TITLE 26
BANKS AND BANKING

CHAPTER 1
TITLE AND SCOPE OF ACT

26-101. TITLE. This act, comprising chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 26, 32, 33, 34, 35 and 36, title 26, Idaho Code, as such chapters may be hereafter amended, shall be known as the "Idaho Bank Act" and shall be applicable to all corporations, copartnerships, cooperative associations and persons engaged in the business of banking in the state of Idaho.

[26-101, added 1979, ch. 41, sec. 2, p. 63; am. 1995, ch. 99, sec. 1, p. 300; am. 1997, ch. 310, sec. 2, p. 917; am. 2000, ch. 288, sec. 1, p. 972.]

26-102. PURPOSE OF THE ACT. The purposes of this act are to provide for:

(1) Safe and prudent conduct of the banking business for the benefit of depositors and shareholders.

(2) Maintenance of public confidence in banks.

(3) An opportunity for banks to remain competitive with each other, with financial institutions existing under other laws of this state and to encourage the continuation, maintenance and preservation of the dual banking system.

[26-102, added 1979, ch. 41, sec. 2, p. 63.]

26-103. 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being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[26-103, added 1979, ch. 41, sec. 2, p. 63.]

26-104. 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.

[26-104, added 1979, ch. 41, sec. 2, p. 63; am. 2015, ch. 244, sec. 8, p. 1011.]

26-105. EFFECT OF ACT ON EXISTING BANKS. The powers, privileges, duties and restrictions heretofore conferred and imposed upon any bank now existing and doing business under the laws of this state, are hereby abridged, enlarged or modified as each particular case may require to conform with the provisions of this chapter.

[26-105, added 1979, ch. 41, sec. 2, p. 63.]

26-106. DEFINITIONS. As used in this act, unless the context or subject matter otherwise requires:

(1) "Bank" means any person engaged in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether or not such deposit, however evidenced, is made subject to check or draft or other order.

(2) "Banking business" means the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business whether such deposit is made subject to check or draft or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) "Bank service corporation" means a corporation organized to perform bank services for two (2) or more banks, each of which owns part of the capital stock of such corporation, and which are subject to examination by either the department of finance of the state of Idaho or a federal bank supervisory agency.

For the purpose of this definition, "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(4) "Borrowing" means any nondeposit liability.

(5) "Branch" means any location except a loan production office, mobile or temporary facility, customer-bank communication terminal or bank service corporation at which a bank performs any or all functions of a bank.

(6) "Capital" means the amount of unimpaired paid-up common stock plus the amount of paid-up preferred stock issued and unimpaired.

(7) "Capital note" means a convertible or nonconvertible note of a bank subordinated as to principal and interest to the depositors of the bank and containing such conditions as the director may require.

(8) "Capital structure" means the total of the capital, surplus, undivided profits and subordinated capital notes and contingency reserves of the bank or such other account as determined by the director of the department of finance, less intangible assets.

(9) "Common stock" means the stock of a banking corporation other than preferred stock.

(10) "Commercial paper" means a short-term negotiable instrument arising out of a commercial transaction; provided however, that commercial paper shall not be construed to be a deposit as defined in this act.

(11) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(12) "Demand deposit" means all deposits except time deposits.

(13) "Deposit" means the act of placing or lodging money in the custody of a person, for safety or convenience whether interest-bearing or not, to be withdrawn at the will of the depositor or under rules, terms and regulations agreed upon by the depositor and the depository. If the context requires, deposit may also mean the money so deposited or the credit the depositor receives for it.

(14) "Depositor" means any person who deposits money.

(15) "Director" means the director of the department of finance.

(16) "Dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this act.

(17) "Executive officer" means each officer of a bank, who by virtue of his position, has both voice in the formulation of the policy of the bank and responsibility for the implementation of such policy.

(18) "Federal funds" means member bank deposits at federal reserve banks.

(19) "Federal reserve act" means and includes the act of congress of the United States approved December 23, 1913, as amended.

(20) "Federal reserve bank" means a federal reserve bank created and organized under the authority of the federal reserve act.

(21) "Federal reserve board" means the board of governors of the federal reserve system created and described in the federal reserve act.

(22) "Federal bank supervisory agency" means the comptroller of the currency, the board of governors of the federal reserve system, or the board of directors of the federal deposit insurance corporation.

(23) "Fiduciary" means trustee, agent, executor, administrator, personal representative, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(24) "Home state" means:

(a) With respect to a state chartered bank, the state from which the bank received the charter under which it operates.

(b) With respect to a national bank, the state in which the main office of the national bank is located.

(25) "Host state" means, with respect to any bank, a state other than the home state of the bank in which the bank maintains or seeks to establish and maintain a branch.

(26) "Member bank" means any national bank or state bank which has become or which becomes a member of one (1) of the federal reserve banks created by the federal reserve act.

(27) "Merger" means the union of two (2) or more bank corporations by the transfer of property of all to one (1) of them. As used in this act, "merger" includes a consolidation.

(28) "Merging bank" means a party to a merger.

(29) "Mobile or temporary facility" means a place of business of a bank from which the bank performs limited activities for limited periods of time.

(30) "National bank" means a bank organized under the laws of the United States and issued an organization certificate by the comptroller of the currency.

(31) "Net demand deposits" means the total of the bank's demand deposits after subtracting from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and excluding any deposits received in any office of the bank for deposits in any other office of the bank. The amount of trust funds held in the bank's own trust department, which the bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included as net deposits.

(32) "Net profits" means profits remaining after the deduction of all expenses including depreciation, losses, or doubtful assets, as required by

the director of the department of finance, interest, and taxes accrued or due.

(33) "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(34) "Preferred stock" means a class of the stock of a banking corporation issued in accordance with section 26-206, Idaho Code, which is accorded a preference or priority over the common stock of the corporation.

(35) "Resulting bank" means the bank resulting from a merger or conversion.

(36) "Savings deposit" means a deposit:

(a) That consists of funds deposited to the credit of or in which the entire beneficial interest is held by one (1) or more individuals, or a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed one hundred fifty thousand dollars ($150,000) per such depositor at a bank; and

(b) With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than thirty (30) days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(37) "State bank" means any bank chartered by the state of Idaho.

(38) "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(a) On a certain date, specified in the instrument, not less than thirty (30) days after the date of the deposit; or

(b) At the expiration of a certain specified time not less than thirty (30) days after date of the instrument; or

(c) Upon notice in writing which is actually required to be given not less than thirty (30) days before the date of repayment; and

(d) In all cases only upon presentation and surrender of the instrument.

(39) "Time deposit" means time certificates of deposit, time deposits open account, and savings deposits.

(40) "Time deposits open account" means a deposit, other than a time certificate of deposit, with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty (30) days after the date of the deposit,

or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty (30) days in advance of withdrawal.

(41) "Trust department" means the division of a bank which has been granted trust powers by the director of finance.

[26-106, added 1979, ch. 41, sec. 2, p. 64; am. 2004, ch. 159, sec. 1, p. 512; am. 2015, ch. 204, sec. 2, p. 618; am. 2016, ch. 47, sec. 3, p. 99.]

26-107. SECTIONS APPLICABLE TO NATIONAL BANKS. The provisions of sections 26-215, 26-301 through and including, 26-309, 26-311, 26-712, 26-713, 26-714, 26-1203, 26-1206, 26-1207, 26-1208, and 26-1209, 26-1601 through 26-1605, 26-2601 through 26-2612, Idaho Code, shall also apply to national banks.

[26-107, added 1979, ch. 41, sec. 2, p. 67; am. 1995, ch. 99, sec. 2, p. 300; am. 1997, ch. 225, sec. 1, p. 661; am. 2004, ch. 159, sec. 17, p. 525.]

TITLE 26
BANKS AND BANKING

CHAPTER 2
ORGANIZATION AND CORPORATION POWERS OF BANKS

26-201. GENERAL CORPORATION LAWS APPLICABLE. Except as otherwise provided herein, the general business corporation laws of this state shall apply to all corporations organized and operating under the bank act. In the event of any conflict between the provisions of the bank act and the provisions of the general business corporation laws, the laws governing limited liability companies, partnerships and other business associations and entities, or the laws governing entity mergers, acquisitions, conversions, domestications, interest exchanges and divisions, the bank act shall control.

[26-201, added 1979, ch. 41, sec. 2, p. 68; am. 2008, ch. 140, sec. 3, p. 404.]

26-202. AUTHORIZATION NECESSARY TO DO BUSINESS. It shall be unlawful for any person to engage in or transact any banking business in this state except by means of a corporation duly organized for that purpose and chartered under the bank act. Corporations organized to engage in and transact banking business shall be formed by five (5) or more natural persons under the general business corporation laws of this state and as provided in the bank act.

Except as specifically authorized by this act, other laws of the state of Idaho, or federal law, no person except a national bank shall engage in or transact any banking business except as is incidental or necessarily preliminary to its organization without the written approval of the director and without his written charter stating that it has complied with the provisions of the bank act and all of the requirements of law and that it is authorized to transact banking business within the state. To obtain a charter the incorporators shall file with the director the following information:

(a) Five (5) copies of its articles of incorporation;

(b) Satisfactory proof of compliance with section 26-204, Idaho Code;

(c) The names and addresses of its officers and directors;

(d) The names and addresses of all subscribers to its common stock and the amounts subscribed by each;

(e) The oath of each and every director as provided in section 26-213, Idaho Code;

(f) The affidavit of its directors to the effect that said corporation has complied with all the provisions of the bank act required to authorize it to commence business; and

(g) Such other information as the director may require in the form required by the director.

Upon filing of the foregoing, it shall be the duty of the department to examine and investigate into the condition of the corporation, ascertaining whether or not the capital has been paid in and whether the corporation has complied with all the provisions of the law required to entitle it to engage in the business of banking. The department shall also ascertain from the best sources of information at its command whether the character and general fitness of the persons named as subscribers and officers and directors are such that the bank may be operated in a safe, prudent and profitable manner and as to command the confidence of the community in which such bank is proposed to be located. If upon such examination, and investigation, it appears

that the corporation is lawfully entitled to commence banking business, and the directors and officers are competent to engage in banking business, and its subscribers are such as to command the confidence of the community, and if, in the opinion of the director the organization of the bank is justified, the director shall forthwith issue to the corporation a bank charter, under official seal.

If the director has reason to believe that the corporation has been formed for any other business than the legitimate banking business contemplated by the bank act or that the subscribers, officers and directors will not operate the bank in a safe, prudent and profitable manner, or that the bank will not have qualified experienced management with experience commensurate with the area where the bank is proposed to be located, he shall withhold such charter, and he may withhold the issuance of such charter to a corporation seeking to engage in banking business in an area which in his judgment does not justify or warrant a new or additional bank or could not support a profitable banking corporation.

[26-202, added 1979, ch. 41, sec. 2, p. 68; am. 2015, ch. 204, sec. 3, p. 622.]

26-203. ARTICLES OF INCORPORATION -- FORM. Proposed articles of incorporation of a banking corporation shall be in a form acceptable to the director, and must be submitted to the director for approval as to form and content before the same are filed for record in the offices of the secretary of state; provided that no bank shall be required to have the word "corporation" in its corporate name. The articles may include a provision which eliminates or limits the personal liability of the directors of the bank in accordance with section 30-1-202, Idaho Code, provided that such provision shall not eliminate or limit the liability of a director under section 26-213(5), Idaho Code.

[26-203, added 1979, ch. 41, sec. 2, p. 69; am. 1990, ch. 242, sec. 1, p. 694; am. 1998, ch. 337, sec. 1, p. 1083; am. 2008, ch. 140, sec. 4, p. 404.]

26-204. ARTICLES OF INCORPORATION -- AMENDMENT. Any proposed amendment to the articles of incorporation of a bank shall, before the same is adopted, be submitted to the director for his approval as to form and content. In addition to the articles of amendment to be filed with the secretary of state under the provisions of the general business corporation act, like articles and a copy of the articles of incorporation as amended must be filed in the office of the director and no amendment shall be operative nor effective until such articles be filed in the office of the director and shall have been approved in writing by the director. The articles of incorporation may be amended to include a provision which eliminates or limits the personal liability of the directors of the bank in accordance with section 30-1-202, Idaho Code, provided that such provision shall not eliminate or limit the liability of a director under section 26-213(5), Idaho Code.

[26-204, added 1979, ch. 41, sec. 2, p. 69; am. 1990, ch. 242, sec. 2, p. 694; am. 1998, ch. 337, sec. 2, p. 1083.]

26-205. INCORPORATION -- CAPITAL STRUCTURE REQUIRED. (1) Every banking corporation hereafter organized must have common stock, surplus and undi-

vided profits paid up in unhypothecated cash of not less than the following amounts:

(a) In cities, and communities the population of which does not exceed six thousand (6,000), a minimum of two hundred fifty thousand dollars ($250,000) in par value of common stock, fifty thousand dollars ($50,000) in surplus, and twenty-five thousand dollars ($25,000) in undivided profits.

(b) In cities, or communities the population of which exceeds six thousand (6,000), but does not exceed fifty thousand (50,000), a minimum of three hundred fifty thousand dollars ($350,000) in par value common stock, seventy thousand dollars ($70,000) in surplus, and thirty-five thousand dollars ($35,000) in undivided profits.

(c) In cities, or communities the population of which exceeds fifty thousand (50,000), a minimum of one million dollars ($1,000,000) in par value of common stock, two hundred thousand dollars ($200,000) in surplus, and one hundred thousand dollars ($100,000) in undivided profits.

(d) The par value of common stock, surplus and undivided profit amounts set out herein are minimum amounts only, and the director may in his discretion require larger amounts of par value of common stock, surplus and undivided profits.

(2) No original subscription to the stock of any bank hereafter organized under the laws of this state shall be valid or operative unless the subscriber also subscribes and actually pays in, in cash, at the time he pays such subscription an additional amount equal to twenty percent (20%) of his subscription, for the purpose of constituting surplus funds for such bank and an additional amount equal to ten percent (10%) of his subscription for the purpose of constituting undivided profits for such bank to be used, so far as necessary, in paying the costs of organization and for the general expenses of the bank. No bank shall issue any share of stock until the full par value thereof, plus twenty percent (20%) surplus and ten percent (10%) undivided profits, has been actually paid in, in cash, as above provided.

(3) The entire par value of the common stock, plus surplus and undivided profits of every banking corporation hereafter formed shall be paid in, in cash, and deposited in a bank in the state of Idaho before a corporation may be authorized to commence banking business. A subscription for which a subscriber gives the banking corporation his or her note in payment or part payment of the par value of common stock, plus surplus or undivided profits is void. Stock issued pursuant to this section may not be used as security for a loan to purchase stock.

(4) For the purpose of this section, the population shown and determined by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, shall be deemed to be the population of any city in which any such bank is to be organized. If the principal place of business of any bank so organized is located outside of the corporate limits of any city or village, then the population within a radius of five (5) miles of its principal place of business, which is not included within the boundaries of any municipal corporation, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classification under the provisions of this section.

(5) A bank may not issue preferred stock to meet the capitalization requirements of this section.

[26-205, added 1979, ch. 41, sec. 2, p. 69.]

26-206. PREFERRED STOCK. (1) Subject to the provisions of the bank act, and by and with the approval and consent of the director, any bank now or hereafter incorporated under the laws of this state may issue such part of its capital as is approved by the director as preferred stock having such special rights, preferences, privileges, immunities, qualifications and restrictions as to voting, dividends, redemption, retirement, participation in corporate assets, not common to other stock, as provided in its articles of incorporation as hereafter adopted or amended, and as are not inconsistent with the provisions of the bank act and the provisions of its articles of incorporation or amendments thereto.

(2) Dividends on preferred stock may be declared and paid only from net profits as defined by section 26-106, Idaho Code, but such net profits may be current profits or those accumulated as surplus. No dividend shall be declared nor paid, any retirement or redemption of such stock be made, nor any other distribution or payment of corporate assets made thereon or therefor at any time when the total common stock and surplus is below or will be thereby reduced below the minimum common stock required by law plus a surplus fund equal to ten percent (10%) of such minimum common stock or the amount of common stock required by the director at the time the bank's charter was issued plus a surplus fund equal to ten percent (10%) of such required common stock.

(3) Preferred stock under the provisions of this act must be subscribed and paid for at not less than par value.

(4) Except as otherwise provided in the bank's articles of incorporation or by the bank act, preferred stock authorized by this act is capital and shall be considered as such in computing the capital structure of the bank within the meaning of all provisions of the bank act.

[26-206, added 1979, ch. 41, sec. 2, p. 71; am. 2020, ch. 82, sec. 15, p. 190.]

26-207. BYLAWS. Every banking corporation formed under the bank act must, within thirty (30) days after the issuance of its certificate of incorporation, adopt a code of bylaws as provided in the Idaho Business Corporations Act. A copy of all bylaws and of any subsequent amendments thereto and a copy of the bylaws as amended must be mailed by certified mail return receipt requested to the department within twenty (20) days after the adoption thereof, and no such bylaw or amendment shall be effective until so mailed.

[26-207, added 1979, ch. 41, sec. 2, p. 71.]

26-208. PLACE OF MEETINGS. Regular or special meetings of the board of directors or the executive committee may be held for the transaction of any business of the bank at any place within or outside of the state of Idaho. Unless restricted by the articles of incorporation or bylaws of the bank, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present as though in person at the meeting.

[26-208, added 1979, ch. 41, sec. 2, p. 72; am. 2021, ch. 58, sec. 1, p. 186.]

26-209. TIME OF ANNUAL MEETING. An annual meeting of stockholders of a bank shall be held each year at the time and in the manner indicated in the bylaws.

[26-209, added 1979, ch. 41, sec. 2, p. 72; am. 2015, ch. 204, sec. 4, p. 623.]

26-210. STOCKBOOK. A book shall be provided and kept by every bank in which shall be entered the names and residences of the stockholders thereof, the number of shares held by each, the time when such person became a stockholder, and also all transfers of stock, stating the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said books shall be prima facie evidence of the facts therein stated.

The president, cashier or corporate secretary of every bank shall cause to be kept at all times in the principal place of business of the bank a full and correct list of the names and residences of all the shareholders. Such list shall be subject to the inspection of any stockholder of the bank and a stockholder may obtain a copy of such list upon paying the cost of the reproduction of the list.

[26-210, added 1979, ch. 41, sec. 2, p. 72.]

26-211. STOCK-TRANSFERS. (1) The shares of stock of a bank shall be deemed personal property and shall be transferred on the books of the bank in such manner as the bylaws thereof shall direct.

(2) All transfers of voting securities of a bank by sale, gift or otherwise shall be reported to the director thirty (30) days prior to such transfer and shall be approved by the director prior to such transfer if, immediately after the transfer, the acquiring person or persons acting in concert will own, control, or hold with power to vote ten percent (10%) or more of any class of voting securities of the bank. The director may disapprove a transfer of voting securities if he finds that the transferee has been removed from a position as a director, officer or employee of a bank or other financial institution pursuant to an order of a state or federal agency, has been convicted of a felony or if in his opinion the transferee does not satisfy the requirements of a stockholder, director or officer as set out in section 26-202, Idaho Code. The provisions of this subsection shall not apply to a voting trust existing prior to July 1, 1978.

[26-211, added 1979, ch. 41, sec. 2, p. 72; am. 1980, ch. 132, sec. 1, p. 291; am. 2015, ch. 204, sec. 5, p. 623.]

26-212. RIGHT OF EXAMINATION BY STOCKHOLDER. No stockholder of any bank who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers but any such stockholder shall have the right to inspect, during business hours, the daily statement showing the general assets and liabilities of such bank.

[26-212, added 1979, ch. 41, sec. 2, p. 72.]

26-213. BOARD OF DIRECTORS -- ELECTION, MEETINGS, DUTIES, LIABILITIES, OATH, REMOVAL -- OFFICERS -- ELECTION AND BOND. (1) The affairs, business and property of a bank shall be managed and controlled by a board of not less than

five (5) directors, who shall be elected by the stockholders at their regular stated annual meetings.

(2) No person shall be eligible to serve as a director of any bank organized or existing under the laws of this state, unless he shall be the owner in his own right of unhypothecated common stock of the bank in the amount of at least five hundred dollars ($500) par value. One (1) or more of the directors of a bank, the majority of the common stock of which is owned by a bank holding company, may satisfy the requirement of this subsection by owning in his own right at least five hundred dollars ($500) of the unhypothecated common stock of the bank holding company, either the par value or the book value.

(3) Any vacancy in the board of directors shall be filled by the board, and any directors so appointed shall hold office until the next annual meeting of stockholders. The board of directors shall, immediately following each annual meeting of stockholders, organize and elect a president, vice president, and cashier, who may also be the secretary and treasurer of the bank, and such other officers as shall be provided for in the bylaws, and shall fix the salary of all officers and employees or delegate such authority to its managing officer or officers. Directors of every bank shall hold at least six (6) meetings per year; provided, no more than ninety (90) days may elapse between board of directors meetings, and complete records of such meetings shall be entered in the minute book and signed by both the chairman and the secretary.

(4) Whenever a vote is taken upon any matter, a record shall be kept and entered in the minutes of those voting in the affirmative and those voting in the negative. At every meeting it shall be the duty of the directors to familiarize themselves with loans and investments made since the previous regular meeting, and any director may request a listing of all loans made since the previous regular meeting. It shall be the duty of the president and cashier to furnish such information to the directors. The directors shall familiarize themselves with the existing liabilities to the bank of every officer and director of their bank at least once during each calendar year. The minutes of the meeting shall record the approval or disapproval of loans, investments and liabilities of officers.

(5) Any director, officer or person who shall participate in any violation of the laws of this state relative to banks or banking shall be liable for all damages which said bank, its stockholders, depositors, or creditors shall sustain in consequence of such violation. It shall be the duty of every director of a bank personally to attend all meetings of the board of directors unless unavoidably detained therefrom. Any director who shall habitually absent himself from such meeting shall be deemed to have participated in any violation of law that may have occurred in his absence, and he shall not be permitted to set up such absence as a defense thereto.

