

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 557

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-46-302, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING QUALIFICATIONS FOR A REGULATED
3 LENDER LICENSE, TO REMOVE A PROVISION REGARDING EXPENSES FOR A HEAR-
4 ING, TO REVISE A PROVISION REGARDING WHEN A WRITTEN DEFICIENCY NOTICE
5 SHALL BE DEEMED RECEIVED, TO REVISE A PROVISION REGARDING REGULATED
6 LICENSE RENEWAL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
7 28-46-304, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN REPORT;
8 AMENDING SECTION 28-46-403, IDAHO CODE, TO REVISE PROVISIONS REGARDING
9 QUALIFICATIONS FOR A PAYDAY LOAN LICENSE; AMENDING SECTION 28-46-404,
10 IDAHO CODE, TO REVISE PROVISIONS REGARDING PAYDAY LOAN LICENSE APPLICA-
11 TIONS, TO REVISE A PROVISION REGARDING WHEN A WRITTEN DEFICIENCY NOTICE
12 SHALL BE DEEMED RECEIVED, TO REVISE A PROVISION REGARDING LICENSE RE-
13 NEWAL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-46-409,
14 IDAHO CODE, TO REVISE A PROVISION REGARDING A CERTAIN REPORT; AND
15 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
16

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

18 SECTION 1. That Section 28-46-302, Idaho Code, be, and the same is
19 hereby amended to read as follows:

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27 application for licensure is denied or withdrawn, the administrator shall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

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

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

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

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

3 (~~ed~~) The application does not contain all of the information required
4 by the administrator; or

5 (~~fe~~) The application is not accompanied by an application fee of three
6 hundred fifty dollars (\$350).

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

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

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

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

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

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

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

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

38 (7) A license application shall be deemed withdrawn and void if an ap-
39 plicant submits an incomplete license application and, after receipt of a
40 written notice of the application deficiency, fails to provide the ~~director~~
41 administrator with information necessary to complete the application within
42 sixty (60) days of receipt of the deficiency notice. A written deficiency
43 notice shall be deemed received by a license applicant when:

44 (a) Placed in regular ~~U.S.~~ United States mail by the ~~director~~
45 administrator or his agent using an address provided by the applicant on
46 the license application; or

47 (b) ~~E-mailed~~ Emailed to the applicant using an ~~e-mail~~ email address
48 provided by the applicant on the license application or otherwise; or

1 (c) Posted by the ~~director~~ administrator or his agent on the ~~NMLSR if~~
 2 ~~the license application was submitted through the NMLSR electronic sys-~~
 3 ~~tem of licensing in use by the administrator.~~

4 (8) On or before ~~May~~ December 31 of each year, every licensee under this
 5 chapter shall pay a nonrefundable annual license renewal fee of one hundred
 6 fifty dollars (\$150) per licensed location, and shall file with the adminis-
 7 trator a renewal form containing such information as the administrator may
 8 require. Notwithstanding the provisions of section 67-5254, Idaho Code, a
 9 license issued under this part automatically expires if not timely renewed
 10 according to the requirements of this section. Notwithstanding the provi-
 11 sions of section 67-5254, Idaho Code, branch licenses issued under this part
 12 also expire upon the expiration, relinquishment or revocation of a license
 13 issued under this part to a licensee's designated home office.

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

18 (a) A complete application for renewal;

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

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

22 SECTION 2. That Section 28-46-304, Idaho Code, be, and the same is
 23 hereby amended to read as follows:

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

35 (2) ~~Concurrent with license renewal, on~~ On or before May ~~31~~15 of each
 36 year, every licensee shall file with the administrator a composite annual
 37 report for the prior calendar year in the form prescribed by the administra-
 38 tor relating to all regulated consumer loans made by him. Information con-
 39 tained in annual reports shall be subject to disclosure according to chapter
 40 1, title 74, Idaho Code, and may be published only in composite form.

41 SECTION 3. That Section 28-46-403, Idaho Code, be, and the same is
 42 hereby amended to read as follows:

43 28-46-403. QUALIFICATIONS FOR PAYDAY LOAN LICENSE. (1) To qualify for
 44 a payday loan license, ~~an applicant shall satisfy the following require-~~
 45 ~~ments:~~

46 ~~(a) The applicant shall have liquid assets of at least thirty thousand~~
 47 ~~dollars (\$30,000) determined in accordance with generally accepted~~

1 ~~accounting principles, provided that applicants seeking to engage in~~
 2 ~~the business of payday loans at more than one (1) location in the state~~
 3 ~~shall have liquid assets of at least an additional five thousand dollars~~
 4 ~~(\$5,000) for each additional location in the state up to a maximum of~~
 5 ~~seventy-five thousand dollars (\$75,000) for all locations in the state;~~
 6 ~~and~~

