

TITLE 26
BANKS AND BANKING

CHAPTER 22
COLLECTION AGENCIES

26-2221. SHORT TITLE. This act shall be known as the "Idaho Collection Agency Act."

[26-2221, added 1995, ch. 211, sec. 1, p. 716.]

26-2222. DEFINITIONS. As used in this act:

(1) "Agent" means any person who, for compensation or gain, or in the expectation of compensation or gain, contacts persons in Idaho in connection with the business activities of a licensee or person required to be licensed under this act.

(2) "Business funds" means all moneys belonging to or due a licensee or person required to be licensed in connection with the business activities authorized under this act.

(3) "Collection activities" means the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.

(4) "Collection agency" means a person who engages in any of the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.

(5) "Credit repair organization" means any person engaged in any of the activities enumerated in subsection (8) of section 26-2223, Idaho Code. A credit repair organization does not include:

(a) A consumer reporting agency, as defined in 15 U.S.C. section 1681a(f), that provides consumer reports based on information furnished by creditors or any affiliate or subsidiary of such consumer reporting agency as defined by rule promulgated by the director;

(b) A person who has an ongoing contractual arrangement with a consumer reporting agency, as described in subsection (5) (a) of this section, to obtain consumer reports from a consumer reporting agency for the purposes of:

(i) Reselling such report, or any information contained in or derived from such report, to a consumer; or

(ii) Monitoring information in such report on behalf of a consumer; or

(c) A person to the extent that such person advertises, markets, provides or facilitates consumer access to the products or services offered or provided by:

(i) An entity described in subsection (5) (a) of this section; or

(ii) A person described in subsection (5) (b) of this section.

(6) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed.

(7) "Creditor client" means any person who transfers or assigns to a collection agency licensee or person required to be so licensed under this act, any account, bill, claim or other indebtedness for collection purposes.

(8) "Creditor funds" means all funds due and owing a creditor by a licensee or person required to be licensed under this act.

(9) "Debt counselor" or "credit counselor" means any person engaged in any of the activities enumerated in subsection (7) of section 26-2223, Idaho Code.

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

(11) "Director" means the director of the Idaho department of finance.

(12) "Licensee" means a person who has obtained a license under this act.

(13) "Net collections" means all funds that are due to creditors from the licensee pursuant to the contract between the licensee and creditor, or licensee and debtor without taking into account any offset or funds due from the creditor to the licensee, because of the creditor having collected any part of the account due, plus all funds that the licensee agreed to return to debtors or that were not to be applied to debts.

(14) "Person" means any individual, corporation, association, partnership, limited liability partnership, trust, company, limited liability company, or unincorporated association.

[26-2222, added 1970, ch. 53, sec. 1, p. 118; am. 1974, ch. 24, sec. 22, p. 592; am. 1987, ch. 295, sec. 1, p. 630; am. 1990, ch. 346, sec. 1, p. 931; am. 1997, ch. 370, sec. 1, p. 1176; am. 2002, ch. 190, sec. 1, p. 545; am. 2008, ch. 347, sec. 1, p. 938.]

26-2223. COLLECTION AGENCY, DEBT COUNSELOR, CREDIT COUNSELOR, OR CREDIT REPAIR ORGANIZATION -- LICENSE REQUIRED. No person shall without complying with the terms of this act and obtaining a license from the director:

(1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.

(2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(3) Solicit or advertise in this state to collect or receive payment for another of any account, bill, claim or other indebtedness.

(4) Sell or otherwise distribute in this state any system or systems of collection letters or similar printed matter where the name of any person other than the particular creditor to whom the debt is owed appears.

(5) Engage in any activity in this state which indicates, directly or indirectly, that a third party is or may be involved in effecting any collections.

(6) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

(7) Engage or offer to engage in this state in the business of receiving money from debtors for application or payment to or prorating of a debt owed to, any creditor or creditors of such debtor, or engage or offer to engage in this state in the business of providing counseling or other services to debtors in the management of their debts, or contracting with the debtor to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor.

(8) Engage or offer to engage in this state in the business of selling, providing or performing services to improve any consumer's credit record, credit history or credit rating, or providing advice or assistance to any consumer with regard to his credit record, credit history or credit rating.

[26-2223, added 1970, ch. 53, sec. 2, p. 118; am. 1990, ch. 346, sec. 2, p. 932; am. 2002, ch. 190, sec. 2, p. 546; am. 2008, ch. 347, sec. 2, p. 940.]

