

TITLE 26
BANKS AND BANKING

CHAPTER 32
TRUST INSTITUTIONS -- GENERAL PROVISIONS

26-3201. TITLE. Chapters 32 through 36, [title 26](#), Idaho Code, shall be known and may be cited as the "Idaho Trust Institutions Act."

[26-3201, added 2000, ch. 288, sec. 8, p. 975.]

26-3202. PURPOSES OF THE ACT. The purposes of this act are to permit:

- (1) State banks and state trust companies to engage in the trust business in this state; and
- (2) Banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions.

[26-3202, added 2000, ch. 288, sec. 8, p. 975.]

26-3203. DEFINITIONS. The following definitions shall be liberally construed to accomplish the purposes of this act. In this act, unless the context otherwise requires:

(1) "Account" means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust institution acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) Accept or execute trusts, including to:

- (i) Act as trustee under a written agreement;
- (ii) Receive money or other property in its capacity as trustee for investment in real or personal property;
- (iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
- (iv) Act as trustee of the estate of a deceased person; or
- (v) Act as trustee for a minor or incapacitated person;

(b) Administer in any other fiduciary capacity real or tangible personal property; or

(c) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Authorized trust institution" means any state trust company, trust office or representative trust office.

(4) "Bank" has the meaning set forth in 12 U.S.C. 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(5) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the office of thrift supervision and any successor to these agencies.

(6) "Branch" with respect to a depository institution has the meaning set forth in section [26-106](#), Idaho Code.

(7) "Charter" means the authority issued by the director or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(8) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(9) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust or another trust.

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

(11) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. 1813(c) (2) and (3).

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

(13) "Foreign bank" means a foreign bank, as defined in section 1(b) (7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than this state.

(14) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(15) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(16) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(17) "New trust office" means a trust office located in a host state which:

(a) Is originally established by the trust institution as a trust office; and

(b) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any such trust institution or trust office.

(18) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(19) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state.

(20) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(21) "Out-of-state trust institution" means a trust institution that is not a state trust institution.

(22) "Person" means an individual, a company or any other legal entity.

(23) "Principal office" with respect to:

(a) A state trust company, means a location registered with the director as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one (1) executive officer of the state trust company maintains an office.

(b) A trust institution other than a state trust company, means its principal place of business in the United States.

(24) "Representative trust office" means an office at which a trust institution has been authorized by the director to engage in a trust business other than acting as a fiduciary.

(25) "Savings association" means a depository institution that is neither a bank nor a foreign bank.

(26) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(27) "State bank" means:

(a) A bank which has received a charter from the director authorizing it to operate a trust department; or

(b) A foreign bank as defined in section 1(b)(7) of the international banking act of 1978 chartered to act as a fiduciary in this state.

(28) "State trust company" means a corporation organized under this act and chartered to act as a fiduciary by the state, including a trust company organized under the laws of this state before the effective date of this act.

(29) "State trust institution" means a trust institution having its principal office in this state.

(30) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state including, but not limited to:

(a) Acting as a fiduciary; or

(b) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(31) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(32) "Trust institution" means a depository institution, foreign bank, state bank or trust company.

(33) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the director to act as a fiduciary.

(34) "Unauthorized trust activity" means:

(a) A person, other than one identified in section [26-3204](#)(1), Idaho Code, acting as a fiduciary within this state;

(b) A person engaging in a trust business in this state at any office of such person that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such person, unless the person has been authorized by the director, in his discretion, to engage in a trust business in this state in another manner and upon such conditions as he may require; or

(c) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the director pursuant to section [26-1115](#), Idaho Code, is in effect.

[26-3203, added 2000, ch. 288, sec. 8, p. 975; am. 2016, ch. 47, sec. 4, p. 102.]

26-3204. PERSONS AUTHORIZED TO ACT AS A FIDUCIARY. (1) No person shall act as a fiduciary in this state except:

(a) A state trust company;

(b) A state bank;

(c) A savings bank organized under the laws of this state and authorized to act as a fiduciary pursuant to the savings bank act, [chapter 18, title 26](#), Idaho Code;

(d) A national bank authorized by the comptroller of the currency to act as a fiduciary pursuant to 12 U.S.C. 92a;

(e) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(f) An out-of-state bank with a branch in this state established or maintained pursuant to the interstate banking act, [chapter 26, title 26](#), Idaho Code, or the interstate branching act, [chapter 16, title 26](#), Idaho Code, or a trust office licensed by the director pursuant to this act;

(g) An out-of-state trust company with a trust office licensed by the director pursuant to this act;

(h) A foreign bank with a trust office licensed by the director pursuant to this act; or

(i) Such other person as may be authorized by the director, in his discretion, and upon such conditions as he may require.

