licensee, a debit card, a cashier's check, an electronic funds transfer from the borrower's bank account, or any other reasonable electronic payment mechanism to which the parties may agree.

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

[28-46-412, added 2003, ch. 182, sec. 1, p. 495; am. 2014, ch. 270, sec. 2, p. 675.]

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

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

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

(4) A payday lender shall not be in violation of subsection (2) of this section if the borrower presents evidence of his gross monthly income to the payday lender or represents to the payday lender in writing that the pay-

day loan does not exceed twenty-five percent (25%) of the borrower's gross monthly income when the loan is made.

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

(6) If the borrower's check is returned unpaid to the licensee from a payor financial institution, the licensee shall have the right to collect charges authorized by section [28-22-105](#), Idaho Code, provided such charges are disclosed in the loan agreement. A licensee may not charge treble damages. If the borrower's obligation is assigned to any third party for collection, the provisions of this section shall apply to such third party collector.

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

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

(9) A licensee may renew a payday loan no more than three (3) consecutive times, after which the payday loan shall be repaid in full by the borrower. A borrower may enter into a new loan transaction with the licensee at any time after a prior loan to the borrower is completed. A loan secured by a borrower's check is completed when the check is presented or deposited by the licensee or redeemed by the borrower pursuant to section [28-46-412](#)(5), Idaho Code.

(10) Other than a borrower's check in a transaction pursuant to section [28-46-412](#)(5), Idaho Code, a licensee shall not accept any property, title to property, or other evidence of ownership as collateral for a payday loan.

(11) A licensee may conduct other business at a location where it engages in payday lending unless it carries on such other business for the purpose of evading or violating the provisions of this act.

(12) A borrower may rescind the payday loan at no cost at any time prior to the close of business on the next business day following the day on which the payday loan was made by paying the principal amount of the loan to the licensee in cash or other immediately available funds.

[[28-46-413](#), added 2003, ch. 182, sec. 1, p. 496; am. 2013, ch. 54, sec. 6, p. 117; am. 2014, ch. 270, sec. 3, p. 675.]

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

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

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

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

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

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

[28-46-414, added 2014, ch. 270, sec. 4, p. 676.]

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

- "1. Payday loans are intended to address short-term, not long-term, financial needs.
2. You will be required to pay additional fees if the payday loan is renewed rather than paid in full when due.
3. You have the right to rescind the payday loan at no cost no later than the end of the next business day following the day on which the payday loan is made.
4. Payday loans may contain high-cost features, and borrowers should consider alternative lower-cost loans.
5. If you believe that the lender has violated the law, you may file a written complaint with the Idaho Department of Finance. Filing a complaint does not limit nor impair any rights you may have against the lender.
6. You have a one-time right during any consecutive twelve (12) month period to convert a payday loan into an extended payment plan."

[28-46-415, added 2014, ch. 270, sec. 5, p. 677.]

PART 5
TITLE LOAN ACT

28-46-501. SHORT TITLE. This part shall be known and may be cited as the "Title Loan Act."

[28-46-501, added 2006, ch. 323, sec. 1, p. 1023.]

28-46-502. DEFINITIONS. As used in this part, unless the context otherwise requires:

(1) "Title lender" means a regulated lender authorized pursuant to this part to make title loans.

(2) "Title loan" means a loan for a consumer purpose that is secured by a nonpurchase money security interest in titled personal property and that is scheduled to be repaid in either a single installment or in multiple installments that are not fully amortized. Title loans are regulated consumer loans and, except as otherwise provided in this part, all provisions of the Idaho credit code relating to regulated consumer loans apply to title loans and to persons engaged in the business of making title loans.

(3) "Title loan agreement" means a written agreement whereby a title lender agrees to make a title loan to a debtor, and the debtor agrees to give the title lender a security interest in unencumbered titled personal property owned by the debtor. Except as otherwise provided in this part, all provisions of [chapter 9, title 28](#), Idaho Code, apply to title loans and to persons engaged in the business of making title loans.

(4) "Titled personal property" means any motor vehicle, the ownership of which is evidenced and delineated by a state issued certificate of title, but does not include a motor home, mobile home or manufactured home.

[28-46-502, added 2006, ch. 323, sec. 1, p. 1024.]