26-2223A. COLLECTION AGENCY OFFICE REQUIREMENTS -- DESIGNATION OF RESPONSIBLE PERSON. (1) Each licensee shall maintain a home office licensed under this act as the licensee's principal location for collection activities. Each licensee must maintain a listed telephone number and must be open to the public during normal business hours on each business day, provided, however, that the director may in his discretion approve a request for opening during hours other than normal business hours or a portion of a business day. A business day within the meaning of this section does not include Saturdays, Sundays, or legal holidays.

(2) Each licensee shall designate a natural person, who meets the experience requirement of section 26-2224(6), Idaho Code, to be responsible for the collection activities carried on at each office of the licensee. If the person designated by the licensee for such purpose is not normally available at the licensee's designated location, then the licensee's collection activities in Idaho must begin with a written notice to each debtor setting forth a mailing address and a toll-free telephone number whereby a debtor may contact the designated responsible person during normal business hours.

[26-2223A, as added by 1974, ch. 154, sec. 1, p. 1379; am. 1987, ch. 297, sec. 1, p. 633; am. 1995, ch. 211, sec. 2, p. 716; am. 2008, ch. 347, sec. 3, p. 941.]

26-2224. LICENSE APPLICATION. Every applicant for a license under this act shall file with the director an application in a form prescribed by the director that shall include:

(1) The name of the applicant; if the applicant is a corporation, a list of its officers and directors and their addresses; if the applicant is a partnership, a list of the partners and their addresses; or if the applicant is a limited liability company, a list of its members or managers and their addresses.

(2) The street address of the applicant's principal location.

(3) All names by which the applicant engages in collection activities.

(4) The names of all persons and organizations with which the applicant is affiliated, and the location of the principal office or place of business of each such affiliate.

(5) A complete description of the business to be conducted, or plan of operation contemplated, by the applicant in this state.

(6) The name, address and qualifications of a natural person possessing a minimum of three (3) years of experience related to the business to be conducted under this act who will supervise the applicant's office locations from which business activities in this state will be conducted.

(7) Copies of all contracts, forms, form letters, and advertisements or solicitations to be used by the applicant in its business activities under this act, which must accompany the application and be identified as exhibits by number.

(8) If the applicant is a corporation, a limited liability company, partnership, or limited liability partnership, a copy of its articles of incorporation, articles of organization, partnership agreement, or operating agreement, duly authenticated.

(9) A list of the names, business addresses and telephone numbers of all agents who will contact persons or solicit business for the applicant in this state.

(10) The name and business address of the applicant's agent for service of process located in this state.

(11) A nonrefundable application fee of one hundred fifty dollars (\$150).

(12) An agreement of consent authorizing the director to examine any and all of the applicant's financial accounts used for business activities under this act.

(13) Such other information concerning the applicant as the director may reasonably require. Such application shall be executed and verified on oath by the applicant. Information required at the time of application, except for advertisements and solicitations, shall be updated and filed with the director as necessary to keep the information current.

[26-2224, added 1970, ch. 53, sec. 3, p. 118; am. 1974, ch. 154, sec. 2, p. 1379; am. 1990, ch. 213, sec. 23, p. 503; am. 1995, ch. 211, sec. 3, p. 716; am. 2002, ch. 190, sec. 3, p. 546; am. 2008, ch. 347, sec. 4, p. 941.]

26-2225. APPROVAL OF LICENSE APPLICATION. (1) The director shall act upon all applications for a license under this act. If the director determines that the requirements of this act have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the director shall issue a license to the applicant.

(2) Each license issued under this section shall remain in full force and effect unless the licensee fails to satisfy the renewal requirements of this act, or the license is relinquished, suspended, terminated or revoked.

[26-2225, added 2008, ch. 347, sec. 6, p. 943.]

26-2226. FALSE OR FRAUDULENT DEBT REDUCTION AND ELIMINATION PRACTICES. (1) No person shall obtain or attempt to obtain a fee, compensation or consideration from a person through a false or fraudulent representation or statement that a debt, loan, or extension of credit could or would be eliminated, reduced or substituted, if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the person making the representation or statement does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

(2) (a) Whenever it appears to the director that a person has violated subsection (1) of this section, the director shall have the powers and remedies set forth in sections 67-2754 and 67-2755, Idaho Code, as well as the powers and remedies found in this chapter, as to any such violation.

(b) Any person who violates subsection (1) of this section shall be subject to the criminal proceedings and penalties set forth in sections 67-2757, 67-2758 and 67-2759, Idaho Code, as well as the criminal proceedings and penalties provided in this chapter.

[26-2226, added 2005, ch. 265, sec. 17, p. 825.]