(2) No person shall engage in an unauthorized trust activity.

[26-3204, added 2000, ch. 288, sec. 8, p. 978.]

26-3205. ACTIVITIES NOT REQUIRING A CHARTER. Notwithstanding any other provision of this act, a person does not engage in the trust business or in any other business in a manner requiring a charter under this act, or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(2) Obtaining trust business as a result of an existing attorney-client relationship or certified public accountant-client relationship;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Idaho real estate commission;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Idaho department of finance or the securities and exchange commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Idaho department of insurance to the extent that the activity is regulated by the Idaho department of insurance;

(7) Engaging in the lawful sale of prepaid funeral contracts under a permit issued by the Idaho board of morticians or engaging in the lawful business of a perpetual care cemetery under the Idaho endowment care cemetery act;

(8) Acting as trustee under a voting trust as provided by the Idaho business corporation act;

(9) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(10) Engaging in other activities expressly excluded from the application of this act, by rule of the director;

(11) Acting as a fiduciary for relatives;

(12) Provided the company is a trust institution and is not barred by order of the director from engaging in a trust business in this state pursuant to section [26-1115](#), Idaho Code:

(a) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(b) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(c) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client;

(13) Acting pursuant to court appointment as:

(a) A personal representative of a decedent's estate; or

(b) A guardian or conservator of an estate;

(14) Acting as a trustee, but only if such person is an individual and does not engage in the trust business as defined in section [26-3203](#)(30), Idaho Code.

[26-3205, added 2000, ch. 288, sec. 8, p. 979; am. 2016, ch. 44, sec. 1, p. 94; am. 2016, ch. 47, sec. 5, p. 105.]

26-3206. TRUST BUSINESS OF STATE TRUST INSTITUTION. (1) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this act, at a branch or at any location other than an office or branch.

(2) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the director applicable to the state trust institution; provided however, that the director may waive any such prohibition if the director determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

[26-3206, added 2000, ch. 288, sec. 8, p. 980.]

26-3207. TRUST BUSINESS OF OUT-OF-STATE TRUST INSTITUTION. An out-of-state trust institution which establishes or maintains one (1) or more offices in this state under this act, may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

[26-3207, added 2000, ch. 288, sec. 8, p. 980.]

26-3208. NAME OF TRUST INSTITUTION. A state trust company or out-of-state trust institution may register any name with the director in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this act, except that the director may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

[26-3208, added 2000, ch. 288, sec. 8, p. 980.]

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CHAPTER 33
TRUST INSTITUTIONS -- STATE TRUST INSTITUTION OFFICES

26-3301. TRUST BUSINESS. A state trust company or a state bank may:

- (1) Perform any act as a fiduciary;
- (2) Engage in any trust business;
- (3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this act.

[26-3301, added 2000, ch. 288, sec. 9, p. 980.]

26-3302. BRANCHES AND OFFICES OF STATE TRUST INSTITUTIONS. (1) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this act, and at a branch in this state.

(2) A state trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this act.

(3) Notwithstanding subsections (1) and (2) of this section, a state trust institution may not engage at an out-of-state office in any trust business not permitted for such an office by the host state to trust institutions chartered by such state.

[26-3302, added 2000, ch. 288, sec. 9, p. 981.]

26-3303. STATE TRUST COMPANY PRINCIPAL OFFICE. (1) Each state trust company must have and continuously maintain a principal office in this state.

(2) Each executive officer at the principal office is an agent of the state trust company for service of process.

(3) A state trust company may change its principal office to any location within this state by filing a written notice with the director setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(4) The change of principal office shall take effect on the thirty-first day after the date the director receives the notice pursuant to subsection (3) of this section, unless the director establishes an earlier or later date or unless prior to such day the director notifies the state trust company that it must establish to the satisfaction of the director that the relocation is consistent with the provisions of this act for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the director.

[26-3303, added 2000, ch. 288, sec. 9, p. 981.]

26-3304. TRUST OFFICE -- REPRESENTATIVE TRUST OFFICE. (1) A state trust institution may establish or acquire, and maintain, trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire, and maintain, such an office shall file a

written notice with the director setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office, furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee, if any, prescribed by the director.

(2) The state trust institution may commence business at the additional office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the director.

(4) The director may deny approval of the additional office if the director finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

[26-3304, added 2000, ch. 288, sec. 9, p. 981.]

26-3305. OUT-OF-STATE OFFICES. (1) A state bank, a state trust company or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire, and maintain, an office in another state under this section shall file a notice with the director on a form prescribed by the director, which shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the director.