(6) Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office and will not knowingly violate or permit a violation of any provisions of the bank act, and such oath of office shall be transmitted to and filed with the department of finance. A director may be removed from office at any time for violation of his oath of office by the affirmative vote of two-thirds (2/3) of the entire board, exclusive of the director to be removed.

(7) Every active officer and employee of any bank in this state shall furnish a surety bond in the penal sum of fifty thousand dollars ($50,000) to the bank by which he is employed for the faithful performance of his duties, executed by a surety company authorized to do business in the state of Idaho

as a surety. In lieu of the individual surety bonds required by this section, a bank may provide a bankers blanket or financial institution bond in a minimum amount of two hundred fifty thousand dollars ($250,000). The conditions of such bond, whether the instrument so describes the conditions or not, shall be that the principal shall protect the obligee against any loss or liability that the obligee may suffer or incur by reason of the acts of dishonesty of the principal.

(8) In lieu of the bonds required in subsection (7) of this section, a bank may, with the approval of the director of the department of finance, provide to the director a certificate of deposit issued by any other bank in the state of Idaho. The principal amount of the certificate of deposit shall be payable to the director and shall be in an amount to be determined by the director, but not less than two hundred fifty thousand dollars ($250,000). The interest on the certificate of deposit shall be payable to the bank providing the certificate of deposit to the director. The certificate of deposit shall be maintained at all times the bank is authorized to do business under this chapter, and for a period of time thereafter to be determined by the director, but not to exceed three (3) years.

(9) Every bank shall provide adequate insurance protection or indemnity against robbery and burglary and other similar insurable losses.

(10) All surety bonds shall be approved by and filed with the directors. The directors or the director may require an increase of the amount of any such bond whenever either the directors or the director deem necessary for the better protection of the bank.

[26-213, added 1979, ch. 41, sec. 2, p. 73; am. 1986, ch. 316, sec. 1, p. 780; am. 1987, ch. 293, sec. 1, p. 623; am. 1991, ch. 145, sec. 1, p. 344; am. 1993, ch. 53, sec. 1, p. 137; am. 2007, ch. 126, sec. 1, p. 376; am. 2021, ch. 58, sec. 2, p. 187.]

26-214. POWER OF BANKS TO GRANT OPTIONS TO PURCHASE OR SELL SHARES OF ITS STOCK TO ITS EMPLOYEES. (1) Any bank may grant options to purchase, sell or enter into agreements to sell, shares of its stock to its employees whether or not such transactions qualify for special tax treatment under the Internal Revenue Code of 1954 as defined in section 63-3004, Idaho Code, and regulations promulgated thereunder, provided that the following conditions are met:

(a) Application for approval shall be made to the director of the department of finance in the form of a letter accompanied by the following information:

1. Description of all material provisions of the plan.

2. Proposed notice of stockholders' meeting, proxy and proxy statement.

3. The number of shares of authorized but unissued stock to be allocated to the plan.

4. Proposed amendments, if any, to articles of incorporation creating authorized but unissued stock and eliminating preemptive rights as to the shares reserved under the plan.

(b) The plan is administered by a committee, none of whose members may participate in the plan;

(c) The number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank; and

(d) In the case of a stock option plan, the number of shares subject to the plan is not unreasonable in relation to the bank's capital structure and anticipated growth.

(2) (a) Employees' stock option and stock purchase plans or agreements may provide that options may be exercisable or that shares may be purchased on any business day. Stock certificates representing the shares purchased pursuant to the exercise of options may be validly issued to such purchasers on receipt of the purchase price.

(b) The increase in capital represented by stock certificates issued pursuant to this section will not be applicable for the purposes of permitted investment in banking premises, permitted indebtedness, lending limits, branches, banking facilities and other like purposes until it has been duly paid in as part of the capital of such bank.

[26-214, added 1979, ch. 41, sec. 2, p. 74.]

26-215. FEDERAL RESERVE -- MEMBERSHIP. Any bank shall have the power to subscribe to the capital stock and become a member of a federal reserve bank.

Any bank incorporated under the laws of this state which is or which becomes a member of a federal reserve bank is, by the bank act, vested with all powers conferred upon member banks of the federal reserve banks by the terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described herein. All such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board, made pursuant thereto. The right of the legislature to revoke or to amend the powers herein converted is, however, expressly reserved.

Compliance on the part of any such bank with the reserve requirements of the Federal Reserve Act shall be held to be in full compliance with those provisions of the laws of this state which require banks to maintain cash balances in their vaults or with other banks, and no such bank shall be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act. Any such bank shall continue to be subject to the supervision and examinations required by the laws of this state, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the authorities of this state having supervision over such bank may disclose to the Federal Reserve Board or to examiners duly appointed by it, all information in reference to the affairs of any bank which has become or desires to become a member of a federal reserve bank.

[26-215, added 1979, ch. 41, sec. 2, p. 75.]

26-216. CUSTODIAL ACCOUNTS. A bank is authorized to act as custodian or fiduciary, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement in connection with a tax-advantaged savings plan authorized under the Internal Revenue Code or chapter 30, title 63, Idaho Code, if the funds of such trust or funds subject to the custodial agreement are invested only in savings accounts or deposits in such bank or in obligations or securities issued by such bank. All funds held in such custodial or fiduciary capacity by any such bank may be commingled for appropriate purposes of investment, but individual records shall be kept by the custodian for each participant and shall show in proper detail all transactions engaged in under the authority of this section.

[26-216, added 1979, ch. 41, sec. 2, p. 76; am. 2020, ch. 181, sec. 1, p. 557.]

26-217. BANKS EMPOWERED TO COMPLY WITH REQUIREMENTS FOR FEDERAL DEPOSIT INSURANCE. Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges, which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section 8 of the federal "Banking Act of 1933" (sec. 12B of the Federal Reserve Act, as amended), which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

[26-217, added 1979, ch. 41, sec. 2, p. 76.]

TITLE 26
BANKS AND BANKING

CHAPTER 3
BANK BRANCHES

26-301. BRANCH -- REQUIREMENTS. No bank shall maintain any branch except as provided for in this act. Any bank organized and chartered under the laws of Idaho may, upon written application to and with the approval of the director, establish and operate one (1) or more branches for the transaction of its business at any location. Any such bank may establish and operate a branch in a state other than Idaho, provided that the bank shall comply with all applicable provisions of Idaho law, the law of the other state and federal law. Any bank organized and chartered under the laws of another state or under federal law may establish and operate one (1) or more branches in Idaho as permitted by chapter 16, title 26, Idaho Code, and federal law.

[26-301, added 1979, ch. 41, sec. 2, p. 76; am. 1995, ch. 99, sec. 3, p. 301; am. 2015, ch. 204, sec. 6, p. 623.]

26-302. ESTABLISHMENT OF LOAN PRODUCTION OFFICES AUTHORIZED. A bank may, after providing notice to the director, establish and maintain one (1) or more loan production offices at any location in the state of Idaho.

(1) A loan production office when so established may conduct any of the following activities:

(a) Solicit loans on behalf of the bank;

(b) Provide information on loans, rates and terms;

(c) Accept loan applications and supporting documents;

(d) Review and process loan applications for compliance with underwriting standards and completeness of documents;

(e) Approve loan applications;

(f) Conduct loan closing activities, such as the execution of promissory notes and deeds of trust; and

(g) Engage in other loan production office activities that the bank's primary state or federal regulator has approved for banks subject to its supervision.

(2) A loan production office shall not have the power to solicit, receive or accept money or its equivalent on deposit, or disburse loan funds to customers.

(3) A bank that desires to establish a loan production office in this state shall provide written notice to the director of its intent to do so no later than thirty (30) days prior to opening the loan production office. The notice to the director shall provide the following information:

(a) The name of the bank and address of the main office;

(b) The city and street address of the loan production office;

(c) The activities proposed to be conducted at the loan production office, including the types of loans to be solicited and originated at the office; and

(d) Any additional relevant information required by the director.

(4) Following a bank's establishment of a loan production office in this state, a bank shall give notice to the director of any relocation or closure of the office, the date of the relocation or closure and the disposition of any records previously maintained at the loan production office.

(5) Each loan production office shall be subject to examination and supervision by the director in the same manner and to the same extent as the bank.

(6) A state bank may establish and operate a loan production office in a state other than Idaho, provided that the bank shall comply with all applicable provisions of Idaho law, the law of the other state where the loan production office will be located and federal law.

(7) Each loan production office operating in Idaho on July 1, 2015, shall provide written notice to the director containing the information required in subsection (3) of this section on or before August 1, 2015.

[26-302, added 2015, ch. 204, sec. 8, p. 624.]

26-303. SECTION CONCERNING BRANCH BANKS UNAFFECTED. The sections of this chapter relating to loan production offices and mobile or temporary facilities shall not be construed to modify or repeal section 26-301, Idaho Code, and the terms "loan production office," "mobile facility" and "temporary facility" as used in the bank act shall not be construed to mean branch bank.

[26-303, added 1979, ch. 41, sec. 2, p. 77; am. 2015, ch. 204, sec. 9, p. 624.]

26-305. RESPONSIBILITIES OF BANK. Any bank establishing a loan production office or mobile or temporary facility shall be responsible for all transactions of the loan production office or mobile or temporary facility, and for keeping accounts and books covering all business transactions of the loan production office or mobile or temporary facility.

[26-305, added 1979, ch. 41, sec. 2, p. 77; am. 2015, ch. 204, sec. 10, p. 624.]

26-306. MOBILE OR TEMPORARY FACILITY. Mobile facilities or temporary facilities may be established with the approval of the director and under such conditions as the director may establish.

[26-306, added 1979, ch. 41, sec. 2, p. 77; am. 2015, ch. 204, sec. 11, p. 625.]

26-309. CUSTOMER-BANK COMMUNICATION TERMINAL. A bank may make available for use by its customers one (1) or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the bank. Any transactions initiated through such a device shall be subject to verification by the bank either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer-bank communication terminal (CBCT). The use of a CBCT at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank shall

provide insurance protection under its bonding program for transactions involving such devices.

(1) The establishment and use of a CBCT is subject to the following limitations:

(a) Written notice must be given to the director's office no less than thirty (30) days before any CBCT is put into operation. Any bank presently utilizing a CBCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. the location;
2. a general description of the area where located and the manner of installation;
3. the manner of operation;
4. the kinds of functions which will be performed;
5. whether the CBCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. the manufacturer and, if owned, the purchase price or, if leased, a copy of the lease;
7. the distance from the nearest banking office and from the nearest similar CBCT of the reporting bank; and
8. the distance from the nearest banking office and nearest CBCT of another commercial bank, which will share the facility, and the name of such other bank or banks.

(b) The functions of the CBCT shall be limited to:

1. the receiving of deposits;
2. the cashing of checks;
3. the dispensing of cash;
4. payment of loan proceeds on a prearranged line of credit;
5. the communication of other such information directly related to the customer's account; and
6. receiving loan payments;
7. any other function authorized to be performed by national banks and approved by the director.

(c) Arrangements may be made at the CBCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the bank.

(d) The CBCT shall be a communication service available only to customers of the bank or other financial institution which the management of the bank may approve.

(e) The CBCT shall not be advertised as full service banking or as performing anything other than activities set out in subsection (1)(b) of this section.

(2) To the extent consistent with the anti-trust laws, banks are required to share unmanned CBCTs at a reasonable fee with one (1) or more other financial institutions if requested by the other financial institution. A bank may connect CBCTs with a regional or national consumer funds transfer system for the purpose of handling financial transactions of the kind authorized by subsection (1)(b) of this section. An agreement to share CBCT usage may not prohibit, limit or restrict the right of a bank to charge a customer any fee allowed by state or federal law or require the bank to limit or waive its rights or obligations under the provisions of this section. No bank may impose a fee for the use of a CBCT by those using an access device not issued by that bank unless such fee is clearly disclosed to the customer at a time

and in a manner that allows the user to terminate or cancel the transaction without incurring the fee. The fee may be in addition to any other charges imposed on the user by the operator of any consumer funds transfer system or by the user's own financial institution.

(3) The director may issue a cease and desist order upon a finding that a bank utilizing a CBCT is doing so in a manner not specifically authorized in this section.

(4) This section and regulations adopted pursuant to it shall be deemed to apply to national banks operating customer-bank communication terminals and for the purpose of the bank act a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho.

[26-309, added 1979, ch. 41, sec. 2, p. 78; am. 1993, ch. 52, sec. 1, p. 133; am. 1993, ch. 53, sec. 2, p. 139.]

26-311. BRANCHES FOLLOWING RELOCATION. Notwithstanding any other provision of law, a bank that relocates its main office from another state into Idaho pursuant to 12 U.S.C. 30, 12 U.S.C. 36, and section 26-1101, Idaho Code, shall continue to be authorized to establish and operate branches within this state as provided in section 26-301, Idaho Code, even if, after its relocation into Idaho, its home state as defined by section 26-1603, Idaho Code, becomes a state other than Idaho.

[26-311, added 1997, ch. 225, sec. 2, p. 662.]

TITLE 26
BANKS AND BANKING

CHAPTER 4
BANK SERVICE CORPORATIONS

26-401. DEFINITIONS. As used in this section:

"Invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

"Applying bank" means a bank applying to a bank service corporation for bank services; and

"Stockholding bank" means a bank which owns stock of a bank service corporation.

[26-401, added 1979, ch. 41, sec. 2, p. 80.]

26-402. INVESTMENT IN SERVICE CORPORATION. No limitation or prohibition otherwise imposed by any provision of the laws of the state of Idaho exclusively relating to banks shall prevent or prohibit any two (2) or more banks from investing not more than ten percent (10%) of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.

[26-402, added 1979, ch. 41, sec. 2, p. 80.]

26-403. BANKS JOINTLY HOLDING STOCK -- EFFECT OF WITHDRAWAL BY ONE BANK. If stock in a bank service corporation has been held by two (2) banks, and one (1) of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.

[26-403, added 1979, ch. 41, sec. 2, p. 80.]

26-404. DUTY OF BANK SERVICE CORPORATION NOT TO DISCRIMINATE -- BURDEN OF PROOF. Whenever a bank, referred to in this section as an "applying bank," subject to examination by either the department of finance of the state of Idaho, or a federal bank supervisory agency, applies for a type of bank service for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank, referred to in this section as a "stockholding bank," which holds stock in such corporation, the corporation must offer to supply such services by either:

(a) issuing stock to the applying bank and furnishing bank services to it on the same basis as to the other banks holding stock in the corporation, or

(b) furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the corporation by its stockholders, at the corporation's option, unless comparable services at competitive overall cost are available to the applying bank from another source, or unless the furnishing of the services sought by the ap-

plying bank would be beyond the practical capacity of the corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability.

[26-404, added 1979, ch. 41, sec. 2, p. 80.]

26-405. PROHIBITED ACTIVITIES. No bank service corporation may engage in any revenue producing activity other than the performance of bank services for banks and, to an extent not exceeding one-half (1/2) of its total activity, the performance of similar services for persons or organizations other than banks.

[26-405, added 1979, ch. 41, sec. 2, p. 81.]

TITLE 26
BANKS AND BANKING

CHAPTER 5
BANK HOLDING COMPANIES

26-501. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Bank" shall mean any bank chartered under this act.

(2) "Company" shall mean any corporation, business trust, association, or similar organization but shall not include:

(a) An individual; or

(b) Any corporation the majority of shares of which are owned by the United States or any state.

(3) "Business trust" shall mean a business organization wherein a business or other property is conveyed to trustees who manage the business or other property for the benefit of the certificate or shareholders of the trust. Business trust shall not include a voting trust.

(4) "Bank holding company" shall mean any company:

(a) Which directly or indirectly owns or controls twenty-four percent (24%) or more of the voting shares of a bank;

(b) Which controls in any manner the election of the majority of the directors of a bank; or

(c) For the benefit of whose shareholders or members twenty-four percent (24%) or more of the voting shares of a bank is held by trustees;

For the purposes of any proceeding under subsection (4)(b) of this section, there is a presumption that any company which directly or indirectly owns, controls or has power to vote less than five percent (5%) of the voting shares of a bank does not have control over that bank; and

(5) Notwithstanding the foregoing:

(a) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of shares of stock of a bank unless such trust is a business trust or a voting trust which by its terms or by law does not expire within ten (10) years from the effective date of the voting trust;

(b) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(c) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which are held only for such period of time as will permit the sale thereof on a reasonable basis.

(6) "Financial holding company" shall mean a bank holding company that, notwithstanding subsection (4) of this section, may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the director determines, by rule or order:

(a) To be financial in nature or incidental to such financial activity; or

(b) Is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system in general.

[26-501, added 1979, ch. 41, sec. 2, p. 81; am. 2001, ch. 137, sec. 1, p. 496.]

26-502. APPROVAL OF BANK HOLDING COMPANY. Every bank holding company hereafter formed shall register with the department of finance and receive the approval of the director to become a bank holding company. The director shall approve an application to form a bank holding company if he finds that the persons who are officers, directors or stockholders are of such character and fitness that a bank or banks acquired by the bank holding company will be operated in a safe, prudent and profitable manner. The application shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters, as the director may deem necessary or appropriate. The director may, in his discretion, accept copies of federal registration in lieu of state requirements.

[26-502, added 1979, ch. 41, sec. 2, p. 82.]

26-503. APPROVAL TO ACQUIRE A BANK -- REQUIREMENTS -- APPROVAL TO COMMENCE ACTION OR ACQUIRE A COMPANY. (1) A bank holding company shall apply to the department of finance and receive the approval of the department of finance prior to acquiring a bank. The application shall include such information with respect to the financial condition and operations, management and intercompany relationships of the bank to be acquired and the holding company as the director may deem necessary or appropriate. In considering an application to acquire a bank, the director shall consider at least:

(a) The financial condition of the bank holding company and any banks already owned by the holding company;

(b) The probable effect of the acquisition on the holding company, any banks already owned by the holding company and the bank which is to be acquired; and

(c) The effect of the acquisition on competition in the providing of banking services.

(2) A financial holding company shall apply to the department of finance and receive the approval of the department of finance prior to commencing any activity or acquiring any company as described in section 26-501(6), Idaho Code.

[26-503, added 1979, ch. 41, sec. 2, p. 82; am. 2001, ch. 137, sec. 2, p. 497.]

26-505. DIRECTOR OF FINANCE -- REPORTS -- REQUIREMENTS. The director may require reports made under oath to be filed in the department of finance to keep it informed as to the operation of any bank holding company. The director may make examinations of each bank holding company and each subsidiary thereof under the provisions of section 26-1102, Idaho Code, the actual cost of which may be assessed against and paid by such holding company. The director may accept reports of examinations made by the federal reserve board, the comptroller of the currency, or the federal deposit insurance corporation in lieu of making an examination by the department.

[26-505, added 1979, ch. 41, sec. 2, p. 83; am. 2001, ch. 137, sec. 3, p. 498.]

26-506. CHANGE IN CONTROL. All transfers of a major portion of the outstanding stock or trust certificates of a bank holding company by sale, gift, or otherwise shall be approved by the director prior to such transfer. For the purposes of this section, a major portion of the outstanding stock or trust certificates of a bank holding company is any number of any class of shares of a bank holding company the acquisition of which will result in a person acquiring the shares having voting control of the bank holding company. The director shall not approve a transfer of stock if he finds that the transferee has been removed from a position as a director, officer or employee of a bank holding company, a bank or other financial institution pursuant to an order of a state or federal agency. The director may disapprove a transfer of stock if in his opinion the transferee does not meet the requirements of a stockholder, director, or officer as set out in section 26-502, Idaho Code.

[26-506, added 1979, ch. 41, sec. 2, p. 83.]

26-507. VIOLATION -- PENALTY. Any person who willfully violates any provision of this chapter shall be guilty of a felony.

[26-507, added 1979, ch. 41, sec. 2, p. 83.]

TITLE 26
BANKS AND BANKING

CHAPTER 6
RESERVES, SURPLUS AND DIVIDENDS

26-601. RESERVE. Every bank organized under the laws of this state and authorized to receive deposits shall comply with the reserve requirements of the Federal Reserve act.

[26-601, added 1979, ch. 41, sec. 2, p. 86; am. 1981, ch. 8, sec. 1, p. 15; am. 2008, ch. 140, sec. 5, p. 404.]

26-602. DIMINUTION OF RESERVE. (1) When the reserve of any bank falls below the amount required by section 26-601, Idaho Code, for any reporting period, the bank shall immediately restore its reserve to the amount required by section 26-601, Idaho Code, and in addition:

(a) If a bank is deficient in reserve for two (2) nonconsecutive reporting periods in a calendar year, the bank shall pay to the department of finance at the end of the second reporting period a fine of three hundred dollars ($300).

(b) If a bank is deficient in reserves for three (3) nonconsecutive reporting periods in a calendar year, the bank shall pay to the department of finance at the end of the third reporting period a fine equal to five percent (5%) of the dollar amount by which it was deficient in reserves for the third reporting period or five hundred dollars ($500), whichever is greater.

(c) If a bank is deficient in reserves for more than three (3) nonconsecutive reporting periods or for two (2) or more consecutive reporting periods in a calendar year, the director shall proceed as provided in section 26-1115, Idaho Code. The bank shall not increase its loans or discounts until its reserve is fully restored and the director may by order set a minimum level of cash reserves which the bank must maintain until such time as the director has reason to believe that the bank will comply with the reserve requirements of section 26-601, Idaho Code.

(2) The penalties set out in subsection (1) of this section are not exclusive. The director may in proper cases proceed in his discretion as provided in section 26-1115, Idaho Code, or chapter 10, title 26, Idaho Code.

[26-602, added 1979, ch. 41, sec. 2, p. 86; am. 2008, ch. 140, sec. 6, p. 405.]

26-604. DIVIDENDS -- SURPLUS. No dividend shall be declared or paid by any bank until a surplus equal to twenty percent (20%) of the paid-in capital stock of such bank has been built up. Thereafter, the board of directors of any bank may declare a dividend of so much of its net profits as it shall deem expedient; but before any such dividend is declared or paid, not less than one-fifth (1/5) of the net profits of the bank for such period as is covered by the dividend shall be carried to the surplus fund until such surplus fund shall amount to fifty percent (50%) of the paid-in common stock. Any loss sustained by any bank in excess of its undivided profits may be charged to its surplus account, provided that its surplus funds shall thereafter be reimbursed from its earnings in the manner above provided. If such surplus fund is reduced below an amount equal to twenty percent (20%) of the common stock,

no further dividend shall be declared or paid until such surplus is restored to that amount, and thereafter dividends shall only be declared and paid in the amount and in the manner above provided until such surplus shall be restored to an amount equal to fifty percent (50%) of the common stock.