28-46-503. LICENSE REQUIRED. (1) No person shall engage in the business of making title loans without having first obtained a license from the administrator pursuant to this chapter authorizing the person to make regulated consumer loans.

(2) Any title loan made without first having obtained a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the debtor in connection with the title loan agreement. The person making the title loan shall release its security interest in the titled personal property used as security for the title loan and shall return to the debtor:

- (a) The certificate of title for such titled personal property;
- (b) Such titled personal property if the person making the loan took possession of such property;
- (c) The fair market value of such titled personal property if the person making the loan took possession of such property and is not able to return such property; and
- (d) All principal, interest, and any other fees paid by the debtor.

[28-46-503, added 2006, ch. 323, sec. 1, p. 1024.]

28-46-504. TITLE LOAN AGREEMENTS. (1) Every title lender shall keep a numbered record of each and every title loan agreement executed by the title lender and debtor. Such record, as well as the title loan agreement, shall include the following information:

- (a) The make, model and year of the titled personal property;
- (b) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property;
- (c) The name, residential address and date of birth of the debtor;
- (d) The date the title loan agreement is executed by the title lender and the debtor; and
- (e) The maturity date of the title loan agreement.

(2) The following information shall also be printed on the title loan agreement:

- (a) The name and physical address of the title loan office;
- (b) In not less than twelve (12) point bold type, the name and address of the administrator as well as a telephone number to which consumers may address complaints;
- (c) The following statement in not less than twelve (12) point bold type and in all capitalized letters:

- "(1) This loan is not intended to meet long-term financial needs.
- (2) You should use this loan only to meet short-term cash needs.

(3) You will be required to pay additional interest and fees if you renew this loan rather than pay the debt in full when due.

(4) This loan may be a higher interest loan. You should consider what other lower cost loans may be available to you.

(5) You are placing at risk your continued ownership of the titled personal property you are using as security for this loan.

(6) If you default under this loan the title lender may take possession of the titled personal property used as security for this loan and sell the property in the manner provided by law.

(7) If you enter into a title loan agreement, you have a legal right of rescission. This means you may cancel your contract at no cost to you by returning the money you borrowed by the next business day after the date of your loan.

(8) If you believe that the title lender has violated the provisions of the Idaho Title Loan Act, you have the right to file a written complaint with the Idaho Department of Finance and the Department will investigate your complaint."

(d) The statement that "The debtor represents and warrants, to the best of the debtor's knowledge, that the titled personal property is not stolen and has no liens or encumbrances against it, the debtor has the right to enter into this transaction and will not apply for a duplicate certificate of title while the title loan agreement is in effect."

(3) The debtor shall sign the title loan agreement and shall be provided with a copy of such agreement. The title loan agreement shall also be signed by the title lender or the title lender's employee or agent. If the debtor has been issued a social security number, the title lender shall keep on file the social security number of the debtor.

[28-46-504, added 2006, ch. 323, sec. 1, p. 1024.]

28-46-505. DISCLOSURE. (1) Notwithstanding the provisions of section [28-46-103](#), Idaho Code, or any other law to the contrary, in accordance with the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, the administrator may promulgate rules requiring each title lender to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any title loan agreement. The required style, content and method of executing the form may be prescribed by the rule and shall be designed to ensure that the debtor, prior to entering into such agreement, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all interest, fees, charges and other costs that will or potentially could be imposed as a result of such agreement.

(2) A title lender shall conspicuously post in each licensed location the statements listed in section [28-46-504](#)(2)(c), Idaho Code.

[28-46-505, added 2006, ch. 323, sec. 1, p. 1025.]

28-46-506. RENEWAL OF TITLE LOAN AGREEMENTS. (1) Title loan agreements shall not exceed thirty (30) days in length. However, such agreements may provide for renewals, which may occur automatically, unless one (1) of the following has occurred:

(a) The debtor has paid all principal and finance charges due in accordance with the title loan agreement;

(b) The debtor has surrendered possession, title and all other interest in and to the titled personal property to the title lender; or

(c) The title lender has notified the debtor in writing that the title loan agreement is not to be renewed.