26-2227. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) An application for a license may be denied or, after notice and the opportunity for a hearing, a license may be suspended or revoked by the director if he finds that facts or conditions exist which would have justified the director in refusing to grant a license had such facts or conditions been known to exist at the time the license was issued, or that the licensee or the applicant, or any officer, member, owner, manager or agent of a licensee or applicant:

(a) Has violated any provision of this act, the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, or any rule or order of the director under this act;

(b) Is not legally qualified to do business in this state;

(c) Has failed to retain a natural person with three (3) years of experience related to the type of business conducted by the licensee under this act to supervise each office from which business activities are conducted under this act;

(d) Has failed, refused or neglected to pay or remit to any creditor client the agreed portion of any sum collected by the applicant or licensee on any bill, claim, account or other indebtedness entrusted to such applicant or licensee for collection;

(e) Has failed to return to a debtor an amount that was not owed on his debt;

(f) Has made a material misstatement in the application for such license or renewal;

(g) Has obtained or attempted to obtain a license or renewal by fraud or misrepresentation;

(h) Has misappropriated or converted to his own use or improperly withheld moneys collected or held for any other person, except that a collection agency licensee may convert into business funds his portion of any moneys collected on behalf of a creditor client, pursuant to a written agreement with the creditor client and in compliance with this act;

(i) Has falsely represented himself as a licensee for the purpose of soliciting for or representing any business covered in this act;

(j) Has been convicted of, or a court of competent jurisdiction has entered a withheld judgment for any felony, or for a misdemeanor involving financial wrongdoing or moral turpitude;

(k) Has had a license substantially equivalent to a license under this act issued by another state revoked, suspended or denied; or

(l) Demonstrates a lack of fitness to engage in business activities authorized for a licensee under this act.

(2) The director may, after notice and the opportunity for a hearing, impose upon any licensee, or person required to be licensed under this act, a civil penalty of not more than five thousand dollars (\$5,000) for each violation of this act.

(3) The director may, after notice and the opportunity for a hearing, impose upon a licensee, or person required to be licensed under this act, any sanction authorized by this section if the director finds that an agent of the licensee, or person required to be licensed under this act, has violated any provision of this act.

(4) The director may, in his discretion, and by an order issued in accordance with chapter 52, title 67, Idaho Code, prohibit a licensee from using an individual as an agent if the individual has violated any provision of this act, or any similar statute or rule of another state.

(5) Any denial, suspension or revocation of any license issued under this act shall be governed by chapter 52, title 67, Idaho Code.

[26-2227, added 2008, ch. 347, sec. 7, p. 943.]

26-2228. POWERS OF THE DIRECTOR. In addition to any other duties authorized by law, the director shall:

(1) Administer and enforce the provisions and requirements of this act;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this act, rule or order hereunder;

(3) Conduct examinations of the books and records of licensees related to business activities authorized under this act and conduct investigations as necessary and proper for the enforcement of the provisions of this act, rules or orders hereunder;

(4) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this act; and

(5) Require that all funds collected by the department under this act be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

[26-2228, added 1970, ch. 53, sec. 7, p. 118; am. 1974, ch. 24, sec. 23, p. 744; am. 1974, ch. 154, sec. 6, p. 1379; am. 1995, ch. 211, sec. 4, p. 717; am. 2008, ch. 347, sec. 8, p. 944.]

26-2229. CONTRACTS. (1) Contracts between collection agency licensees or collection agencies required to be licensed under this act and creditor clients shall be in writing.

(2) It shall be a violation of this act for any collection agency contract to:

(a) Authorize a collection agency to retain any sums collected on behalf of a creditor client, other than the regular collection fees or commissions authorized by this act;

(b) Penalize a creditor client for any unintentional error, mistake or omission in furnishing the correct name or address of any debtor to a collection agency; or

(c) Require the payment of any fee, commission or compensation in excess of fifty percent (50%) of the amount actually collected on any account, bill, claim or other indebtedness entrusted to the collection agency for collection. However, in the case that a collection agency collects interest on an account, the creditor client and the collection agency may agree in writing for division of such interest between them without such percentage limitation. Furthermore, in the case of the collection of checks dishonored by nonacceptance or nonpayment, the creditor client and the collection agency, by written agreement between them, may provide, in place of a percentage fee, for the payment of a set dollar amount collection fee not to exceed the amount provided in section 28-22-105, Idaho Code, which shall not be subject to the fifty percent (50%) limitation. Collection agreements to proceed under section 1-2301A, Idaho Code, shall be subject to the fifty percent (50%) limitation.

(3) (a) No debt counselor, credit counselor or credit repair organization licensed or required to be licensed under this act shall take or receive for services performed for any one (1) person more than fifteen percent (15%) of the amount received by it at any one (1) time from or on behalf of that person for payment or prorating to creditors, and no other charges shall be made or received for any such service.

