



June 15, 2006

Re: *Idaho's New Title Loan Act*

Dear Idaho Licensed Automobile Title Lender:

As you are undoubtedly aware, the 2006 Idaho Legislature enacted the Idaho Title Loan Act, which necessitates some changes in the automobile title lending business in Idaho. The following question-answer format is intended to provide guidance on this new law, which goes into effect on July 1, 2006.

Please carefully study the following questions and answers. The new Idaho Title Loan Act significantly changes required practices in conducting title lending business in Idaho.

Q: I already have a Regulated Lenders license under the Idaho Credit Code (ICC). Under the new Title Loan Act, will I have to obtain a separate license to make title loans in Idaho?

A: *No. The Title Loan Act is a part of the ICC, and a Regulated Lender's license under the ICC remains the operative license for title lending in Idaho.*

Q: Under the new Title Loan Act, what is a "Title Loan?"

A: *A title loan is a loan for a consumer purpose that is secured by a nonpurchase money security interest in titled personal property¹ and that is scheduled to be repaid in either a single installment or in multiple installments that are not fully amortized.*

Q: What is the effect of making a title loan in Idaho without the required Regulated Lender's license under the Idaho Credit Code?

A: *The loan transaction is void, and the person making the loan forfeits the right to collect on the loan. The lender must also release its security interest and return to the borrower (i) all principal, interest, and any other fee paid by the borrower, (ii) the certificate of title, and (iii) the vehicle if the lender has taken possession of it. If the lender has taken possession of the vehicle and is not able to return it to the borrower, the lender must pay the borrower the fair market value of the vehicle.*

¹ "Titled Personal Property" means any motor vehicle, the ownership of which is evidenced and delineated by a state issued certificate of title, but does not include a motor home or manufactured home.

Q: How can I obtain a copy of the new Idaho Title Loan Act?

A: A copy of the new law (House Bill 784 as enacted) can be found at the following Internet address: <http://www3.state.id.us/oasis/H0784.html>. Once codified in the Idaho Code at Idaho Code § 28-46-501 et seq., a link to the Title Loan Act will also be available on the Department's website under the "Laws/Statutes" section. The Department's website may be viewed by going to: <http://finance.idaho.gov>

Q: Does the Idaho Title Loan Act include specific requirements for title loan agreements I use with borrowers in Idaho?

A: Yes. Title loan agreements must include, (i) the make, model and year of the titled personal property, (ii) the vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property, (iii) the name, residential address and date of birth of the borrower, (iv) the date the title loan agreement is executed by the title lender and the borrower, (v) the maturity date of the title loan agreement, (vi) the name and physical address of the title loan office, (vii) the statement that, "The debtor represents and warrants, to the best of the debtor's knowledge, that the titled personal property is not stolen and has no liens or encumbrances against it, the debtor has the right to enter into this transaction and will not apply for a duplicate certificate of title while the title loan agreement is in effect," (viii) in at least 12-point bold type and in all capitalized letters, the following specific separate statements:

1. **THIS LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS;**
2. **YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT-TERM CASH NEEDS;**
3. **YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST AND FEES IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE;**
4. **THIS LOAN MAY BE A HIGHER INTEREST LOAN. YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS MAY BE AVAILABLE TO YOU;**
5. **YOU ARE PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE TITLED PERSONAL PROPERTY YOU ARE USING AS SECURITY FOR THIS LOAN;**
6. **IF YOU DEFAULT UNDER THIS LOAN THE TITLE LENDER MAY TAKE POSSESSION OF THE TITLED PERSONAL PROPERTY USED AS SECURITY FOR THIS LOAN AND SELL THE PROPERTY IN THE MANNER PROVIDED BY LAW;**

7. **IF YOU ENTER INTO A TITLE LOAN AGREEMENT, YOU HAVE A LEGAL RIGHT OF RESCISSION. THIS MEANS YOU MAY CANCEL YOUR CONTRACT AT NO COST TO YOU BY RETURNING THE MONEY YOU BORROWED BY THE NEXT BUSINESS DAY AFTER THE DATE OF YOUR LOAN;**
8. **IF YOU BELIEVE THAT THE TITLE LENDER HAS VIOLATED THE PROVISIONS OF THE IDAHO TITLE LOAN ACT, YOU HAVE THE RIGHT TO FILE A WRITTEN COMPLAINT WITH THE IDAHO DEPARTMENT OF FINANCE AND THE DEPARTMENT WILL INVESTIGATE YOUR COMPLAINT. IF YOU EXERCISE THIS RIGHT, PLEASE ADDRESS YOUR COMPLAINT AS FOLLOWS:**

**Director Gavin M. Gee
Idaho Department of Finance
800 Park Blvd, Suite 200
Boise, ID 83712**

Q: Does the Idaho Title Loan Act require me to post any notices in conspicuous public view at my place of business?

