

Idaho Statutes

§ 28-41-101. Short title

This act shall be known and may be cited as the “Idaho Credit Code.”

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-102. Purposes--Rules of construction

(1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this act are:

(a) To simplify, clarify and modernize the law governing installment sales, credit, loans and usury;

(b) To further understanding of the terms of credit transactions and to foster competition among suppliers of credit so that debtors may obtain credit at reasonable cost;

(c) To protect debtors against unfair practices by some suppliers of credit, having due regard for the interests of legitimate and scrupulous creditors;

(d) To permit and encourage the development of fair and economically sound credit practices; and

(e) To conform the regulation of those credit transactions to the policies of the Federal Consumer Credit Protection Act¹, where applicable.

(3) A reference to a requirement imposed by this act includes reference to a related rule of the administrator adopted pursuant to this act.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement the provisions of this act.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-104. Construction against implicit repeal

This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-105. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-106. Waiver--Agreement to forgo rights--Settlement of claims

(1) Except as otherwise provided in this act, a debtor may not waive or agree to forgo rights or benefits under this act.

(2) A claim by a debtor against a creditor for an excess charge, other violation of this act, or civil penalty, or a claim against a debtor for default or breach of a duty imposed by this act, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a debtor may be settled for less value than the amount claimed.

(4) A settlement in which the debtor waives or agrees to forgo rights or benefits under this act is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

(5) Title 41, Idaho Code, shall not apply to an agreement by a creditor or lessor, with or without consideration, to forgive or waive all or any part of a debt or lease obligation following a partial or total loss of the property that is the subject of a loan, credit sale or lease transaction and the forgiveness shall not be considered the transaction of insurance for the purposes of the Idaho credit code.

Credits

S.L. 1983, ch. 119, § 3; S.L. 2000, ch. 175, § 1. Amended by S.L. 2015, ch. 244, § 15, eff. July 1, 2015.

§ 28-41-107. Effect of act on powers of organizations

(1) This act prescribes maximum charges for all creditors, except those excluded under section 28-41-202, Idaho Code, extending credit as a regular business, including regulated credit sales, as defined in section 28-41-301, Idaho Code, and regulated loans, as defined in section 28-41-301, Idaho Code, and displaces existing limitations on the powers of those creditors based on maximum charges, except in insurance matters as prescribed by rule of the department of insurance.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, finance companies, sales finance companies, industrial banks and loan companies, and commercial banks, this act displaces existing limitations on their powers based solely on amount or duration of credit, except the insurance matters as prescribed by rule of the department of insurance.

(3) Except as provided in subsection (1) of this section, this act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) of this section, this act does not displace:

(a) Limitations on powers of supervised financial organizations, as defined in section 28-41-301, Idaho Code, with respect to the amount of a loan to a single borrower, the ratio of the loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

(5) Notwithstanding the provisions of chapter 1, title 57, Idaho Code, and chapter 27, title 67, Idaho Code, any supervised financial organization which intentionally fails to comply with the provisions of this act shall not be entitled to receive deposits from state or public depositing units.

Credits

S.L. 1983, ch. 119, § 3. Amended by S.L. 2013, ch. 54, § 9, eff. July 1, 2013.

§ 28-41-108. Transactions subject to act by agreement

Parties to a credit transaction or modification thereof that is not a regulated consumer credit transaction, as defined in section 28-41-301, Idaho Code, may agree in a writing signed by them that the transaction is subject to the provisions of this act applying to regulated consumer credit transactions. If the parties so agree, the transaction is a regulated consumer credit transaction for the purposes of this act.

Credits

S.L. 1983, ch. 119, § 3. Amended by S.L. 2013, ch. 54, § 10, eff. July 1, 2013.

§ 28-41-201. Territorial application

(1) Except as otherwise provided in this section, this act applies to sales and loans made in this state and to modifications, including refinancings, consolidations, and deferrals made in this state, of sales and loans, wherever made. For purposes of this act, a sale, loan or modification of a sale or loan is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means including, but not limited to, mail, brochure, telephone, print, radio, television, internet or any other electronic means.

(2) Notwithstanding subsection (1)(b) of this section, unless made subject to this act by agreement of the parties, a sale, loan or modification of a sale or loan is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) The part on limitations on creditors' remedies, part 1 of the chapter on remedies and penalties, chapter 45, title 28, Idaho Code, applies to actions or other proceedings brought in this state to enforce rights arising from regulated credit sales or regulated loans, or extortionate extensions of credit, wherever made.