The directors knowingly voting for any dividend in violation of any of the provisions of this section shall be jointly and severally liable, civilly, for any and all dividends so declared, and in addition thereto, shall be guilty of a misdemeanor.

[26-604, added 1979, ch. 41, sec. 2, p. 87.]

TITLE 26
BANKS AND BANKING

CHAPTER 7
LIMITATIONS ON LOANS, INVESTMENTS, AND PRACTICES

26-701. INVESTMENT OF FUNDS -- CERTAIN LOANS PROHIBITED. No bank shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling goods, chattels, wares and merchandise, except to the extent national banks are so authorized if approved by the director. A bank may hold and sell all kinds of property which may come into its possession as collateral security for loans, or any ordinary collection of debts, as prescribed by law. Any goods, chattels, wares or merchandise coming into the possession of any bank as collateral security or as a result of collection of debts shall be disposed of as soon as possible and shall not be considered as a part of the bank's assets after the expiration of two (2) years from the date of acquirement. The words "goods and chattels" as used in this section shall not be construed to include bonds and securities.

[26-701, added 1979, ch. 41, sec. 2, p. 87; am. 1993, ch. 53, sec. 3, p. 141.]

26-702. BANK STOCK. (1) Except as provided in subsection (2) of this section, no bank shall accept as collateral, nor make any loans or discounts on the security of nor purchase any shares of its own capital stock. No bank shall purchase the shares of any other bank wherever organized, or situated, except stock of federal reserve banks. A bank may acquire a security interest in or purchase its own stock if the acquisition is necessary to prevent loss upon a debt previously contracted in good faith and the stock so purchased or acquired shall within six (6) months from the date of acquirement be sold or disposed of at public or private sale. After the expiration of six (6) months any such stock shall not be considered as a part of the assets of such bank.

(2) With the written approval of the director, a bank may redeem or otherwise purchase shares of its own capital stock if the director finds that such redemption or purchase does not impair the capital structure of the bank as required by section 26-205, Idaho Code, is for legitimate corporate purposes and not for speculation, is not for an unreasonable price, does not conflict with the articles of incorporation or the bylaws of the bank, and is not otherwise detrimental to the bank or to the public interest. Legitimate corporate purposes for acquiring and holding of treasury stock may include:

(a) To have shares available for use in connection with employee stock option, bonus, purchase or similar plans;

(b) To sell to a director for the purpose of acquiring qualifying shares;

(c) To purchase a director's qualifying shares upon cessation of the director's service in that capacity if there is no ready market for the shares;

(d) To reduce the number of shareholders to qualify as a subchapter S corporation;

(e) To reduce costs associated with shareholder communications and meetings;

(f) To facilitate a bank's shareholder dividend reinvestment plan; or

(g) Any other legitimate corporate purpose as may be approved by the director.

[26-702, added 1979, ch. 41, sec. 2, p. 88; am. 1986, ch. 58, sec. 1, p. 167; am. 2008, ch. 140, sec. 7, p. 405.]

26-703. REAL ESTATE LOANS. Any bank may make real estate loans secured by liens upon improved real estate, including improved farm land and improved business and residential properties, as are consistent with safe and sound banking practices. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument which shall constitute a lien upon real estate.

[26-703, added 1979, ch. 41, sec. 2, p. 88; am. 2004, ch. 159, sec. 2, p. 515; am. 2007, ch. 126, sec. 3, p. 378.]

26-704. DETERMINATION OF LIMITS OF LOANS AND INVESTMENTS OF BANKS. For the purpose of determining limitations on loans and investments the following items are to be disregarded:

(1) The sale of excess reserve funds by one (1) bank to another bank;

(2) The purchase of securities by a bank, under an agreement to resell at the end of a stated period; and

(3) The purchase of mortgage loans by a bank, under agreement to resell at the end of a stated period.

The director may, upon application by a bank, approve loans and investments in excess of the limitations provided in this chapter.

[(26-704) 26-708, added 1979, ch. 41, sec. 2, p. 90; am. and redesig. 2004, ch. 159, sec. 4, p. 515.]

26-705. LOANS TO ONE PERSON. (1) The total loans and extensions of credit by a bank to a person outstanding at one (1) time, shall at no time exceed twenty percent (20%) of the capital structure of such bank.

(2) "Borrower" means a person who is named as a borrower or debtor in a loan or extension of credit, a counterparty to whom a bank has credit exposure in a derivative transaction entered into by the bank, or any other person including a drawer, endorser or guarantor, who is deemed to be a borrower under the direct benefit and common enterprise tests set forth in this section.

(3) "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note or option that is based, in whole or in part, on the value of, any interest in or any quantitative measure or the occurrence of any event relating to, one (1) or more commodities, securities, currencies, interest or other rates, indices or other assets.

(4) "Loans and extensions of credit" means a bank's direct or indirect advance of funds to or on behalf of a borrower based upon an obligation of the borrower to repay the funds, or repayable from specific property pledged by or on behalf of the borrower, and includes, for the purposes of this section:

(a) A contractual commitment to advance funds;

(b) A maker or endorser's obligation arising from a bank's discount of commercial paper;

(c) A bank's purchase of securities subject to an agreement that the seller shall repurchase the securities at the end of a stated period,

but not including a bank's purchase of type I securities, as defined in 12 CFR part 1, subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the type I securities as collateral;

(d) A bank's purchase of third-party paper subject to an agreement that the seller shall repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(e) An overdraft, whether or not prearranged, but not an intraday overdraft for which payment is received before the close of business of the bank that makes the funds available;

(f) The sale of federal funds with a maturity of more than one (1) business day, but not federal funds with a maturity of one (1) day or less or federal funds sold under a continuing contract;

(g) Loans or extensions of credit that have been charged off on the books of the bank in whole or in part, unless the loan or extension of credit:

(i) Is unenforceable by reason of discharge in bankruptcy;

(ii) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(iii) Is no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable; and

(h) Any credit exposure in a derivative transaction.

(5) The following items do not constitute loans or extensions of credit for purposes of this section:

(a) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(b) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(c) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(d) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by this section), or a new borrower replaces the original borrower, or unless the director determines

that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(e) Amounts paid against uncollected funds in the normal process of collection;

(f) (i) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing shall be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(ii) When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded shall be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming, rather than a violation, if:

1. The originating bank had a valid and unconditional participation agreement with a participating bank or banks that was sufficient to reduce the loan to within the originating bank's lending limit;

2. The participating bank reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

3. The participation was to be funded by close of business of the originating bank's next business day; and

(g) Intraday credit exposure in a derivative transaction.

(6) The following loans or extensions of credit are not subject to the lending limits of this section:

(a) The discount of bills of exchange drawn in good faith against actual existing values;

(b) The discount of bankers' acceptances of other banks;

(c) The discount of commercial or business paper actually owned by the person negotiating the same;

(d) The obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the federal farm loan act;

(e) Loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty percent (120%) of the amount loaned thereon;

(f) Loans and extensions of credit to the extent secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any federal reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States,

including any corporation wholly owned directly or indirectly by the United States; or

(g) Loans, including portions thereof, secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law.

(7) Combination. Loans or extensions of credit to one (1) borrower shall be attributed to another person and each person shall be deemed a borrower when proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, or when a common enterprise is deemed to exist between the persons.

(a) Direct benefit. The proceeds of a loan or extension of credit to a borrower shall be deemed to be used for the direct benefit of another person and shall be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services.

(b) Common enterprise. A common enterprise shall be deemed to exist and loans to separate borrowers shall be aggregated:

(i) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer shall not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee unless the standards of paragraph (b)(ii) of this subsection are met;

(ii) When loans or extensions of credit are made:

1. To borrowers who are related directly or indirectly through common control, including where one (1) borrower is directly or indirectly controlled by another borrower; and

2. Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty percent (50%) or more of one (1) borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(iii) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty percent (50%) of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) When the director determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(c) Loans to a corporate group.

(i) Loans or extensions of credit by a bank to a corporate group may not exceed fifty percent (50%) of the bank's capital and surplus. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than fifty

percent (50%) of the voting securities or voting interests of the corporation or company.

(ii) Except as provided in paragraph (c)(i) of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(d) Loans to partnerships, joint ventures, and associations.

(i) Partnership loans. Loans or extensions of credit to a partnership, joint venture or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture or association, and those provisions are valid under applicable law.

(ii) Loans to partners.

1. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to the partnership, joint venture or association unless either the direct benefit or the common enterprise test is met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

2. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to other members of the partnership, joint venture or association unless either the direct benefit or common enterprise test is met.

(e) Loans to foreign governments and their agencies and instrumentalities.

(i) Aggregation. Loans and extensions of credit to foreign governments and their agencies and instrumentalities shall be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

1. The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it shall be presumed that the means test has not been satisfied.

2. The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(ii) Documentation. In order to show that the means and purpose tests have been satisfied, a bank must, at a minimum, retain in its files the following items:

1. A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;
2. Financial statements for the borrowing entity for a minimum of three (3) years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three (3) years;
3. Financial statements for each year the loan or extension of credit is outstanding;
4. The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and
5. A loan agreement or other written statement from the borrower that clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(8) A bank shall evaluate the credit exposure in a derivative transaction in accordance with a methodology approved by any federal bank supervisory agency. In each type of derivative transaction a bank engages in, a bank shall use the same credit exposure methodology in all derivative transactions of that type.

(9) Lending limit calculation. For purposes of determining compliance with this section, a bank shall determine its lending limit as of the last day of the preceding calendar quarter. A bank's lending limit calculated in accordance with this section shall be effective on the date that the limit is to be calculated. If the director determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by this subsection, the director may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice from the director.

(10) Nonconforming loans and extensions of credit. A loan or extension of credit, within a bank's legal lending limit when made, shall not be deemed a violation but shall be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's lending limit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed. A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming under this subsection into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(b) Collateral securing the loan or extension of credit to satisfy the requirements of a lending limit exception has declined in value. A bank must bring a loan or extension of credit that is nonconforming under this subsection into conformity with the bank's lending limit within thirty (30) calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(c) In the case of credit exposure in a derivative transaction, the credit exposure increases after execution of the transaction. A bank must use reasonable efforts to bring a derivative transaction that is nonconforming under this subsection into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(11) When in the judgment of the director the loans and extensions of credit to any person, or the combined loans and extensions of credit to any corporation and one (1) or more of its stockholders are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

Provided, further, that the director may compel the reduction of any loan or extension of credit which shall in his judgment appear excessive or dangerous.

[(26-705) 26-709, added 1979, ch. 41, sec. 2, p. 90; am. and redesig. 2004, ch. 159, sec. 5, p. 516; am. 2013, ch. 55, sec. 1, p. 124.]

26-706. LOANS TO OFFICERS AND DIRECTORS. Except as authorized under this section, no bank may extend credit in any manner to any of its own executive officers. Any extension of credit under this section must be approved by the board of directors of the bank, and may be made only if such credit extension comports with the principles of safety and soundness and is in compliance with regulation O of the board of governors of the federal reserve system, 12 CFR 215. Each executive officer and director who receives an extension of credit from the bank shall submit a personal financial statement to the chief executive officer of the bank at least once during each calendar year and such financial statement shall be made available to federal or state regulatory agencies upon request by the agency.

[(26-706) 26-710, added 1979, ch. 41, sec. 2, p. 91; am. 1990, ch. 93, sec. 1, p. 193; am. 1995, ch. 99, sec. 4, p. 301; am. and redesig. 2004, ch. 159, sec. 6, p. 521; am. 2007, ch. 126, sec. 4, p. 378.]

26-707. REAL ESTATE HOLDINGS. A bank may purchase, acquire, hold and convey real estate for the following purposes only:

(1) Such as shall be necessary for the convenient transaction of its business, including at the same location as its banking offices' other property to rent as a source of income; provided however, that no bank shall invest in buildings, lots, furniture, fixtures and equipment in an amount greater than fifty percent (50%) of the capital structure of such bank.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of business.

(3) Such as it shall purchase at sale on judgments, decrees, mortgage foreclosures or trustee's sale for debts previously contracted, but a bank shall not bid at such sale a larger amount than is necessary to satisfy all debts and costs necessary to obtain clear title. Real estate acquired for

debts previously contracted shall be carried on the books of the bank at the lower of cost or market value. Market value shall be determined by:

(a) An appraisal prepared by a state-certified or state-licensed appraiser; or

(b) An appropriate evaluation when the recorded investment is equal to or less than two hundred fifty thousand dollars ($250,000).

If a bank has a valid appraisal or an appropriate evaluation that was previously obtained in connection with a real estate loan, a new appraisal or evaluation is not required at the time the bank acquires the property to determine the market value of real estate acquired for debts previously contracted. A bank may defer obtaining an appraisal or evaluation for a period not to exceed three (3) months following acquisition of the real estate if the bank documents a reasonable expectation that a sale of the real estate, other than in a transaction involving an affiliated party, will be consummated during a period of three (3) months following the acquisition of the property. If the property is not sold during the expected three (3) month period, a new appraisal or appropriate evaluation as set forth in paragraphs (a) and (b) of this subsection must be obtained. Thereafter, the director may in his discretion require an appraisal or evaluation if the director believes it is necessary to address safety and soundness concerns. A bank shall develop and maintain prudent real estate appraisal and evaluation policies and procedures to monitor the market value of real estate acquired for debts previously contracted, in accordance with applicable real estate appraisal and evaluation guidelines.

(4) No real estate acquired under subsections (2) and (3) of this section may be held for a longer period than five (5) years, provided however, that upon application by the bank, the director shall approve the continued holding of any such real estate by the bank for an additional period of five (5) years upon the bank's showing of its good faith attempt to dispose of the real estate within the first five (5) year period or showing that disposal within the first five (5) year period would be detrimental to the bank. Nothing in this section shall be construed to prevent a bank from making loans secured by real estate as provided in this act, or a trust department holding and conveying real estate in trust.

(5) A bank may, with the approval of the director and the board of governors of the federal reserve system or the federal deposit insurance corporation, invest in bank premises or in the stock, bonds, debentures, or other obligations of any corporation holding the banking buildings, lots, furniture, fixtures and equipment of such bank in an amount not to exceed the capital and surplus of the bank.

[(26-707) 26-711, added 1979, ch. 41, sec. 2, p. 92; am. 1987, ch. 165, sec. 1, p. 325; am. and redesig. 2004, ch. 159, sec. 7, p. 522; am. 2015, ch. 204, sec. 12, p. 625; am. 2021, ch. 58, sec. 3, p. 188.]

26-708. VALUATION OF ASSETS. No bank shall enter or at any time carry on its books any of its assets at a valuation exceeding their actual cost to the bank; nor shall the value of any of its assets be increased on the books of the bank without the written consent of the director. Additional charges, delinquency charges and other similar charges on consumer credit transactions permitted by and made in compliance with the Idaho Credit Code and added to the principal balance of the loan, shall not come within the prohibition of this section.

[(26-708) 26-712, added 1979, ch. 41, sec. 2, p. 93; am. and redesig. 2004, ch. 159, sec. 8, p. 523; am. 2008, ch. 140, sec. 8, p. 406.]

26-709. STATUTORY BAD DEBT. Every bank carrying any bad debt, or a debt of doubtful value, as an asset shall, upon the request or demand of the director, collect the same or put it in good bankable condition or charge it out of its books. Any debt on which interest is past due and unpaid for a period of six (6) months, unless the same is well secured and in process of collection, shall be considered a bad debt within the meaning of this section.

[(26-709) 26-713, added 1979, ch. 41, sec. 2, p. 93; am. and redesig. 2004, ch. 159, sec. 9, p. 523.]

26-710. OWNERSHIP AND LEASING OF PROPERTY FOR CUSTOMERS. A bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

[(26-710) 26-714, added 1979, ch. 41, sec. 2, p. 93; am. and redesig. 2004, ch. 159, sec. 10, p. 523.]

26-711. LENDING OF CREDIT -- SURETYSHIP AND GUARANTYSHIP. A bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, only if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability.

[(26-711) 26-715, added 1979, ch. 41, sec. 2, p. 93; am. and redesig. 2004, ch. 159, sec. 11, p. 523.]

26-712. VALIDITY OF TRANSACTIONS. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours.

[(26-712) 26-716, added 1979, ch. 41, sec. 2, p. 93; am. 1993, ch. 52, sec. 2, p. 135; am. and redesig. 2004, ch. 159, sec. 12, p. 523.]

26-713. ADVERSE CLAIM TO BANK DEPOSIT. Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not require the bank to recognize the adverse claim unless the adverse claimant shall:

(1) Procure a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction wherein the person to whose credit the deposit stands is made a party and served with summons; or

(2) Execute to said bank, in a form and with sureties acceptable to the bank, a bond indemnifying the bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

This section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the

facts constituting such relationship and the facts showing reasonable cause for belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant.

[(26-713) 26-717, added 1979, ch. 41, sec. 2, p. 94; am. and redesig. 2004, ch. 159, sec. 13, p. 524.]

26-714. ACCOUNT OF PERSON UNDER DISABILITY. Whenever any minor or any person under disability shall become a depositor, as defined in section 26-106, Idaho Code, in any bank in his or her name, such bank may pay such money on the check, order or endorsement of such depositor the same as in cases of depositors not under disability, and such payment shall be in all respects valid in law.

[(26-714) 26-718, added 1979, ch. 41, sec. 2, p. 94; am. and redesig. 2004, ch. 159, sec. 14, p. 524.]

26-715. BRANCH OR OFFICE AT WHICH INSTRUMENTS ARE TO BE PRESENTED MUST BE INDICATED. All checks, drafts, bills of exchange or other orders for the payment of money drawn against any bank operating branch banks shall indicate the particular bank and branch at which the same are to be presented for payment or acceptance.

[(26-715) 26-719, added 1979, ch. 41, sec. 2, p. 94; am. and redesig. 2004, ch. 159, sec. 15, p. 524.]

TITLE 26
BANKS AND BANKING

CHAPTER 8
LIMITATIONS ON BORROWING MONEY AND PLEDGING ASSETS

26-801. BORROWING MONEY -- LIMITATIONS. At no time shall the total borrowings of any bank exceed in the aggregate an amount equal to the capital structure of the bank, except with the consent of the director.

For the purpose of computing total borrowings the following items shall not be included:

(1) Federal funds purchased.

(2) The sale of securities by a bank, under an agreement to repurchase at the end of a stated period.

(3) Borrowings from the federal reserve system.

(4) The sale of mortgage loans by a bank, under agreement to repurchase at the end of a stated period.

(5) Money borrowed to meet seasonal requirements.

(6) Money borrowed to meet unexpected withdrawals.

(7) Capital notes issued in accordance with section 26-802, Idaho Code.

(8) Borrowing from federal home loan banks.

The total of all borrowings by a bank including those items excluded from the computation of total borrowings may not exceed in the aggregate an amount equal to two and one-half (2 1/2) times the capital structure of the bank, except with the consent of the director.

Whenever it shall appear to the director that a bank is borrowing money in excess of the above limitation, or for purposes other than as specified above, he may require it to reduce such borrowings within a time to be fixed by him.

[26-801, added 1979, ch. 41, sec. 2, p. 94; am. 2004, ch. 159, sec. 16, p. 524; am. 2007, ch. 126, sec. 5, p. 378.]

26-802. ISSUANCE OF CONVERTIBLE OR NONCONVERTIBLE CAPITAL DEBENTURES AND NOTES. The issuance of convertible or nonconvertible capital debentures and notes by banks in accordance with normal business considerations is permissible.

With the consent of the director, every bank is, however, authorized to issue and sell its capital notes or debentures, for all capital purposes, in an amount not to exceed one hundred percent (100%) of its unimpaired, paid-in capital stock, plus fifty percent (50%) of its unimpaired surplus fund. A bank may, with the approval of stockholders owning two-thirds (2/3) of the stock of the bank, entitled to vote, or without such approval if authorized by its articles of incorporation, issue convertible or nonconvertible capital debentures and notes in such amounts and under such terms and conditions as shall be approved by the director.

[26-802, added 1979, ch. 41, sec. 2, p. 95.]

26-803. BORROWING FROM FEDERAL AGENCIES. With the consent of the director, a bank may borrow from any agency of the United States. The limitations imposed on borrowing by this chapter shall not apply to borrowings under this section.

[26-803, added 1979, ch. 41, sec. 2, p. 95.]

26-804. BORROWING MONEY -- ACCOUNTING. No officer or employee of any bank shall issue the note of such corporation for money borrowed or rediscount any of its paper, or pledge or hypothecate any of its assets, except when authorized by resolution of its board of directors, or by an authorized committee thereof.

All borrowings shall be carried on the books of the bank, and in all reports of such bank under liabilities.

All rediscounted paper containing the endorsement of or guarantee of the bank discounting the same, except when endorsed without recourse, shall be carried on the books of the bank and in all reports of such bank under liabilities as "rediscounts," until the same are actually paid by the makers, other than by renewal, or the rediscounting bank itself takes up the paper.

[26-804, added 1979, ch. 41, sec. 2, p. 95.]

26-805. EXTENT ASSETS MAY BE PLEDGED. No bank, banker or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed, its assets in a ratio exceeding one and one-half (1 1/2) times the amount borrowed (except as otherwise authorized by the director).

[26-805, added 1979, ch. 41, sec. 2, p. 96.]

26-806. GIVING SECURITY FOR DEPOSIT PROHIBITED. It shall be unlawful for any bank to pledge, mortgage or hypothecate to any depositor any of its real or personal property as security for any deposit except money of the United States, the state of Idaho and its political subdivisions, and deposits for which security is required by any law of the United States, or required or permitted by any other statute of this state. Any pledge, mortgage or hypothecation made in violation hereof shall be unenforceable and void and any person, firm or corporation, holding or receiving any security or securities mortgaged or hypothecated, pledged or attempted to be pledged, shall, upon demand of any officer, director or stockholder of the bank or the director, be required forthwith to make return thereof, and the repayment of any deposit shall not be prerequisite to the recovery of any property so unlawfully pledged, hypothecated or mortgaged.

