

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 470

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO LOANS; AMENDING SECTION 28-46-412, IDAHO CODE, TO PROVIDE FOR A
2 MAXIMUM FEE FOR A PAYDAY LOAN AND TO PROVIDE FOR DISCLOSURE OF ALL FEES;
3 AMENDING SECTION 28-46-504, IDAHO CODE, TO PROVIDE FOR DISCLOSURE OF
4 ALL FEES AND INTEREST IN THE TITLE LOAN AGREEMENT; AND AMENDING SECTION
5 28-46-508, IDAHO CODE, TO PROVIDE FOR A MAXIMUM INTEREST RATE FOR A TI-
6 TLE LOAN AND TO PROHIBIT A LENDER FROM FAILING TO DISCLOSE ALL FEES AND
7 INTEREST.
8

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

10 SECTION 1. That Section 28-46-412, Idaho Code, be, and the same is
11 hereby amended to read as follows:

12 28-46-412. PAYDAY LOAN PROCEDURES. (1) Each payday loan must be doc-
13 umented in a written agreement signed by the borrower. The loan agreement
14 must include the name of the licensee, the loan date, the principal amount of
15 the loan, and a statement of the total amount of fees charged as a condition
16 of making the loan, expressed both as a dollar amount and as an annual per-
17 centage rate (APR).

18 (2) The maximum principal amount of any payday loan is one thousand dol-
19 lars (\$1000).

20 (3) A licensee ~~may~~ shall not charge a fee for each any payday loan that
21 exceeds thirty-six percent (36%) per annum, exclusive of fees for a check re-
22 turned unpaid to a licensee as authorized in subsection 28-46-413(3), Idaho
23 Code. Such fee shall be deemed fully earned as of the date of the transac-
24 tion and shall not be deemed interest for any purpose of law. No other fee
25 or charges may be charged or collected for the payday loan except as specifi-
26 cally set forth in this act.

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

30 (5) Before disbursing funds pursuant to a payday loan, a licensee shall
31 provide written notice to the borrower indicating the following:

32 (a) All fees that a borrower will incur as a condition of the loan.

33 (b) A payday loan is intended to address short-term, not long-term, fi-
34 ancial needs.

35 (~~b~~c) The borrower will be required to pay additional fees if the payday
36 loan is renewed rather than paid in full when due and all such additional
37 fees the borrower will be required to pay.

38 (~~e~~d) The borrower has the right to rescind the payday loan, at no cost,
39 no later than the end of the next business day following the day on which
40 the payday loan is made.

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

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

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

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

14 (7) The amount advanced to the borrower by the licensee in a payday
15 loan may be paid to the borrower in the form of cash, the licensee's business
16 check, a money order, an electronic funds transfer to the borrower's ac-
17 count, or other reasonable electronic payment mechanism, provided however,
18 that no additional fee may be charged to the borrower by a licensee to access
19 the proceeds of the payday loan.

20 (8) A payday loan may be repaid by the borrower in cash, by negotiation
21 of the borrower's check in a transaction pursuant to subsection (6) of this
22 section or, with the agreement of the licensee, a debit card, a cashier's
23 check, an electronic funds transfer from the borrower's bank account, or
24 any other reasonable electronic payment mechanism to which the parties may
25 agree.

26 SECTION 2. That Section 28-46-504, Idaho Code, be, and the same is
27 hereby amended to read as follows:

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

32 (a) The make, model and year of the titled personal property;

33 (b) The vehicle identification number, or other comparable identifica-
34 tion number, along with the license plate number, if applicable, of the
35 titled personal property;

36 (c) The name, residential address and date of birth of the debtor;

37 (d) The date the title loan agreement is executed by the title lender
38 and the debtor; ~~and~~

39 (e) The maturity date of the title loan agreement; and

40 (f) All fees and interest that a borrower will incur as a condition of
41 the loan and any additional fees and interest if such loan is renewed
42 rather than paid in full when due.

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

45 (a) The name and physical address of the title loan office;

46 (b) In not less than twelve (12) point bold type, the name and address of
47 the administrator as well as a telephone number to which consumers may
48 address complaints;

1 (c) The following statement in not less than twelve (12) point bold type
2 and in all capitalized letters:

3 "(1) This loan is not intended to meet long-term financial needs.

4 (2) You should use this loan only to meet short-term cash needs.

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

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

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

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

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

18 (8) If you believe that the title lender has violated the provi-
19 sions of the Idaho Title Loan Act, you have the right to file a
20 written complaint with the Idaho Department of Finance and the De-
21 partment will investigate your complaint."

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

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

32 SECTION 3. That Section 28-46-508, Idaho Code, be, and the same is
33 hereby amended to read as follows:

34 28-46-508. PROHIBITED ACTIONS. A title lender shall not:

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

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

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

- 1 (4) Accept any waiver, in writing or otherwise, of any right or protec-
2 tion accorded a debtor under this chapter;
- 3 (5) Fail to exercise reasonable care to protect from loss or damage the
4 certificate of title in the physical possession of the title lender;
- 5 (6) Purchase titled personal property used as security for a title loan
6 made by the title lender;
- 7 (7) Enter into a title loan agreement unless the debtor presents a clear
8 title to titled personal property at the time that the loan is made. If the
9 title lender files a lien against such titled personal property without pos-
10 session of a clear title to such property, the resulting lien shall be void;
- 11 (8) Capitalize or add any accrued interest or fee to the original prin-
12 cipal of the title loan agreement during any renewal of the agreement;
- 13 (9) Require a debtor to provide any additional guaranty as a condition
14 to entering into a title loan agreement;
- 15 (10) Use any device or agreement, including agreements with affiliated
16 title lenders, with the intent to obtain greater charges than otherwise
17 would be authorized by this part; ~~or~~
- 18 (11) Charge a rate of interest for making and carrying any title loan au-
19 thorized by this part that exceeds thirty-six percent (36%) per annum;
- 20 (12) Fail to disclose all fees and interest that a borrower will incur
21 as a condition of the loan and any additional fees and interest if such loan
22 is renewed rather than paid in full when due; or
- 23 (13) Violate the provisions of this part or any rule promulgated pur-
24 suant thereto.