(4) If a regulated credit sale or regulated loan or modification thereof, is made in another state to a person who is a resident of this state when the sale, loan or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A seller, lender or assignee of his rights may not collect charges through actions or other proceedings in excess of those permitted by chapter 42, title 28, Idaho Code, on finance charges and related provisions; and

(b) A seller, lender or assignee of his rights may not enforce rights against the buyer or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices, part 3, chapter 43, title 28, Idaho Code.

(5) Except as provided in subsection (3) of this section, a sale, loan or modification thereof made in another state to a person who was not a resident of this state when the sale, loan or modification was made is valid and enforceable according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this act, the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this act does not apply if the buyer or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) This act applies if the buyer or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, the following agreements by a buyer or debtor are invalid with respect to regulated credit sales, regulated loans or modifications thereof to which this act applies:

(a) That the law of another state shall apply;

(b) That the buyer or debtor consents to the jurisdiction of another state; and

(c) That fixes venue.

(9) Notwithstanding any other provision in this section, any person who, in this state, advertises, offers or solicits to make a loan for a consumer purpose, or arranges a payday loan for a third party lender, is engaging in business in this state for which a license is required under the Idaho credit code, unless exempt pursuant to section 28-46-301, Idaho Code.

Credits

S.L. 1983, ch. 119, § 3; S.L. 2002, ch. 301, § 1; S.L. 2006, ch. 122, § 1, eff. Jan. 1, 2006.

Amended by S.L. 2013, ch. 54, § 1, eff. July 1, 2013; S.L. 2014, ch. 97, § 10, eff. July 1, 2014.

§ 28-41-202. Exclusions

This act does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance, chapter 44, title 28, Idaho Code;

(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the service involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-203. Jurisdiction

The courts of this state may exercise jurisdiction over any creditor with respect to any conduct of the creditor subject to this act or with respect to any claim arising from a transaction subject to this act.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-41-204. Applicability

This act shall apply only to credit transactions for a consumer purpose, except for the following parts, chapters and sections, which shall apply to credit transactions for any and all purposes:

- (1) Part 1, chapter 41, title 28, Idaho Code;
- (2) Section 28-41-202, Idaho Code;
- (3) Section 28-41-203, Idaho Code;
- (4) Section 28-41-204, Idaho Code;
- (5) Part 3, chapter 41, title 28, Idaho Code;
- (6) Part 2, chapter 42, title 28, Idaho Code;
- (7) Section 28-42-308, Idaho Code;
- (8) Part 4, chapter 42, title 28, Idaho Code;
- (9) Section 28-45-109, Idaho Code; and
- (10) Chapter 49, title 28, Idaho Code.

No provisions of this act other than those specified in subsections (1) through (10) of this section shall limit, expand or otherwise affect the powers, rights, duties or obligations of creditors or debtors in credit transactions for a business purpose.

Credits

S.L. 1983, ch. 119, § 3; S.L. 1994, ch. 185, § 5.

§ 28-41-301. General definitions

(1) “Actuarial method” means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) “Administrator” means the administrator designated in section 28-46-103, Idaho Code.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) “Agricultural purpose” means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. “Agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) “Amount financed” means the total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) In case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge, paragraph (b)(iii) of subsection (18); and

(c) In the case of a loan, to the extent that payment is, or payments are, deferred and the amount is not otherwise included and is authorized and disclosed to the debtor as required by law, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees.

(6) “Billing cycle” means the time interval between periodic billing statement dates.

(7) “Business purpose” means any purpose except a consumer purpose. For purposes of this act, a credit transaction:

(a) Engaged in by a debtor for an agricultural purpose; or

- (b) Engaged in by a debtor for an investment purpose; or
- (c) Creating a debt secured by a first mortgage or first deed of trust on real property; or
- (d) In which the debtor is an organization, rather than a natural person;

is considered to be for a business purpose.

(8) “Card issuer” means a person who issues a credit card.

(9) “Cardholder” means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance to or use of the card by another person.

(10) “Cash price” means the price of goods, services, or an interest in land at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, except as the administrator may otherwise prescribe by rule, and may include:

- (a) Applicable sales, use, and excise and documentary stamp taxes;
- (b) The cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements; and
- (c) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

The cash price stated by the seller to the buyer pursuant to the provisions on disclosure, part 2 of chapter 43, title 28, Idaho Code, is presumed to be the cash price.

(11) “Conspicuous” means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) “Consumer purpose” means primarily a personal, family or household purpose. For purposes of this act, consumer purpose does not include a credit transaction:

- (a) Engaged in by a debtor for an agricultural purpose; or
- (b) Engaged in by a debtor for an investment purpose; or
- (c) Creating a debt secured by a first mortgage or first deed of trust on real property; or
- (d) In which the debtor is an organization, rather than a natural person.

(13) “Credit” means the right granted by a creditor to a debtor to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

(14) “Credit card” means a card or device issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise. A transaction is “pursuant to a credit card” only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction is not “pursuant to a credit card” if the card or device is used solely in that transaction to:

- (a) Identify the cardholder or evidence his credit-worthiness and credit is not obtained according to the terms of the arrangement;
- (b) Obtain a guarantee of payment from the cardholder’s deposit account, whether or not the payment results in a credit extension to the cardholder by the card issuer; or
- (c) Effect an immediate transfer of funds from the cardholder’s deposit account by electronic or other means, whether or not the transfer results in a credit extension to the cardholder by the card issuer.

(15) “Creditor” means the person who grants credit in a regulated credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but use of the term does not itself impose on an assignee any obligation of his assignor. In case of credit granted pursuant to a credit card, “creditor” means the card issuer and not another person honoring the credit card.

(16) “Debtor” means the person to whom credit is granted in a regulated credit transaction.

(17) “Earnings” means compensation paid or payable by an employer to an employee, or for his account, for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(18) “Finance charge”:

(a) Except as provided in paragraph (b) of this subsection, “finance charge” means the sum of any of the following types of charges payable directly or indirectly by the debtor and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, as applicable:

- (i) Interest or any amount payable under a point, discount, or other system of charges, however denominated;
- (ii) Time-price differential, credit service, service, carrying, or other charge, however denominated;
- (iii) Premium or other charge for any guarantee or insurance protecting the creditor against the debtor’s default or other credit loss; and

(iv) Charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

(b) The term does not include:

(i) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence, unless the parties agree that these charges are finance charges; a charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account that is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or of a specified amount is required when billed, and in the ordinary course of business the debtor is permitted to continue to have purchases or other debts debited to the account after imposition of the charge;

(ii) Deferral charges, section 28-42-302, Idaho Code; or

(iii) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(19) “Goods” includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(20) “Insurance premium loan” means a regulated consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one (1) or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract financed.

(21) “Lender,” except as otherwise provided, includes an assignee of a lender’s right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

(22) “Lender credit card” means a credit card issued by a regulated lender.

(23)(a) “Loan” means, except as provided in paragraph (b) of this subsection:

(i) The creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third person for the account of the debtor;

(ii) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or his assignees;

(iii) The creation of debt by a cash advance to a debtor pursuant to a seller credit card;

(iv) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and

(v) The forbearance of debt arising from a loan.

(b) "Loan" does not include:

(i) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale and results from use of a seller credit card; or

(ii) The forbearance of debt arising from a sale.

(24) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Nationwide mortgage licensing system and registry" or "NMLSR" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage brokers, mortgage lenders, mortgage loan originators and other consumer financial service providers.

(26) "Open-end credit" means an arrangement pursuant to which:

(a) A creditor may permit a debtor, from time to time, to purchase on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically; and

(d) Either the debtor has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to purchase on credit.

(27) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(28) “Payable in installments” means that payment is required or permitted by agreement to be made in:

- (a) Two (2) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which a finance charge is made;
- (b) Four (4) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which no finance charge is made; or
- (c) Two (2) or more periodic payments with respect to a debt arising from a regulated consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two (2) or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the regulated consumer credit sale or regulated consumer loan is “payable in installments.”

(29) “Person” includes a natural person or an individual, and an organization.

(30) “Person related to” with respect to an individual means:

- (a) The spouse of the individual;
- (b) A brother, brother-in-law, sister or sister-in-law of the individual;
- (c) An ancestor or lineal descendant of the individual or his spouse; and
- (d) Any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual.

“Person related to” with respect to an organization means:

- (a) A person directly or indirectly controlling, controlled by or under common control with the organization;
- (b) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) The spouse of a person related to the organization; and
- (d) A relative by blood or marriage of a person related to the organization who shares the same home with him.

(31) “Precomputed credit transaction” means a credit transaction in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the federal consumer credit protection act does not in itself make a finance charge or transaction precomputed.

