

TITLE 26  
BANKS AND BANKING

CHAPTER 27  
BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS

26-2701. PURPOSE OF CHAPTER. The purposes of this chapter are to:

(1) Promote economic development by encouraging the formation of business and industrial development corporations, a new type of private institution, to help meet the financing assistance and management assistance needs of business firms.

(2) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development corporations to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration pursuant to section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. section 636(a), and other programs for which they may be eligible.

(3) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate recordkeeping, and appropriate communication with shareholders in order to provide the following:

(a) Comfort to prospective shareholders in order to facilitate equity investments in business and industrial development corporations;

(b) Comfort to prospective debt sources in order to facilitate the borrowing of money by business and industrial development corporations; and

(c) Protection of the general reputation of business and industrial development corporations as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be expended or granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

[26-2701, added 1989, ch. 252, sec. 1, p. 602; am. 2002, ch. 145, sec. 1, p. 407.]

26-2702. DEFINITIONS. For the purposes of this chapter:

(1) "Advisor" means a person who regularly provides legal, accounting, or management services or advice to a licensee.

(2) "Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person who also controls the specified person.

(3) "Associate" means, if used with respect to a licensee:

(a) A controlling person, director, officer, agent, or advisor of that licensee.

(b) A director, officer, or partner of a person referred to in paragraph (a).

(c) A person who controls, is controlled by, or is under common control with a person referred to in paragraph (a) directly or indirectly through one or more intermediaries.

(d) Any close relative of any person referred to in paragraph (a).

(e) A person of which a person referred to in paragraphs (a) through (d) is a director or officer.

(f) A person in which a person referred to in paragraphs (a) through (d), or any combination of those persons acting in concert, owns or controls, directly or indirectly, a twenty percent (20%) or greater equity interest.

(g) A person who is in a relationship referred to in this subsection, within six (6) months before or after a licensee provides financing assistance, shall be considered to be in that relationship as of the date that licensee provides that financing assistance.

(h) If a licensee, in order to protect its interests, designates a person to serve as a director of, officer of, or in any capacity in the management of a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of the business firm for a period of thirty (30) days or more.

(4) "BIDCO" means a business and industrial development corporation licensed under this chapter.

(5) "Business firm" means a person that transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.

(6) "Close relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

(7) "Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.

(8) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through one or more intermediaries, the management and policies of that specified person, whether through the ownership of voting securities; by contract, other than a commercial contract for goods or nonmanagement services; or otherwise. A natural person shall not be considered to control a person solely on account of being a director, officer, or employee of that person. A person who, directly or indirectly, owns of record or beneficially holds with power to vote, or holds proxies with discretionary authority to vote, twenty percent (20%) or more of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control that corporation.

(9) "Controlling person" means, if used with respect to a specified person, a person who controls that specified person, directly or indirectly through one or more intermediaries.

(10) "Corporate name" means the name of a corporation as set forth in the articles of incorporation of that corporation.

- (11) "Department" means the department of finance.
- (12) "Director" means the director of the department of finance.
- (13) "Idaho corporation" means a corporation incorporated pursuant to title 30, Idaho Code.
- (14) "Idaho nonprofit corporation" means a not-for-profit corporation incorporated pursuant to title 30, Idaho Code.
- (15) "Incorporating statute" means that part of title 30, Idaho Code, under which a licensee is incorporated.
- (16) "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due, or whose liabilities exceed its assets.
- (17) "Interests of the licensee" includes the interests of shareholders of the licensee.
- (18) "License" means a license issued under this chapter authorizing an Idaho corporation to transact business as a BIDCO.
- (19) "Licensee" means an Idaho corporation which is licensed under this chapter.
- (20) "Officer" means:
- (a) If used with respect to a corporation, a person appointed or designated as an officer of that corporation by or pursuant to applicable law or the articles of incorporation, or bylaws of that corporation, or a person who performs with respect to that corporation functions usually performed by an officer of a corporation.
- (b) If used with respect to a specified person other than a natural person or a corporation, a person who performs with respect to that specified person functions usually performed by an officer of a corporation with respect to that corporation.
- (21) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the director. Order includes a condition of a license and an agreement made by a person with the director under this chapter.
- (22) "Person" means an individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government, or any other organization. If used with respect to acquiring control of or controlling a specified person, person includes a combination of two (2) or more persons acting in concert.
- (23) "Principal shareholder" means a person that owns, directly or indirectly, of record or beneficially, securities representing ten percent (10%) or more of the outstanding voting securities of a corporation.
- (24) "Short-term financing assistance" means financing assistance with a term of not more than five (5) years.
- (25) "Subject person" means a controlling person, subsidiary, or affiliate of a licensee; a director, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee; or any other person who participates in the conduct of the business of a licensee.
- (26) "Subsidiary" means, if used with respect to a licensee, a company or business firm which the licensee holds control of as permitted by section 26-2718(1)(b), (c) or (d), Idaho Code.
- (27) "This chapter" includes an order issued or rule promulgated under this chapter.

