

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 millionREPLACE DOL TAG HERE	\$1,500 Flat Fee
\$1 million to \$10 millionREPLACE DOL TAG HERE	\$2,000 + \$.25 per thousand dollars

\$10 million to \$50 million REPLACE DOL TAG HERE	of assets in excess of \$1 million \$4,250 + \$.19 per thousand dollars
\$50 million to \$100 million REPLACE DOL TAG HERE	of assets in excess of \$10 million \$11,850 + \$.12 per thousand dollars
\$100 million to \$500 million REPLACE DOL TAG HERE	of assets in excess of \$50 million \$17,850 + \$.10 per thousand dollars
\$500 million to \$1 billion REPLACE DOL TAG HERE	of assets in excess of \$100 million \$57,850 + \$.09 per thousand dollars
\$1 billion to \$3 billion REPLACE DOL TAG HERE	of assets in excess of \$500 million \$102,850 + \$.08 per thousand dollars
\$3 billion to \$10 billion REPLACE DOL TAG HERE	of assets in excess of \$1 billion \$262,850 + \$.07 per thousand dollars
\$10 billion to \$20 billion REPLACE DOL TAG HERE	of assets in excess of \$3 billion \$369,425 + \$.03 per thousand dollars
\$20 billion and over REPLACE DOL TAG HERE	of assets in excess of \$10 billion \$689,425 + \$.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.]

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 cancellation 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 another 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.]