

STATE OF IDAHO
IDAHO FINANCIAL FRAUD
PREVENTION ACT



(UNOFFICIAL COPY)

DEPARTMENT OF FINANCE

(Amended through 2005)

IDAHO FINANCIAL FRAUD PREVENTION ACT

CHAPTER 27, TITLE 67, IDAHO CODE

67-2750. SHORT TITLE. This act shall be known and may be cited as the "Idaho Financial Fraud Prevention Act."

67-2751. DEFINITIONS. As used in sections 67-2750 through 67-2762, Idaho Code:

(1) "Act" or "Idaho Financial Fraud Prevention Act" means sections 67-2750 through 67-2762, Idaho Code.

(2) "Department" means the Idaho department of finance.

(3) "Director" means the director of the Idaho department of finance or his designee.

(4) "Financial institution" means any state or federally chartered bank, savings bank, savings and loan association, thrift institution, holding company, credit union, credit union service organization, "regulated lender" as defined in section 28-41-301(37), Idaho Code, collection agency licensed under the Idaho collection agency act, mortgage lender, mortgage broker, or loan originator licensed under the Idaho residential mortgage practices act, licensee under the Idaho money transmitters act, escrow agency, or broker-dealer or investment advisor licensed under the Idaho securities act or federal law, or such an institution licensed under the laws of another state, and doing business in Idaho.

(5) "Person" means a natural person, firm, partnership, association, corporation, limited liability company, limited liability partnership, trust, or any other association of individuals, however organized, and whether or not citizens or residents of this state.

67-2752. FINANCIAL FRAUD ILLEGAL. It is unlawful for any person, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud a financial institution;

(2) To obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations, or promises or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument;

(3) To falsely represent that a person is a financial institution or a representative of a financial institution, for the purpose of obtaining money, goods, or services from any person;

(4) To obtain or record or attempt to obtain or record, personal identifying information of another person without the authorization of that person, for the purpose of obtaining money, goods, or services from any person, through a false or fraudulent representation that the person doing so is a financial institution. "Personal identifying information" has the same meaning as set forth in section 18-3122(10), Idaho Code, or any successor to that section;

(5) To fraudulently make, emboss, encode, or use a financial transaction card, financial transaction card account number, personal identification code or credit card sales draft, as defined in sections 18-3122, 18-3123, 18-3124 and 18-3125A, Idaho Code, or any successors to those sections, for the purpose of obtaining money, goods, or services from any person; or

(6) While serving as an employee, agent or representative of a financial institution, to obtain or attempt to obtain the money, funds, credits, assets, securities, or other property owned

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by, held by, or under the custody or control of, the financial institution by means of false or fraudulent pretenses, representations, or promises or by means of any fraudulent device, scheme or artifice, or through the use of a fraudulent monetary instrument.

67-2753. EMPLOYMENT OR AFFILIATION OF CERTAIN PERSONS. Except with the prior written consent of the director, no person who has been convicted of, or who has pled nolo contendere [contendere] to, any criminal offense involving dishonesty, breach of trust or fiduciary duty, or money laundering, or who has been granted a withheld judgment based on such offense, or who has been found to have violated this act, shall seek employment with, accept employment by, become employed by, or continue in their employment with an Idaho state chartered or licensed financial institution.

67-2754. POWERS OF DIRECTOR. The director shall have the following powers and authority under this act:

(1) Investigations. The director may make such public or private investigations within or without this state as he deems necessary to determine whether any person has violated this act or is attempting or conspiring to violate this act. The investigative powers of the director under this act shall include, but not be limited to, participating in joint or multistate investigations with any regulatory or law enforcement agencies of this state, any other state, the federal government or authorized agency thereof, or any regulatory or law enforcement agency of another country. The director may also participate in any antifraud or criminal information network or service available to the director or the department.

(2) Statements. The director may require or permit any person to file a statement in writing, under oath, to appear before the director and give testimony, or otherwise, as the director may determine, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publication. The director may publish information concerning any violation or attempted violation of this act, or any rule or order hereunder.

(4) Subpoenas and production. Either in the course of an investigation, or in any administrative proceeding brought pursuant to this act, in addition to the powers and penalties set forth in section 67-2717, Idaho Code, the director may subpoena documents and witnesses, take evidence, require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in any form or on any media, which the director, in his discretion, deems material or relevant.

(a) Failure to comply. In case of contumacy or refusal to obey a subpoena or order to compel production issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or the officer designated by him, to produce documentary evidence if so ordered, to appear and produce testimony if so ordered, or to give evidence relating to the matter under investigation or proceeding and any failure to obey such order of the court may be punished by the court as a contempt of court.