[26-806, added 1979, ch. 41, sec. 2, p. 96; am. 1998, ch. 406, sec. 1, p. 1262.]

TITLE 26
BANKS AND BANKING

CHAPTER 9
CONSOLIDATION, SALE AND REORGANIZATION

26-901. RESULTING NATIONAL BANK. (1) Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of two-thirds (2/3) of each class of voting stock of a state bank, at a meeting called in conformity with the provisions of section 26-904, Idaho Code, shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in section 26-909, Idaho Code.

(2) Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate.

[26-901, added 1979, ch. 41, sec. 2, p. 96.]

26-902. RESULTING STATE BANK. Upon approval by the director, banks may be merged to result in a state bank or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders.

[26-902, added 1979, ch. 41, sec. 2, p. 97.]

26-903. MERGER PROCEDURE -- RESULTING STATE BANK. (1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) A statement or recital that the agreement is subject to approval by the director and by the stockholders of each merging bank.

(b) The name of each merging bank and location of each office.

(c) With respect to the resulting bank:

1. the name and location of the principal and the other offices;
2. the name and residence of each director to serve until the next annual meeting of the stockholders;
3. the name and residence of each officer;
4. the amount of capital, the number of shares and the par value of each share;
5. the amount, terms, and preferences if preferred stock is to be issued; and
6. the amendments to its charter and bylaws.

(d) Provisions governing:

1. the manner of converting the shares of the merging banks into shares of the resulting state bank or into shares of a bank holding company; and
2. the manner of disposing of the shares of the resulting state bank or of the bank holding company not taken by the dissenting stockholders of each merging bank.

(e) Such other provisions as the director may require to enable him to discharge his duties with respect to the merger.

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board of each merging state bank and evidence of proper action by the board of directors of any merging national bank.

(3) After receipt by the director of the papers specified in subsection (a), the director shall approve or disapprove the merger agreement. The director shall approve the agreement if it finds that:

(a) The resulting state bank meets the requirements as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest.

(4) If the director disapproves an agreement, the objections shall be stated in writing and the merging banks shall be given an opportunity to amend the merger agreement to obviate such objections.

[26-903, added 1979, ch. 41, sec. 2, p. 97.]

26-904. MERGER -- APPROVAL BY STOCKHOLDERS OF STATE BANKS. (1) To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds (2/3) of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

(2) Notice of the meeting of stockholders of each state bank shall be given by publication in a newspaper of general circulation in the place where its principal office is located at least once a week for four (4) successive weeks, and by mail at least fifteen (15) days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of two-thirds (2/3) of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of section 26-909, Idaho Code, and shall state that the section sets forth the exclusive rights and remedies of dissenting stockholders.

[26-904, added 1979, ch. 41, sec. 2, p. 98.]

26-905. EFFECTIVE DATE OF MERGER -- FILING OF APPROVED AGREEMENT -- CERTIFICATE OF MERGER AS EVIDENCE. (1) A merger or sale which is to result in a state bank shall, unless a later date is specified in the agreement, become effective upon the filing with the director of the executed agreement together with copies of the resolutions of the stockholders of each merging purchasing and selling bank approving it and a list of the owners of the shares voted against the merger or purchase, certified by the bank's president or a vice-president and a secretary or cashier. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

(2) The director shall promptly issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in the office of the county recorder of any county wherein property of the merging banks is held, to evidence the new name in which the property of the merging banks is held.

[26-905, added 1979, ch. 41, sec. 2, p. 98.]

26-906. CONVERSION OF NATIONAL INTO STATE BANK. (1) A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank, shall be granted a charter by the director unless he finds that the bank does not meet the standards as to location of offices, capital structure, and business experience and character of officers and directors for the incorporation of a state bank.

(2) The national bank may apply for such charter by filing with the director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

[26-906, added 1979, ch. 41, sec. 2, p. 99.]

26-907. CONTINUATION OF CORPORATE ENTITY -- USE OF OLD NAME. (1) A resulting state or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, and duties of each merging bank or the converting bank, except as affected by the law of this state in the case of a resulting state bank or the laws of the United States in the case of a resulting national bank, and by the charter and bylaws of the resulting bank.

(2) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

(3) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing, except when the resulting bank is not authorized to or has not qualified to exercise the powers conferred or required by the writing.

[26-907, added 1979, ch. 41, sec. 2, p. 99.]

26-908. SALE OF ASSETS OF BANK OR DEPARTMENT. (1) Any state bank may sell to any other bank:

(a) all or substantially all of the selling bank assets and business; or

(b) all or substantially all of the assets and business of any department of the selling bank.

(2) Any state bank may, upon assuming the liabilities relating thereto, purchase:

(a) all or substantially all of the assets and business of another bank; or

(b) all or substantially all of the assets and business of any department of another bank.

(3) The agreement of purchase and sale shall be authorized, approved by the director, approved by the vote of a majority of the stockholders of the purchasing and selling bank at a meeting called for the purpose in like manner as meetings to approve mergers are called and filed with the director accompanied by evidence of such stockholders' approval in like manner as agreements of mergers are filed. After such approval is given by the stockholders a notice of such sale shall be published once a week for three (3) successive weeks in a newspaper of large general circulation in the county in which the selling bank has its principal office, and proof of such publication shall be filed with the director.

(4) Notwithstanding any term of the agreement, or of his contract of deposit, any depositor whose business is thus sold has the right to withdraw his deposit in full on demand after such sale unless by dealing with [the] purchasing bank with knowledge of the purchase he ratifies the transfer.

(5) The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank subject to the right of the court, on petition of any interested party, to appoint another or succeeding fiduciary to the positions so transferred. Until the court appoints another or succeeding fiduciary the purchasing bank shall, if qualified to do so, exercise any fiduciary function vested in the selling bank.

(6) No right against or obligation of the selling bank in respect of assets or business sold shall be released or impaired by the sale until one (1) year from the last date of publication of the notice pursuant to subsection (3) of this section, but after the expiration of such year, no action can be brought against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.

(7) A bank may, with the prior approval of the director, purchase assets and the charter of and assume deposit liabilities or [of] a branch office of another bank or sell assets and the charter of a branch and permit the assumption of deposit liabilities by the purchasing bank. The sale or acquisition of a branch office and deposit liabilities shall comply with all capital requirements and other statutory requirements and restrictions relating to the maintenance of branch offices as required by this law. Banks which desire to sell, purchase or exchange branches shall apply to the director and shall provide all information required by the director to properly evaluate the impact upon public need and convenience and the impact upon depositors, stockholders and creditors of both the selling and acquiring banks. The director may in his discretion require a public hearing for the purpose of obtaining public impact and evaluating public need and convenience issues. The department shall make an investigation of the proposed sale, purchase or exchange of branches. The actual cost of an investigation, administrative procedure or hearing, shall be shared equally by the selling and acquiring banks. All fees shall be paid to the department of finance by the applicant banks following the approval or denial by the director. A bank selling a branch shall publish notice of the sale once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the branch is located.

[26-908, added 1979, ch. 41, sec. 2, p. 99.]

26-909. DISSENTING STOCKHOLDERS. (1) A dissenting stockholder of a state bank shall be entitled to receive the value in cash of only those

shares which were voted against a merger to result in a state bank, against the conversion of a state bank into a national bank or against a sale of all or substantially all of the state bank's assets, and only if written demand thereupon is made to the resulting state or national bank at any time within thirty (30) days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares will be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three (3) appraisers, one (1) to be selected by the vote of the owners of two-thirds (2/3) of the shares involved at a meeting called by the director on ten (10) days' notice, one (1) by the board of directors of the resulting state or national bank, and the third by the two (2) so chosen. The valuation agreed upon by any two (2) appraisers shall govern. If any necessary appraiser is not appointed within sixty (60) days after the effective date of the merger or conversion, the director shall make the necessary appointment, or if the appraisal is not completed within ninety (90) days after the merger or conversion becomes effective, the director shall cause an appraisal to be made.

(2) The merger agreement may fix an amount which the merging banks consider to be the fair market value of the shares of a merging or a converting bank at the time of the stockholders' meeting approving the merger or conversion, which the resulting bank will pay dissenting stockholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

(3) The expenses of appraisal shall be paid by the resulting state bank except when the value fixed by the appraiser does not exceed the value fixed by the merger agreement in which case one-half (1/2) of the expenses shall be paid by the resulting bank and one-half (1/2) by the dissenting stockholders requesting the appraisal in proportion to their respective holdings.

[26-909, added 1979, ch. 41, sec. 2, p. 101.]

26-910. NONCONFORMING ASSETS OF BUSINESS. If a merging, converting or selling bank has assets which do not conform to the requirements of state law for the resulting or purchasing state bank or carries on business activities which are not authorized or permitted for the resulting or purchasing state bank, the director may permit a reasonable time to conform with the law of this state, and, in the case of a resulting or purchasing state bank that is not to exercise trust powers, shall require that prompt application be made to a court of competent jurisdiction for the appointment of successor trustees.

[26-910, added 1979, ch. 41, sec. 2, p. 101.]

26-911. BOOK VALUE OF ASSETS. Without approval by the director no asset shall be carried on the books of the resulting or purchasing bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.

[26-911, added 1979, ch. 41, sec. 2, p. 102.]

TITLE 26
BANKS AND BANKING

CHAPTER 10
CLOSING AND LIQUIDATION OF BANKS

26-1001. GROUNDS FOR CLOSING BANK. Whenever it shall appear to the department of finance that:

(1) Any bank has violated its charter or any law of this state; or

(2) Has violated any general rule or regulation of the director, made in accordance with law, or any special lawful order, direction or requirement of the director, directed to any particular bank; or

(3) That the capital of any bank is impaired or for any reason is below the amount required by law and has not been made good after fifteen (15) days' notice, as provided by law, or without such notice, in the event a majority of the board of directors of such bank notify the director in writing that the same cannot be made good within fifteen (15) days; or

(4) That such bank cannot meet or has failed to meet any of its liabilities as they become due in the regular course of business; or

(5) That its reserve has fallen below the amount required by law and it has failed to make good such reserve within fifteen (15) days after being requested to do so by the director, or, without such notice, if a majority of the directors, in writing, notify the director that such reserve cannot be made good within fifteen (15) days, or if it is continually allowing its reserve to fall below the required amount; or

(6) That it is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; or

(7) It has refused to submit its papers, books and records to the inspection of the director or his authorized agent or representative; or

(8) That any director or officer of such bank has refused to be examined on oath touching the affairs or business of any bank insofar as such relate to the solvency of the bank or matters having to do with the supervision of the director.

The director himself, or his duly authorized agent upon express authority from the director, may in his discretion, close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business,or its operations or liquidation be turned over to the Federal Deposit Insurance Corporation as provided in this chapter, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hands voluntarily.

The powers and authority conferred on the director by this section, except in cases of voluntary surrender, shall be considered as discretionary and not as mandatory, and so long as the director acts in good faith in the matter, neither he nor his deputies shall be held liable civilly or criminally or upon their official bonds in any action taken thereunder or for any failure to act thereunder.

[26-1001, added 1979, ch. 41, sec. 2, p. 102.]

26-1002. PENALTY FOR CLOSING BANK WITH CRIMINAL INTENT. If the director of the department of finance or official in the department of finance, shall, as a result of malice or for personal gain, declare any bank insolvent, he shall, upon conviction thereof be subject to punishment by fine not

exceeding one thousand dollars ($1,000), or imprisonment in the county jail not exceeding one (1) year, or both, within the discretion of the court.

[26-1002, added 1979, ch. 41, sec. 2, p. 103.]

26-1003. RECEIVING DEPOSITS WHEN INSOLVENT. The owners or officers of any bank or trust company who shall receive any deposits, knowing that such bank or trust company is insolvent, shall be guilty of a felony and punished, upon conviction thereof, by a fine not exceeding one thousand dollars ($1,000), or imprisonment in the state penitentiary not exceeding two (2) years, or both such fine and imprisonment, at the discretion of the court.

[26-1003, added 1979, ch. 41, sec. 2, p. 103.]

26-1004. BANK MAY BE PLACED IN DIRECTOR'S POSSESSION. Any bank may place its affairs and assets under the control and in the possession of the director after oral or written notice to the director by posting a notice on the front door of such bank, indicating that said bank is in his hands, which notice shall be signed, in their own handwriting, by a majority of the directors.

[26-1004, added 1979, ch. 41, sec. 2, p. 103.]

26-1005. EFFECT OF POSTING NOTICE. The posting of such notice by the directors of any bank, or of a like notice signed by the director, shall be sufficient to place all assets and property of such bank, of whatever nature and wherever situate, in possession of the director, and shall operate as a bar to any attachment or any other legal proceedings against such bank or its assets, and no valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of such bank after the posting of such notice or after taking possession of any bank by the director.

[26-1005, added 1979, ch. 41, sec. 2, p. 103.]

26-1006. TAKING POSSESSION OF BANK -- NOTICE. On taking possession of the assets and business of the bank, the director shall, in addition to posting notice thereof, on the front door of such bank, as aforesaid, also notify personally or by telephone or mail or by public announcement through the news media, all correspondent banks, and any and all persons or corporations known to him to be holding or in possession of, any of the estate of such bank.

[26-1006, added 1979, ch. 41, sec. 2, p. 103.]

26-1007. RESUMPTION AFTER CLOSING. After the director has taken possession of any bank, he may permit such bank to resume business upon such conditions as may be approved by him.

[26-1007, added 1979, ch. 41, sec. 2, p. 104.]

26-1008. POWERS OF DIRECTOR ON CLOSING BANK. Upon taking the assets and business of any bank into his possession, the director is authorized to collect all moneys due to such bank, assess the stock of such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. He shall have general and inclu-

sive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs of such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is in his discretion practicable or desirable.

The director may institute, in his own name as director, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court. Any such application or petition by the director may be had at any time, either in term or vacation in court, or in chambers, as the court may order.

[26-1008, added 1979, ch. 41, sec. 2, p. 104; am. 1987, ch. 76, sec. 1, p. 147.]

26-1009. RECOURSE OF AGGRIEVED BANK. Any bank deeming itself aggrieved by the action of the director in taking possession of its assets or closing its doors may, within ten (10) days after such possession shall have been taken, apply to the district court of the county in which its principal place of business is located, or to the judge thereof in chambers, to enjoin further proceedings by the director, and the court or the judge thereof in chambers, after notifying the director to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss such application, or enjoin the director from further proceeding and direct him to surrender the business and assets of said bank. Such application for injunction may be heard at any time after five (5) days' notice from the time of service on said director in the discretion of the court, or the judge thereof, or at any time prior thereto by the consent of the director. Application therefor shall be made on the verified complaint of the bank, in the ordinary form used in civil actions in district court, and a copy of such complaint shall be served on the director with the order to show cause. The director shall, at least two (2) days before the time set for hearing, file in the cause, and serve upon counsel for plaintiff an answer to the complaint, also in the ordinary form used in civil actions in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any questions raised by demurrer or motion in other actions may be raised in the answer. On the issues thus made on the complaint and answer, the court, or the judge thereof at chambers, at the time fixed for showing cause, or at such other time to which he, in his discretion, may continue the same, shall try the matter on the merits by hearing the allegations and proofs of the parties in the same manner as on the trial of ordinary civil actions in the district court, and the rules governing the trial of ordinary civil actions and for the production and taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In the event the director makes no appearance in the time limited, the court shall enter his default and proceed to hear the proofs of the plaintiff in like manner as in civil

actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, shall be final judgment from which either party shall have the right, by notice filed within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action.

[26-1009, added 1979, ch. 41, sec. 2, p. 104.]

26-1010. DIRECTOR MAY APPOINT AGENTS. The director may, under his hand and seal, appoint and authorize an agent to assist him or act for him in the performance of any powers or duties hereunder, the certificate of appointment to be filed in the office of said director, and a certified copy thereof delivered to such agent. Such agent and other employees hereinafter mentioned, shall receive a salary, to be fixed as hereinafter provided, for the time he is actually engaged in the performance of such duties. The director may also employ such attorneys and procure such expert accountants and other experts, assistants and employees as may be necessary in the liquidation and distribution of the assets of any such bank, and the performance of his duties hereunder, and may retain such of the officers or employees of such bank as he may deem necessary. He shall require from the agent appointed by him and from such of the assistants as will have charge of any of the assets of the bank such security for the faithful discharge of their duties as he may deem proper.

The director may also designate any one of the examiners of the department of finance as a general liquidating agent, with his office in the department of finance, for the purpose of liquidating any one or all state banks in the process of liquidation, and for the purpose of conducting such liquidation under the direction of said director; and may authorize the said liquidating agent to employ such clerical help as may be necessary.

Liquidating agents and experts and clerical assistants shall receive a salary to be fixed by the director and necessary traveling and hotel expenses incurred in the performance of official duties. The salary of the liquidating agent and experts and necessary clerical assistance [assistants] and other expenses incurred by the said liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under such agent's charge in proportion to the total amount of resources of each of such banks. The funds for such expenses shall be raised by assessing each bank in ratio herein set forth and paying such expenses directly to the persons entitled thereto, without depositing any of such funds in the state treasury.

The compensation of the agents appointed by the director and of attorneys, expert accountants and other assistants, and all expenses of liquidation and distribution of a bank whose assets and business shall be taken possession of by the director, shall be fixed by the director, but subject to be approved by the judge of the district court of the county in which the bank is located, on notice to such bank. Except in cases of emergency, the compensation to be paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation shall have been so fixed and approved and the services rendered, the same shall be paid out of the funds of such bank in the hands of the director, and shall be a proper charge and lien on the assets of such bank as herein provided.

[26-1010, added 1979, ch. 41, sec. 2, p. 105.]

26-1011. FEDERAL DEPOSIT INSURANCE CORPORATION -- RIGHT TO ACT AS RECEIVER OR LIQUIDATOR. The Federal Deposit Insurance Corporation created by section 8 of the federal "Banking Act of 1933" (section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors, in lieu of the director of finance, but only if and when requested so to do by said director.

The director of the department of finance may, in his discretion, in the event of such closing tender to said corporation the appointment as receiver or liquidator of such banking institution, in his stead, and if the corporation accepts said appointment, the corporation shall have and possess all the rights, powers and privileges provided by the laws of this state with respect to the director of the department of finance acting as receiver or liquidator of a banking institution, and be subject to all the duties of such receiver or liquidator, except insofar as such rights, powers, privileges or duties are in conflict with the provisions of subsection (1) of section 12B of the Federal Reserve Act, as amended (section 8 of the "Banking Act of 1933").

The corporation shall not, however, without the consent of the director of the department of finance, continue to act as receiver or liquidator of any banking institution after the amount of the insured deposit liability of such banking institution, paid or assumed by the corporation, and the costs of liquidation paid or assumed by it have been repaid it, or after funds are available therefor.

[26-1011, added 1979, ch. 41, sec. 2, p. 106.]

26-1012. CLOSED BANK -- FEDERAL DEPOSIT INSURANCE CORPORATION FURNISHING FUNDS FOR PAYMENT OF INSURED DEPOSIT LIABILITIES -- SUBROGATION. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution, of the owners of such deposits, in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (1) of section 12B of said Federal Reserve Act, as amended (being section 8 of said "Banking Act of 1933") in the case of the closing of a national bank, provided, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

[26-1012, added 1979, ch. 41, sec. 2, p. 107.]

26-1013. CLOSED BANKS -- PLEDGE OR SALE OF ASSETS BY DIRECTOR OR LIQUIDATOR TO FEDERAL DEPOSIT INSURANCE CORPORATION -- COURT ORDER. With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the director of the department of finance or of a court or by action of its directors or in the event of its insolvency or suspension, the director of the department of finance and/or the receiver or liquidator of such institution with the permission of said director of finance may borrow from said

corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, provided, that where said corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said director upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of said director, the receiver or liquidator of any such institution may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the director of the department of finance or receivers or liquidators to pledge or sell assets in accordance with any existing law.

[26-1013, added 1979, ch. 41, sec. 2, p. 107.]

26-1014. FEDERAL DEPOSIT INSURANCE CORPORATION ACTING AS LIQUIDATOR -- POSSESSION AND CONTROL OF ASSETS AND BUSINESS OF BANK. Upon the acceptance of the appointment of receiver or liquidator aforesaid by said corporation, and during its continuance as such receiver or liquidator, the possession and control of all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement, with the same force and effect and to the same extent as in the director of the department of finance under like circumstances.

[26-1014, added 1979, ch. 41, sec. 2, p. 108.]

26-1015. ENFORCEMENT OF INDIVIDUAL LIABILITY OF DIRECTORS OF CLOSED BANK. Among its other powers, said corporation, in the performance of its powers and duties as such receiver or liquidator, when acting as such in lieu of the director of the department of finance, shall have the right and power upon the order of the court of record of competent jurisdiction to enforce any individual liability of the directors of any such banking institution.

[26-1015, added 1979, ch. 41, sec. 2, p. 108.]

26-1016. NOTICE TO CREDITORS OF INSOLVENT BANK. The director shall cause notice to be given by advertisement in a newspaper of general circulation in the town or city in which said bank is situated, if there be one, and if not, then in such other newspaper published in the state of Idaho, as the director shall designate, once a week for six (6) consecutive weeks, calling on all persons who have claims against said bank to present the same to the director or his duly authorized agent at a place to be specified in said notice, and to make sworn proof thereof, in form to be fixed by him, within the time specified in said notice, not less than thirty (30) days from the date of the last publication thereof. A copy of such notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

[26-1016, added 1979, ch. 41, sec. 2, p. 108.]