(b) Debt counselors or credit counselors who do not receive, hold or disburse funds from debtors for payment to creditors shall not charge or accept as a fee for their services more than twenty percent (20%) of the principal amount of the debtor's unsecured debt at the time of contract-

ing for services for the management of debt. In the event of cancellation of the contract by the debtor prior to its successful completion, the debt counselor or credit counselor shall refund fifty percent (50%) of any collected fees associated with the amount of debt remaining unsettled at the time of the termination of the contract.

[26-2229, added 1970, ch. 53, sec. 8, p. 118; am. 1973, ch. 263, sec. 1, p. 538; am. 1974, ch. 24, sec. 24, p. 744; am. 1982, ch. 107, sec. 1, p. 306; am. 1984, ch. 47, sec. 8, p. 81; am. 1995, ch. 211, sec. 5, p. 718; am. 1996, ch. 373, sec. 4, p. 1270; am. 1997, ch. 370, sec. 3, p. 1178; am. 2008, ch. 347, sec. 9, p. 945.]

26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING -- PROHIBITED PRACTICES. (1) Every licensee or person required to be licensed under this act and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this act.

(2) When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against collection agencies licensed or required to be licensed under the provisions of this act.

(3) In every instance where a collection agency licensee has a managerial or financial interest in a creditor client, or where a creditor client has a managerial or financial interest in a collection agency licensee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness.

(4) No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:

- (a) Are expressly authorized by statute;
- (b) Are allowed by court ruling against the debtor;
- (c) Have been judicially determined;
- (d) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or
- (e) Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the method of payment and has been notified in advance that such payment may be made by reasonable alternative means that will not result in additional charges, fees or expenses to the debtor.

(5) No person shall sell, distribute or make use of solicitations, collection letters, demand forms or other printed matter which are made similar to or resemble governmental forms or documents, or legal forms used in civil or criminal proceedings.

(6) No person shall use any trade name, address, insignia, picture, emblem or any other means which creates any impression that such person is connected with or is an agency of government.

(7) No person licensed, or required to be licensed under this act, shall misappropriate, transfer, or convert to his own use or benefit, funds be-

longing to or held for another person in connection with business activities authorized under this act.

(8) No credit repair organization licensed, or required to be licensed under this act, shall charge or receive money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(9) No person licensed or required to be licensed under this act shall make a representation or statement of material fact, or omit to state a material fact, in connection with the offer, sale or performance of any service authorized under this act, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading.

[26-2229A, added 1973, ch. 263, sec. 2, p. 538; am. 1993, ch. 165, sec. 1, p. 417; am. 1995, ch. 211, sec. 6, p. 719; am. 1997, ch. 370, sec. 4, p. 1180; am. 2008, ch. 347, sec. 10, p. 946.]

26-2230. BRANCH OFFICES. A licensee must register, in a manner prescribed by the director, each additional place of business from which activities authorized under this act are directly or indirectly conducted in this state. Registered locations shall be considered branches of the licensee. The licensee shall inform the director of the opening of a branch location at least thirty (30) days prior thereto, and no later than thirty (30) days after the closing of any branch location.

[26-2230, added 1995, ch. 211, sec. 8, p. 720; am. 1997, ch. 370, sec. 5, p. 1180; am. 2008, ch. 347, sec. 11, p. 947.]

26-2231. RENEWAL OF LICENSE. (1) On or before the fifteenth day of March of each year, each licensee shall pay to the director a nonrefundable license renewal fee of one hundred dollars (\$100) and shall file with the director a license renewal form providing complete information as required by the director.

(2) Failure to fully comply with the license renewal requirements of this section by the fifteenth day of March of each year shall result in automatic expiration of the license as of that date.

[26-2231, added 1970, ch. 53, sec. 10, p. 118; am. 1984, ch. 47, sec. 9, p. 82; am. 1990, ch. 346, sec. 3, p. 932; am. 2002, ch. 190, sec. 4, p. 547; am. 2008, ch. 347, sec. 12, p. 948.]

26-2232. COLLECTION AGENCY SURETY BONDS. (1) Upon approval of the application and prior to the issuance of a license under this act, the applicant shall file in the department of finance a surety bond in a form prescribed by the director. The bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state, and shall be for the term of the license issued to the applicant. In lieu of the bond required by this section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho may be provided to the director in the same principal amount as required for the bond. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to do business under this act. The certificate of deposit must provide that it will remain in effect for at least three (3) years following discontinuance of operations, unless released earlier by the director when all statutory requirements have been met.