[26-2702, added 1989, ch. 252, sec. 1, p. 602.]

26-2703. POWERS OF DIRECTOR. (1) The director shall administer this chapter. The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with chapter 52, title 67, Idaho Code. The director may promulgate rules pursuant to this chapter and chapter 52, title 67, Idaho Code, prior to the effective date of this chapter.

(2) Whenever the director issues an order or license under this chapter, the director may impose conditions that are necessary, in the opinion of the director, to carry out this chapter and the purposes of this chapter.

(3) The director may honor applications from interested persons for declaratory rulings regarding any provisions of this chapter and may seek declaratory judgments from a court of competent jurisdiction.

(4) Every final order, decision, license, or other official action of the director under this chapter is subject to judicial review in accordance with law.

(5) The director is hereby authorized to use a reasonable amount of excess funds, if the director deems them to be available, from the finance administrative account for the purpose of preparing and distributing informational materials describing the provisions of this chapter.

[26-2703, added 1989, ch. 252, sec. 1, p. 605.]

26-2704. APPLICATIONS -- INVESTIGATIONS -- SERVICE OF PROCESS. (1) An application filed with the director under this chapter shall be in such a form and contain such information as the director may require.

(2) The director may make public or private investigations within or outside this state that the director considers necessary to determine whether to approve an application filed with the director under the provisions of this chapter, to determine whether a person has violated or is about to violate the provisions of this chapter, to aid in the enforcement of the provisions of this chapter or to aid in issuing an order or promulgating a rule under this chapter.

(3) For purposes of an investigation, examination, or other proceeding under this chapter, the director may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant or material to the proceeding.

(4) If a person fails to comply with a subpoena issued by the director or to testify with respect to a matter concerning which the person may be lawfully questioned, the court, on application of the director, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

(5) Service of process authorized to be made by the director in connection with a noncriminal proceeding under this chapter may be made by registered or certified mail.

[26-2704, added 1989, ch. 252, sec. 1, p. 605.]

26-2705. FEES. (1) The director shall set the fees required under this chapter at a level sufficient to cover the department's expenses which arise due to the administration of the provisions of this chapter provided, the fees shall be set within the parameters set forth in this section.

(a) The fee for filing an application for a license shall not exceed twenty-five hundred dollars (\$2,500).

(b) The fee for filing an application for approval to acquire control of a licensee shall not exceed twelve hundred and fifty dollars (\$1,250).

(c) The fee for filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee shall not exceed twelve hundred and fifty dollars (\$1,250). If two (2) or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application shall be the quotient determined by dividing the applicable fee set by the director by the number of the applications.

(d) The annual fee for a licensee shall not exceed twenty-five hundred dollars (\$2,500), payable on or before June 30 of each year.

(e) Whenever the director examines a licensee or a subsidiary of a licensee, within ten (10) days after receiving a statement from the director, the licensee shall pay a fee established by the director based on the number of examiner hours used for the examination, plus travel expenses. Examiner time shall be billed at a rate not less than twenty-five dollars (\$25.00) per hour and not more than forty dollars (\$40.00) per hour.

(2) A fee for filing an application with the director is nonrefundable and shall be paid at the time the application is filed with the director.

(3) A fee collected under this section shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code. Money in this account shall be used only for the operation of the department.

[26-2705, added 1989, ch. 252, sec. 1, p. 606.]

26-2706. REQUIRED RECORDKEEPING -- INDEPENDENT AUDIT -- APPLICATION TO OUTSIDE RECORDKEEPERS -- REPORT REQUIRED. (1) A licensee shall make and keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) The director may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value. In addition, the director may require an appraisal of any assets of a licensee by an independent appraiser approved by the director.

(3) The director may require a licensee to file with the director, not more than ninety (90) days after the close of each calendar year or a longer period if specified by the director, an audit report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is an Idaho non-profit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant subject to approval by the director in accordance with generally accepted accounting principles.

(b) An unqualified report, certificate, or opinion of the independent certified public accountant or independent public accountant subject

to approval by the director who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Other information that the director may require.

(4) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this chapter applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(5) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this chapter applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(6) If the director considers it expedient, the director may require any particular licensee to obtain the approval of the director before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

(7) Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the director such reports as and when the director may require. A report shall be in such a form and shall contain such information as the director may require.