(2) A debtor has the right to cancel the debtor's obligation to make payments under a title loan agreement until the close of the next business day after the day when the debtor signs a title loan agreement if the debtor returns the original check or cash to the location where the loan was originated. For the purpose of this section, "business day" means any day that the title loan office is open for business.

(3) Notwithstanding any provision of this part 5 to the contrary, beginning with the third renewal or continuation and at each successive renewal or continuation thereafter, the debtor shall be required to make a payment of at least ten percent (10%) of the principal amount of the original title loan in addition to any finance charges that are due. Finance charges due at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the ten percent (10%) required principal reduction shall be credited to the outstanding principal on the day received. If at the maturity of any renewal requiring a principal reduction, the debtor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the debtor cannot repay at least ten percent (10%) of the original principal balance and any outstanding finance charges, the title lender may, but shall not be obligated to, defer any required principal payment until a future date. No further finance charges may accrue on any such principal amount thus deferred.

(4) Within fourteen (14) days after a title loan is automatically renewed, the title lender shall provide the debtor written notice of the renewal either by personal delivery to the debtor or by deposit in the regular mail to the debtor's residential address listed in the title loan agreement. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than extension of the maturity date and a reduction in principal.

[28-46-506, added 2006, ch. 323, sec. 1, p. 1026.]

28-46-507. DEFAULT. (1) Before exercising any of its rights upon a default by a debtor under a title loan agreement, the title lender shall mail a "Notice to Cure Default" to the debtor at the debtor's last address shown in the title lender's file, notifying the debtor that the debtor has ten (10) days from the date of the notice in which to cure the default.

(2) If the debtor does not cure the default within the ten (10) days, the title lender may proceed to exercise its rights under [chapter 9, title 28](#), Idaho Code. There shall be no further finance charges assessed to the debtor after the title lender has obtained possession of the titled personal property.

(3) Upon voluntary surrender of the titled personal property used as security for a title loan, the title lender shall have no obligation to send any "Notice to Cure Default" to the debtor.

(4) Title lenders may assess and collect reasonable expenses of collection and enforcement as authorized by [chapter 9, title 28](#), Idaho Code.

[28-46-507, added 2006, ch. 323, sec. 1, p. 1026.]

28-46-508. PROHIBITED ACTIONS. No title lender licensee under this part or person required under this part to have such license shall:

(1) Enter into a title loan agreement with a person less than eighteen (18) years of age, or with anyone who appears to be intoxicated;

(2) Make any agreement giving the title lender any recourse against the debtor other than the title lender's right to take possession of the titled personal property and certificate of title upon the debtor's default, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of [chapter 9, title 28](#), Idaho Code, except where the debtor prevented repossession of the vehicle, damaged or committed or permitted waste on the vehicle or committed fraud;

(3) Enter into a title loan agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title loan agreements the debtor has with the same lender secured by any single titled personal property, exceeds the retail value of the titled personal property as determined by common motor vehicle appraisal guides;

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a debtor under this chapter;

(5) Fail to exercise reasonable care to protect from loss or damage the certificate of title in the physical possession of the title lender;

(6) Purchase titled personal property used as security for a title loan made by the title lender;

(7) Enter into a title loan agreement unless the debtor presents a clear title to titled personal property at the time that the loan is made. If the title lender files a lien against such titled personal property without possession of a clear title to such property, the resulting lien shall be void;

(8) Capitalize or add any accrued interest or fee to the original principal of the title loan agreement during any renewal of the agreement;

(9) Require a debtor to provide any additional guaranty as a condition to entering into a title loan agreement;

(10) Use any device or agreement, including agreements with affiliated title lenders, with the intent to obtain greater charges than otherwise would be authorized by this part; or

(11) Violate the provisions of this part or any rule promulgated pursuant thereto.

[28-46-508, added 2006, ch. 323, sec. 1, p. 1027; am. 2013, ch. 54, sec. 7, p. 118.]

28-46-509. EXEMPTION. The provisions of this part shall not apply to any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union, insurance company, or industrial loan company. The terms "bank," "savings and loan association," "credit union," "insurance company" and "industrial loan company" shall include employees and agents of such organizations as well as wholly-owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes.

[28-46-509, added 2006, ch. 323, sec. 1, p. 1027.]