(2) The surety bond shall be executed to the state of Idaho in the sum of fifteen thousand dollars (\$15,000) or upon renewal in such larger sum as hereinafter provided. In any case where a licensee or its representatives have failed to account for and pay over the proceeds of any collection made or money received for payment or prorating to creditors, or have failed to return to a debtor any sum received that was not to be applied to his debts, the creditor or debtor shall have in addition to all other legal remedies a right of action in his own name on such bond without the necessity of joining the licensee in such action. The bond shall be continuous in form and shall remain in full force and effect for the license period. The surety may cancel the bond provided that the surety shall in such event provide the licensee and the director with notice no less than thirty (30) days prior to cancellation of said bond. Such notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond.

(3) Upon renewal of a license, the licensee shall supply the director with a statement of the preceding year's net collections. The amount of the bond upon renewal shall be in the amount of fifteen thousand dollars (\$15,000), or two (2) times the average monthly net collections for the preceding year computed to the next highest one thousand dollars (\$1,000), whichever sum is greater, up to a maximum of one hundred thousand dollars (\$100,000).

[26-2232, added 1970, ch. 53, sec. 11, p. 118; am. 1987, ch. 296, sec. 1, p. 632; am. 1987, ch. 301, sec. 1, p. 639; am. 1999, ch. 277, sec. 1, p. 691; am. 2008, ch. 347, sec. 13, p. 948.]

26-2232A. DEBT COUNSELORS, CREDIT COUNSELORS, CREDIT REPAIR ORGANIZATIONS -- BONDS. (1) Upon approval of the application and prior to the issuance of a license under this act, an applicant for a license as a debt counselor, credit counselor or credit repair organization shall file in the department of finance a surety bond in a form prescribed by the director. The bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state, and shall be for the term of the license issued to the applicant. In lieu of the bond required by this section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho may be provided to the director in the same principal amount as required for the bond. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to do business under this act. The certificate of deposit must provide that it will remain in effect for at least three (3) years following discontinuance of operations, unless released earlier by the director when all statutory requirements have been met.

(2) The surety bond shall be executed to the state of Idaho in the sum of fifteen thousand dollars (\$15,000) or upon renewal in such larger sum as hereinafter provided. In any case where a licensee or its representatives have failed to account for and pay over moneys accepted, received or held for another in the licensee's conduct of business authorized by this act, a person injured thereby shall have, in addition to all other legal remedies, a right of action in his own name on such bond without the necessity of joining the licensee in such action. The bond shall be continuous in form and shall remain in full force and effect for the license period. The surety may cancel

the bond provided that the surety shall in such event provide the licensee and the director with notice no less than thirty (30) days prior to cancellation of the bond. Such notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond.

(3) Upon renewal of a license, the licensee shall supply the director with a statement of the moneys accepted, received or held for another in the licensee's conduct of business authorized by this act. The amount of the bond upon renewal shall be in the amount of fifteen thousand dollars (\$15,000), or two (2) times the average monthly amount over the preceding year of moneys accepted, received or held for another in the licensee's conduct of business authorized by this act computed to the next highest one thousand dollars (\$1,000), whichever sum is greater, up to a maximum of one hundred thousand dollars (\$100,000).

[26-2232A, added 2008, ch. 347, sec. 15, p. 950.]

26-2233. LICENSEE ACCOUNTS REQUIRED. (1) Every licensee under this act that receives or holds funds belonging to another in connection with the business activities authorized by this act shall, in its own name, establish and maintain a separate trust account for deposit and remittance of such funds in a financial institution, the deposits of which are insured by the federal deposit insurance corporation. A licensee may not, directly or indirectly, misappropriate, misapply or borrow money held in trust.

(2) Every licensee under this act shall establish and maintain a separate business account for the licensee's business funds and moneys in a financial institution, the deposits of which are insured by the federal deposit insurance corporation.

[26-2233, added 1970, ch. 53, sec. 12, p. 118; am. 1983, ch. 252, sec. 1, p. 672; am. 1995, ch. 211, sec. 9, p. 720; am. 1997, ch. 370, sec. 6, p. 1181; am. 2008, ch. 347, sec. 16, p. 950.]

26-2234. EXAMINATIONS, INVESTIGATIONS, RECORDS AND PAYMENT OF FUNDS. (1) The director or his duly authorized representative may make an annual examination, or more frequently in the director's discretion, of the licensee's business locations from which activities authorized under this act are conducted, and for that purpose the director shall have free access during normal business hours to the offices and places of business, and to the books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults used by a licensee for its operations under this act.