(32) “Presumed” or “presumption” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(33) “Regulated consumer credit sale” means a regulated credit sale, subsection (36) of this section, and for a consumer purpose, subsection (12) of this section.

(34) “Regulated consumer credit transaction” means a regulated credit transaction, subsection (37) of this section, and for a consumer purpose, subsection (12) of this section.

(35) “Regulated consumer loan” means a regulated loan, subsection (39) of this section, and for a consumer purpose, subsection (12) of this section.

(36) “Regulated credit sale” means a sale of goods, services, or an interest in land in which:

(a) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind; and

(b) The debt is payable in installments or a finance charge is made.

A “regulated credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(37) “Regulated credit transaction” means a regulated credit sale or regulated loan or a refinancing or consolidation thereof.

(38) “Regulated lender” means a person authorized to make, or take assignments of, regulated consumer loans, as a regular business, under section 28-46-301, Idaho Code.

(39) “Regulated loan” means a loan made by a creditor regularly engaged in the business of making loans in which the debt is payable in installments or a finance charge is made. A “regulated loan” does not include a sale in which the seller allows the buyer to purchase pursuant to a seller credit card.

(40) “Sale of goods” includes an agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement.

(41) “Sale of an interest in land” includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(42) “Sale of services” means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(43) “Seller” includes, except as otherwise provided, an assignee of the seller’s right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

(44) “Seller credit card” means either:

(a) A credit card issued primarily for the purpose of giving the cardholder the privilege of using the card to purchase property or services from the card issuer, persons related to the card issuer, or persons licensed or franchised to do business under the card issuer’s business or trade name or designation, or both from any of these persons and from other persons; or

(b) A credit card issued by a person except a regulated lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase property or services from at least one hundred (100) persons not related to the card issuer.

(45) “Services” includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(46) “Supervised financial organization” means a person, except an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of this state or of the United States that authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

Credits

S.L. 1983, ch. 119, § 3; S.L. 2006, ch. 122, § 2, eff. Jan. 1, 2006. Amended by S.L. 2013, ch. 54, § 2, eff. July 1, 2013.

§ 28-41-302. Federal consumer credit protection act—Defined

In this act “Federal Consumer Credit Protection Act” means the consumer credit protection act, Public Law 90-321; 82 Stat. 146, as amended, to and including January 1, 2005, or a subsequent date if so defined by administrative rule, and includes regulations issued pursuant to that act, as amended to and including January 1, 2005, or a subsequent date if so defined by administrative rule.

Credits

S.L. 1983, ch. 119, § 3; S.L. 2002, ch. 301, § 2; S.L. 2003, ch. 74, § 1; S.L. 2004, ch. 98, § 1; S.L. 2005, ch. 263, § 1.

§ 28-42-101. Short title

This chapter shall be known and may be cited as the Idaho Credit Code--Finance Charges and Related Provisions.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-201. Maximum finance charge

(1) With respect to a loan or credit sale, the rate of finance charge shall be that which is agreed upon between the parties to the transaction. In addition to the finance charge permitted herein, a creditor may contract for and receive any other charge, except to the extent expressly prohibited or limited by this act.

(2) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise. If the credit transaction is precomputed:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment is governed by the provisions on rebate upon prepayment, section 28-42-307, Idaho Code.

(3) Except as provided in subsection (4) of this section, the term of a credit transaction for purposes of this section commences on the day the credit transaction is made. The administrator may adopt rules with respect to treating as regular minor irregularities in amount or time.

(4) With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance, payment of the premium on which is financed by the loan.

Credits

S.L. 1983, ch. 119, § 3; S.L. 1991, ch. 278, § 1; S.L. 1993, ch. 227, § 1.

§ 28-42-301. Delinquency charges

(1) With respect to a precomputed regulated consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its due date, as originally scheduled or as deferred, in an amount which is not more than five percent (5%) of the unpaid amount of the installment, or twelve dollars and fifty cents (\$12.50), whichever is greater.

(2) With respect to a regulated consumer loan secured by a security interest in real property which is used or expected to be used as the residence of the debtor which is not a precomputed regulated consumer loan, the parties may contract for a delinquency charge on any installment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment, or fifteen dollars (\$15.00), whichever is greater.