(2) The trust institution may commence business at the additional office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the director.

(4) The director may deny approval of the additional office if the director finds that the trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies.

[26-3305, added 2000, ch. 288, sec. 9, p. 982.]

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CHAPTER 34
TRUST INSTITUTIONS -- OUT-OF-STATE TRUST INSTITUTION OFFICES

26-3401. TRUST BUSINESS AT A BRANCH OR TRUST OFFICE OR REPRESENTATIVE TRUST OFFICE. (1) An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business in this state if it maintains a trust office in this state as permitted by this chapter, or a branch in this state.

(2) An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this chapter.

[26-3401, added 2000, ch. 288, sec. 10, p. 982.]

26-3402. ESTABLISHING OR ACQUIRING AN INTERSTATE TRUST OFFICE OR REPRESENTATIVE OFFICE. (1) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish or acquire, and maintain, a trust office in this state.

(2) An out-of-state trust institution may establish or acquire, and maintain, a representative trust office in this state.

[26-3402, added 2000, ch. 288, sec. 8, p. 983.]

26-3403. REQUIREMENT OF NOTICE. An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this chapter shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the director on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish or acquire, and maintain, the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the director.

[26-3403, added 2000, ch. 288, sec. 10, p. 983.]

26-3404. CONDITIONS FOR APPROVAL. (1) No trust office of an out-of-state trust institution may be acquired or established in this state under this chapter unless:

(a) The out-of-state trust institution shall have confirmed in writing to the director that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;

(b) The out-of-state trust institution shall have provided satisfactory evidence to the director of compliance with:

(i) Any applicable requirements of part 15, [chapter 1, title 30](#), Idaho Code, and

(ii) The applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(c) The director, acting within sixty (60) days after receiving notice under section [26-3403](#), Idaho Code, shall have certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions

imposed by the director pursuant to subsection (2) of this section have been satisfied.

(2) The out-of-state trust institution may commence business at the trust office on the sixty-first day after the date the director receives the notice unless the director specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the director shall have conditioned such approval on the satisfaction by the out-of-state trust institution of any requirement applicable to a state trust company pursuant to this act, such institution shall have satisfied such conditions and provided to the director satisfactory evidence thereof.

(3) The sixty (60) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the director.

(4) The director may deny approval of the office if the director finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies.

[26-3404, added 2000, ch. 288, sec. 10, p. 983.]

26-3405. REGISTRATION OF REPRESENTATIVE TRUST OFFICE. (1) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire, and maintain a representative trust office shall file a notice with the director on a form prescribed by the director which shall set forth the name of the out-of-state trust institution and the location of the proposed office and satisfactory evidence that the out-of-state trust institution is a trust institution, furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay the filing fee, if any, prescribed by the director.

(2) The out-of-state trust institution may commence business at the representative trust office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the director.

(4) The director may deny approval of the representative trust office if the director finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies.

[26-3405, added 2000, ch. 288, sec. 10, p. 984.]

26-3406. ADDITIONAL TRUST OFFICES. An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in section [26-3304](#), Idaho Code.

[26-3406, added 2000, ch. 288, sec. 10, p. 984.]

26-3407. NOTICE OF SUBSEQUENT MERGER, TRANSFER, OR CLOSING. Each out-of-state trust institution that maintains an office in this state pursuant to this act, or the home state regulator of such trust institution, shall give at least thirty (30) days' prior written notice or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the director of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, as amended, 12 U.S.C. 1817(j), or the federal bank holding company act of 1956, as amended, 12 U.S.C. 1841 et seq., or any successor statutes thereto;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in this state.

[26-3407, added 2000, ch. 288, sec. 10, p. 984.]

TITLE 26
BANKS AND BANKING

CHAPTER 35
TRUST INSTITUTIONS -- STATE TRUST COMPANY ORGANIZATION -- GENERAL
PROVISIONS

26-3501. PREREQUISITE TO ENGAGING IN TRUST BUSINESS. (1) A corporation duly organized for the purpose of engaging in the trust business may apply for a charter to operate as a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(2) A bank having the power to engage in the trust business, which is organized under the laws of this state or authorized to do business in this state, and which is chartered under the provisions of the Idaho bank act to engage in banking business in the state of Idaho, may apply for a charter from the director authorizing it to operate a trust department.

(3) To the extent not inconsistent with specific provisions of this chapter, and in the discretion of the director, provisions of the Idaho bank act regarding organization, operation and closing of banks shall apply to applicants for a charter under this chapter and to state trust companies.

[26-3501, added 2000, ch. 288, sec. 11, p. 985.]