A: *Yes. In addition to being incorporated into all title loan agreements, the foregoing disclosure statements must be conspicuously posted at each location from which title loans are offered.*

Q: Under the Idaho Title Loan Act is there a limit on the term of a title loan agreement?

A: *Yes. The Idaho Title Loan Act specifically states, "Title loan agreements shall not exceed thirty (30) days in length." (Idaho Code § 28-46-506(1))*

Q: Can a title loan agreement be renewed?

A: *Yes. A title loan agreement may provide for renewals, which may occur automatically, unless prior to the end of the loan term the borrower has, (i) paid all principal and finance charges due in accordance with the title loan agreement, or (ii) surrendered possession, title and all other interest in and to the titled personal property to the title lender. A title loan agreement shall not be renewed if the title lender has notified the borrower in writing that the title loan agreement is not to be renewed.*

Q: Does a borrower have a right to cancel a title loan agreement after entering into it?

A: *Yes. The borrower has the right to cancel his/her obligation to make payments under a title loan agreement until the close of the next business day² after the day when the borrower signs a title loan agreement if the borrower, (i) returns the original check or cash to the location where the loan was originated.*

² "Business day" means any day that the title loan office is open for business.

Q: Does a borrower have to make a payment on his/her title loan as a qualification of being able to renew that loan?

A: *Yes, beginning with the third (3rd) renewal. The borrower must make a payment of at least 10% of the principal amount of the original title loan amount beginning with the 3rd renewal – in addition to any finance charges due. Finance charges due at each successive renewal must be calculated on the outstanding principal balance. Principal payments in excess of the 10% required principal reduction shall be credited to the outstanding principal on the day received. At the maturity of any renewal requiring a principal reduction payment, if the borrower has not made adequate previous principal reduction payments to satisfy the current required principal reduction requirement, and the borrower cannot repay at least 10% of the original principal balance and any outstanding finance charges, the title lender may, but shall not be obligated to, defer any required principal payment until a future date. No further finance charges may accrue on any such principal amount thus deferred.*

Q: As a title lender, am I required to provide written notice to a borrower when his/her title loan is automatically renewed³ as provided for in the title loan agreement?

A: *Yes. Written notice of the renewal must be provided by the title lender to the borrower within 14 days of an automatic renewal. Notice may be made by personal delivery to the borrower or by deposit in the regular mail to the borrower's address listed on the title loan agreement.*

Q: Does a title lender have any specific requirements before exercising any of its rights upon a default of the title loan agreement by the borrower?

A: *Yes. Before exercising any of its default rights under a title loan agreement, the title lender must mail a "Notice to Cure Default" to the borrower at the borrower's last address shown in the title lender's file, notifying the borrower that he/she has 10 days from the date of the notice in which to cure the default.⁴*

Q: As a title lender, what are my rights if the borrower doesn't cure the default within 10 days after the date of the notice?

A: *Then the lender may exercise its rights as authorized under the Uniform Commercial Code – Secured Transactions (Idaho Code § 28 9-101 et seq.). No further finance charges can be assessed to the borrower after the title lender has obtained possession of the titled personal property.*

³ A "renewal" is any extension of a title loan for an additional period without any change in the terms of the title loan other than extension of the maturity date and a reduction in principal (Idaho Code § 28-46-506(4)).

⁴ Upon voluntary surrender of the titled personal property used as security for a title loan, the title lender shall have no obligation to send any "Notice to Cure Default" to the borrower.

Q: Does the Idaho Title Loan Act specify any specific practices that are prohibited in making title loans in Idaho?

A: Yes. *Title lenders are specifically prohibited from:*

1. *Entering into a title loan agreement with a person less than 18 years of age, or with anyone who appears to be intoxicated;*
2. *Making any agreement giving the title lender any recourse against the borrower other than the title lender's right to take possession of the titled vehicle and certificate of title upon the borrower's default, and to sell or otherwise dispose of the titled vehicle in accordance with the provisions of Uniform Commercial Code – Secured Transactions (Idaho Code § 28 9-101 et seq.), except in instances where the borrower prevented repossession of the vehicle, damaged or committed or permitted waste on the vehicle or committed fraud;*
3. *Entering into a title loan agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title loan agreements the borrower has with the same lender secured by any single titled personal property, exceeds the retail value of the titled personal property as determined by common motor vehicle appraisal guides;*
4. *Accepting any waiver, in writing or otherwise, of any right or protection accorded a debtor under the Idaho Title Loan Act;*
5. *Failing to exercise reasonable care to protect from loss or damage the certificate of title in the physical possession of the title lender;*
6. *Purchasing titled personal property used as security for a title loan made by the title lender;*
7. *Entering into a title loan agreement unless the borrower presents a clear title to the vehicle at the time the loan is made⁵;*
8. *Capitalizing or adding any accrued interest or fee to the original principal of the title loan agreement during any renewal of the agreement;*
9. *Requiring a borrower to provide any additional guaranty as a condition to entering into a title loan agreement;*
10. *Using any device or agreement, including agreements with affiliated title lenders, with the intent to obtain greater charges than authorized under the provisions of the Idaho Title Lender Act;*
11. *Violating the provisions of the Idaho Title Loan Act or any rule promulgated pursuant thereto.*

⁵ If the title lender files a lien against a vehicle without possession of a clear title to such vehicle, the resulting lien is void.