(2) The director may conduct public or private investigations and examinations within or outside of this state which the director considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act. For that purpose the director shall have free access during normal business hours to the offices and places of business, and to the books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults used by a licensee for its operations under this act.

(3) The cost of examination and any investigation shall be paid to the director by each licensee so examined or investigated and the director may maintain an action for the recovery of such costs against the licensee or

against the surety providing the bond to indemnify the state for such expenditures as required by this act. The cost shall be fixed annually by the director, but shall not exceed fifty dollars (\$50.00) per hour.

(4) Each collection agency licensee shall acknowledge in writing each account received for collection and shall maintain a record of such account, and shall make a permanent record of all sums collected and of all disbursements made. Every collection agency licensee shall keep and preserve all records relating to accounts received for collection, moneys collected, receipts, and disposal or disbursement of all creditors' funds for a period of three (3) years after the final disposition of any account. It shall be unlawful for any person to intentionally make any false entry, omit to make a necessary entry, mutilate, secrete away, destroy or otherwise dispose of any record referenced in this subsection, provided a record may be disposed of after the three (3) year period heretofore provided.

(5) Every collection agency licensee shall, within thirty (30) days following the end of each calendar month, remit to his creditor clients all funds due them resulting from collections made by the licensee during said calendar month. Such licensees shall provide each of their creditor clients a written statement of all moneys collected on behalf of such creditor clients and any payments made to such creditor clients within thirty (30) days following the end of each calendar month.

(6) Every licensee shall maintain books and records, including financial records in accordance with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this act.

(7) The director may impound the accounts, including all operating and trust accounts held in any financial institution, of any licensee or person required to be licensed under this act who receives, holds or disburses consumer funds, if the director deems it in the public interest and good cause exists therefor, in accordance with section 67-5247, Idaho Code.

[26-2234, added 1970, ch. 53, sec. 13, p. 118; am. 1974, ch. 24, sec. 25, p. 744; am. 1993, ch. 165, sec. 2, p. 418; am. 2002, ch. 190, sec. 5, p. 548; am. 2008, ch. 347, sec. 17, p. 951.]

26-2236. SUBPOENAS. The director shall have the power to issue subpoenas as necessary to determine whether a person has violated any provision of this act, rule or order thereunder, to swear witnesses and to take the testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in district courts of this state in civil cases. Any party to a proposed revocation or suspension of a license shall have the right of subpoena to compel the attendance of witnesses and produce all reasonably necessary books and writings on his behalf. In case any witness shall fail or refuse to comply with a subpoena to appear before the director, the clerk of the district court of the county in which the administrative proceedings are held shall, upon demand of the director, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of a subpoena issued by the district court.

[26-2236, added 1970, ch. 53, sec. 15, p. 118; am. 1993, ch. 165, sec. 4, p. 420; am. 2008, ch. 347, sec. 19, p. 952.]

26-2237. FEES -- DISPOSITION OF FUNDS. All fees provided for in this act shall be paid to the director and by him remitted to the state treasurer pursuant to section 59-1014, Idaho Code, and all such funds shall be deposited to the credit of the finance administrative account in the state dedicated fund.

[26-2237, added 1970, ch. 53, sec. 16, p. 118; am. 1974, ch. 24, sec. 27, p. 744; am. 1984, ch. 47, sec. 10, p. 83; am. 2008, ch. 347, sec. 20, p. 953.]

26-2238. VIOLATIONS -- PENALTIES. (1) Any person who engages in activities authorized under this act, who fails to establish and maintain a separate trust account as required under this act, or fails to disburse funds in accordance with the requirements of this act, or misappropriates, transfers, or converts to his own use or benefit, funds belonging to or held for another person, shall, upon conviction, be guilty of a felony punishable by a fine not to exceed five thousand dollars (\$5,000) per violation or by imprisonment for not more than five (5) years, or both.

(2) Any person, except a person exempt under section 26-2239, Idaho Code, who engages in activities authorized under this act without first obtaining a license as required by this act shall, upon conviction, be guilty of a felony punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for not more than five (5) years, or both.

(3) Any person who shall fail to comply with any of the other provisions of this act shall, upon conviction, be guilty of a misdemeanor.

[26-2238, added 1970, ch. 53, sec. 17, p. 118; am. 1997, ch. 370, sec. 8, p. 1182; am. 2008, ch. 347, sec. 21, p. 953.]