26-3502. APPLICATION FOR CHARTER. An application for a state trust company or trust department charter shall be in writing and in such form as the director shall prescribe, verified under oath and supported by such information, data and records as the director may require.

[26-3502, added 2000, ch. 288, sec. 11, p. 985.]

26-3503. APPLICATION FEE. A reasonable application fee, as set by the director, shall be paid to the department with respect to each application for a charter under this chapter at the time the application is filed.

[26-3503, added 2000, ch. 288, sec. 11, p. 985.]

26-3504. MINIMUM CAPITAL. (1) A charter shall not be issued to a corporation applying for a state trust company charter having a paid-in capital of less than one million five hundred thousand dollars (\$1,500,000).

(2) A charter to operate a trust department shall not be issued to a bank unless the capital of the bank is in an amount of not less than one million five hundred thousand dollars (\$1,500,000), in addition to its statutory required minimum capital for a bank charter required by section [26-205](#), Idaho Code.

(3) Subject to subsection (4) of this section, a state trust company or state bank shall at all times maintain capital in at least the amount required under subsections (1) and (2) of this section.

(4) The director may require additional capital for a proposed or existing state trust company or state bank or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company or state bank.

[26-3504, added 2000, ch. 288, sec. 11, p. 986.]

26-3505. ISSUANCE OF CHARTER. Upon the filing of an application the director shall make or cause to be made an investigation and examination of the facts concerning the applicant and shall issue a charter if he finds:

(1) The applicant is a corporation having powers and purposes to engage in the trust business, organized under the laws of this state or authorized to do business in this state as a foreign corporation; and

(2) The applicant has complied with all of the applicable provisions of this act; and

(3) The ability and integrity of the persons involved in the management of the applicant's business are such as to demonstrate that it will be operated in a sound and lawful manner; and

(4) The applicant has adequate facilities to engage in trust business.

[26-3505, added 2000, ch. 288, sec. 11, p. 986.]

26-3506. RECORDS -- PRESERVATION OF RECORDS. A state trust company or trust department shall keep and use in its business any books, accounts and records which will enable the director to determine whether the trust institution is complying with the provisions of this act and the rules and orders of the director. The director may by rule or order provide which books, accounts and records shall be kept, and the periods of time and the manner in which they shall be preserved.

[26-3506, added 2000, ch. 288, sec. 11, p. 986.]

26-3507. DISCLOSURE OF INFORMATION. A state trust company or trust department, its officers and employees, shall not disclose information to any person concerning the existence, condition, management and administration of any trust of which it is the trustee except as such disclosure:

(1) Is specifically authorized by the terms of the trust or upon the direction of the trustor;

(2) Is determined by an officer of the state trust institution to be necessary for the proper administration of such trust;

(3) Is required by a court of competent jurisdiction;

(4) Is made, in the case of an irrevocable trust, to or upon the instructions of any beneficiary thereunder whether or not presently entitled to receive benefits from the trust;

(5) Is made to the director or to any state or federal regulatory or insuring agency lawfully requiring such disclosure;

(6) Is required by [title 15](#), Idaho Code.

[26-3507, added 2000, ch. 288, sec. 11, p. 986.]

26-3508. TRUST FUNDS. (1) All moneys received by a state trust company as a fiduciary on trust business within this state shall be deposited in a bank, in a specially designated account or accounts, shall not be commingled with any funds of the state trust company and shall remain on deposit until disbursed or invested in accordance with the powers and duties of the state trust company in its capacity as fiduciary.

(2) A bank which is chartered by the director to operate a trust department shall establish and maintain a trust department in which separate books and records for each trust or estate shall be maintained. All property held

by the bank as a fiduciary shall be segregated from and unmingled with other property of the bank; provided, cash held by the bank as a fiduciary may be deposited to the credit of the bank as such fiduciary in time or demand deposit accounts with itself, or may be deposited in time or demand deposit accounts with any other bank in this state so long as said bank or banks are insured by the federal deposit insurance corporation. Property held by a bank as a fiduciary may be held in the name of nominees of the bank whether the bank is the sole fiduciary or acting with others, but the bank shall be responsible for the acts of any such nominee.

[26-3508, added 2000, ch. 288, sec. 11, p. 987.]

26-3509. LOANS TO DIRECTORS, OFFICERS OR EMPLOYEES PROHIBITED -- LOANS TO AFFILIATES OR SUBSIDIARIES PROHIBITED. (1) A state trust company or bank having a trust department shall not make any loan to any director, officer or employee of the trust institution or to any affiliate or subsidiary corporation or to any director, officer or employee of an affiliate or subsidiary corporation from its trust funds. A state trust company or bank having a trust department shall not permit any director, officer, employee, affiliate or subsidiary corporation to become indebted to it in any manner out of its trust funds unless specifically authorized to do so by the terms of the trust.