26-1017. CLAIMS -- ALLOWANCE AND REJECTION. The director shall reject or allow all claims in (the) whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant

personally or by certified mail with a return receipt requested and an affidavit of the service of such notice, which shall be prima facie evidence thereof, filed in the office of the director. The action of the director shall be final unless an action be brought by the claimant against the bank in the proper court of the county where the bank is located within ninety (90) days after such service to fix the amount of the claim and its order of priority or either. An appeal from the director's allowance, either as to priority or amount, may also be taken to the district court of such county by any party in interest by serving on the director notice thereof, stating the grounds of objection and filing the same in said court within thirty (30) days after allowance. Within five (5) days after such notice, the director shall file in the court, and serve on the appellant, a copy of the claim and his reasons for allowance. The court or judge shall, after five (5) days' notice of time and place of hearing on the issues thus made, hear the proof of the parties and enter judgment reversing, affirming or modifying the director's action.

[26-1017, added 1979, ch. 41, sec. 2, p. 108.]

26-1018. PAYMENT OF CLAIMS. Claims presented to the director prior to the expiration of the time fixed in the notice to creditors therefor, and allowed by him, shall be paid in the order of priority hereinafter fixed. Those filed after such expiration and prior to one (1) year thereafter shall be entitled, after they have been allowed by the director, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the director and available for the payment of claims of their order of priority at the time such claims are filed, but as against other claims of their same order of priority, on which dividends have been paid, they shall be entitled to payment in a proportionate amount before further payments are made on such other claims. All claims filed after the expiration of one (1) year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind or character, except claims of shareholders, based on stock or assessments paid on stock, shall have been fully paid and discharged, and a surplus remains in the hands of the director, and then only from such surplus.

[26-1018, added 1979, ch. 41, sec. 2, p. 109.]

26-1019. CLAIMS -- ORDER OF PAYMENT -- PRIORITIES. The order of payment of the debts of a bank liquidated by the director shall be as follows:

(1) The expense of liquidation, including compensation of agents, employees and attorneys.

(2) All funds held by bank in trust.

(3) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor) including those of the United States, the state of Idaho, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subdivision and take the same priority as

debts due any other depositor, anything in the statutes of the state of Idaho to the contrary notwithstanding.

(4) All other contractual liabilities pro rata.

(5) Interest on all foregoing classes of claims without regard to the priority of the principal computed as follows:

Savings accounts at the same rate they bore at the time of the closing of the bank; time certificates of deposit at the rate fixed in the certificate; all other contractual obligations bearing interest at the rate they bore at the time of closing until due by their terms; no interest to be compounded.

(6) Unliquidated claims for damages and the like.

Provided, however, that the director may, in his discretion, without regard to the priorities herein fixed in subdivisions 3, 4, 5 and 6 of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion, create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above-mentioned moneys for the aforesaid purposes.

Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired.

Deposits of any person, firm or corporation in a bank which is in the possession of the director, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section) due to such bank from such person, firm or corporation. All dividends when declared in favor of any creditor of the bank may be applied, in the discretion of the director, in satisfaction of the indebtedness, if any, due the bank from such creditor.

[26-1019, added 1979, ch. 41, sec. 2, p. 109.]

26-1020. PARTIAL PAYMENT OF CLAIMS -- CALCULATION OF DIVIDENDS -- ASSIGNMENT OF CLAIMS -- CHECKS AGAINST CLOSED BANK. The director need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends, but he may, in his discretion, and if under the circumstances of the particular case he deems it expedient and safe, at any time after taking possession of said bank and prior to the expiration of such period fixed for filing of claims, if he has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled thereto, in the order of priority heretofore fixed, making such payment to said creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by such books and records. At any time after the expiration of the date fixed for the presentation of claims against said bank and from time to time thereafter, when, in his discretion there are sufficient funds available therefor, the director shall, after making proper provision for the payment of expenses of liquidation, declare and pay dividends to all creditors of such bank pro rata in the order of their priority. If, after the time fixed for presentation of

claims against the bank has expired, it appears that any person, prior to the expiration of said period, or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more shall be paid said creditor until such time as the payment made other creditors shall place them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon such disputed claims or deposits shall be held by the director until the justice and validity of such claims or deposits shall have been finally determined. Claims against any bank in process of liquidation may be assigned as a whole, but partial assignments of such claims shall not be valid against the director of the department of finance or his agents in charge of such bank, nor recognized by them. Assignments of claims shall be binding upon the director only after the same have been filed and allowed by the director but not before, and only then subject to the payment of the assignor's liabilities to the bank. Such assignment shall be made by filing written notice, signed by the original claimant, with the director or person in charge of said bank. No assigned claim may be offset against obligations due the bank. A check or draft drawn against any bank closed or taken possession of by the director, whether issued before or after closing thereof, shall not be recognized as a claim against said bank, or as an assignment of any amount, whether protested or not protested.

[26-1020, added 1979, ch. 41, sec. 2, p. 110.]

26-1021. STATEMENT OF CONDITION. The director of the department of finance shall, within sixty (60) days after taking possession of any bank or trust company under the provisions of this chapter and at intervals of every six (6) months thereafter during the liquidation thereof and until depositors' claims against said bank or trust company have been fully paid or the assets available for such claims exhausted, make public a statement of the condition of such bank or trust company.

[26-1021, added 1979, ch. 41, sec. 2, p. 111.]

26-1022. DEPOSIT OF FUNDS IN DIRECTOR'S HANDS. All funds in the hands of the director belonging to any bank in process of liquidation shall be deposited in his name as director in such banks within the state as may be selected and designated by him and subject to his checks as director of the department of finance. Provided, that any bank receiving such deposits shall file and keep on file with the director a surety bond, executed by some surety company authorized to transact business in the state of Idaho, in an amount not less than the amount of the sum on deposit, conditioned for the payment on demand of the full amount of such deposit, or in lieu of such bond, shall deposit with the director, securities in like amount to be approved by the director, as security for the payment of such deposits, but only approved securities as defined by the Public Depository Law, shall be accepted by the director. No deposit of such funds shall be made in any bank in excess of the penal amount of such bond or in excess of ninety per cent (90%) of the market value of such approved securities.

[26-1022, added 1979, ch. 41, sec. 2, p. 111.]

26-1023. DISPOSITION OF UNCLAIMED FUNDS. The director shall certify to the treasurer of the state a complete list of funds remaining in his hands

uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six (6) months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon which he has so held in trust for six (6) months. A copy of such certificate shall also be filed with the state controller, who shall make a record thereof.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the director for the amount due him, after it has been certified into the treasury of the state. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the director shall approve the claim and forward it to the state controller, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records to be due such depositor or creditor which shall be paid by the treasurer.

[26-1023, added 1979, ch. 41, sec. 2, p. 112; am. 1994, ch. 180, sec. 43, p. 455.]

26-1024. DISPOSITION OF ASSETS REMAINING AFTER PAYMENT OF CLAIMS. Whenever the director has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the full amount thereof, and shall have made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation or, if the assets of said bank be insufficient for making said payments, then, whenever the director has liquidated all available assets and disbursed the same as herein provided, the director shall make application to the district court of the county in which such bank is located, or the judge thereof in chambers for an order authorizing the director, if there be remaining assets on hand, to surrender the same to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person or persons, if any, as have been designated as trustees by the stockholders at a meeting lawfully called and assembled for such purpose, in like manner as any other stockholders' meeting. Said order shall also provide that upon the surrender of said assets, as in said order directed, and where there are no remaining assets, then, upon the entry of the order, the director shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank and that the charter of said bank shall be forfeited. The court may require such trustees to give bond in such amount as the court may fix, conditioned for the faithful performance of their duties. It shall be the duty of the said trustee or trustees to complete the liquidation of any remaining assets as rapidly as may be and to distribute the proceeds of the same among the stockholders according to their respective rights. On application for such order, the bank shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application may be had at any time in court or in chambers, as the court may order, after five (5) days' notice of the hearing.

[26-1024, added 1979, ch. 41, sec. 2, p. 112.]

26-1025. BORROWING MONEY TO FACILITATE LIQUIDATION OR REOPENING OF BANK. The director of the department of finance, when he deems it to be for the best interest of the depositors of any closed bank, shall be and hereby is authorized and empowered in his official capacity, without personal liability, and under orders of the court, to borrow from any federal agency, or any corporation or person, for the purpose of facilitating the liquidation of such bank and making distribution to depositors, and/or for the purpose of reorganizing or reopening such bank, and as security for the payment of any money so borrowed, the director may pledge or otherwise hypothecate or mortgage all or any part of the assets of such bank and enter into all such contracts or agreements in connection therewith as he may deem prudent and advisable.

[26-1025, added 1979, ch. 41, sec. 2, p. 113.]

26-1026. REOPENING OF BANK -- UNSECURED DEPOSITORS AND CREDITORS -- ACCEPTANCE OF PLAN -- CERTIFICATE OF APPROVAL. Whenever the director of the department of finance believes it to be for the best interest of the unsecured depositors and creditors of any bank that any proposed plan for maintaining or restoring the solvency of such bank, or for effecting any merger or reorganization thereof, should be carried out and made effective,the director shall issue his certificate of approval, and thereupon all other unsecured depositors and unsecured creditors of such bank shall be held to be subject to the agreement and plan so approved by the director and all depositors and creditors shall be bound thereby and their deposits and claims shall be subject thereto to the same extent and effect as if they had joined in the execution thereof, and their deposits and claims shall be paid in the manner provided in the plan so approved, as aforesaid, and not otherwise.

[26-1026, added 1979, ch. 41, sec. 2, p. 113.]

26-1027. PUBLIC FUNDS ON DEPOSIT -- JOINDER OF OFFICIAL IN PLAN -- BONDS SECURING DEPOSITS UNAFFECTED. Public officers and governing boards having control of public funds on deposit in any such bank are authorized to join in any plan approved as provided in section 26-1026, Idaho Code, if, in the judgment of such officers or boards, the plan is for the best interest of all persons concerned, but no such agreement shall release any surety on any bond securing public deposits or public funds, or waive any security held for any preference given to such public funds under any law of this state, or relieve any officer, or the sureties of his official bond, of the liability, if any, for such deposit, and the time for the repayment of public funds shall in no event be extended for a longer period than six (6) months from the date of said certificate of the director of the department of finance.

[26-1027, added 1979, ch. 41, sec. 2, p. 114.]

TITLE 26
BANKS AND BANKING

CHAPTER 11
SUPERVISION BY DEPARTMENT OF FINANCE

26-1101. ADMINISTRATION -- RULES AND POWERS. (1) Every bank and bank holding company shall be subject to the inspection and supervision of the director of the department of finance as provided in this act.

(2) The director may from time to time promulgate, amend and rescind rules necessary or proper to carry out the provisions of this act. No rule may be adopted unless the director finds that the action is necessary or appropriate for the protection of the interests of bank depositors or for the welfare of banks and consistent with the purpose of this act.

(3) Notwithstanding any other provision of the Idaho bank act, but subject to the limitations provided for in this section:

(a) A bank may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment which it could make if it were operating as a national bank or which has been approved by the responsible federal agency for any state-chartered bank in the United States.

(b) Before engaging in any activity or exercising any power afforded under this subsection (3), a bank shall first notify the director of its intent to do so. This notice shall be sent to the director by U.S. mail, postage prepaid, certified or registered, with return receipt requested. Should the director take no action on the request within twenty (20) days of delivery to the director, the right to engage in the action or power so requested shall be deemed granted.

(c) Should the director deny the request, the affected bank shall have the right to request a hearing before the director, which hearing shall be held within thirty (30) days of the date of the denial.

(d) The director shall have the discretion to deny any request which is inconsistent with the purposes of the Idaho bank act.

(e) No such approval shall operate to deny the director of any of his authority under the Idaho bank act and such permitted activity shall be subject to supervision by the director.

(f) The director may, by order, waive or modify any requirement under this act if the corresponding federal requirement for national banks is eliminated or modified.

(4) Banks which are subsidiaries of bank holding companies may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans as agent for other depository institutions which are subsidiaries of the same bank holding company.

(5) All rules must be promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code. Unless expressly provided in the Idaho bank act, proceedings under the Idaho bank act shall not be considered "contested cases" under chapter 52, title 67, Idaho Code.

[26-1101, added 1979, ch. 41, sec. 2, p. 114; am. 1995, ch. 99, sec. 5, p. 302.]

26-1102. EXAMINATION BY DEPARTMENT. (1) The director may examine no less often than once in eighteen (18) months, and more frequently whenever he shall deem it necessary, all records and other documents in the possession

of or relating to the bank, bank trust department including records in the custody of a data processor or other person or company. For this purpose, the director shall have authority to demand and inspect all books, papers, moneys, notes, bonds, or evidences of debt of such bank and may examine on oath any of the directors, officers, agents, employees, customers, or depositors of such bank. Any willful false swearing in any examination shall be deemed perjury. During examinations, the directors, officers and employees shall give any assistance required by the director, but no examiner shall interfere with the routine duty of such directors, officers and employees.

(2) Whenever it shall come to the notice of the director that any bank has failed or refused to comply with any of the provisions of this act, the director is authorized to make a special examination of said bank and to charge and collect for such special examination; and to continue such examinations and charges at intervals of not less than thirty (30) days until such provisions are complied with.

(3) The director may in his discretion at any time omit his examination of any bank as above required and accept in lieu thereof the findings or result of an examination of such bank made by any bank regulatory or insuring agency of the United States authorized to make such examination.

(4) The director may in his discretion extend the examination period to no less often than once in twenty-four (24) months if:

(a) The bank has total assets of less than one billion dollars ($1,000,000,000);

(b) The bank is well capitalized, as defined in 12 U.S.C. section 1831o, the federal deposit insurance act;

(c) When the bank was most recently examined, it was found to be well-managed and its composite condition was found to be outstanding or good; and

(d) The bank is not currently subject to a formal enforcement proceeding or order by the department or the appropriate federal banking agency.

[26-1102, added 1979, ch. 41, sec. 2, p. 114; am. 2007, ch. 126, sec. 6, p. 379.]

26-1103. REFUSAL TO SUBMIT TO EXAMINATION. Whenever any officer, director or employee of any bank or any data processor or other person or company having custody of books or records of any bank shall refuse to submit the books, papers and concerns of such bank to the inspection of the department of finance or refuse to be examined on oath touching the affairs or concerns of the bank, the director may, in his discretion, apply to the district court within the jurisdiction of which the home office of the bank is located for an injunction requiring the officer to allow such inspection. Upon application by the director, the court shall issue such an injunction.

[26-1103, added 1979, ch. 41, sec. 2, p. 115.]

26-1104. FEES. (1) On January 15 of each year, the director shall fix and collect from each state bank a fee based upon the amount of the total assets of the bank as of December 31 of the preceding calendar year, which fees shall not exceed the amounts set forth in the following schedule:

TOTAL ASSETS	MAXIMUM FEE
$0 to $1 million	$1,500 Flat Fee
$1 million to $10 million	$2,000 + $.25 per thousand dollars of assets in excess of $1 million
$10 million to $50 million	$4,250 + $.19 per thousand dollars of assets in excess of $10 million
$50 million to $100 million	$11,850 + $.12 per thousand dollars of assets in excess of $50 million
$100 million to $500 million	$17,850 + $.10 per thousand dollars of assets in excess of $100 million
$500 million to $1 billion	$57,850 + $.09 per thousand dollars of assets in excess of $500 million
$1 billion to $3 billion	$102,850 + $.08 per thousand dollars of assets in excess of $1 billion
$3 billion to $10 billion	$262,850 + $.07 per thousand dollars of assets in excess of $3 billion
$10 billion to $20 billion	$752,850 + $.03 per thousand dollars of assets in excess of $10 billion
$20 billion and over	$1,052,850 + $.02 per thousand dollars of assets in excess of $20 billion

(2) In addition to the foregoing, each state bank shall pay to the director an additional sum not to exceed one hundred dollars ($100) for each office and branch office maintained by said bank. The director shall collect from each bank for each special examination of its condition an amount sufficient to reimburse the director for the actual expenses incurred in connection therewith.

(3) The director may, in his discretion, assess state banks and state bank holding companies for the review, analysis and investigation of an application to:

(a) Charter or incorporate a bank or bank holding company;

(b) Establish a branch or office;

(c) Merge with, acquire, or be acquired by another bank or bank holding company located in or outside of Idaho; and

(d) Convert to an entity other than a state bank or bank holding company.

(4) For banks operating in Idaho with a home state other than Idaho, the director may, in his discretion, enter into a cooperative agreement with the home state supervisor of the bank to assess supervisory fees on the bank. The fees may include assessments, examination fees, branch fees, license fees and all other fees that are levied by the director on state banks. If such agreement has been entered, the director may, in his discretion, assess supervisory fees on banks operating in Idaho with home states other than Idaho.

(5) All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho bank act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

[26-1104, added 1979, ch. 41, sec. 2, p. 115; am. 1980, ch. 169, sec. 1, p. 361; am. 1984, ch. 47, sec. 1, p. 77; am. 1995, ch. 99, sec. 6, p. 303; am. 1997, ch. 225, sec. 3, p. 662; am. 2015, ch. 204, sec. 13, p. 626; am. 2021, ch. 58, sec. 4, p. 189.]

26-1105. DIRECTORS TO BE ADVISED OF CONDITIONS. The department of finance shall, after each examination, address a letter to the president or chairman of the board of directors, calling attention to the condition of the bank at the time of examination. Such letter from the department shall be

read at the first meeting of the board of directors following its receipt and the bank or company's minute book shall show the receipt of such letter and the reply thereto as approved by the directors.

[26-1105, added 1979, ch. 41, sec. 2, p. 116.]

26-1106. REPORTS OF BANK. Every bank shall make to the department of finance not less than three (3) reports during each calendar year at such times as reports are called for by the director. The department of finance shall prescribe the form of such reports and they shall be signed and verified by the oath or affirmation of one of the officers of such bank and attested by at least two (2) of the directors. They shall be forwarded to the department within fifteen (15) days after the receipt of the call therefor. Such report shall be published in a newspaper in the city or county in which said bank is located, or in a paper published nearest to such town, and in the same form as made to the department. Proof of publication shall be furnished to said department within thirty (30) days after receipt of the aforesaid call.

The department of finance shall also have the power to call for special reports from any bank whenever in its judgment the same is necessary to inform the department fully of the condition of such bank. It shall not be necessary for such bank to publish such special report.

[26-1106, added 1979, ch. 41, sec. 2, p. 116.]

26-1107. REPORTS -- DUTIES OF DEPARTMENT OF FINANCE. The department of finance shall receive and place on file in the office of the department the reports to be made by the banks under this act and shall prepare and furnish, on demand, to all the banks required to report blank forms for such statements or reports.

[26-1107, added 1979, ch. 41, sec. 2, p. 116.]

26-1109. BOOKS AND ACCOUNTS. Whenever it appears to the department of finance that any bank does not keep books and accounts in such manner as to enable it to readily ascertain the true condition of such bank, or that such books and accounts are not kept in a manner which will minimize, as far as possible, loss through dishonesty of its officers or employees or otherwise, the department shall have power to require the officers of such bank or any of them, to open and keep such books or accounts as the department may, in its discretion, determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank.

The directors of any bank shall, within ten (10) days from receipt by the bank of a written statement from the department that the bank's internal auditing procedures are inadequate or deficient in any respect in the opinion of the department, retain, at the bank's sole expense, an independent licensed certified public accountant, approved by the director, to forthwith make an audit of the bank, and upon completion thereof a certified copy of the audit shall be delivered to the department.

[26-1109, added 1979, ch. 41, sec. 2, p. 116.]

26-1110. PROOF THAT SERVICES PERFORMED WILL BE SUBJECT TO REGULATION AND EXAMINATION. No bank subject to examination by the department of finance may cause to be performed, by contract or otherwise, any bank services for

itself, whether on or off its premises, unless assurances satisfactory to the department of finance are furnished to such department by both the bank and the party performing such services that the performance thereof for any such bank will be subject to regulation and examination by the department of finance to the same extent as if such services were being performed by the bank itself on its own premises.

[26-1110, added 1979, ch. 41, sec. 2, p. 117.]

26-1111. RECORDS NOT PUBLIC. (1) The department of finance shall keep proper books and records of all regulatory acts, matters and things done by it under the provisions of chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 21, 26, 32, 33, 34, 35, 36 and 37, title 26, Idaho Code, as records of its office, but the same shall be subject to disclosure according to chapter 1, title 74, Idaho Code, except as otherwise provided in this section and in sections 26-1112 and 67-2743E, Idaho Code.

(2) All written communications and copies thereof, between the department, the director, department employees and any bank, bank holding company, trust company, savings and loan association and credit union which relate in any manner to the examination or condition of the financial institution, are the property of the department of finance and, if acquired by any person, shall be returned to the department upon written demand.

(3) (a) The director of the department of finance, any federal bank or other financial institution regulatory or supervisory agency, and any bank, bank holding company, trust company, savings and loan association, or credit union incorporated or chartered under title 26, Idaho Code, or under federal law or the law of any state and doing business in the state of Idaho, shall each have a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, and the contents of any documents relating to any confidential communications, between the financial institution and the department of finance or federal bank or financial institution regulatory or supervisory agency made during the regulatory relationship.

(b) A communication is confidential if it is made during the regulatory relationship between the department of finance or the federal bank or other financial institution regulatory or supervisory agency and any such bank, bank holding company, trust company, savings and loan association or credit union, and if the communication is not designed or intended for disclosure to any other parties.

(c) The privilege may be claimed by the financial institution or by the department of finance or the federal bank or other financial institution regulatory or supervisory agency, or by the lawyer for either. The privilege may be waived only in accordance with this section and sections 26-1112 and 67-2743E, Idaho Code.

(d) The director of the department of finance or the appropriate officer or employee of the federal bank or other financial institution regulatory or supervisory agency may disclose confidential communications between the department or agency and financial institutions to the court, in camera, in a civil action. Such disclosure shall also be a privileged communication and the privilege may be claimed by the director, officer or employee or his lawyer.

(e) No sanction may be imposed upon any financial institution as a result of the claim of a privilege by the financial institution or the di-

rector of the department of finance or the officer or employee of the federal supervisory agency under this section.

[26-1111, added 1979, ch. 41, sec. 2, p. 117; am. 1990, ch. 213, sec. 21, p. 502; am. 1993, ch. 187, sec. 1, p. 477; am. 2000, ch. 288, sec. 2, p. 972; am. 2005, ch. 265, sec. 16, p. 824; am. 2015, ch. 141, sec. 42, p. 413.]