(3) With respect to all other regulated consumer credit transactions, whether secured or unsecured, and whether such credit transactions are classified as open-end credit or closed-end credit, the parties may contract for a delinquency charge on any installment or scheduled payment not paid in full within ten (10) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment or scheduled payment, or fifteen dollars (\$15.00), whichever is greater.

(4) A delinquency charge under subsection (1), subsection (2) or subsection (3) of this section may be collected only once on an installment or scheduled payment, however long it remains in default. No delinquency charge may be collected if the installment or scheduled payment has been deferred and a deferral charge, section 28-42-302, Idaho Code, has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(5) No delinquency charge may be collected on an installment or payment which is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment or scheduled payment or a delinquency charge on an earlier installment or scheduled payment may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or scheduled payments and then to delinquent installments or scheduled payments.

(6) If two (2) installments or parts thereof of a precomputed regulated consumer credit transaction are in default for ten (10) days or more, the creditor may elect to convert the credit transaction from a precomputed regulated consumer credit transaction to one in which the finance charge is based on unpaid balances. In this event, he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on finance charge for regulated consumer credit transactions. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 28-42-307, Idaho Code.

Credits

S.L. 1983, ch. 119, § 3; S.L. 1993, ch. 227, § 2; S.L. 1996, ch. 134, § 1; S.L. 2002, ch. 302, § 1.

§ 28-42-302. Deferral charges

(1) With respect to a precomputed regulated consumer credit transaction, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the creditor may make and collect a charge not exceeding the rate previously stated to the debtor applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as $\frac{1}{30}$ th of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The parties may agree in writing at the time of a precomputed regulated consumer credit transaction, refinancing, or consolidation that if an installment is not paid within ten (10) days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

(3) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-303. Finance charge on refinancing

With respect to a regulated consumer credit transaction, the creditor may, by agreement with the debtor, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing. The amount financed resulting from the refinancing comprises, if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the borrower or buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, on the date of refinancing, except that for the purpose of computing this amount, no minimum charge shall be allowed.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-304. Finance charge on consolidation

If a debtor owes an unpaid balance to a creditor with respect to a regulated consumer loan or regulated consumer credit sale, or a refinancing or consolidation thereof, and becomes obligated on another regulated consumer loan or regulated consumer credit sale, or a refinancing or consolidation thereof, with the same lender or seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous loan or sale pursuant to the provisions on refinancing, section 28-42-303, Idaho Code, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent loan or sale. The lender or seller may contract for and receive a finance charge based on the aggregate amount financed resulting from the consolidation.

(2) The parties may agree to consolidate the unpaid balance of a regulated consumer loan or regulated consumer credit sale with the unpaid balance of another regulated consumer loan or regulated consumer credit sale. The parties may agree in writing to refinance the previous unpaid balance pursuant to the provisions on refinancing, section 28-42-303, Idaho Code, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding to it the amount financed or the principal with respect to the subsequent loan or sale; the aggregate amount resulting from the consolidation shall be deemed principal and the creditor may contract for and receive a finance charge based upon the principal.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-305. Conversion to open-end credit

The parties may agree at or within ten (10) days before the time of conversion to add the unpaid balance of a regulated consumer credit transaction not made pursuant to open-end credit to the debtor's open-end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed, determined according to the provision on finance charge on refinancing, section 28-42-303, Idaho Code.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-306. Right to prepay

(1) Subject to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, and subject to the provisions of subsection (2) of this section, the debtor may prepay in full the unpaid balance of a regulated consumer credit transaction at any time without penalty.

(2) With respect to a regulated consumer credit transaction which is primarily secured by a mortgage or deed of trust on real property, the parties may agree upon a prepayment charge to be paid by the debtor to the creditor if the debt is repaid in full and prior to its due date, during the first three (3) years of the contract, which prepayment charge shall not exceed the following:

(a) For closed-end loans, the prepayment charge may not exceed an amount equal to six (6) months interest calculated on the average balance for the prior six (6) months at the rate of interest designated in the contract. If the prepayment occurs prior to the expiration of six (6) months from the date of the contract, the prepayment charge may be calculated in the same manner, except the number of months shall be the number of months the loan has existed;

(b) For open-end loans, the amount of the prepayment charge shall not exceed an amount equal to six (6) months finance charge at the annual percentage rate in effect at the time of prepayment, calculated on the average of the average daily balances on the account for the last six (6) billing periods prior to prepayment. If the account has been open for less than six (6) billing periods, the prepayment charge shall be calculated in the same manner, except the number of billing periods shall be the number of billing periods the account has been open.