(2) This section shall not prevent the maintenance by a state trust company of its trust funds in time or demand deposits in an affiliate which is a bank, or a trust department of a bank from maintaining its trust funds in the bank in accordance with section [26-3508](#), Idaho Code.

[26-3509, added 2000, ch. 288, sec. 11, p. 987.]

26-3510. CLOSING OF TRUST UNDULY DELAYED. If, as a result of an examination, the director finds that the closing of any trust by a state trust company has been unreasonably delayed, the director may initiate proceedings in a court of competent jurisdiction to require the state trust institution to perform its duties in closing the trust.

[26-3510, added 2000, ch. 288, sec. 11, p. 987.]

TITLE 26
BANKS AND BANKING

CHAPTER 36
TRUST INSTITUTIONS -- SUPERVISION AND ENFORCEMENT

26-3601. ADMINISTRATION AND RULES. Every authorized trust institution shall be under the supervision of the director. The director may issue, promulgate, amend and rescind rules or orders necessary or proper to carry out the provisions of this act. All authorized trust institutions doing business under the provisions of this act shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules or orders that may be promulgated or issued by the director.

[26-3601, added 2000, ch. 288, sec. 12, p. 988.]

26-3602. EXAMINATIONS -- PERIODIC REPORTS -- COOPERATIVE AGREEMENTS -- ASSESSMENT OF FEES. (1) The director may make such examinations, with or without notice, of any office or branch established or maintained in this state pursuant to this act as the director may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The director may compel the attendance of any person or the production of any books, accounts and records for the purpose of such examination.

(2) The director may require periodic reports regarding any trust institution that has established or maintained an office in this state pursuant to this act. The required reports shall be provided by such trust institution or, if an out-of-state trust institution, may be provided by the home state regulator.

(3) The director may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the director may accept the agency's or organization's report of examination and report of investigation in lieu of conducting an examination or investigation.

(4) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state; provided, that the director may at any time take such actions independently if the director deems such actions to be necessary or appropriate under this act or to ensure compliance with the laws of this state; but provided further that, in the case of an out-of-state trust institution, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) Each trust institution that maintains one (1) or more offices in this state may be assessed and, if assessed, shall pay reasonable supervisory and examination fees as set by the director. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or

representing one (1) or more bank supervisory agencies in accordance with agreements between such parties and the director.

[26-3602, added 2000, ch. 288, sec. 12, p. 988.]

26-3604. NOTICE AND OPPORTUNITY FOR HEARING. Consistent with [chapter 52, title 67](#), Idaho Code, notice and opportunity for hearing shall be provided in connection with any of the foregoing actions. Provided however, in cases involving extraordinary circumstances requiring immediate action, the director may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken. The director shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

[26-3604, added 2000, ch. 288, sec. 12, p. 989.]

26-3605. SUBPOENA POWER -- EXAMINATION UNDER OATH. The director shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the director by this act.

[26-3605, added 2000, ch. 288, sec. 12, p. 990.]

26-3607. IMPAIRMENT OF CAPITAL -- UNSAFE CONDITION -- RECEIVERSHIP. If it appears to the director that the capital of a state trust company is either reduced or impaired below one million five hundred thousand dollars (\$1,500,000) or the affairs of the company are in an unsound condition, the director shall order the state trust company to make good any deficit or to remedy the unsafe condition of its affairs within sixty (60) days of the date of such order and may restrict and regulate the operation of the state trust company until the capital is so restored. If the deficiency in capital has not been made good and the unsafe condition remedied within sixty (60) days, the director may apply to the district court, in the county in which the principal office of the state trust company is located, to be appointed receiver for the liquidation or rehabilitation of the state trust company. The expense of such receivership shall be paid out of the assets of the state trust company.

[26-3607, added 2000, ch. 288, sec. 12, p. 990.]

26-3608. LIMIT OF LEGAL ACTION. This chapter does not limit any statutory or common law right of a person to bring an action in a court for any act involved in the transaction of trust business or the right of the state to bring an action against any person for a violation of law based on such act. The director may enforce any of his orders through injunctive proceedings or any other appropriate action brought in the name of this state.

[26-3608, added 2000, ch. 288, sec. 12, p. 990.]

26-3609. CONTINUED OPERATION. Any bank chartered to operate a trust department on July 1, 2000, is hereby authorized to continue to operate a trust

department after July 1, 2000; provided that such bank must conform its trust department operations with the provisions of this act.

[26-3609, added 2000, ch. 288, sec. 12, p. 990.]