26-1112. PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION. (1) Neither the department of finance, its director nor its employees shall disclose to any person or agency any fact or information obtained in the course of business of the department under this act, except in the following cases:

(a) When by the terms of this act or chapter 1, title 74, Idaho Code, it is made the duty of the department to make public records and publish the same.

(b) When the department is required by law to take special action regarding the affairs of any bank.

(c) When called as a witness in any criminal proceeding in a court of competent jurisdiction, provided that the court must review such information in chambers to determine the necessity of disclosing such information, and subject to the privilege provided by subsection (3) of section 26-1111, Idaho Code.

(d) When, in the case of a problem bank, it is necessary or advisable, in the discretion of the director, for the good of the public or of the depositors.

(e) When, in the discretion of the department, it is advisable to disclose any such information to a state or federal bank supervisory agency.

(2) Any person violating the provisions of this section shall be guilty of a felony and conviction shall subject the offender to a forfeiture of his office or employment.

[26-1112, added 1979, ch. 41, sec. 2, p. 117; am. 1990, ch. 213, sec. 22, p. 502; am. 1993, ch. 187, sec. 2, p. 478; am. 2015, ch. 141, sec. 43, p. 414.]

26-1113. IMPAIRMENT OF CAPITAL -- ASSESSMENT. Notwithstanding any law of this state to the contrary, the stock of a bank chartered by the state of Idaho shall be assessable. Whenever the director has reason to believe that the capital and surplus of any bank is impaired or reduced below the amount required by the director at the time the bank's charter was issued or an amount which the director reasonably believes to be necessary for the protection of the depositors of the bank, it shall be the duty of the director to examine said bank and ascertain the facts. In case he finds an impairment or reduction of capital and surplus, he shall order the bank to make good the deficiency within thirty (30) days after the date of the order. The directors of the bank upon which an order shall have been made, shall levy an assessment upon the stock of the bank to repair the capital deficiency. The director shall cause notice of the order and the amount of the assessment to be given to each stockholder of the bank. Notice shall be given by a written notice mailed to each stockholder at his last known address or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in the notice within ten (10) days from the date of mailing or service upon him of the notice, the directors of the bank shall have the right to sell the stock of such stockholder, at public auction. Previous notice of

such sale shall be given ten (10) days in advance of the date of the sale in a newspaper of general circulation in the county where the principal place of business of the bank is located. A copy of the notice of sale shall also be served personally on the stockholder or by mailing same to his last known address ten (10) days before the day fixed for the sale. Such stock may be sold at private sale and without such public notice; provided that an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally or by mailing a copy of the offer to his last known address. If, after service of the offer, the owner shall refuse or neglect to pay the assessment within two (2) weeks from the time of the service of the offer, the directors may accept the offer and sell the stock to the person(s) making the offer, or to any other person(s) making a larger offer than the offer submitted to the stockholder. Stock shall in no event be sold for less than the amount of the assessment called for and the expense of the sale.

The stockholder whose shares of stock are to be sold shall return the certificates evidencing such shares to the bank prior to the date the shares will be sold.

Out of the proceeds of the stock so sold, the directors shall pay the amount of assessment levied thereon and the necessary costs of sale, and the balance, if any, shall be paid to the person or persons whose stock has thus been sold. A sale of stock as herein provided shall effect an absolute cancelation of the outstanding certificate or certificates evidencing the stock so sold and shall make the same null and void, and a new certificate shall be issued to the purchaser thereof.

[26-1113, added 1979, ch. 41, sec. 2, p. 118.]

26-1114. SUSPENSION OR REMOVAL OF DIRECTORS, OFFICERS OR EMPLOYEES -- PROHIBITION OF FUTURE EMPLOYMENT. (1) The director of the department of finance may issue a written order suspending or removing a director, officer or employee of a bank, bank holding company or trust institution, upon finding that the director, officer or employee:

(a) Has been dishonest or reckless in the performance of his official duties;

(b) Has breached his fiduciary duties to the bank, bank holding company or trust institution, in a manner that is likely to cause substantial loss to or seriously weaken the bank, bank holding company or trust institution;

(c) Has violated any provision of this title, any state or federal law or regulation pertaining to the business of the bank, bank holding company, or trust institution, or any order of the director of the department of finance;

(d) Has been convicted of any felony or a misdemeanor involving theft or dishonesty; or

(e) Has engaged or participated in any unsafe or unsound practice in the conduct of the affairs of the bank, bank holding company or trust institution.

The order shall be issued pursuant to chapter 52, title 67, Idaho Code.

(2) In the event a director, officer or employee has been removed from office as set forth in this section, and the order has not been modified, rescinded or set aside, or if a person has been removed as a director, officer or employee of a bank, bank holding company or trust institution by a federal financial institution regulator or a financial institution regulator in an-

other state, the person is prohibited from becoming employed by a bank, bank holding company or trust institution supervised by the director of the department of finance in this state, except as specifically permitted by the director of the department of finance.

[26-1114, added 2015, ch. 204, sec. 15, p. 627.]

26-1115. CEASE AND DESIST ORDERS -- PENALTIES. (1) If the director of the department of finance finds that any bank, bank holding company or trust institution has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such bank, bank holding company or trust institution, or any person has violated or is about to violate any provision of this act, any rule or order issued under the act, any condition imposed in writing by the director, or any written agreement entered into with the director, the director may order the bank, bank holding company, trust institution or other person to cease and desist from any such violation or practice. The order shall be issued pursuant to chapter 52, title 67, Idaho Code.

(2) After providing a notice and an opportunity for a public hearing pursuant to chapter 52, title 67, Idaho Code, the director of the department of finance may assess against and collect a civil money penalty from any bank, bank holding company or trust institution that, or from any executive officer, director, employee, agent or other person participating in the conduct of the affairs of such bank, bank holding company or trust institution who:

(a) Engages or participates in any unsafe or unsound practice in connection with a bank, bank holding company or trust institution; or

(b) Violates or knowingly permits any person to violate any of the provisions of:

(i) The Idaho bank act;

(ii) Any rule promulgated pursuant to the Idaho bank act; or

(iii) Any lawful order of the director of the department of finance issued pursuant to the Idaho bank act.

(3) The civil money penalty shall not exceed one thousand dollars ($1,000) per day for each day such violation continues. No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, bank holding company or trust institution, or person to be assessed such civil money penalty. In determining the amount of the civil money penalty to be assessed, the director of the department of finance shall consider:

(a) The good faith of the bank, bank holding company, trust institution or person to be assessed with such civil money penalty;

(b) The gravity of the violation;

(c) Any previous violations by the bank, bank holding company, trust institution or person to be assessed with such civil money penalty;

(d) The nature and extent of any past violations; and

(e) Such other matters as the director of the department of finance may deem appropriate.

(4) Upon waiver by the respondent of the right to a public hearing concerning an assessment of a civil money penalty, the hearing or portions thereof may be closed to the public when concerns arise about prompt withdrawal of moneys from or the safety and soundness of the bank, bank holding company or trust institution.

(5) For the purposes of this section, a violation shall include, but is not limited to, any action by any person alone or with another person that

causes, brings about, or results in the participation in, counseling of or aiding or abetting of a violation.

(6) The director of the department of finance may modify or set aside any order assessing a civil money penalty.

(7) Failure by a trust institution to comply with an order issued under this section within a reasonable time as the director prescribes is grounds for suspension or revocation of its charter or license issued under this act.

[26-1115, added 2015, ch. 204, sec. 17, p. 628.]

26-1116. CIVIL ENFORCEMENT. Whenever it appears to the director that any bank, bank holding company or trust institution has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such bank, bank holding company or trust institution, or any person has violated or is about to violate any provision of this act, any rule or order issued under the act, any condition imposed in writing by the director, or any written agreement entered into with the director, the director may, in his discretion, bring an action in any court of competent jurisdiction, and upon a showing of any unsafe or unsound practice, or violation, shall be granted any or all of the following:

(1) A writ or order restraining or enjoining, temporarily or permanently, any unsafe or unsound practice, or violation of any provision of this act, any rule or order issued under the act, any condition imposed in writing by the director, or any written agreement entered into with the director;

(2) An order granting a declaratory judgment;

(3) An order for disgorgement and other equitable remedies;

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets;

(5) An order that the person engaged in the unsafe or unsound practice, or violating any provision of this act, any rule or order issued under the act, any condition imposed in writing by the director or any written agreement entered into with the director shall pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation;

(6) An order allowing the director to recover costs that may include investigative expenses and attorney's fees.

[26-1116, added 2015, ch. 204, sec. 19, p. 629.]

TITLE 26
BANKS AND BANKING

CHAPTER 12
CIVIL AND CRIMINAL PENALTIES

26-1201. UNAUTHORIZED BANKING. It shall be unlawful for any person to engage in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether such deposit, however evidenced, is made subject to check or draft or other order unless such activity is specifically authorized by statute. Any person violating any provision of this section shall be guilty of a felony.

[26-1201, added 1979, ch. 41, sec. 2, p. 121.]

26-1202. UNAUTHORIZED USE OF NAME -- WAIVER BY DIRECTOR. (1) With the exception of the persons defined in subsection (2) of this section, no person may advertise or transact business in this state under a name or title that contains the word "bank," "banker," "bancorp," "savings bank," "trust company," or a word or words of similar import, unless the person has been granted a charter to engage in banking or trust business in this state by the director, or unless the director has granted the person a waiver from this prohibition as set forth in this section.

(2) The foregoing prohibition shall not apply to a national bank, federal thrift or federal savings bank, bank holding company or a state-chartered bank or trust company located in another state that has obtained all approvals that may be required under the law as a prerequisite to doing business in this state.

(3) The director may grant a waiver to allow the use of the word "bank," "banker," "bancorp," "savings bank," "trust company" or a word or words of similar import if:

(a) The person is not engaged in banking or trust business;

(b) The name or title used is not likely to deceive or mislead an individual to believe that the person is engaged in banking or trust business;

(c) The name or title, or a name or title similar to it, is not already used by another person doing business in this state; and

(d) The name or title does not suggest or imply that the person is engaged in unlawful conduct.

(4) Should the director grant a waiver as set forth in subsection (3) of this section, the director may condition or restrict the use of the name or title as he finds necessary in order to protect the public.

(5) In the event the use of a name or title is prohibited as set forth in this section and that none of the exceptions set forth in subsection (2) of this section apply, and the director has not granted a waiver to the prohibition as set forth in subsection (3) of this section, the Idaho secretary of state shall not be obligated to file any documents, records, articles or certificates that the person using or desiring to use the prohibited name or title requests the Idaho secretary of state to file.

(6) Any person who willfully violates the foregoing prohibition is guilty of a felony.

[26-1202, added 2015, ch. 204, sec. 21, p. 630.]

26-1203. FALSE STATEMENTS REGARDING BANKS AND TRUST COMPANIES -- PENALTY. Any person who shall willfully and maliciously make, circulate or transmit to another or others any false statement, rumor, or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a felony.

[26-1203, added 1979, ch. 41, sec. 2, p. 121; am. 2000, ch. 288, sec. 3, p. 973.]

26-1204. FALSE STATEMENTS REGARDING BANKS AND TRUST COMPANIES -- CIVIL REMEDIES. (1) It is unlawful for any person to make, circulate or transmit to another or others any false statement, rumor, or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor.

(2) Whenever it appears to the director that any person has engaged in any act constituting a violation of this section, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such act and to enforce compliance with this section. Upon a showing that a person has engaged or is about to engage in an act constituting a violation of this section, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The director shall not be required to furnish a bond. In addition to the foregoing, the director may be granted the following remedies:

(a) An order that the person violating this section pay a civil penalty to the general fund in an amount not to exceed ten thousand dollars ($10,000) for each violation;

(b) An order that the person violating this section pay costs to the department, which may include an amount representing reasonable attorney's fees and reimbursements for investigative efforts;

(c) An order granting other appropriate remedies upon a proper showing.

[26-1204, added 2000, ch. 288, sec. 4, p. 973.]

26-1206. PENALTY FOR UNLAWFUL HYPOTHECATION OF ASSETS. Any officer or employee of any bank or the bank holding company owning or controlling the bank, doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges or in any way alienates any notes, stocks, bonds, mortgages, securities or any other property coming into his hands or into the possession of said bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, shall be guilty of theft, and upon conviction thereof shall be punished as provided in section 18-2408, Idaho Code.

[26-1206, added 1979, ch. 41, sec. 2, p. 122; am. 1998, ch. 337, sec. 3, p. 1083.]

26-1207. CONCEALMENT OF LOANS AND DISCOUNTS. Any officer or employee of any bank or the bank holding company owning or controlling the bank who

intentionally conceals from the director of the department of finance or the directors of the bank or a committee thereof, the purchase of any security, the sale of any of its securities, or any guaranty, repurchase agreement or any other agreement whereby the bank is obligated, shall be guilty of a felony.

[26-1207, added 1979, ch. 41, sec. 2, p. 122.]

26-1208. FALSE REPORTS OR ENTRIES. Any director, officer, or employee of any bank or bank holding company who shall willingly and knowingly subscribe to or make or cause to be made any false statement or false entry on the books or in any report or statement of the bank or bank holding company, or shall knowingly make or exhibit any false reports, entries or statements with the intent to deceive any person or persons authorized to examine into the affairs of the bank or bank holding company or the board of directors of the bank or bank holding company or shall knowingly state or publish any false report or statement of any bank or bank holding company, shall be guilty of a felony.

[26-1208, added 1979, ch. 41, sec. 2, p. 122.]

26-1210. BANK OFFICERS AND DIRECTORS TO REPORT FELONIES. It shall be the duty of every officer or director of any bank to report promptly every violation or apparent violation of any of the banking laws of this state which is defined as a felony under the laws of this state, of which he has knowledge, to the director of the department of finance or his duly authorized agent or agents, immediately upon the discovery thereof. Every such person who intentionally withholds such a report, or fails to make a prompt report of any such violation with the intent to injure, deceive or defraud such bank or any of its depositors, creditors or stockholders, or the director of the department of finance or his duly authorized agent or agents shall be guilty of a misdemeanor.

[26-1210, added 1979, ch. 41, sec. 2, p. 123.]

26-1211. MISLEADING ADVERTISING. No bank or bank holding company or any officer thereof shall advertise in any manner which is misleading, false or deceptive. Any bank violating the provisions of this section shall be subject to the provisions of section 26-1115, Idaho Code.

[26-1211, added 1979, ch. 41, sec. 2, p. 123.]

26-1212. LOANS TO OFFICIALS OF DEPARTMENT PROHIBITED. It shall be unlawful for the department of finance, its director or employees engaged in bank examination or supervision, to borrow money directly or indirectly from any state bank, or director or official of a state bank. Any person violating the provision of this section shall be guilty of a felony.

[26-1212, added 1979, ch. 41, sec. 2, p. 123; am. 1993, ch. 53, sec. 4, p. 141.]

26-1213. COMMISSION FOR MAKING LOANS. No officer, director or employee of any bank or the bank holding company owning or controlling the bank shall demand, accept or receive, directly or indirectly, any commission or other

consideration on account of the making, extension, or renewal by said bank of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a bank to its employees.

Any person violating the provisions of this section shall be guilty of a felony.

[26-1213, added 1979, ch. 41, sec. 2, p. 123; am. 1993, ch. 53, sec. 5, p. 142.]

26-1214. OVERDRAFTS. Any officer or employee of any bank who shall pay out the funds of any bank upon the check, order or draft of any individual, firm, corporation or association, which has not on deposit with such bank a sum equal to such check, order or draft shall be personally liable to it for the amount so paid, unless the drawer of such check, order or draft has previously arranged with the board of directors for credit sufficient to cover such amount. Provided, that the board of directors may ratify such overdraft and relieve such liability.

Whenever the overdrafts of the depositors of any bank doing business under this chapter are, in the opinion or judgment of the director of the department of finance, excessive or of long standing, he may require such bank to either collect or materially reduce the same or secure notes in lieu (of) thereof.

[26-1214, added 1979, ch. 41, sec. 2, p. 123.]

26-1215. PENALTY FOR OFFICER OVERDRAWING ACCOUNT. Any director, officer or employee of any bank or the bank holding company owning or controlling the bank who knowingly and consistently overdraws his or her account, or any officer or employee who allows such an overdraft shall be guilty of a misappropriation of the bank's funds and upon conviction thereof, shall be punished by a fine of not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment, in the discretion of the court.

[26-1215, added 1979, ch. 41, sec. 2, p. 124.]

26-1216. CARRYING AS ASSET PROPERTY NOT ACTUALLY OWNED. It shall be unlawful for any bank or bank holding company to carry as an asset any note, obligation or security which is not the property of the bank or bank holding company; and any officer or employee of any such bank or bank holding company who places among the assets thereof any note, obligation or security which it does not actually own, or who represents to the director or any examiner appointed by him that any note, obligation or security carried among the assets of the bank or bank holding company is the property of said bank, when in fact such note, obligation or security is not owned by said bank or bank holding company shall be guilty of a misdemeanor.

[26-1216, added 1979, ch. 41, sec. 2, p. 124.]

26-1217. PENALTY FOR NEGLECT TO OPEN. Any bank which fails to open for business within one (1) year after the date from which its charter was issued shall, unless the time is extended by the director of the department of finance, be deemed to have forfeited the charter and its right and authority to do business and to have no further legal existence, and in case the direc-

tor of the department of finance approves the establishment of any branch of a bank as required by section 26-301, Idaho Code, and such branch or branch office is not established and operating within twelve (12) months after the date the charter is issued, unless the time be extended by the director for good cause shown, such approval shall be of no further force or effect and such branch or branch office shall not be established or operated until the approval of the director is again obtained as required by the statute last mentioned. The director may not extend the time for the establishment and commencement of operations of any such bank or branch office for a longer period than an additional six (6) months.

[26-1217, added 1979, ch. 41, sec. 2, p. 124.]

26-1218. NOTES FOR STOCK SUBSCRIPTION ILLEGAL. It shall be unlawful for the officers or directors of the banking corporation to accept the note of any subscriber or stockholder in payment or part payment of the par value of the common stock, surplus or undivided profits.

[26-1218, added 1979, ch. 41, sec. 2, p. 124.]

26-1219. ADVERTISING BRANCHES. It shall be unlawful for any bank to advertise that a branch office will be established or available for bank customers until a branch charter has been issued by the director for that branch office under the provisions of chapter 3, title 26, Idaho Code. It shall be unlawful for any person or group of persons to advertise that a unit bank will be established until approval for a bank charter has been issued by the director under the provisions of chapter 2, title 26, Idaho Code.

[26-1219, added 1979, ch. 41, sec. 2, p. 124; am. 2015, ch. 204, sec. 22, p. 630.]

26-1220. ILLEGAL DATA PROCESSING ACTIVITIES. It shall be unlawful for any person to introduce fraudulent records or data into the computer system of a bank or to use the computer related facilities of a bank without the proper authorization, or to alter or destroy information or files in a bank's computer system or to obtain without proper authorization, by electronic or other means, money, financial instruments, property, services or valuable data stored in a bank's computer system. Any person violating the provisions of this section shall be guilty of a felony.

[26-1220, added 1979, ch. 41, sec. 2, p. 125.]

CHAPTER 13
TRUST COMPANIES AND TRUST DEPARTMENTS -- [REPEALED]

TITLE 26
BANKS AND BANKING

CHAPTER 14
AFFILIATED BANK COMPANY

26-1401. DEFINITIONS. In this chapter:

(1) "Affiliated bank," with respect to a trust company or another bank, means any bank:

(a) That owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank; or

(b) Eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank.

(2) "Affiliated trust company" means a trust company with a principal place of business located within the state of Idaho, and eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank or bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of a trust company or a bank with respect to which the affiliated trust company is participating in a transfer of fiduciary capacities as provided in this chapter.

(3) "Bank" means any state bank or national bank whose operations are principally conducted in this state and which is authorized to engage in trust business.

(4) "Bank holding company" means a bank holding company as defined in the United States bank holding company act of 1956, as amended.

(5) "Director" means the director of the department of finance.

(6) "Fiduciary account," with respect to an affiliated bank, affiliated trust company, or trust company, means an estate, trust, or other fiduciary relationship, and includes all rights, privileges, duties, obligations, and undertakings thereof, that have been established or provided for by a written instrument or in any other lawful manner with such affiliated bank, affiliated trust company or trust company.

(7) "Fiduciary capacity" means a capacity resulting from the undertaking to act alone or jointly with others as a personal representative of a decedent's estate, a guardian or conservator of an estate, a receiver, a trustee under appointment of any court or under authority of any law, or a trustee for any other purpose permitted by law.

(8) "Principal place of business," with respect to any affiliated bank, affiliated trust company, or trust company means such entity's principal place of business within the state of Idaho.

(9) "Trust company" means a corporation holding a charter to engage in the trust business in this state, issued pursuant to chapters 32 through 36, title 26, Idaho Code, with a principal place of business located within the state of Idaho.

[26-1401, added 1991, ch. 215, sec. 2, p. 515; am. 1992, ch. 87, sec. 1, p. 271; am. 2000, ch. 288, sec. 6, p. 974.]

26-1402. TRANSFER OF FIDUCIARY CAPACITIES TO AN AFFILIATED BANK OR AN AFFILIATED TRUST COMPANY. (1) A bank or trust company may transfer some or all of its fiduciary capacities to an affiliated bank or an affiliated trust company. To accomplish such a transfer, the bank or trust company shall

file a verified application in the district court of the county in which the bank's or trust company's principal place of business is located, requesting that every fiduciary capacity of the bank or trust company, except as may be expressly excluded in such application, be transferred to an affiliated bank or affiliated trust company specified in the application, and the specified affiliated bank or affiliated trust company shall join in such application. The application shall indicate the county in which the principal place of business of the affiliated bank or affiliated trust company joining in the application is located.