(b) Use of evidence or testimony. No person is excused from attending and testifying, from producing any document or record before the director or obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no

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individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

67-2755. INJUNCTIONS -- OTHER REMEDIES. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion:

(1) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder, if, in the determination of the director, it is necessary to protect any financial institution or the public, or a person is violating or is about to violate this act, or other good cause justifies the same, without prior notice to the person or opportunity for hearing.

(2) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder and, after giving reasonable notice and opportunity for a hearing, issue the following:

(a) An order restoring to any financial institution or person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, or any rule or order hereunder, pay a civil penalty to the department of finance in an amount not to exceed five thousand dollars (\$5,000) for each violation. In the event a person violating this act knowingly accepts money representing (i) equity in a person's home, (ii) a withdrawal from any individual retirement account or similar account or (iii) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(c) In addition to the penalties set forth in paragraph (b) of this subsection, in the event a person violating this act has knowledge that the victim is an elder or dependent adult, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation. As used in this section, "elder" means any person who is sixty-five (65) years of age or older. As used in this section, "dependent adult" means any person who is between the ages of eighteen (18) and sixty-four (64) years, who has physical or mental limitations which restrict the person's ability to carry out normal activities or to protect the person's rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age or illness;

(d) An order that the person violating this act, or any rule or order hereunder, pay costs, which in the discretion of the director may include an amount representing reasonable attorney's fees and reimbursements of investigative efforts; or

(e) An order granting other appropriate remedies.

(3) Enter into a consent order, or other administrative order or agreement, setting forth requirements, limitations and restrictions on the future conduct or practices of a person violating this act. A consent order, or other administrative order or agreement entered into pursuant to this act, may include assessment of any of the penalties authorized in subsection (2) of this section.

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(4) Bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in any act or practice constituting a violation of this act or any rule hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The director shall not be required to furnish a bond.

(5) In addition to the remedies in subsection (4) of this section, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated the provisions of this act or any rule or order hereunder, may be granted the following additional remedies:

(a) An order restoring to any financial institution or to any person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, rules or any order hereunder pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation;

(c) An order awarding the director all costs incurred, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursements for investigative efforts; or

(d) An order granting other appropriate remedies.

(6) Liability for sanctions, both civil and criminal, and personal jurisdiction shall extend to all persons who engaged in violations or attempted violations or who aided and abetted others or conspired with others in violations or attempted violations of this act and rules and orders hereunder. Officers and directors of corporations shall not be exempt from actions brought for violations, merely because of their capacity as officers or directors, if they have participated in acts making the violations possible or if they have actual or constructive knowledge of violations by the corporation while acting as an officer, director or member.

67-2756. CUSTOMER INDEMNIFICATION. In the event a financial institution indemnifies its customer for damages caused by a violation of this act, or assumes the loss caused its customer by a violation of this act, the financial institution shall be entitled to sue the violator, at law or in equity, to recover any actual damages suffered by its customer, plus costs and attorney's fees incurred in the bringing of the action.

67-2757. INSTITUTION OF CRIMINAL PROCEEDINGS. The director may refer such evidence as may be available concerning violations of this act or any rule or order hereunder to the attorney general, prosecuting attorney, United States attorney, county, state or federal law enforcement agency, or foreign law enforcement agency or prosecutor. Any county prosecuting attorney, or the attorney general may, in his discretion, with or without such a referral, institute appropriate criminal proceedings under this act.

67-2758. CRIMINAL PENALTIES FOR VIOLATIONS -- LIMITATION OF ACTIONS. (1) Any person who violates any provision of this act or who violates any rule or order hereunder, shall be guilty of a felony and, upon conviction, be fined not more than five thousand dollars (\$5,000) or imprisoned not more than three (3) years, or both.

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(2) In the event a person violates any provision of this act or any rule or order hereunder, and accepts money under any of the circumstances described in section 67-2755(2)(b), Idaho Code, or accepts money under any of the facts described in section 67-2755(2)(c), Idaho Code, shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than five (5) years for each violation, or both.

(3) No indictment or information may be returned under this act more than five (5) years after the alleged violation.

67-2759. CRIMINAL PUNISHMENT UNDER THIS ACT NOT EXCLUSIVE. Nothing in this act limits the power of the state or any other law enforcement agency to proceed against and punish any person for any conduct which constitutes a crime under any applicable law, statute, code or ordinance.

67-2760. JUDICIAL REVIEW OF ORDERS. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of chapter 52, title 67, Idaho Code.

67-2761. ADMINISTRATION OF ACT -- RULES, FORMS AND ORDERS. The administration of the provisions of this act shall be under the general supervision and control of the director. The director may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of financial institutions and consistent with the purposes of this act.

67-2762. ADMINISTRATIVE PUBLIC HEARINGS -- EXCEPTION. Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request that the hearing be conducted privately.