7 ~~(b) The under this part, the financial responsibility, financial con-~~
 8 ~~dition, business experience, character, and general fitness of the ap-~~
 9 ~~plicant shall reasonably warrant the administrator's belief that the~~
 10 ~~applicant's business will be conducted lawfully and fairly. In deter-~~
 11 ~~mining whether this qualification has been met, and for the purpose of~~
 12 ~~investigating compliance with this act, the administrator may review:~~

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

15 ~~(iib) The competence, experience, integrity, and financial ability of~~
 16 ~~any applicant, and, if the applicant is an entity, of any person who is~~
 17 ~~a member, partner, director, senior officer, or twenty-five percent~~
 18 ~~(25%) or more equity owner other individuals in control of or with the~~
 19 ~~authority to direct the affairs of the applicant; and~~

20 ~~(iic) Any record of conviction, on the part of the applicant, or any~~
 21 ~~person referred to in subparagraph (iib) of this paragraph, subsection~~
 22 ~~of any criminal activity; any fraud or other act of personal dishon-~~
 23 ~~esty; any act, omission, or practice which that constitutes a breach of~~
 24 ~~a fiduciary duty; or any suspension, revocation, removal, or adminis-~~
 25 ~~trative action by any agency or department of the United States, or any~~
 26 ~~state, from participation in the conduct of any business.~~

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

30 SECTION 4. That Section 28-46-404, Idaho Code, be, and the same is
 31 hereby amended to read as follows:

32 28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application
 33 for a payday loan license shall be in writing and under oath to the adminis-
 34 trator. Applications shall be filed through an electronic system of licens-
 35 ing as prescribed by the administrator and shall contain such information as
 36 the administrator may reasonably require, in a form prescribed by the admin-
 37 istrator, and shall include including at least the following:

38 (a) The legal name, residence, and business address of the applicant
 39 and, if the applicant is an entity, of every member, partner, direc-
 40 tor, senior officer ~~or twenty-five percent (25%) or more equity owner,~~
 41 or other individuals in control of or with the authority to direct the
 42 affairs of the applicant;

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

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

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

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

6 (4) Within sixty (60) days of the filing of an application in a form
 7 prescribed by the administrator, that is accompanied by the fee required in
 8 subsection (2) of this section, the administrator shall investigate to as-
 9 certain whether the qualifications prescribed by subsection (1) of section
 10 28-46-403, Idaho Code, have been satisfied. If the administrator finds that
 11 the qualifications have been satisfied and approves the documents, the ad-
 12 ministrator shall issue to the applicant a license to engage in the payday
 13 loan business.

14 (5) Notwithstanding the provisions of section 67-5254, Idaho Code, a
 15 license issued pursuant to this part automatically expires if not timely
 16 renewed according to the requirements of subsection (7) of this section,
 17 or the license is relinquished, suspended, or revoked pursuant to this
 18 act. Notwithstanding the provisions of section 67-5254, Idaho Code, branch
 19 licenses issued under this part also expire upon the expiration, relin-
 20 quishment, or revocation of a license issued under this part to a licensee's
 21 designated home office.

22 (6) A license application shall be deemed withdrawn and void if an ap-
 23 plicant submits an incomplete license application and, after receipt of a
 24 written notice of the application deficiency, fails to provide the ~~director~~
 25 administrator with information necessary to complete the application within
 26 sixty (60) days of receipt of the deficiency notice. A written deficiency
 27 notice shall be deemed received by a license applicant when:

28 (a) Placed in regular ~~U.S.~~ United States mail by the ~~director~~
 29 administrator or his agent using an address provided by the applicant on
 30 the license application; or

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

33 (c) Posted by the ~~director~~ administrator or his agent on the ~~NMLSR if~~
 34 ~~the license application was submitted through the NMLSR~~ electronic sys-
 35 tem of licensing in use by the administrator.

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

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

45 (a) A complete application for renewal;

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

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

49 SECTION 5. That Section 28-46-409, Idaho Code, be, and the same is
 50 hereby amended to read as follows:

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

11 (2) On or before May 31⁵ of each year, every licensee shall file with
12 the administrator a composite annual report for the prior calendar year in
13 the form prescribed by the administrator relating to all payday loans made by
14 him. Information contained in annual reports shall be subject to disclosure
15 according to chapter 1, title 74, Idaho Code, and may be published only in
16 composite form.

17 SECTION 6. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after
19 July 1, 2022.