(2) When any application under subsection (1) of this section has been filed, the clerk of the court where the application is filed shall enter an order fixing a date and time (which date shall not be more than sixty (60) days from the date the application is filed) for a hearing on the application. The bank or trust company filing an application under subsection (1) of this section shall prepare a notice as provided in subsection (3) of this section, and shall cause a copy of such notice to be published at least once a week for three (3) successive weeks preceding the hearing date, the first such publication to be at least thirty (30) days preceding the hearing date. Proof of such publication shall be made by certified copy of the notice or by affidavit, and the same shall be filed with the district court wherein the application was filed. Such publication shall be in a newspaper of general circulation published in each county in which the principal place of business of the bank or trust company is located or, if in any case there is no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least thirty (30) days preceding the hearing date, the bank or trust company shall cause a copy of such notice to be mailed by first class mail to all persons entitled to and then receiving trust accountings from the bank or trust company.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing on the application, the name of the bank or trust company that has filed the application, the name of the affiliated bank or affiliated trust company which has joined in the application, that a transfer is requested of fiduciary capacities to the affiliated bank or affiliated trust company specified in the application, and that any interested person may file with the clerk of the court, on or before the date of the hearing, a written objection to the transfer as provided in subsection (4) of this section.

(4) On or before the date and time of the hearing on the application, any interested person, who is authorized by a will or relevant trust instrument to prohibit, challenge, amend or revoke a transfer of a fiduciary capacity otherwise allowed under this chapter and arising from a fiduciary account in which the person is interested, may file an objection to such transfer with the clerk of the court. Failure to file an objection on or before the date and time of the hearing on the application shall constitute a waiver by such interested person of the right to object under this subsection, and waiver of any power under a will or relevant trust instrument to prohibit, challenge, amend, or revoke with respect to any transfer of fiduciary capacity otherwise authorized under this chapter.

(5) At the hearing, upon finding that notice has been given as required in this section, and upon finding that the affiliated bank or affiliated trust company has been duly authorized by the director to commence the business for which it is organized, the district court shall enter an order transferring to the affiliated bank or affiliated trust company every

fiduciary capacity of the bank or trust company, excepting as may be otherwise specified in the application and excepting fiduciary capacities with respect to which a proper objection has been filed pursuant to subsection (4) of this section. Upon entry of the order, the affiliated bank or affiliated trust company shall, without further act and by operation of law, be substituted in every such fiduciary capacity. The transfer may be made a matter of record in any county of this state by filing a certified copy of the order of transfer in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the recorder of any county in this state, to be recorded and indexed by such officer in like manner and with like effect as other orders and decrees of courts are recorded and indexed. Any fiduciary capacities of the bank or trust company excepted from the order of transfer shall remain with such bank or trust company.

(6) Each designation of the bank or trust company as fiduciary in a will or other relevant trust instrument executed before or after the date the order of transfer is entered shall be deemed a designation of the affiliated bank or affiliated trust company substituted for such bank or trust company pursuant to this section, except when such will or other relevant trust instrument is executed after the order of transfer and expressly negates the application of the provisions of this section. Any grant in any such will or other relevant trust instrument of any discretionary power shall be deemed conferred upon the affiliated bank or affiliated trust company deemed designated as the fiduciary pursuant to an order of transfer under the provisions of this section.

(7) Each bank or trust company shall account jointly with the affiliated bank or affiliated trust company which has been substituted as fiduciary pursuant to this section for the accounting period during which the affiliated bank or affiliated trust company is initially so substituted. Upon a transfer of fiduciary capacities pursuant to the provisions of this section, each bank or trust company shall deliver to the affiliated bank or affiliated trust company all related fiduciary accounts and assets held by such bank or trust company (except assets held for accounts with respect to which there has been no transfer of fiduciary capacities pursuant to this section), and upon such transfer the affiliated bank or affiliated trust company shall, without the necessity of any instrument of transfer or conveyance, succeed to all rights, privileges, duties, obligations and undertakings under any fiduciary capacity and fiduciary account transferred in the manner authorized in this chapter.

[26-1402, added 1991, ch. 215, sec. 2, p. 516; am. 1992, ch. 87, sec. 2, p. 272.]

26-1403. TRANSFERS OF FIDUCIARY CAPACITIES NOT PROHIBITED BY SECTION 68-107, IDAHO CODE. No transfer of fiduciary capacities pursuant to the provisions of this chapter shall be deemed to be a transfer or delegation prohibited by the provisions of section 68-107, Idaho Code.

[26-1403, added 1991, ch. 215, sec. 2, p. 518.]

26-1404. COMPLIANCE AND APPROVAL WITH FINANCIAL INSTITUTION ACQUISITION ACT REQUIRED. No out-of-state financial institution or out-of-state financial institution holding company shall be allowed to join in an application for transfer of fiduciary capacities pursuant to the provisions of

this chapter unless such out-of-state financial institution or out-of-state financial institution holding company first complies in full with the provisions of chapter 26, title 26, Idaho Code, and obtains approval of the director as specified in chapter 26, title 26, Idaho Code.

[26-1404, added 1991, ch. 215, sec. 2, p. 518.]

TITLE 26
BANKS AND BANKING

CHAPTER 15
MISCELLANEOUS PROVISIONS

26-1501. OFFICE LOCATION. (a) Nothing in the laws of this state shall prohibit a bank from maintaining an authorized branch office, customer bank communication terminal or other authorized office at the same location as an authorized office of another bank or a savings and loan association, credit union or supervised lender authorized to do business under the Idaho uniform consumer credit code.

(b) Nothing in the laws of this state shall prohibit a savings and loan association from maintaining an authorized branch office or other authorized office at the same location as an authorized office of another savings and loan association or a bank, credit union or supervised lender licensed to do business under the Idaho uniform consumer credit code.

(c) Nothing in the laws of this state shall prohibit a credit union from maintaining an authorized branch office, customer credit union communication terminal or other authorized office at the same location as an authorized office of another credit union or a bank, savings and loan association or supervised lender licensed to do business under the Idaho uniform consumer credit code.

(d) Nothing in the laws of this state shall prohibit a supervised lender authorized to do business under the Idaho uniform consumer credit code from maintaining an authorized branch office, or other authorized office, at the same location as an authorized office of another supervised lender or a bank, savings and loan association or credit union.

[26-1501, added 1979, ch. 224, sec. 1, p. 619.]

TITLE 26
BANKS AND BANKING

CHAPTER 17
IDAHO INTERNATIONAL BANKING ACT

26-1701. TITLE AND SCOPE. (1) This chapter shall be known, and may be cited as the "Idaho International Banking Act."

(2) This chapter is intended to set forth the terms and conditions under which an international banking corporation may enter and do business in Idaho.

[26-1701, added 1995, ch. 99, sec. 10, p. 307.]

26-1702. DEFINITIONS. (1) As used in this chapter, unless the context otherwise requires:

(a) "Director" means the director of the department of finance.

(b) "Federal international bank institutions" means a branch, agency, or representative office of an international banking corporation established and operating under the federal international banking act of 1978, 12 U.S.C. sec. 3101 et seq., as amended, and its regulations.

(c) "Foreign country" means a country other than the United States, but including a territory or possession of the United States.

(d) "International bank agency" means a business or any part of a banking business conducted in this state or through an office located in this state, other than a federal international bank institution, which exercises powers as set forth in section 26-1709, Idaho Code, on behalf of an international banking corporation.

(e) "International bank branch" means a business or any part of a banking business conducted in this state, or through an office located in this state, other than a federal international bank institution, which exercises powers as set forth in section 26-1709, Idaho Code, on behalf of an international banking corporation.

(f) "International banking corporation" means a banking corporation organized and licensed under the laws of a foreign country or a political subdivision of a foreign country.

(g) "International representative office" means a business location of a representative of an international banking corporation other than a federal international bank institution, established to act in a liaison capacity with existing and potential customers of the international banking corporation and to generate new loans and other activities for the international banking corporation that is operating outside the state.

(2) Legal and financial terms used in this chapter refer to equivalent terms used by the country in which the international banking corporation is organized.

[26-1702, added 1995, ch. 99, sec. 10, p. 308.]

26-1703. AUTHORITY FOR OPERATION OF INTERNATIONAL BANKING OFFICES. (1) An international banking corporation with a home state other than Idaho may establish and operate, directly or indirectly, a federal international bank institution in this state in accordance with applicable federal law.

(2) An international banking corporation with no home state may establish and operate, directly or indirectly, a federal international bank institution in this state in accordance with applicable federal law.

(3) An international banking corporation with a home state other than Idaho may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this chapter and applicable federal law.

(4) An international banking corporation with no home state may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this chapter and applicable federal law.

(5) For the purposes of this section, the home state of an international banking corporation that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination of branches, agencies, subsidiary commercial lending companies, or subsidiary banks in more than one (1) state is whichever of the states is so elected by the international banking corporation. If the international banking corporation does not elect a home state, the board of governors of the federal reserve system or the director, as applicable, shall elect the home state.

[26-1703, added 1995, ch. 99, sec. 10, p. 308.]

26-1704. APPLICATION OF THIS CHAPTER. International banking corporations, other than federal international bank institutions, are subject to this chapter, except where it appears, from the context or otherwise, that a provision is clearly applicable only to banks or trust companies organized under the laws of this state or the United States. An international banking corporation has no greater right under, or by virtue of, this chapter than is granted to banks organized under the laws of this state.

[26-1704, added 1995, ch. 99, sec. 10, p. 309.]

26-1705. APPLICATION OF THE IDAHO BUSINESS CORPORATION ACT. Where not inconsistent with this chapter and the Idaho bank act, the provisions of the Idaho business corporation act shall apply to international banking corporations doing business in this state.

[26-1705, added 1995, ch. 99, sec. 10, p. 309.]

26-1706. REQUIREMENTS FOR CARRYING ON BANKING BUSINESS. (1) No international banking corporation, other than a federal international bank corporation, shall transact a banking business or maintain in this state any office for carrying on a banking business or any part of a banking business unless the corporation:

(a) Is authorized by its articles to carry on a banking business and has complied with the laws of the country under which it is chartered;

(b) Has furnished to the director any proof as to the nature and character of its business and as to its financial condition as the director may require;

(c) Has filed with the director:

(i) A duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director its true and lawful attorney upon whom all process in any action against it may be served with the same force and effect as if it were a domes-

tic corporation and has been lawfully served with process within the state;

(ii) A written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom the director shall forward the process; and

(iii) A certified copy of any filings required to be made by foreign corporations to the secretary of state by the Idaho business corporation act.

(d) Has paid to the director a fee set by the director to defray the cost of investigation and supervision.

(e) Has received a license duly issued to it by the director.

(2) The director shall not issue a license to an international banking corporation unless it is chartered in a foreign country that permits banks chartered by the United States or any of its states to establish similar facilities in that country.

[26-1706, added 1995, ch. 99, sec. 10, p. 309.]

26-1707. ACTIONS AGAINST INTERNATIONAL BANKING CORPORATIONS. (1) A "resident of this state" may maintain an action against an international banking corporation doing business in this state for any cause of action. For purposes of this subsection, the term resident of this state includes any individual domiciled in this state, or any corporation, partnership, or trust formed under the laws of this state.

(2) An international banking corporation or a nonresident of this state may maintain an action against an international banking corporation doing business in this state in the following cases only:

(a) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state or relating to property situated within this state at the time of the making of the contract;

(b) Where the subject matter of the litigation is situated within this state;

(c) Where the cause of action arose within this state, except where the object of the action is to affect the title of real property situated outside this state; or

(d) Where the action is based on a liability for acts done within this state by an international banking corporation or its international bank agency, international bank branch, or international representative office.

(3) The limitations contained in subsection (2) of this section, do not apply to a corporation formed and existing under the laws of the United States and that maintains an office in this state.

[26-1707, added 1995, ch. 99, sec. 10, p. 310.]

26-1708. APPLICATION FOR LICENSE. (1) Every international banking corporation, before being licensed by the director to transact a banking business in this state as an international bank branch or as an international bank agency or before maintaining in this state any office to carry on a banking business or any part of a banking business, shall subscribe and acknowl-

edge and submit to the director, at the director's office, a separate application, in duplicate, which shall state:

(a) The name of the international banking corporation;

(b) The location by street and post office address and county where its business is to be transacted in this state and the name of the person who is in charge of the business and affairs of the office;

(c) The location where its initial registered office will be located in this state;

(d) The amount of its capital actually paid in and the amount subscribed for and unpaid; and

(e) The actual value of the assets of the international banking corporation, which must be at least fifty million dollars ($50,000,000) in excess of its liabilities, and a complete and detailed statement of its financial condition as of a date within sixty (60) days before the date of the application; except that the director may, when necessary or expedient, accept the statement of financial condition as of a date within one hundred twenty (120) days before the date of the application.

(2) When the application is submitted to the director, the international banking corporation shall also submit a duly authenticated copy of its article of incorporation, or equivalent corporate document, and an authenticated copy of its bylaws, or an equivalent of the bylaws that is satisfactory to the director, and pay an investigation and supervision fee to be established by rule or order. The international banking corporation shall also submit to the director a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a general banking business.

(3) The director may approve or disapprove the application, but the director shall not approve the application unless, in the director's opinion, the applicant meets every requirement of this chapter and any other applicable provision of this chapter and any rules adopted under this chapter. The director may specify any conditions as the director deems appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this state.

(4) An international banking corporation may operate more than one (1) international bank branch in this state, each at a different place of business, provided each branch office is separately licensed to transact a banking business or any part of a banking business under this chapter. An international banking corporation may operate more than one (1) international bank agency in this state, each at a different place of business, provided each agency office is separately licensed to transact a banking business or any part of a banking business under this chapter.

(5) Notwithstanding subsection (4) of this section, no international banking corporation licensed to maintain one (1) or more international bank branches in this state shall be licensed to maintain an international bank agency in this state except upon termination of the operation of its international bank branches under section 26-1713(2), Idaho Code and no international banking corporation licensed to maintain one (1) or more international bank agencies in this state shall be licensed to maintain an international bank branch in this state except upon the termination of the operation of its international bank agencies under section 26-1713(2), Idaho Code.

[26-1708, added 1995, ch. 99, sec. 10, p. 310.]

26-1709. EFFECT, RENEWAL, AND REVOCATION OF LICENSES -- PERMISSIBLE ACTIVITIES. (1) When the director has issued a license to an international banking corporation, it may engage in the business authorized in this act at, and only at, the office specified in the license for a period not exceeding one (1) year from the date of the license or until the license is surrendered or revoked. No license is transferable or assignable. Every license shall be, at all times, conspicuously displayed in the place of business specified in the license.

(2) The international banking corporation may renew the license annually upon application to the director upon forms to be supplied by the director for that purpose. The application for renewal shall be submitted to the director no later than sixty (60) days before the expiration of the license. The license may be renewed by the director upon a determination, with or without examination, that the international banking corporation is in a safe and satisfactory condition, that it has complied with applicable requirements of law, and that the renewal of the license is proper and has been duly authorized by proper corporate action. Each application for renewal of an international banking corporation license shall be accompanied by an annual renewal fee to be determined by the director by rule.

(3) The director may revoke the license, with or without examination, upon a determination that the international banking corporation does not meet the criteria established by subsection (2) of this section for renewal of licenses.

(4) If the director refuses to renew the license and, as a result, the license is revoked, all the rights and privileges of the international banking corporation to transact the business for which it was licensed shall immediately cease, and the license shall be surrendered to the director within twenty-four (24) hours after written notice of the decision has been mailed by the director to the registered office of the international banking corporation set forth in its application, as amended, or has been personally delivered to any officer, director, employee, or agent of the international banking corporation who is physically present in this state.

(5) An international banking corporation licensed under this act to carry on business in this state as an international bank agency may conduct a general banking business through its international bank agency in the same manner as banks existing under the laws of this state, except that no international banking corporation shall, through its bank agency, exercise fiduciary powers or receive deposits, but may maintain for the account of others credit balances incidental to or arising out of the exercise of its lawful powers.

[26-1709, added 1995, ch. 99, sec. 10, p. 311.]

26-1710. SECURITIES, BONDS AND OTHER COMMERCIAL PAPER TO BE HELD IN THIS STATE. (1) An international banking corporation licensed under this chapter shall hold, at its office in this state, currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the director, in funds freely convertible into United States funds in an amount that is not less than one hundred eight percent (108%) of the aggregate amount of liabilities of the international banking corporation payable at or through its office in this state or as a

result of the operations of the international bank branch or international bank agency, including acceptances, but excluding:

(a) Accrued expenses; and

(b) Amounts due and other liabilities to other offices, agencies, or branches of and wholly owned, except for a nominal number of directors' shares, and subsidiaries of the international banking corporation.

(2) For the purpose of this chapter, the director shall value marketable securities at principal amount or market value, whichever is lower, and may determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this state. In determining the amount of assets for the purpose of computing the above ratio of assets, the director may exclude any particular assets, but may give credit, subject to any rules adopted by the director, to deposits and credit balances with unaffiliated banking institutions outside this state if the deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds. In no case shall credit given for the deposits and credit balances exceed in aggregate amounts any percentage, but not less than eight percent (8%) as the director may from time to time prescribe, of the aggregate amount of liabilities of the international banking corporations.

(3) If, by reason of the existence or the potential occurrence of unusual or extraordinary circumstances, the director considers it necessary or desirable for the maintenance of a sound financial condition, for the protection of creditors and the public interest and to maintain public confidence in the business of the international bank agency of the international banking corporation, the director may reduce the credit to be given as provided in this section for deposits and credit balances with unaffiliated banking institutions outside this state and may require the assets to be held in this state under this chapter with any bank or trust company existing under the laws of this state that the international banking corporation designates and the director approves.

(4) An international bank branch and international bank agency shall file any reports with the director as the director may require in order to determine compliance by the international bank branch or international bank agency with this section.

[26-1710, added 1995, ch. 99, sec. 10, p. 312.]

26-1711. FINANCIAL CERTIFICATION -- RESTRICTIONS ON INVESTMENTS, LOANS AND ACCEPTANCES. (1) Before opening an office in this state, and annually thereafter so long as a bank office is maintained in this state, an international banking corporation licensed under this act shall certify to the director the amount of its paid-in capital, its surplus, and its undivided profits, each expressed in the currency of the country of its incorporation. The dollar equivalent of this amount, as determined by the director, is considered to be the amount of its capital, surplus, and undivided profits.

(2) Purchases and discounts of bills of exchange, bonds, debentures, and other obligations and extensions of credit and acceptances by an international bank agency within this state are subject to the same limitations as to amount in relation to capital, surplus, and undivided profits as are applicable to banks organized under the laws of this state. With the prior approval of the director, the capital notes and capital debentures of the in-

ternational banking corporation may be treated as capital in computing the limitations.

[26-1711, added 1995, ch. 99, sec. 10, p. 313.]

26-1712. REPORTS. An international banking corporation licensed under this act shall, at the times and in the form prescribed by the director, make written reports in the English language to the director, under the oath of one (1) of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing any other matters required by the director. If an international banking corporation fails to make a report, as directed by the director, or if a report contains a false statement knowingly made, this is grounds for revocation of the license of the international banking corporation.

[26-1712, added 1995, ch. 99, sec. 10, p. 314.]

26-1713. DISSOLUTION. (1) When an international banking corporation licensed to maintain an international bank branch or an international bank agency in this state is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official responsible for records of banking corporations of the jurisdiction of incorporation of the international banking corporation attesting to the occurrence of this event or a certified copy of an order or decree of a court of the jurisdiction directing the dissolution of the international banking corporation or the termination of its existence or the cancellation of its authority shall be delivered to the director. The filing of the certificate, order, or decree has the same effect as the revocation of the international banking corporation's license as provided in section 26-1709(4), Idaho Code.

(2) An international banking corporation that proposes to terminate the operation in this state of an international bank branch, an international bank agency, or an international representative office shall comply with procedures as the director may prescribe by rule or order to insure an orderly cessation of business in a manner that is not harmful to the public interest and shall surrender its license to the director or shall surrender its right to maintain an office in this state, as applicable.

(3) The director shall continue as agent of the international banking corporation upon whom process against it may be served in any action based upon any liability or obligation incurred by the international banking corporation within this state before the filing of the certificate, order, or decree; and the director shall promptly cause a copy of the process to be mailed by registered or certified mail, return receipt requested, to the international banking corporation at the post office address specified for this purpose on file with the director's office.

[26-1713, added 1995, ch. 99, sec. 10, p. 314.]

26-1714. INTERNATIONAL REPRESENTATIVE OFFICES. (1) An international banking corporation that does not transact a banking business or any part of a banking business in or through an office in this state, but maintains an office in this state for other purposes is considered to have an international representative office in this state.

(2) An international representative office located in this state shall register with the director annually on forms prescribed by the director. The registration shall be filed before January 31 of each year, shall be accompanied by a registration fee prescribed by rule or order, and shall list the name of the local representative, the street address of the office, and the nature of the business to be transacted in or through the office.

(3) The director may review the operations of an international representative office annually or at any greater frequency as is necessary to assure that the office does not transact a banking business.

(4) An international banking corporation desiring to convert its existing registered international representative office to a licensed international bank branch or licensed international bank agency shall submit to the director the application required in section 26-1708, Idaho Code, and is required to meet the minimum criteria for licensing of an international bank branch or licensed international bank agency under this chapter.

(5) An international representative office may act in a liaison capacity with existing and potential customers of an international banking corporation and in undertaking these activities may, through its employees or agents, without limitation, solicit loans, assemble credit information, make proprietary inspections and appraisals, complete loan applications and other preliminary paperwork in preparation for making a loan, but may not solicit or accept deposits. No international representative office shall conduct any banking business or part of a banking business in this state.

[26-1714, added 1995, ch. 99, sec. 10, p. 314.]

26-1715. RULES. The department of finance may promulgate administrative rules necessary to implement this chapter.

[26-1715, added 1995, ch. 99, sec. 10, p. 315.]

TITLE 26
BANKS AND BANKING

CHAPTER 18
SAVINGS BANKS

26-1801. SHORT TITLE. This chapter shall be known as the "Idaho Savings Bank Act."

[26-1801, added 1997, ch. 310, sec. 3, p. 918.]