(3) No prepayment charge may be charged or collected if the loan is refinanced or consolidated with the same lender.

(4) Disclosure of any prepayment charge authorized by this section shall be made by the creditor to the debtor in such manner and form as may be approved by the director.

Credits

S.L. 1983, ch. 119, § 3; S.L. 1996, ch. 244, § 1.

§ 28-42-307. Rebate upon prepayment

(1) Except as provided in subsection (2) of this section, upon prepayment in full of the unpaid balance of a precomputed regulated consumer loan or regulated consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than one dollar (\$1.00), no rebate need be made.

(2) Upon prepayment in full of a regulated consumer loan or regulated consumer credit sale, other than one pursuant to open-end credit, a refinancing, or consolidation, whether or not precomputed, the creditor may collect or retain a minimum charge within the limits stated in this subsection if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of finance charge contracted for, or five dollars (\$5.00) in a transaction which had a principal of seventy-five dollars (\$75.00) or less, or seven dollars and fifty cents (\$7.50) in a transaction which had a principal of more than seventy-five dollars (\$75.00).

(3)(a) Except as otherwise provided in this section, the unearned finance charge shall be an amount which is a proportion of the precomputed interest at least as great as the sum of the remaining monthly balances of principal and interest combined scheduled to follow the installment date nearest the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. If such prepayment occurs before the first installment date, an additional refund of $\frac{1}{30}$ th of the portion of precomputed interest which should be retained in the first installment period shall be made for each day from the date of prepayment in full to the first scheduled installment date. Any prepayment made on or before the 15th day following an installment date shall be deemed to have been made on the preceding installment date.

(b) With respect to a precomputed transaction entered into on or after July 1, 1978, and payable according to its original terms in more than sixty-one (61) installments, the unearned portion of the finance charge is, at the option of the creditor, either:

1. That portion which is applicable to all fully unexpired computational periods as originally scheduled, or, if deferred, as deferred, which follow the date of prepayment. For this purpose, the applicable charge is the total of that which would have been made for each such period, had the regulated consumer loan or regulated consumer credit sale not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, the rate of finance charge previously stated to the debtor based upon the assumption that all payments were made as originally scheduled, or if deferred, as deferred. The creditor, at his option, may round the stated rate to the nearest one-quarter ($\frac{1}{4}$) of one percent (1%) if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

2. The total finance charge minus the earned finance charge. The earned finance charge shall be determined by applying the rate previously stated to the debtor according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(4) In this section:

(a) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that date;

(b) "Computational period" means one (1) month if one-half ($\frac{1}{2}$) or more of the intervals between scheduled payments under the agreement is one (1) month or more, and otherwise means one (1) week;

(c) The "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a loan or credit sale, refinancing, or consolidation, and includes either the first or last day of the interval;

(d) If the interval to the due date of the first scheduled installment does not exceed one (1) month by more than fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one (1) computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one (1) month and:

1. If the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one (1) month by more than five (5) days but not more than fifteen (15) days, the unearned finance charge shall be

increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be $\frac{1}{30}$ th of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) month; and

2. If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not subsection 5(a)1. applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one (1) month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the creditor at his option may exclude the extra days and the charge for the extra days in computing the unearned finance charge; but if he does so and a rebate is required before the due date of the first scheduled installment, he shall compute the earned charge for each elapsed day as $\frac{1}{30}$ th of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one (1) week and:

1. If the number of days in the interval to the due date of the first scheduled installment is less than five (5) days, or more than nine (9) days but not more than eleven (11) days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be $\frac{1}{7}$ th of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) week; and

2. If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if four (4) days or more. This subparagraph applies whether or not subsection 5(c)1. applies.

(6) If a deferral, section 28-42-302, Idaho Code, has been agreed to, the unearned portion of the finance charge shall be computed with regard to the deferral. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the creditor of delinquency charges, section 28-42-301, Idaho Code.

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a regulated consumer loan or regulated consumer credit sale by the proceeds of credit insurance, section 28-44-103, Idaho Code, the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten (10) business days after satisfactory proof of loss is furnished to the creditor.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-308. Dishonored check fees

With respect to a regulated credit transaction, a dishonored check fee in the amount allowed as a set collection fee under section 28-22-105, Idaho Code, may be charged and collected by a creditor, for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft, offered by a debtor in full or partial repayment of a regulated credit transaction, and, provided that the fee is contracted for between the parties.