[26-2706, added 1989, ch. 252, sec. 1, p. 606; am. 2001, ch. 86, sec. 1, p. 221.]

26-2707. ANNUAL REPORT TO LEGISLATURE REQUIRED. (1) The director shall publish annually and provide to the house business committee and senate commerce and labor committee, or the appropriate germane legislative committees, information on the impact of this chapter in promoting economic development in this state. At a minimum, the information shall include aggregate statistics on each of the following:

(a) The number and dollar amount of provisions of financing assistance made by licensees to business firms.

(b) The number and dollar amount of provisions of financing assistance made by licensees to business firms classified in broad categories of industry such as divisions of the standard industrial classification manual.

(c) The number and dollar amount of provisions of financing assistance made by licensees to minority owned business firms and to woman owned business firms.

(d) Estimates of the number of jobs created or retained.

(e) Estimates of the number and dollar amount of any financial assistance provided to licensed BIDCOs, or investments in individual licensed BIDCOs, for the purpose of fostering economic development by any state or federal agency, or by public or quasi-public entities, including the public employee retirement system.

[26-2707, added 1989, ch. 252, sec. 1, p. 607; am. 2002, ch. 145, sec. 2, p. 407.]

26-2708. ANNUAL LICENSE REVIEW BY DIRECTOR. (1) The director shall examine each licensee not less than once each calendar year to determine whether or not the licensee is in compliance with the provisions of this chapter.

(2) The director may at any time examine a licensee or subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the director, or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary, shall exhibit to the director, on request, any of the books, accounts, and other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as it is in their power to do so.

(4) If in the director's opinion it is necessary in the examination of a licensee or of a subsidiary of a licensee, the director may retain a certified public accountant, attorney, appraiser, or other person to assist the director. Within ten (10) days after receipt of a statement from the director, the licensee being examined shall pay the fees of a person retained by the director under this subsection.

[26-2708, added 1989, ch. 252, sec. 1, p. 608.]

26-2709. REQUIREMENTS FOR LICENSURE. (1) An Idaho corporation may apply to the director for licensure as a BIDCO. A person other than an Idaho corporation shall not apply for a license.

(2) After a review of information regarding the directors, officers, and controlling persons of the applicant, a review of the applicant's business plan, including at least three (3) years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines all of the following:

(a) The applicant has a net worth, or firm financing commitments which demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO as determined under subsection (3) of this section.

(b) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; each director and officer of the applicant is competent to perform his or her functions with respect to the applicant; and the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO.

(c) It is reasonable to believe that the applicant, if licensed, will comply with this chapter.

(d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

(3) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO, the director shall consider the types and variety of financing assistance that the applicant plans to provide; the experience that the directors, officers, and controlling persons of the applicant have in providing financing and managerial assistance to business firms; the financial projections and other relevant information from the applicant's business plan; and whether the applicant intends to operate as a profit or nonprofit corporation. Except as otherwise provided in this chapter, the director shall require a minimum net worth of not less than one million dollars (\$1,000,000) and not more than ten million dollars (\$10,000,000). The director may require a minimum net worth of

less than one million dollars (\$1,000,000), but not less than five hundred thousand dollars (\$500,000), if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

(4) For the purposes of subsection (2) of this section, the director may find any of the following:

(a) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person, or a director or officer of a controlling person, has been convicted of, entered a plea of guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(b) That it is not reasonable to believe that an applicant, if licensed, will comply with this chapter, if the applicant has been convicted of, entered a plea of guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(5) For purposes of subsection (2) of this section, subsection (4) of this section shall not be considered to be the only grounds upon which the director may find that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with the provisions of this chapter.

[26-2709, added 1989, ch. 252, sec. 1, p. 608; am. 2002, ch. 145, sec. 3, p. 408.]

26-2710. PRELIMINARY APPROVAL -- DENIAL IN WRITING -- POSTING OF LICENSE. (1) A person may apply to the director for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors and officers of the applicant have not been identified, the director may grant preliminary approval. In issuing an order granting preliminary approval, the director shall indicate that, for the director to determine that the requirements of section 26-2709, Idaho Code, are satisfied, final approval is conditioned on review by the director of the applicant's completion of fund-raising, including the controlling persons, and review by the director of the completion of the roster of directors and officers. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the director may request an updated balance sheet and such other information considered relevant by the director.

(2) If a person files an application under this section, the fee required in section 26-2705(1)(a), Idaho Code, is payable at the time the application is filed with the director.

(3) If the director denies an application under this section or section 26-2709, Idaho Code, the director shall provide the applicant with a written statement explaining the basis for the denial.

(4) If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the director shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

[26-2710, added 1989, ch. 252, sec. 1, p. 609.]