26-2239. EXEMPTIONS. The provisions of this act shall not apply to the following:

(1) Persons licensed to practice law in this state, to the extent that they are retained by their clients to engage in activities authorized by this act, and such activities are incidental to the practice of law. Such exemption shall not apply to an attorney engaged in a separate business conducting the activities authorized by this act;

(2) Any regulated lender as defined in section 28-41-301, Idaho Code, and its subsidiary, affiliate or agent, to the extent that the regulated lender, subsidiary, affiliate or agent collects for the regulated lender or engages in acts governed by this act which are incidental to the business of a regulated lender;

(3) Any bank, trust company, credit union, insurance company or industrial loan company authorized to do business in this state;

(4) Any federal, state or local governmental agency or instrumentality;

(5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state while engaged in acts authorized by his real estate license;

(6) Any person authorized to engage in escrow business in this state while engaged in authorized escrow business;

(7) Any mortgage company engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code, except a mortgage company engaged in a separate business conducting the activities authorized by this act;

(8) Any court-appointed trustee, receiver or conservator;

(9) Any telephone corporation as defined in subsection (14) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent;

(10) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom he is so related or affiliated and if the principal business of such person is not the collection of debts.

[26-2239, added 1970, ch. 53, sec. 18, p. 118; am. 1990, ch. 346, sec. 6, p. 935; am. 1993, ch. 165, sec. 5, p. 420; am. 2003, ch. 112, sec. 1, p. 355; am. 2008, ch. 347, sec. 22, p. 953; am. 2013, ch. 54, sec. 8, p. 119; am. 2015, ch. 244, sec. 9, p. 1011.]

26-2240. AGENT IDENTIFICATION -- QUARTERLY NOTICE -- FEE. Each applicant for a license under this act, with its initial license application, and each licensee at annual renewal, shall file with the director a list of all agents including the name of each agent and any other identifying information the director may require. A fee of twenty dollars (\$20.00) for each listed agent shall accompany the list. Each licensee shall notify the director in writing of any additions to its agent list no less often than every calendar quarter. A fee of twenty dollars (\$20.00) shall be paid to the director for each additionally identified agent in the quarterly notification of additions to a licensee's agent list. An agent is not required to be listed, nor the fee paid therefor, unless the agent acted for the licensee for more than thirty (30) business days.

[26-2240, added 1997, ch. 370, sec. 10, p. 1182; am. 2008, ch. 347, sec. 23, p. 954.]

26-2243. PROPERTY RIGHT IN ACCOUNTS -- PRACTICE OF LAW PROHIBITED. A licensee under this act shall have a property right in any account assigned to it for collection; provided, however, no right herein granted shall authorize such licensee to engage in the practice of law.

[26-2243, added 1970, ch. 53, sec. 22, p. 118; am. 2008, ch. 347, sec. 24, p. 954.]

26-2244. CEASE AND DESIST ORDERS, PENALTY. (1) Whenever it appears to the director that it is in the public interest, he may order any person to cease and desist from acts, practices, or omissions which constitute a violation of this act or a rule adopted or an order issued under this act.

(2) Whenever, after notice and the opportunity for a hearing, the director finds that any person has engaged in any act, practice, or omission constituting a violation of any provision of this act or a rule adopted or an order issued under this act, the director may order the person to cease and desist from such acts, practices or omissions and:

(a) Impose a civil penalty of not more than five thousand dollars (\$5,000) for each violation upon any person found to have violated any provision of this act or a rule adopted or an order issued under this act;

(b) Issue an order restoring to any person in interest any consideration that may have been acquired or transferred in violation of this act or a rule adopted or an order issued under this act; and

(c) Issue an order that the person violating this act or a rule adopted or an order issued under this act pay costs, which in the discretion of the director may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts.

[26-2244, added 1970, ch. 53, sec. 23, p. 118; am. 1974, ch. 24, sec. 28, p. 744; am. 1990, ch. 346, sec. 9, p. 936; am. 1993, ch. 165, sec. 7, p. 421; am. 2002, ch. 190, sec. 6, p. 549; am. 2008, ch. 347, sec. 25, p. 955.]

26-2245. DIRECTOR'S POWER TO ENJOIN VIOLATIONS. (1) Whenever it appears to the director that any person, or employee or agent thereof, has engaged in or is about to engage in any act or practice or omission constituting a violation of any provision of this act, or any rule or order issued hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts, practices or omissions and to enforce compliance with this act or any rule adopted or order issued hereunder. Upon a showing that a person, or employee or agent thereof, has engaged in or is about to engage in an act, practice or omission constituting a violation of this act or any rule adopted or order issued hereunder, a permanent or temporary injunction, or restraining order shall be granted and a receiver or conservator may be appointed, which may be the director, for the defendant's assets. The director shall not be required to furnish a bond.

