

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 undivided 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 26-503 [26-604], 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.]

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. All meetings of stockholders of a bank shall be held in the community of its principal place of business within this state. When so provided in the articles of incorporation or bylaws, or by resolution of the board of directors, 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 other place within the state of Idaho provided that the director may approve meetings of the board of directors outside of the state of Idaho.

[26-208, added 1979, ch. 41, sec. 2, p. 72.]

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. A majority of said directors shall be residents of the state of Idaho.

(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 unhyponothecated common stock of the bank in the amount of at least five hundred dollars (\$500) par value. One (1) or more of the direc-

tors 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 unencumbered 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 ten (10) meetings per year; provided, no more than sixty-five (65) 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. The director may approve, upon written application, a reduction in the number and frequency of directors' meetings.

(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.]

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. Any bank, not having trust powers, may act as custodian, and may receive reasonable compensation for so acting, of any custodial account created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under section 401(d), section 403(b) or section 408(a) of the Internal Revenue Code of 1954 as defined in section 63-3004, Idaho Code, if the funds of such trust 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 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.]

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.]