26-2711. USE OF BIDCO NAME RESTRICTED -- EXCEPTION. (1) Except as otherwise provided in subsection (2) of this section, a person transacting business in this state, other than a licensee, shall not use a name or title which indicates that the person is a business and industrial development corporation including, but not limited to, use of the term "BIDCO," and shall not otherwise represent that the person is a business and industrial development corporation or a licensee.

(2) Before being issued a license under this chapter, an Idaho corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a business and industrial development corporation, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such a corporation shall not represent that it is a licensee until after the license has been obtained. A licensee shall not misrepresent the meaning or effect of its license.

[26-2711, added 1989, ch. 252, sec. 1, p. 610; am. 2002, ch. 145, sec. 4, p. 409.]

26-2712. DUAL LICENSURE -- EXCEPTIONS. (1) An Idaho corporation that is licensed under another law of this state or under any law of the United States may apply for and be issued a license under this chapter unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States violates this chapter or is contrary to the purposes of this chapter.

(2) An Idaho corporation that is licensed under this chapter may apply for and be issued a license under another law of this state or a law of the United States unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States would violate this chapter or would be contrary to the purposes of this chapter.

[26-2712, added 1989, ch. 252, sec. 1, p. 610.]

26-2713. SURRENDER OF LICENSE. (1) Upon approval of a two-thirds (2/3) vote of its board of directors and after complying with subsection (2) of this section, a licensee may apply to the director to have the director accept the surrender of the licensee's license. If the director determines that the requirements of this section have been satisfied, the director shall approve the application unless in the opinion of the director the purpose of the application is to evade a current or prospective action by the director pursuant to this chapter.

(2) Not less than sixty (60) days before filing an application with the director under subsection (1) of this section, a licensee shall notify all of its shareholders and all of its creditors of its intention to file the application. Each creditor shall be notified of the right to comment to the director. Each shareholder shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the sixty (60) day period and shall be advised that, if the shareholder files an objection, the shareholder should send a copy of the objection to the director. If shareholders representing twenty percent (20%) of the outstanding voting securities of the licensee file an objection, the licensee shall not proceed with the application under subsection (1) of this section unless the application is approved by a vote of shareholders representing two-thirds (2/3) of the outstanding voting securities of the licensee.

[26-2713, added 1989, ch. 252, sec. 1, p. 610.]

26-2714. CORPORATE NAME -- DIRECTORS -- DIVIDENDS -- RESTRICTION ON USE OF PUBLIC MONEYS. (1) The corporate name of each licensee may include the phrase "Business and Industrial Development Corporation" or may include the word "BIDCO." A licensee shall not transact business under a name other than its corporate name.

(2) The board of directors of each licensee shall consist of not less than seven (7) directors. The board of directors of each licensee shall hold a meeting not less than once each calendar quarter.

(3) Within thirty (30) days after the death, resignation, or removal of a director or officer; the election of a director; or the appointment of an officer, the licensee shall notify the director in writing of the event and shall provide any additional information which the director may require.

(4) A licensee shall not pay, or obligate itself to pay, a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the licensee and approved by the director. In reviewing dividend policies under this section, the director shall be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs, while at the same time protecting against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO. The director may at any time withdraw any previous approval of a dividend policy if the director determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(5) Without the prior approval of the director, a licensee shall not buy back, or obligate itself to buy back a share of stock from a shareholder.

(6) Any public moneys received by a licensee shall be applied by the licensee solely to providing financing assistance or management assistance to business firms with a home office in Idaho.

[26-2714, added 1989, ch. 252, sec. 1, p. 611; am. 2002, ch. 145, sec. 5, p. 409.]

26-2715. OFFICES -- LOCATION. (1) A licensee shall maintain not less than one (1) office in this state.

(2) A licensee, with the approval of the director, may maintain an office at any place outside this state.

(3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

(5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(6) Upon written notice to the director, a licensee may establish, relocate, or close an office.

[26-2715, added 1989, ch. 252, sec. 1, p. 612; am. 2001, ch. 86, sec. 2, p. 222.]

26-2716. BUSINESS ACTIVITIES -- CORPORATE POWERS. (1) The business of a licensee shall be the business of providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.

(2) In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all powers and privileges conferred by its in-

corporating statute which are not inconsistent with or limited by this chapter. The powers of a licensee include, but are not limited to, all of the following:

(a) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock and warrants to purchase stock.

(b) To make contracts. Such contracts may include contracts to provide management assistance to business firms, which contracts shall be in writing, and the terms of which shall govern all aspects of the relationship between the licensee and the business firm regarding the management assistance provided by the licensee.

(c) To incur and pay necessary and incidental operating expenses.