26-1802. PURPOSE. The purpose of this act is to allow any federal savings bank, federal mutual savings bank or federal savings and loan association, located in Idaho to convert its charter to that of an Idaho bank, an Idaho stock savings bank or an Idaho mutual savings bank. Banks and credit unions chartered either under this title or federal law are also allowed to convert to savings banks as provided herein. Once converted, an Idaho stock savings bank or mutual savings bank shall operate and be supervised pursuant to this act. A savings bank operating under this act may convert to a federal charter as a federal savings bank or federal savings and loan association if authorized by federal law. A savings bank under this act may also convert to a bank charter or to a credit union charter. Wherever the term "savings and loan association" is used in the Idaho Code, it shall include savings banks chartered under this act or associations doing business in this state pursuant to section 26-1815, Idaho Code.

[26-1802, added 1997, ch. 310, sec. 3, p. 918.]

26-1803. DEFINITIONS. Unless the context requires otherwise, the terms below have the meaning assigned:
(1) "Department" means the Idaho department of finance.
(2) "Director" means the director of the Idaho department of finance.
(3) "Mutual savings bank" means a savings bank owned by the members of the savings bank and operating under this act.
(4) "Savings bank" means a bank converted and operating pursuant to this act whether in stock form or in mutual form.
(5) "Stock savings bank" means a savings bank owned by holders of capital stock and operating under this act.

[26-1803, added 1997, ch. 310, sec. 3, p. 918.]

26-1804. IDAHO BANK ACT AND GENERAL BUSINESS CORPORATION LAWS. (1) Except as otherwise provided in this chapter, the Idaho bank act shall apply to all corporations converted and operating under this act.
(2) Except as otherwise provided herein or in the Idaho bank act, the general business corporation laws of this state shall apply to all savings banks converted and operating under this act.

[26-1804, added 1997, ch. 310, sec. 3, p. 918.]

26-1805. PROHIBITIONS. Unless chartered under this act or federal law, it shall be unlawful for any person in this state to use in connection with a business name the term "savings bank" or words of similar import that lead

the public reasonably to believe that the business so conducted is that of a savings bank.

[26-1805, added 1997, ch. 310, sec. 3, p. 918.]

26-1806. INSURANCE REQUIRED. All savings banks shall obtain and maintain federal deposit insurance through an insurance corporation created by an act of Congress.

[26-1806, added 1997, ch. 310, sec. 3, p. 918.]

26-1807. QUALIFICATION AS THRIFT INSTITUTION. All savings banks shall qualify for and maintain the status of a thrift institution under the internal revenue code of 1986 and any amendments thereto.

[26-1807, added 1997, ch. 310, sec. 3, p. 919.]

26-1808. TRUST POWERS. Savings banks which have received a charter from the director authorizing the operation of a trust department may engage in the trust business in accordance with chapters 32 through 36, title 26, Idaho Code.

[26-1808, added 1997, ch. 310, sec. 3, p. 919; am. 2000, ch. 288, sec. 7, p. 975.]

26-1809. POWERS. In addition to the powers granted to banks under provisions of the Idaho bank act, and specifically section 26-1101, Idaho Code, savings banks may exercise any power or engage in any activity authorized either for federal savings banks or savings and loan associations or state savings banks or savings and loan associations.

[26-1809, added 1997, ch. 310, sec. 3, p. 919.]

26-1810. DEMAND DEPOSITS. Savings banks may accept deposits subject to withdrawal or to be paid upon checks of the depositor. All such deposits shall be payable on demand, without notice, except when the deposit agreement provides otherwise.

[26-1810, added 1997, ch. 310, sec. 3, p. 919.]

26-1811. MUTUAL SAVINGS BANKS -- OWNERSHIP -- MEMBERSHIP -- DIRECTORS -- CAPITAL. (1) Members of a mutual savings bank are the owners of the mutual savings bank and shall possess voting rights and any other rights as are provided in the articles of incorporation or bylaws of the mutual savings bank.

(2) The membership of a mutual savings bank shall consist of those persons who either:

(a) Hold deposit accounts in the mutual savings bank; or

(b) Borrow funds or become obligated on a loan from the mutual savings bank, for as long as the loan remains unpaid and the debtor remains liable to the mutual savings bank for repayment of the loan.

(3) The board of directors of a mutual savings bank shall be elected by the members at the annual meeting required by section 26-213, Idaho Code. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a mutual savings bank may provide in

its articles of incorporation. Voting rights for borrowers shall be fully described in a detailed manner in the articles of incorporation of the mutual savings bank.

(4) Mutual savings banks operating under this chapter shall at all times maintain capital at a level determined by the director to be adequate for the safe and sound operation of the savings bank. In addition to the capital plan required to be submitted to the director by section 26-1812, Idaho Code, each mutual savings bank shall periodically revise its capital plan upon written request by the director. All capital plans are subject to the approval of the director. Either failing to maintain adequate capital or operating without an approved capital plan are both violations of this chapter and grounds for sanctions under chapter 11, title 26, Idaho Code.

[26-1811, added 1997, ch. 310, sec. 3, p. 919.]

26-1812. CONVERSIONS. All conversions from one (1) form of charter to another issued by the department shall be approved in advance in writing by the director. All conversion applications filed with the director involving savings banks, including conversion applications under section 26-1813, Idaho Code, shall include a plan for establishing and maintaining adequate capital to assure the continued safe and sound operation of the bank, savings bank or credit union. Capital plans shall be subject to the approval of the director.

(1) A federal savings and loan association or a federal savings bank, if organized on a capital stock basis, may convert its charter to that of an Idaho bank or a savings bank by proceeding in accordance with section 26-906, Idaho Code.

(2) A federal savings bank organized on a mutual basis may converts [convert] its charter to that of an Idaho mutual savings bank by filing an application in a form approved by the director.

(3) A savings bank may convert its state charter to a federal charter by complying with applicable federal law.

(4) A mutual savings bank may convert its form of organization to that of a stock savings bank by complying with section 26-1813, Idaho Code.

(5) A mutual savings bank may convert its form of organization to that of a credit union by filing an application in a form approved by the director.

(6) A stock savings bank may convert its charter to that of a state bank by proceeding in accordance with section 26-906, Idaho Code.

(7) A bank chartered under the Idaho bank act may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(8) A credit union organized under chapter 21, title 26, Idaho Code, may change its charter to that of a mutual savings bank by filing an application on a form approved by the director.

(9) If permitted by federal law, a national bank may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(10) If permitted by federal law, a federal credit union may convert its charter to that of a mutual savings bank by filing an application on a form approved by the director.

[26-1812, added 1997, ch. 310, sec. 3, p. 920.]

26-1813. MUTUAL TO STOCK CONVERSIONS. A mutual savings bank may change its form of organization to that of a stock savings bank by filing an application with the director.

As part of the application, the savings bank will include a plan of conversion, which the director may approve, with or without amendment, if it appears that:

(1) After conversion the savings bank will be in sound financial condition;

(2) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;

(3) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;

(4) The plan has been approved by a vote of two-thirds (2/3) of the board of directors of the savings bank;

(5) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank;

(6) All stock shall be offered to members of the savings bank and others under a formula and procedure that is fair and equitable and will be fairly disclosed to all interested persons; and

(7) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

The plan shall be submitted to the members, but only after it has been approved by the director. After lawful notice to the members of the savings bank and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes that members of the savings bank are eligible and entitled to cast. The vote by the members may be in person or by proxy. Any votes by proxy must be specific to the plan and not a general proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the director. The director shall then either approve or disapprove the requested change in corporate form. After approval, the director shall supervise the conversion process and shall ensure that the process is conducted lawfully and under the approved plan.

[26-1813, added 1997, ch. 310, sec. 3, p. 920.]

26-1814. ACQUISITIONS. All acquisitions shall be approved in advance in writing by the director.

(1) A mutual or stock savings bank may acquire, as defined by section 26-2605, Idaho Code, a savings bank organized in the same form.

(2) A stock savings bank may acquire or be acquired by either a state or national bank with the state or national bank being the surviving bank.

(3) A mutual savings bank may acquire or be acquired by a credit union, with the mutual savings bank being the surviving entity.

(4) A stock savings bank may acquire or be acquired by a national or state bank with the national or state bank being the surviving entity.

[26-1814, added 1997, ch. 310, sec. 3, p. 921.]

26-1815. FOREIGN SAVINGS AND LOAN ASSOCIATIONS. A savings and loan association or savings bank chartered and operating under the laws of another state which has received a valid permit from the director of finance to do

business as a savings and loan association or savings bank within this state pursuant to an application filed with and approved by the director shall be authorized to conduct such business in this state.

[26-1815, added 1997, ch. 310, sec. 3, p. 921.]

CHAPTER 19
SAVINGS AND LOAN ASSOCIATIONS - OPERATION -- [REPEALED]

TITLE 26
BANKS AND BANKING

CHAPTER 26
IDAHO INTERSTATE BANKING ACT

26-2601. SHORT TITLE. This chapter shall be known as the "Idaho Interstate Banking Act."

[26-2601, added 1985, ch. 185, sec. 1, p. 474; am. 1995, ch. 99, sec. 12, p. 316.]

26-2602. STATEMENT OF PURPOSE. It is the policy of the state of Idaho to allow acquisitions of Idaho financial institutions by out-of-state financial institution holding companies under the terms and conditions set forth in this chapter.

[26-2602, added 1985, ch. 185, sec. 1, p. 474; am. 1995, ch. 99, sec. 13, p. 316.]

26-2603. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an out-of-state financial institution holding company which has submitted an application under section 26-2605, Idaho Code.

(2) "Control." A person has "control" of a financial institution or financial institution holding company if the person:

(a) Directly or indirectly, owns, controls or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the financial institution or financial institution holding company;

(b) The person, directly or indirectly, controls the election of a majority of the directors or trustees of the financial institution or financial institution holding company; or

(c) The person, directly or indirectly, directs or exercises a controlling influence over the management or policies of the financial institution or financial institution holding company.

There is a rebuttable presumption that a person has control of a financial institution or financial institution holding company if the person owns, controls or has the power to vote five percent (5%) of more of the voting securities of the financial institution or financial institution holding company. Owning voting securities in a fiduciary capacity does not constitute "control" unless the director determines, after notice and an opportunity for hearing, that the person exercises a controlling influence over the management or policies of the financial institution or financial institution holding company. No person shall be deemed to have control of a financial institution or financial institution holding company by virtue of the person's ownership or control of shares acquired by him in connection with his underwriting of shares in the financial institution or financial institution holding company which are held only for such period of time as will permit the sale thereof on an orderly and reasonable basis, and no person shall be deemed to have control of a financial institution or financial institution holding company by virtue of his ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which is held only for such period

of time as will permit the sale thereof on an orderly and reasonable basis, which period of time shall have a duration of no more than two (2) years.

(3) "Director" means the director of the department of finance.

(4) "Financial institution" means any state bank, national bank, trust company, savings and loan association, savings bank, federal savings and loan association, federal savings bank, or credit union, as those terms are defined in title 26, Idaho Code, or any federal credit union organized under the federal credit union act (12 U.S.C. section 1751, et seq.). The term also includes any other institution which holds and receives deposits, savings or share accounts; issues certificates of deposit; or provides to its customers any deposit accounts which are subject to withdrawal by check, instrument, order or electronic means to effect third-party payments.

(5) "Financial institution holding company" means a person, other than an individual, that has or acquires control over any financial institution.

(6) "Idaho financial institution" means:

(a) A financial institution chartered by or incorporated in the state of Idaho;

(b) With respect to financial institutions chartered by the federal government, those which have their main office located in Idaho.

(7) "Idaho financial institution holding company" means a financial institution holding company whose principal place of business is, and whose operations are principally conducted in, this state. "Idaho financial institution holding company" also means an out-of-state financial institution holding company which lawfully has control of an Idaho financial institution on the effective date of this chapter.

(8) "In danger of failing" means a financial institution is in danger of failing if: (i) the financial institution is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without federal or other governmental assistance; or (ii) the financial institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishing the financial institutions' capital without federal or other governmental assistance.

(9) "Person" means a natural person, corporation, partnership, association, cooperative association, unincorporated association, trust or any other legal or commercial entity.

(10) "Principally conducted." The operations of a financial institution are "principally conducted" in the state in which the total deposits of the financial institution are largest. The operations of a financial institution holding company are principally conducted in the state in which the financial institution holding company's financial institution subsidiary having the largest percentage of the total deposits of all of the financial institution subsidiaries of the holding company is located.

(11) "Out-of-state financial institution" means a financial institution whose operations are principally conducted outside this state.

(12) "Out-of-state financial institution holding company" means a financial institution holding company whose principal place of business is, and whose operations are principally conducted, outside this state.

[26-2603, added 1985, ch. 185, sec. 1, p. 474; am. 1987, ch. 294, sec. 1, p. 625; am. 1995, ch. 99, sec. 14, p. 316.]

26-2604. PROHIBITED ACQUISITION. Except as authorized in this chapter, chapter 16, title 26, Idaho Code, and by the laws of the United States, no

out-of-state financial institution or out-of-state financial institution holding company, nor any subsidiary or affiliate thereof, may establish or maintain an office of, or conduct the business of, a financial institution in this state; nor may such out-of-state financial institutions or out-of-state financial institution holding companies, or any subsidiaries or affiliates thereof, directly or indirectly, acquire control of, acquire substantially all of the assets of, merge with, consolidate with, or assume the deposit liabilities of an Idaho financial institution or an Idaho financial institution holding company.

[26-2604, added 1985, ch. 185, sec. 1, p. 476; am. 1995, ch. 99, sec. 15, p. 318.]

26-2605. ACQUISITION BY OUT-OF-STATE COMPANY. If an application has been submitted by such out-of-state financial institution holding company to, and prior written approval has been obtained from the director, pursuant to section 26-2606, Idaho Code, an out-of-state financial institution holding company may:

(a) Acquire control of;

(b) Acquire all or substantially all of the assets of;

(c) Merge or consolidate with; or

(d) Assume the deposit liabilities of an Idaho financial institution.

[I.C., sec. 26-2605, as added by 1985, ch. 185, sec. 1, p. 474; am. 1987, ch. 294, sec. 2, p. 625; am. 1995, ch. 99, sec. 16, p. 318.]

26-2606. REQUIREMENTS FOR ACQUISITION. No person shall effect any of the transactions described in section 26-2605, Idaho Code, or make any public offer to do so unless it shall first have complied with the provisions of chapters 5 and 9, title 26, Idaho Code, and this section.

(1) An applicant must request authorization to engage in any of the transactions described in section 26-2605, Idaho Code, shall pay such application fee as the director may prescribe for such transactions and shall file with the director:

(a) An application in such form as the director may prescribe;

(b) Such other information as the director may require pursuant to any rule, or which he determines to be necessary to allow him to make the findings in the case of any specific transactions which are required in this section;

(c) Unless the applicant is an Idaho resident, a domestic corporation or a foreign corporation qualified to do business in this state, a written consent to service of process in any action or suit arising out of or in connection with said proposed action, said service to be on a resident of this state;

(d) A written undertaking on the part of the applicant to provide the director, if requested, the financial institution holding company examination records and any and all examination reports of such financial institution holding company subsidiaries as the director may designate.

(2) The director may, as a condition upon acceptance of an application as complete or upon approval of an application, require cooperation from the administrative regulator or regulators of the out-of-state financial institution holding company and its subsidiaries involved in the transaction.

(3) Within thirty (30) days of acceptance of the application as complete, the director shall act upon the application by approving or disapproving it and shall state in writing his findings of fact, conclusions and order. The director may approve an application subject to such terms and conditions as he may consider necessary to protect the public interest and carry out the purposes of this chapter. The director may not approve an application for a transaction in which the applicant is a foreign corporation which has not qualified to do business in this state under title 30, Idaho Code, and which is required to do so.

(4) The director shall disapprove any application filed under this section if he finds:

(a) That the proposed transaction would be detrimental to the safety and soundness of the applicant or to any Idaho financial institution or Idaho financial institution holding company which is a party to the proposed transaction or to a subsidiary or affiliate of that institution or holding company;

(b) The applicant, its executive officers, directors or principal shareholders do not have a record of sound performance, efficient management, financial responsibility and integrity such that it would be against the interest of the depositors, other customers, creditors or shareholders of an Idaho financial institution or an Idaho financial institution holding company, or against the public interest to authorize the proposed transaction;

(c) The financial condition of the applicant or any Idaho financial institution or Idaho financial institution holding company which is a party to or participant in the proposed transaction is such that the financial stability of such applicant or other institution or holding company might be jeopardized or the interests of depositors or other customers of such applicant or other institutions or holding companies might be prejudiced;

(d) The Idaho financial institution to be acquired has been chartered and actively engaged in business for less than five (5) years prior to the date of the application;

(e) The consummation of the proposed transaction will tend substantially to lessen competition within this state unless the director finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the community to be served; or

(f) The applicant has not established a record of meeting the credit needs of the communities which it or its subsidiary financial institution(s) services.

(5) Subsection (4)(d) of this section shall not be construed as prohibiting either:

(a) The approval of the acquisition of any Idaho financial institution or Idaho financial institution holding company formed solely to facilitate the acquisition of all of the voting shares of an Idaho financial institution which itself has been chartered and actively engaged in business for five (5) years or more prior to the date of the application; or

(b) The acquisition of an Idaho financial institution holding company which has been in existence for less than five (5) years if each of the financial institutions controlled by the financial institution holding

company have been chartered and actively engaged in business for five (5) years or more.

[26-2606, added 1985, ch. 185, sec. 1, p. 477; am. 1995, ch. 99, sec. 17, p. 319.]

26-2607. ACQUISITION OF FAILING INSTITUTION. (1) Notwithstanding any provision of the laws of this state to the contrary, if the director determines, in his discretion, that an Idaho financial institution is in danger of failing, or takes possession of a failing Idaho financial institution pursuant to the provisions of title 26, Idaho Code, and if the director deems it to be in the public interest and necessary to protect depositors, creditors and other customers of that financial institution, the director may solicit offers from, and authorize or require the acquisition of such failing Idaho financial institution by a financial institution or financial institution holding company organized and operated under the laws of any state or the United States. Acquisition may be through merger, consolidation, purchase of all or substantially all of the assets and assumption of liabilities, or purchase of all or a controlling part of the shares of the acquired institution.

(2) The director may not, under this section, accept any offers from, or authorize or require any acquisition by a financial institution holding company as described in subsection (1) of this section, unless he finds that:

(a) The subsidiaries of the financial institution holding company have demonstrated an acceptable record of meeting the credit needs of the communities it serves; and

(b) The financial institution holding company and its subsidiaries have a record of sound performance, capital adequacy, financial capacity and efficient management such that the acquisition would not jeopardize the financial stability of the acquired institution and would not be detrimental to the interests of depositors, creditors, or other customers of the acquired institution or the public interest.

(3) To protect the interest of depositors, creditors and other customers of a failing Idaho financial institution, the director may waive any of the procedures set forth in section 26-2606, Idaho Code, or in any rule of the department if he deems it necessary to implement the purposes of this section.

[26-2607, added 1985, ch. 185, sec. 1, p. 479; am. 1987, ch. 294, sec. 3, p. 628; am. 1995, ch. 99, sec. 18, p. 321.]

26-2608. CONDITIONS FOR APPROVAL. The director may make the acquisition of an Idaho financial institution by an out-of-state financial institution holding company subject to any conditions, restrictions, and requirements that would apply to the acquisition by an Idaho financial institution holding company of a financial institution or a financial institution holding company in the state where such acquiring financial institution holding company's operations are principally conducted, which conditions, restrictions and requirements would not apply to acquisitions by a financial institution or financial institution holding company all of whose financial institution subsidiaries are located in that state.

[26-2608, added 1985, ch. 185, sec. 1, p. 480; am. 1995, ch. 99, sec. 19, p. 321.]

26-2610. COOPERATIVE AGREEMENTS. (1) The director is authorized to enter into cooperative and reciprocal agreements with other financial institution regulatory agencies, both federal and state, and from bank supervisory authorities from foreign countries, to facilitate the regulation of financial institutions and financial institution holding companies doing business in this state. The director may accept reports of examinations and other records from such other agencies in lieu of conducting his own examinations of financial institutions controlled by financial institution holding companies located in other states. The director may share examination reports with such other agencies. The director may examine such institutions in Idaho, in the financial institution's home state or such other location as may be necessary. The director may take any action jointly with other regulatory agencies having concurrent jurisdiction over financial institutions and financial institution holding companies doing business in this state or may take such actions independently in order to carry out his responsibilities.

(2) The director may, in his discretion, enter into agreements with a professional association of which the department is a member. The purposes of such agreements may include the facilitation of examination of banks or bank holding companies operating in other states in addition to Idaho. Notwithstanding any other provision of law, such examination agreements may provide for the exchange of bank information, including examination reports, with such a professional association; provided however, that such communication shall not constitute a public disclosure of such records under chapter 1, title 74, Idaho Code, nor a waiver of the statutory privilege in section 26-1111, Idaho Code.

[26-2610, added 1985, ch. 185, sec. 1, p. 481; am. 1995, ch. 99, sec. 21, p. 322; am. 2015, ch. 141, sec. 44, p. 414.]

26-2611. NO REPEAL BY IMPLICATION. Nothing contained in this chapter, or any amendment thereto, shall be construed to amend or modify the provisions of any other chapter of this title governing the supervision or regulation of financial institutions and financial institution holding companies or the organization and powers of the department of finance and the director with respect thereto as may be provided in such other chapter.

[26-2611, added 1985, ch. 185, sec. 1, p. 481; am. 1995, ch. 99, sec. 22, p. 323.]

26-2612. SEVERABILITY. If any court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional.

[I.C. sec. 26-2612, as added by 1985, ch. 185, sec. 1, p. 474; am. 1987, ch. 294, sec. 4, p. 625; am. 1995, ch. 99, sec. 23, p. 323.]

26-2613. BANKS AS "ISSUING PUBLIC CORPORATIONS." Notwithstanding any other provision of law, banks chartered by the state of Idaho and bank holding companies as defined in section 26-501, Idaho Code, shall be considered

"issuing public corporations" as used in chapters 16 and 17, title 30, Idaho Code.

[26-2613, added 1995, ch. 99, sec. 24, p. 323.]