(2) In addition to the foregoing, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated any provision of this act or rule adopted or order issued hereunder, may be granted the following additional remedies:

(a) An order restoring to any person in interest any consideration that may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, rule or order issued hereunder, pay a civil penalty to the department in an amount not to exceed five thousand dollars (\$5,000) for each violation;

(c) An order allowing the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts; and

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

[26-2245, added 1970, ch. 53, sec. 24, p. 118; am. 2002, ch. 190, sec. 7, p. 549; am. 2008, ch. 347, sec. 26, p. 955.]

26-2246. CLOSURE OR DISCONTINUANCE OF OPERATIONS -- REQUIREMENTS. (1) Whenever the operations of a collection agency licensee under this act are closed or discontinued due to revocation, termination, or relinquishment of a collection agency license, or for any other reason, the collection agency shall, within thirty (30) days following the closure or discontinuance of operations, furnish the director with sufficient proof in a form to be determined by the director that:

(a) The collection agency has remitted to all of its creditor clients all moneys collected on their behalf and due such creditor clients;

(b) All collection accounts, judgments obtained, and other accounts have been returned to the creditor clients or other proper parties,

and if appropriate, assigned by the collection agency to its creditor clients or other proper parties; and

(c) All valuable papers, documents, judgments and other property provided to the collection agency by its creditor clients or other parties in connection with the collection agency's collection activities have been returned to the creditor clients or other proper parties.

(2) A collection agency which holds a license issued pursuant to this act, upon closure or discontinuance of its operations, shall maintain the bonds required of such licensee to conduct a collection agency business until a final accounting of its affairs, as set forth in subsection (1) of this section, has been filed with and approved by the director.

(3) Whenever the operations of a collection agency are closed or discontinued as set forth in subsection (1) of this section, in the event the collection agency does not complete all requirements of such subsection within thirty (30) days following the closure or discontinuance of operations, upon demand by the director, the collection agency shall permit the director to take possession of its business records, bank accounts, including creditor client trust accounts, other property belonging to its creditor clients or third parties, and its assets. The director may then liquidate the collection agency's business, return any moneys owed to the collection agency's creditor clients, return the collection agency's accounts to its creditor clients, return or assign any judgments to the agency's creditor clients, and take any other actions which are reasonably necessary to cause the collection agency to liquidate its assets and to comply with subsection (1) of this section.

(4) If a collection agency refuses to permit the director to take possession of its business records, bank accounts, creditor client trust accounts, other property belonging to its creditor clients or third parties and its assets, as set forth in subsection (3) of this section, the director may apply to a court of competent jurisdiction in the county of the collection agency's principal place of business for the appointment of a receiver or conservator as set forth in section 26-2245(1), Idaho Code. Such receiver or conservator may be the director.

(5) The expenses of the receiver or conservator and attorney's fees, and all expenses necessarily incurred in liquidation of the collection agency, shall be paid out of the funds in the control of the director or conservator, to the extent those funds exceed any sums due and owing to the collection agency's creditor clients or other proper parties. To the extent funds in the control of the receiver are not sufficient to pay all sums due and owing to the collection agency's creditor clients or other proper parties and to pay the costs of a receiver or conservator and of liquidation of the collection agency, the collection agency and its owners, shareholders, or interest holders shall be responsible for the balance of any reasonably necessary costs and fees of liquidation.

[26-2246, added 2008, ch. 347, sec. 28, p. 956.]

26-2247. INSTITUTION OF CRIMINAL PROCEEDINGS. The director may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, either of whom may in his discretion, with or without such a reference, institute appropriate criminal proceedings under this act.

[26-2247, added 1970, ch. 53, sec. 26, p. 118.]

26-2248. ADMINISTRATION OF ACT. The administration of the provisions of this act shall be under the general supervision and control of the director, subject to chapter 52, title 67, Idaho Code. The director may from time to time adopt, amend, and rescind rules and issue orders necessary to carry out the provisions of this act. No rule or order may be made unless the director finds that the action is necessary or appropriate for the public interest or for the protection of the public consistent with the purposes of this act.

[26-2248, added 1970, ch. 53, sec. 27, p. 118; am. 2008, ch. 347, sec. 29, p. 957.]

26-2249. JUDICIAL REVIEW OF FINAL ORDERS OF DIRECTOR. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of chapter 52, title 67, Idaho Code.

[26-2249, added 1970, ch. 53, sec. 28, p. 118; am. 1993, ch. 216, sec. 12, p. 596.]

26-2251. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[26-2251, added 2008, ch. 347, sec. 31, p. 957.]

CHAPTER 23
BANK SERVICE CORPORATIONS -- [REPEALED]