(d) To purchase, receive, hold, lease, or otherwise acquire, or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

(e) To make donations for charitable, educational, research, or similar purposes.

(f) To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee.

[26-2716, added 1989, ch. 252, sec. 1, p. 612; am. 2002, ch. 145, sec. 6, p. 410.]

26-2717. FORMS OF FINANCIAL AND MANAGEMENT ASSISTANCE -- INTEREST RATES. (1) A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans; purchase of debt instruments; straight equity investments such as purchase of common stock or preferred stock; debt with equity features such as warrants to purchase stock, convertible debentures, or receipt of a percent of net income or sales; royalty based financing; guaranteeing of debt; or leasing of property. A licensee may purchase securities of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration pursuant to section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636(a) or any successor statute, or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with the requirements of that program.

(2) Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

(3) Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

(4) A licensee may exercise the incidental powers that are necessary or convenient to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(5) In connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a business entity, the parties may agree to any rate of interest.

[26-2717, added 1989, ch. 252, sec. 1, p. 612.]

26-2718. BIDCO ACQUIRING ANOTHER FIRM -- APPLICATION -- REQUIREMENTS. (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate; another licensee; or a director, officer, principal shareholder, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(a) If and to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm, a licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm. Unless the director approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest which constitutes holding control as soon as practicable or within three (3) years after acquiring that interest, whichever is sooner.

(b) With the approval of the director, a licensee may acquire and hold control of a corporation which is licensed as a small business investment company under the small business investment act of 1958, Public Law 85-699, 72 Stat. 689 or any successor statute.

(c) With the approval of the director, a licensee may acquire and hold control of a company which is a local development company in accordance with the small business investment act of 1958, whether or not such a development company is or may become certified by the small business administration under section 503 of the small business investment act of 1958, 15 U.S.C. section 697 or any successor statute.

(d) With the approval of the director, a licensee may acquire and hold control of another business firm which is engaged in no business other than the business of providing financing assistance and management assistance to business firms.

(e) With the approval of the director, a licensee may acquire and hold control of a business firm not referred to in paragraphs (a) through (d) of this subsection. The director shall not approve an application under this subdivision unless the director determines that such an approval will not cause the amount of the licensee's investments in business firms covered by this subdivision to exceed fifteen percent (15%) of the amount of the assets of the licensee and that in the director's judgment such an approval will promote the purposes of this chapter. An approval by the director under this subdivision shall be for a period of not more than three (3) years, except that in a particular case the director may subsequently extend the period beyond three (3) years if the director determines that a longer period is needed and is consistent with the purposes of this chapter.

(2) If the director fails to issue an order approving or denying an application under subsection (1) (b) or (c) of this section, within forty-five (45) days from receipt by the director of an application which complies with

section 26-2704, Idaho Code, the application shall be considered approved by the director.

(3) For the purposes of subsection (1) of this section, "hold control" means ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(a) For a business firm with outstanding voting securities held by fewer than fifty (50) shareholders, forty percent (40%) of the outstanding voting securities.

(b) For a business firm with outstanding voting securities held by fifty (50) or more shareholders, twenty-five percent (25%) of the outstanding voting securities.

(4) If a licensee anticipates acquiring and holding control of a business firm under subsection (1) (a) of this section, the licensee shall file with the director a plan for acquiring and holding control of the business firm that shall include at least all of the following:

(a) The reasons it is necessary for the licensee to acquire and hold control of the business firm.

(b) The percentage of outstanding voting securities of the business firm the licensee plans to own.

(c) The licensee's proposed course of action upon obtaining control of the business firm.

(d) The length of time the licensee anticipates it will be necessary to hold control of the business firm.

(5) The director may require the licensee to demonstrate the necessity for the licensee to hold control of a business firm under subsection (1) (a) of this section.

[26-2718, added 1989, ch. 252, sec. 1, p. 613; am. 2002, ch. 145, sec. 7, p. 411.]

26-2719. SOUND BUSINESS PRACTICES REQUIRED. (1) A licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(2) In determining whether a licensee is transacting business in a safe and sound manner or has committed an unsafe or unsound act, the director shall not consider the risk of a provision of financing assistance to a business firm, unless the director determines that the risk is so great compared with the realistically expected return as to demonstrate gross mismanagement.

(3) The provisions of subsection (2) of this section do not limit the authority of the director to do any of the following:

(a) Determine that a licensee's financing assistance to a single business firm or a group of affiliated business firms is in violation of subsection (1) of this section or constitutes an unsafe or unsound act, if the amount of that financing assistance is unduly large in relation to the total assets or the total shareholders equity of the licensee.

(b) Require that a licensee maintain a reserve in the amount of anticipated losses.

(c) Require that a licensee have in effect a written financing assistance policy, approved by its board of directors, including credit evaluation and other matters. The director shall not require that a licensee adopt a financing assistance policy that contains standards which prevent the licensee from exercising needed flexibility in eval-

uating and structuring financing assistance to business firms on a deal by deal basis.

[26-2719, added 1989, ch. 252, sec. 1, p. 614.]

26-2720. CONFLICT OF INTEREST -- DEFINED. (1) For purposes of this section:

(a) "Associate" means that term as defined in section 26-2702, Idaho Code.

(b) "Relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

(2) If a licensee provides financing assistance to a business firm or engages in another business transaction, and if that financing assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the financing assistance or engages in the transaction shall not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the transaction did not involve a potential conflict of interest. Each person who participates in the decision of the licensee relating to a transaction described in this section and has knowledge of a potential conflict of interest involving that transaction shall disclose the potential conflict of interest in the financing documents of the transaction or, for a business transaction not involving financing assistance, in another appropriate document.

(3) For the purposes of subsection (2) of this section, transactions engaged in by a licensee which involve a potential conflict of interest include, but are not limited to, the following:

(a) Providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee.

(b) Providing financing assistance to a business firm to which a principal shareholder of the licensee: a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee, or a person controlled by a principal shareholder of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm which has or is expected to have a substantial business relationship with another business firm which has a director, officer, or controlling person who is also a director, officer, or controlling person of the licensee or who is the spouse of a director, officer, or controlling person of the licensee.

(d) Providing financing assistance to a business firm if that business firm, or a director, officer, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

(e) Providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal shareholder of the licensee.

(4) Nothing in this section or in any other section of this chapter limits the authority of the director to determine that an act involves a conflict of interest and therefore is an unsafe or unsound act.

(5) Except with the approval of the director, a licensee shall not provide a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person.

[26-2720, added 1989, ch. 252, sec. 1, p. 615; am. 2002, ch. 145, sec. 8, p. 412.]

26-2721. ACQUISITION OF BIDCO -- APPROVAL REQUIRED. (1) Without the prior approval of the director, a person shall not acquire control of a licensee.

(2) With respect to an application for approval to acquire control of a licensee, if the director determines, that the applicant and the directors and officers of the applicant are of good character and sound financial standing; that it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with this chapter; and that the applicant's plans, if any, to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee, the director shall approve the application. If, after notice and a hearing, the director determines otherwise, the director shall deny the application.

(3) For purposes of subsection (2) of this section, the director may determine any of the following:

(a) That an applicant or a director or officer of an applicant is not of good character if that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director or officer of the licensee and that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(4) The conditions described in subsection (3) of this section are not the only conditions upon which the director may determine that an applicant or a director or an officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

[26-2721, added 1989, ch. 252, sec. 1, p. 616.]

26-2722. MERGER -- REQUIREMENTS -- APPLICATIONS. (1) A licensee shall not merge with another corporation unless:

(a) The licensee is the surviving corporation and the merger is approved by the director.

(b) The licensee is a disappearing corporation, the surviving corporation is a licensee and the merger is approved by the director.

(2) A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the director.

(3) A licensee shall not sell all or substantially all of its business or of the business of any of its offices to another person unless that other person is a licensee and the sale is approved by the director.

(4) The director shall approve an application for approval of a merger, purchase, or sale, if, and only if, the director determines all of the following:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee.

(b) That, upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with this chapter.

(c) That the merger, purchase, or sale will not have a major detrimental impact on competition in the providing of financial assistance or management assistance to business firms, or if there will be such a detrimental impact, the merger, purchase, or sale is necessary in the interests of the safety and soundness of any of the parties to the merger, purchase, or sale, or is otherwise, on balance, in the public interest.

[26-2722, added 1989, ch. 252, sec. 1, p. 617.]

26-2723. VIOLATION OF CHAPTER -- DIRECTOR'S POWERS -- HEARINGS -- CEASE AND DESIST. (1) If in the opinion of the director, a person violates, or there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may bring an action in the district court to enjoin the violation or to enforce compliance with the provisions of this chapter. Upon a showing that a person has engaged in or is about to engage in, an act or practice constituting a violation of the provisions of this chapter, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the director to post a bond in an action brought under this chapter.

(2) If the director finds that a person has violated or that there is reasonable cause to believe that a person is about to violate the provisions of section 26-2711, Idaho Code, the director may order the person to cease and desist from the violation unless and until the person is issued a license.

(3) Within thirty (30) days after an order is issued under subsection (2) of this section, the person to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A person to whom an order is directed under subsection (2) of this section may petition for judicial review of the order in conformance with the provisions of chapter 52, title 67, Idaho Code.

(4) If, after notice and the opportunity for a hearing, the director determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate this chapter or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate in an unsafe or unsound act with respect to the business of that licensee, the director may order that licensee or subject person to cease and desist from the action or violation. The order may require the

licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(5) If the director determines that any of the factors set forth in subsection (4) of this section are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (4) of this section, the director may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(6) Within thirty (30) days after an order is issued under subsection (5) of this section, the licensee or subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the director shall affirm, modify, or rescind the order. A licensee or subject person to whom an order is directed under subsection (5) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(7) If the director finds that a licensee has failed to comply with the provisions of section 26-2717(5), Idaho Code, the director shall revoke the certification of eligible equity investment and shall so notify the licensee promptly.

[26-2723, added 1989, ch. 252, sec. 1, p. 617; am. 2002, ch. 145, sec. 9, p. 413.]

26-2724. VIOLATION OF CHAPTER -- REMOVAL OF SUBJECT PERSON. (1) The director may issue an order removing a subject person of a licensee from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and the opportunity for a hearing, the director determines all of the following are true:

(a) The subject person has violated the provisions of this chapter or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The director may issue an order removing the subject person from his office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the

licensee, except with the prior consent of the director, if, after notice and the opportunity for a hearing, the director determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the director determines that the factors set forth in subsection (1) or (2) of this section are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interest of the licensee or for the protection of the public interest that the director immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the director may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the director.

(4) Within thirty (30) days after an order is issued under subsection (3) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to begin a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person of a licensee to whom an order is issued under subsection (3) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(5) A person to whom an order is directed under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office," if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

[26-2724, added 1989, ch. 252, sec. 1, p. 619; am. 2002, ch. 145, sec. 10, p. 415.]

26-2725. INDICTMENT OR CONVICTION OF A CRIME -- REMOVAL OF SUBJECT PERSON. (1) If the director determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending the subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the director.

(2) If the director determines that a subject person or former subject person of a licensee to whom an order was directed under subsection (1) of this section, or another subject person of a licensee, has been convicted of, entered a plea of guilty to, has been found guilty of a crime which is punishable by imprisonment for a term of not less than one (1) year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending or removing the subject person or former subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the director.

(3) Within thirty (30) days after an order is issued under subsection (1) or (2) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person or former subject person of a licensee to whom an order is directed under subsection (1) or (2) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the director from issuing an order concerning the subject person under any other provision of this chapter.

(5) A person to whom an order is directed under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office," if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

[26-2725, added 1989, ch. 252, sec. 1, p. 620; am. 2002, ch. 145, sec. 11, p. 416.]

26-2726. DISCLOSURE TO SHAREHOLDERS -- BOARD OF DIRECTORS. (1) If, in the opinion of the director, disclosure to shareholders regarding a matter is warranted, the director may require a licensee, in such a form and manner as the director may specify, to disclose to the shareholders of a licensee the results of a communication or order from the director addressed to the licensee or to a subject person of the licensee.

(2) If the director considers it expedient, the director may call a meeting of the board of directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than five (5) days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the director.

(3) If the director considers it expedient, the director may call a meeting of the shareholders of a licensee by giving notice of the time, place, and purpose of the meeting not less than five (5) days before the meeting to each shareholder either by personal service or by registered or certified mail sent to the shareholder's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection.

[26-2726, added 1989, ch. 252, sec. 1, p. 621.]

26-2727. ORDER TO REFRAIN FROM OFFERING FINANCIAL ASSISTANCE -- CONDITIONS -- HEARING. (1) The director may issue an order directing a licensee to refrain from providing any additional financing assistance and management assistance to business firms if, in the opinion of the director, the order is necessary to protect the interest of the licensee or the public interest, and if, after notice and a hearing, the director determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated the provisions of this chapter or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the director determines that any of the factors set forth in subsection (1) of this section are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or the public interest that the director immediately issue an order directing the licensee to refrain from providing any additional financing assistance and management assistance to business firms, the director may issue such an order without a hearing. Within thirty (30) days after an order is issued under this subsection, the licensee to whom the order is directed may file with the director a request for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order.

(3) With the consent of the director, a licensee which has been the subject of an order under subsection (1) or (2) of this section may resume pro-

viding financing assistance and management assistance to business firms under such conditions as the director may prescribe.

(4) A person to whom an order is directed under subsection (1) or (2) of this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this chapter.

[26-2727, added 1989, ch. 252, sec. 1, p. 621; am. 2002, ch. 145, sec. 12, p. 417.]

26-2728. APPOINTMENT OF TRUSTEE -- LIQUIDATION OF THE BIDCO -- PROCEDURE. (1) If the director finds that any of the factors set forth in section 26-2727, Idaho Code, are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the director take immediate possession of the property and business of the licensee, the director may appoint a conservator for the licensee. The director may appoint as conservator one (1) of the employees of the department or some other competent and disinterested person. The department shall be reimbursed out of the assets of the conservatorship for all sums expended by the department in connection with the conservatorship as expenses. Upon the approval of the director, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the director, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the director may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions and limitations the director may prescribe.

(3) If in the opinion of the director it is appropriate that the licensee be liquidated, the director may apply to the district court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the director determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under paragraph (c) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under subsection (3) of this section, the receiver shall liquidate the property and business of the licensee in the

manner provided for in chapter 10, title 26, Idaho Code, as if the licensee were a bank.

[26-2728, added 1989, ch. 252, sec. 1, p. 622.]

26-2729. VIOLATION OF CHAPTER -- CIVIL PENALTIES. (1) If, after notice and the opportunity for a hearing, the director finds that a person has violated the provisions of this chapter, he may order that person to pay to the director a civil penalty in the amount the director specifies. However, the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation, or in the case of a continuing violation, one thousand dollars (\$1,000) for each day during which the violation continues. Money collected for a civil penalty under this section shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

(2) The provisions of this section do not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the director, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) of this section are additional to, and not alternative to, other provisions of this chapter which authorize the director to issue orders or to take other action on account of a violation of the provisions of this chapter.

[26-2729, added 1989, ch. 252, sec. 1, p. 623; am. 2002, ch. 145, sec. 13, p. 418.]

26-2730. PROHIBITED ACTS -- EXCEPTIONS -- PENALTIES. (1) A person shall not willfully make an untrue statement of a material fact in an application or report filed with the director under this chapter, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

(2) A person having custody of any of the books, accounts, or other records of a licensee shall not willfully refuse to allow the director, upon request, to inspect or make copies of any of those books, accounts, or other records.

(3) A person shall not, with intent to deceive a director, officer, employee, auditor, or attorney of a licensee, the director or a governmental agency, make a false entry in the books, accounts, or other records of that licensee; omit to make an entry in those books, accounts, or other records which that person is required to make, or alter, conceal, or destroy any of those books, accounts, or other records.

(4) A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

(5) A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to a transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

(6) A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within one (1) year before or after, the providing of financing assistance by the licensee, if

the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

(7) This section does not apply to any of the following:

(a) If the associate is a controlling person of the licensee and is also the only shareholder of the licensee.

(b) If the associate is a subsidiary of the licensee.

(c) A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

(8) An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financing assistance or anything of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to the providing of the financing assistance. This section does not apply to the receipt of fees by an associate of a licensee for bona fide closing services performed by that associate if all of the following are true:

(a) The associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services.

(b) The services are appropriate and necessary in the circumstances.

(c) The fees for the services are approved as reasonable by the licensee.

(d) The fees for the services are collected by the licensee on behalf of the associate.

(9) By such orders or rules the director considers necessary and appropriate, he may exempt from the provisions of subsections (4) through (8), either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the director finds that the exemption is in the public interest and that the regulation of the person, transaction or class is not necessary for the purposes of this chapter.

(10) In exempting a person or transaction or class of persons or transactions, the director shall give consideration, as considered appropriate by the director, to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

(11) A person who knowingly commits an act which violates the provisions of this chapter shall be fined not more than ten thousand dollars (\$10,000) or shall be imprisoned for not more than five (5) years, or both.

(12) The provisions of this section do not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the director, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(13) Nothing in this chapter limits the power of the state to punish a person for an act which constitutes a crime under any statute.

[26-2730, added 1989, ch. 252, sec. 1, p. 624.]

26-2731. CONSTRUCTION -- PROMULGATION OF RULES -- APPLICABILITY OF CHAPTER. This chapter shall be liberally construed to accomplish its purposes.

A proceeding to promulgate rules or a proceeding regarding civil penalties under section 26-2729, Idaho Code, shall be subject to the administrative procedure act contained in chapter 52, title 67, Idaho Code.

Except as otherwise provided in this section, the provisions of a licensee's incorporating statute apply to the licensee. If a provision of the licensee's incorporating statute conflicts with any provision of this chapter, this chapter controls.

[26-2731, added 1989, ch. 252, sec. 1, p. 625; am. 2002, ch. 145, sec. 14, p. 418.]

26-2732. SHORT TITLE. This chapter may be cited as the "Business and Industrial Development Corporation Act."

[26-2732, added 1989, ch. 252, sec. 1, p. 626.]