Credits

S.L. 1994, ch. 185, § 4; S.L. 1997, ch. 73, § 1.

§ 28-42-401. Money of account defined

The money of account in this state is the dollar, cent and mill, and all public accounts and the proceedings of all courts in relation to money must be kept and expressed in money of the above denomination.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-402. Money of other denominations

The above provisions do not in any manner affect any demand expressed in money of another denomination, but such demand in any suit or proceeding affecting the same must be reduced to the above denominations.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-403. Computation of judgments

In all judgments rendered by any court for any debt, damages or costs, and in all executions issued thereon, the amount must be computed, as near as may be, in dollars and cents, rejecting small fractions; and no judgment or other proceeding is erroneous for such omission.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-42-404. Compound interest

Parties may agree in writing for the payment of compound interest.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-101. Short title

This chapter shall be known and may be cited as the Idaho Credit Code--Regulation of Agreements and Practices.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-201. Compliance with federal Consumer Credit Protection Act

A person upon whom the Federal Consumer Credit Protection Act¹, including regulations promulgated pursuant thereto, imposes duties or obligations, shall make or give to the debtor the disclosures, information, and notices required of him by that act and in all respects comply with that act. This section imposes the duty on a creditor to comply with the terms of the Federal Consumer Credit Protection Act only with respect to those credit transactions to which the Federal Consumer Credit Protection Act by its terms applies.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-202. Notice of assignment

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-203. Change in terms of open-end consumer credit accounts

Whether or not a change is authorized by prior agreement, a creditor may change the terms of an open-end consumer credit account applying to any balance incurred before or after the effective date of the change.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-204. Receipts--Statements of account--Evidence of payment

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

(2) Upon written request of a debtor, the person to whom an obligation is owed pursuant to a regulated consumer credit transaction, except one pursuant to open-end consumer credit, shall provide a written statement of the dates and amounts of payments made within the twelve (12) months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested, the creditor may make a reasonable charge not in excess of ten dollars (\$10.00) for each additional statement.

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-205. Form of insurance premium loan agreement

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-301. Security in sales

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-302. Cross-collateral

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-303. Debt secured by cross-collateral

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

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-304. No assignment of earnings

(1) A creditor may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a regulated consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit a debtor from authorizing deductions from his earnings in favor of his creditor if the authorization is revocable, the debtor is given a complete copy of the writing evidencing the authorization at the time he signs it, and the writing contains on its face a conspicuous notice of the debtor's right to revoke the authorization.

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-305. Authorization to confess judgment prohibited

A debtor may not authorize any person to confess judgment on a claim arising out of a regulated consumer credit transaction. An authorization in violation of this section is void.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-306. Certain negotiable instruments prohibited

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-307. Balloon payments

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

(2) This section does not apply to:

- (a) A transaction pursuant to open-end credit;
- (b) A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the debtor;
- (c) A transaction of a class defined by rule of the administrator as not requiring for the protection of the debtor his right to refinance as provided in this section; or
- (d) A transaction secured by a second deed of trust or mortgage on a one (1) to four (4) family dwelling occupied by the debtor.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-308. Referral sales

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-309. Restrictions on interest in land as security

With respect to a regulated consumer loan in which the principal is one thousand dollars (\$1,000) or less, a regulated lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-310. Regular schedule of payments--Maximum loan term

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

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-311. Limitation on attorney fees

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-312. Attorney's fees

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-401. Home solicitation sale defined

"Home solicitation sale" means a regulated consumer credit sale of goods or services, in which the seller or a person acting for him personally solicits the sale, and the buyer's agreement or offer to purchase is given to the seller or a person acting for him, at his residence. It does not include a sale made pursuant to a preexisting open-end credit account with the seller or pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale which is subject to the provisions of the Federal Consumer Credit Protection Act¹ on the consumer's right to rescind certain transactions.

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-402. Buyer's right to cancel

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

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

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-403. Form of agreement or offer--Statement of buyer's rights

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

(2) The statement shall either:

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

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-404. Restoration of down payment

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

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

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

Credits

S.L. 1983, ch. 119, § 3.

§ 28-43-405. Duty of buyer--No compensation for services before cancellation

Except as provided by the provisions on retention of goods by the buyer, subsection (3) of section 28-43-404, Idaho Code, and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, a reasonable time is presumed to be forty (40) days.

Credits

S.L. 1983, ch. 119, § 3.