Q: Does the Idaho Title Loan Act include any exemptions?

A: *Yes. The provisions of the Idaho Title Loan Act do not apply to any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union, insurance company, or industrial loan company. The terms "bank," "savings and loan association," "credit union," "insurance company" and "industrial loan company" shall include employees and agents of such organizations as well as wholly-owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes*

Q: When the Idaho Title Loan Act goes into effect on July 1, 2006, will existing borrowers be required to sign new loan agreements?

A: *No, **unless** the borrower elects to renew after July 1, 2006. Because each title loan renewal is a separate transaction, each title loan renewal occurring after July 1, 2006, must comply with the requirements of the new law. However, a borrower's first loan renewal after July 1, 2006, may be deemed as the initial title loan agreement period for purposes of calculating the renewal period at which time a 10% principal reduction payment is required.*

Q: Could you please provide me with an explanation of the principal reduction payment requirement in the Idaho Title Loan Act?

A: *Yes. As an example of the principal reduction requirement, assume a \$500 title loan to a borrower. Also assume that the borrower is about to renew the title loan for the 3rd time. At that time, the borrower is required to make a principal reduction payment of at least \$50 (10% of the **original** principal amount of \$500) in addition to any finance charges that are due as a condition of renewal. **During the subsequent 30-day renewal period, interest may accrue only on the remaining principal balance (\$450).** Likewise, if the borrower elects to renew the title loan for the 4th time, he/she is required to make another principal reduction payment of \$50 (10% of the **original** principal amount of \$500) in addition to any finance charges that are due as a condition of renewal. **During the subsequent renewal period, interest may accrue only on the remaining principal balance (\$400).** And so forth for each successive renewal.*

*If at the maturity of any renewal requiring a principal reduction payment, the borrower has not made previous principal reduction payments adequate to satisfy the current required principal reduction, and the borrower cannot repay at least 10% of the **original** principal balance and any outstanding finance charges, the title lender may, but shall not be obligated to, defer any required principal payment until a future date. **The title lender is not allowed to charge the borrower any further finance charges on principal amounts thus deferred.***

Q: How long can interest accrue on a title loan under the new Idaho Title Loan Act?

A: *A title loan under the Idaho Title Loan Act is a 30-day loan, which can be renewed per agreement between the lender and the borrower. The effect of the 10% principal reduction payment requirement, which payment requirement begins at the time of the borrower's 3rd renewal as discussed above, is that a title loan cannot charge interest against a title loan borrower after the date of the 12th renewal. This outcome stems from the fact that under the Idaho Title Loan Act the amount of interest that can be charged against a title loan borrower must be calculated on an incrementally declining principal balance; declining by 10% of the original principal balance beginning with the 3rd renewal (which, if so renewed, will occur 90 days after the date of the initial title loan) and by an additional 10% of the original principal balance at each successive renewal thereafter until the 12th renewal (which, if so renewed, will occur 360 days after the date of the initial title loan) at which time no further interest may accrue on the title loan under any scenario; the original principal balance having declined by 100% for calculation purposes, whether actually paid by the title loan borrower or not.*

Q: Does passage of the Idaho Title Loan Act mean that I can make loans to borrowers without making a valid "ability to repay" assessment? Isn't it enough that the borrower has an unencumbered vehicle title?

A: *No and No. The Idaho Credit Code prohibits unconscionable consumer lending practices. Before extending a title loan, a title lender has a responsibility to formulate a reasonable belief that the prospective borrower has the ability to repay the title loan under the terms of the title loan agreement from funds available to the borrower, taking into account the borrower's financial status. An affirmative "ability to repay" determination must be supportable by the title lender's reasonable assessment and must be documented in the borrower's loan file retained by the title lender.*

If, after studying the foregoing, you have additional questions regarding the application of the Idaho Title Loan Act, effective on July 1, 2006, please do not hesitate to contact the Consumer Finance Bureau of the Idaho Department of Finance at (208) 332-8002, or toll-free in Idaho at (888) 346-3378.

Best wishes.

Sincerely,

Michael Larsen

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance