

TITLE 26  
BANKS AND BANKING

CHAPTER 29  
MONEY TRANSMISSION

26-2901. SHORT TITLE. This chapter may be known and cited as the "Idaho Money Transmitters Act."

[26-2901, added 1994, ch. 410, sec. 1, p. 1282.]

26-2902. DEFINITIONS. Unless otherwise indicated, the following definitions shall apply to the terms set forth below wherever such terms are used in this chapter:

(1) "Applicant" means a person filing an application for a license under the provisions of this chapter.

(2) "Authorized representative" means an entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

(3) "Control" means ownership of, or the power to vote, twenty-five percent (25%) or more of the outstanding voting securities of a licensee or controlling person.

(4) "Controlling person" means any person in control of a licensee. On application the director shall determine whether a particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for good cause shown.

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

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

(7) "Executive officer" means the licensee's president, chief executive officer, treasurer, chief financial officer and any other person who performs similar functions.

(8) "Key shareholder" means any person, or group of persons acting in concert, who is the owner of twenty-five percent (25%) or more of any class of an applicant's stock.

(9) "Licensee" means a person licensed under the provisions of this chapter.

(10) "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to the financial health of a business and would be required to be referenced in the business's annual audited financial statements, report to shareholders or similar documents.

(11) "Money transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

(12) "Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or by an authorized representative of the licensee, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee.

(13) "Payment instrument" means any check, draft, money order, traveler's check or other instrument or written order for the transmission or

payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

(14) "Permissible investments" means:

(a) Cash;

(b) Certificate of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(d) Any investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities;

(g) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange; or

(h) Receivables which are due to a licensee from its authorized representatives pursuant to a contract described in section 26-2918, Idaho Code, which are not past due or doubtful of collection; or any other investments approved by the director.

(15) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(16) "State" means the state of Idaho.

[26-2902, added 1994, ch. 410, sec. 1, p. 1282.]

26-2903. LICENSE REQUIRED. (1) On or after the effective date of this act, no person except a person exempt pursuant to the provisions of section 26-2904, Idaho Code, shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter.

(2) A licensee may conduct its business in this state at one (1) or more locations, directly or indirectly owned, or through one (1) or more authorized representatives, or both, pursuant to the single license granted to the licensee.

(3) The director may permit multiple corporations, which are directly or indirectly commonly controlled, to engage in activities under the provisions of this chapter, pursuant to a single bond or other security device in satisfaction of the requirements of section 26-2908, Idaho Code.

[26-2903, added 1994, ch. 410, sec. 1, p. 1284.]

26-2904. EXEMPTIONS. (1) This chapter shall not apply to:

(a) The United States or any department, agency or instrumentality of the United States;

(b) The United States post office;

(c) The state or any political subdivision of the state; and

(d) Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks; and

(2) Authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to the requirements of section 26-2918, Idaho Code, shall not be required to obtain a license pursuant to this chapter.

[26-2904, added 1994, ch. 410, sec. 1, p. 1284.]

26-2905. LICENSE QUALIFICATIONS. (1) Each licensee licensed under the provisions of this chapter shall at all times have a net worth of not less than fifty thousand dollars (\$50,000), calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one (1) location or through authorized representatives shall have an additional net worth of twenty-five thousand dollars (\$25,000) per location or authorized representative located in the state, as applicable, to a maximum of two hundred fifty thousand dollars (\$250,000).

(2) Every corporate applicant, at the time of filing of an application for a license under the provisions of this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. All noncorporate applicants shall, at the time of the filing of an application for a license under the provisions of this chapter and at all times after a license is issued, have all necessary registrations or qualifications to do business in this state.

[26-2905, added 1994, ch. 410, sec. 1, p. 1284.]

26-2906. PERMISSIBLE INVESTMENTS. Each licensee licensed under the provisions of this chapter must at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to section 26-2908, Idaho Code. Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee, and shall be immune from attachment by creditors or judgment holders.

[26-2906, added 1994, ch. 410, sec. 1, p. 1285; am. 1999, ch. 274, sec. 1, p. 688.]

26-2907. LICENSE APPLICATION. Each application for a license under the provisions of this chapter shall be made in writing, under oath, and in a form prescribed by the director. Each application shall contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records;

- (b) The history of the applicant's material litigation for the five (5) year period prior to the date of the application and any nontraffic related criminal convictions or withheld judgments;
  - (c) A description of the activities conducted by the applicant and a history of operations;
  - (d) A description of the business activities in which the applicant seeks to be engaged in this state;
  - (e) A list identifying the applicant's proposed authorized representatives in this state;
  - (f) A sample authorized representative contract, if applicable;
  - (g) A sample form of payment instrument, if applicable;
  - (h) The location(s) at which the applicant and its authorized representatives, if any, propose to conduct the licensed activities in this state; and
  - (i) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.
- (2) If the applicant is a corporation, the applicant must also provide:
- (a) The date of the applicant's incorporation and state of incorporation;
  - (b) A certificate of good standing from the state in which the applicant was incorporated;
  - (c) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;
  - (d) The name, business and residence address, and employment history for the past five (5) years of the applicant's executive officers and the officer(s) or manager(s) who will be in charge of the applicant's activities to be licensed hereunder;
  - (e) The name, business and residence address, and employment history for the five (5) year period preceding the date of the application of any key shareholder of the applicant;
  - (f) The history of material litigation and nontraffic related criminal convictions or withheld judgments for the five (5) year period preceding the date of the application of every current director, executive officer, or key shareholder of the applicant;
  - (g) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding two (2) year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two (2) year period or the parent corporation's form 10K reports filed with the United States securities and exchange commission for the prior three (3) years may be submitted with the applicant's unaudited financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision. In the event any applicant does not otherwise

obtain audited financial statements, such applicant shall, in lieu of audited financial statements required in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled, or reviewed financial statements as the applicant shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to the applicant's bank or other lending institution; and

(h) Copies of all filings, if any, made by the applicant with the United States securities and exchange commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(3) If the applicant is not a corporation, the applicant must also provide:

(a) The name, business and residence address, personal financial statement and employment history, for the five (5) year period prior to the date of the application, of each principal of the applicant and the name, business and residence address, and employment history for the past five (5) years of any other person or persons who will be in charge of the applicant's activities to be licensed hereunder;

(b) The place and date of the applicant's registration or qualification to do business in this state;

(c) The history of material litigation for the five (5) year period prior to the date of the application and any nontraffic related criminal convictions or withheld judgments for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the immediately preceding two (2) year period. In the event any applicant does not otherwise obtain audited financial statements, such applicant shall, in lieu of audited financial statements required in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled or reviewed financial statements as the applicant shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to applicant's bank or other lending institution.

(4) The director is authorized, for good cause shown, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required in this section.

[26-2907, added 1994, ch. 410, sec. 1, p. 1285.]

26-2908. BOND OR OTHER SECURITY DEVICE. (1) Each application must be accompanied by a surety bond, irrevocable letter of credit or such other similar security device, hereinafter referred to as security device, acceptable to the director in the amount of ten thousand dollars (\$10,000). If the applicant proposes to engage in business under the provisions of this chapter at more than one (1) location, through authorized representatives or otherwise, then the amount of the security device will be increased by

five thousand dollars (\$5,000) per location, up to a maximum of five hundred thousand dollars (\$500,000). The security device shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with either the sale and issuance of payment instruments and the transmission of money. In the case of a bond, the aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee or its authorized representatives may themselves bring suit directly on the security device or the director may bring suit on behalf of such claimants, either in one (1) action or in successive actions. Permissible investments required in section 26-2906, Idaho Code, may be pledged as collateral for the surety bond, irrevocable letter of credit, or similar security device required in this section.

(2) In lieu of such security device or of any portion of the principal thereof, as required in this section, the licensee may deposit with the director, or with such banks in this state as the licensee may designate and the director may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, school district or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash, or both, shall be deposited as aforesaid and held to secure the same obligations as would the security device, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the director, to substitute other securities for those deposited, and shall be required to do so on written order of the director made for good cause shown.

(3) The security device shall remain in effect until cancellation, which may occur only after thirty (30) days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during said period.

(4) The security device or deposit in lieu thereof shall remain in place for a period of two (2) years from the date the licensee ceases money transmission operations in this state. Notwithstanding the preceding sentence, the director shall permit the security device or deposit in lieu thereof to be reduced or eliminated prior to the expiration of the two (2) year post-cessation period to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director shall also permit a licensee to substitute a letter of credit or such other form of security device acceptable to the director for the security device, or deposit in lieu thereof, in place at the time the licensee ceases money transmission operations in this state.

(5) Two (2) years following the cessation of money transmission operations in this state, a former licensee has the option to transfer any funds held to pay outstanding payment instruments to the state tax commission, who shall administer said funds in accordance with chapter 5, title 14, Idaho Code.

[26-2908, added 1994, ch. 410, sec. 1, p. 1287.]

26-2909. APPLICATION FEE. Each application must be accompanied by a nonrefundable application fee in the amount of one hundred dollars (\$100)

for the license. The application fee shall also constitute the license fee for the applicant's first year of activities if the license is granted. All fees, fines, examination and miscellaneous charges provided for in accordance with the provisions of this chapter shall be paid to the director and shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

[26-2909, added 1994, ch. 410, sec. 1, p. 1288.]

26-2910. ISSUANCE OF LICENSE. (1) Upon the filing of a complete application, the director shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The director may conduct an on-site investigation of the applicant, the actual cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community, and that the applicant has fulfilled the requirements imposed in this chapter and has paid the required license fee, the director shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state for a term of one (1) year. If these requirements have not been met, the director shall deny the application in writing setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred eighty (180) days from the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application, or consent to the extension of the one hundred eighty (180) day period, the application is deemed approved and the director shall issue the license effective as of the first day after the one hundred eighty (180) day or extended period has elapsed.

(3) Any applicant aggrieved by a denial issued by the director under the provisions of this section may at any time within thirty (30) days from the date of receipt of written notice of the denial contest the denial by serving a response on the director. The director shall set a date for a hearing not later than sixty (60) days after service of the response, unless a later date is set with the consent of the denied applicant.

[26-2910, added 1994, ch. 410, sec. 1, p. 1288.]

26-2911. RENEWAL OF LICENSE AND ANNUAL REPORT. (1) Each licensee shall file with the director an annual report, in a form prescribed by the director, which form shall be sent by the director to each licensee no later than three (3) months immediately preceding the thirtieth day of June of each year, or as the director in his discretion, may determine. The licensee must include each of the following in its annual renewal report:

(a) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position; or, in the case of a licensee that is a wholly owned subsidiary of a parent corporation, the consolidated audited annual financial statement of the parent corporation may be filed with the licensee's unaudited annual financial statement. In the event any licensee does not otherwise obtain audited financial statements, such licensee shall, in lieu of audited financial statements required

in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled or reviewed financial statements as the licensee shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to licensee's bank or other lending institution.

(b) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, the licensee must provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding.

(c) Any material changes in any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the provisions of this chapter.

(d) A list of the licensee's permissible investments; and if an audited financial statement has not been provided, the licensee shall provide a certification by an independent certified public accountant that the licensee has complied with the provisions of section 26-2906, Idaho Code.

(e) A list of the locations within this state at which business regulated by the provisions of this chapter is being conducted by either the licensee or its authorized representative.

(2) A licensee that has not filed an annual report by the renewal filing deadline and has not been granted an extension of time to do so by the director shall be notified by the director, in writing, that a hearing will be scheduled at which time the licensee will be required to show cause why its license should not be suspended pending compliance with this requirement.

[26-2911, added 1994, ch. 410, sec. 1, p. 1289.]

26-2912. EXTRAORDINARY REPORTING REQUIREMENTS. Within fifteen (15) days of the occurrence of any one (1) of the events listed below, a licensee shall file a written report with the director describing such event:

- (1) The filing for bankruptcy or reorganization by the licensee;
- (2) The institution of revocation or suspension proceedings against the licensee by any state or government authority with regard to the licensee's money transmission activities;
- (3) Any felony indictment, complaint or information of the licensee or any of its key officers or directors; or
- (4) Any felony conviction of the licensee or any of its key officers or directors.

[26-2912, added 1994, ch. 410, sec. 1, p. 1290.]

26-2913. CHANGES IN CONTROL OF A LICENSE. (1) Within fifteen (15) days of a change or acquisition of control of a licensee that is a publicly traded corporation or is a direct or indirect subsidiary of a publicly traded corporation, the licensee shall provide notice of such event to the director in writing.

(2) Licensees other than publicly traded corporations or direct or indirect subsidiaries of publicly traded corporations must notify the director in writing thirty (30) days prior to a change of control.

[26-2913, added 1994, ch. 410, sec. 1, p. 1290.]



26-2914. AUTHORITY TO CONDUCT EXAMINATIONS AND INVESTIGATIONS. (1) For the purpose of discovering violations of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may at any time, either personally or by designee, investigate or examine the business and wherever located, the books, accounts, records, papers, documents, files and other information used in the business of every applicant, licensee or its authorized representatives, and of every person who is engaged in the business of providing money transmission services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files and other information; may require that such original books, accounts, papers, documents, records, files and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files or other information. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files or other information. Should the director conclude that an on-site examination of a licensee is necessary, the licensee, subject to the provisions of subsection (2) of this section, shall pay all the actual costs of such examination. If the director determines, based on the licensee's financial statements and past history of operations in the state, that an on-site examination is unnecessary, the on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the director.

(2) In the case of refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or his designee to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt of court. When the director examines a licensee or an authorized representative within this state, the licensee or authorized representative shall pay all the actual costs of such examination, up to a maximum of one thousand dollars (\$1,000).

[26-2914, added 1994, ch. 410, sec. 1, p. 1290; am. 2005, ch. 142, sec. 1, p. 438.]

26-2915. MAINTENANCE OF RECORDS. (1) Each licensee shall make, keep, and preserve the following books, accounts and other records for a period of three (3) years:

- (a) A record or records of payment instruments sold;
- (b) A general ledger containing all asset, liability, capital, income and expense accounts, which general ledger shall be posted at least monthly;
- (c) Settlement sheets, if received from authorized representatives;
- (d) Bank statements and bank reconciliation records;
- (e) Records of outstanding payment instruments;
- (f) Records of each payment instrument paid within the three (3) year period;
- (g) A list of the names and addresses of all of the licensee's authorized representatives, as well as copies of each authorized representative's contract; and
- (h) All reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. sec. 5311, 31 CFR part 103 (2000), and other federal and state laws pertaining to money laundering.

(2) Maintenance of such documents as are required in this section in a photographic or other similar form shall constitute compliance with the provisions of this section.

(3) Records may be maintained at a location other than at a location within this state so long as they are made accessible to the director on seven (7) days' written notice.

[26-2915, added 1994, ch. 410, sec. 1, p. 1291; am. 2005, ch. 142, sec. 2, p. 439.]

26-2916. CONFIDENTIALITY OF DATA SUBMITTED TO THE DIRECTOR. (1) All information or reports obtained by the director from an applicant, licensee or authorized representative, whether obtained through reports, applications, examinations, audits, investigation, or otherwise including, but not limited to:

- (a) All information contained in or related to examination, investigation, operating, or condition reports reported by, on behalf of, or for the use of the director; or
- (b) Financial statements, balance sheets, or authorized representative information;

are confidential trade secrets and may not be disclosed or distributed outside the department in accordance with the provisions of chapter 1, title 74, Idaho Code, by the director or any officer or employee of the department.

(2) The director, however, may provide for the release of information to representatives of state or federal agencies who state in writing that they shall maintain the confidentiality of such information or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under the provisions of this chapter or to release aggregated financial data on such licensees.

[26-2916, added 1994, ch. 410, sec. 1, p. 1291; am. 1997, ch. 60, sec. 3, p. 118; am. 2005, ch. 142, sec. 3, p. 439; am. 2015, ch. 141, sec. 45, p. 415.]

26-2917. SUSPENSION OR REVOCATION OF LICENSES. After notice and opportunity for hearing, the director may suspend or revoke a licensee's license if the director finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying such application;

(2) The licensee's net worth becomes inadequate and the licensee, after ten (10) days' written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;

(3) The licensee violates any provisions of this chapter or any rule or order of the director under the provisions of this chapter or is convicted of a violation of a state or federal money laundering or terrorism law;

(4) The licensee is conducting its business in an unsafe or unsound manner;

(5) The licensee is insolvent;

(6) 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;

(7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

(8) The licensee refuses to permit the director to make any examination authorized in this chapter;

(9) The licensee willfully fails to make any report required in this chapter; or

(10) The licensee, any person who exercises any managerial authority over the licensee's activities, or any of its executive officers or other persons in control of the licensee are listed or become listed on the "specially designated nationals and blocked persons" list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

[26-2917, added 1994, ch. 410, sec. 1, p. 1292; am. 2005, ch. 142, sec. 4, p. 440.]

26-2918. AUTHORIZED REPRESENTATIVE CONTRACTS. Licensees desiring to conduct licensed activities through authorized representatives shall authorize such representative to operate pursuant to an express written contract, which shall provide the following:

(1) That the licensee appoints the person as its representative with authority to engage in money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized representative may authorize subrepresentatives without the written consent of the director;

(3) That licensees are subject to supervision and regulation by the director;

(4) An acknowledgement that the authorized representative consents to the director's inspection, with or without prior notice to the licensee or authorized representative(s), of the books and records of authorized representative(s) of the licensee when the director has a reasonable basis to believe that the licensee or authorized representative is in violation of the provisions of this chapter; and

(5) That authorized representatives are under a duty to act only as authorized under the contract with the licensee and that an authorized representative that exceeds its authority is subject to cancellation of its contract and disciplinary action by the director.

[26-2918, added 1994, ch. 410, sec. 1, p. 1292.]

26-2919. AUTHORIZED REPRESENTATIVE CONDUCT. (1) An authorized representative shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) All money transmission or sale or issuance of payment instrument activities conducted by authorized representatives shall be strictly in accordance with the licensee's written procedures provided to the authorized representative.

(3) An authorized representative shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized representative.

(4) All funds, less fees, received by an authorized representative of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized representative for transmission shall, from the time such funds are received by such authorized representative until such time when the funds or an equivalent amount are remitted by the authorized representative to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized representative commingles any such funds with any other funds owned or controlled by the authorized representative, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(5) An authorized representative shall report to the licensee the theft or loss of payment instruments within twenty-four (24) hours from the time he knew or should have known of such theft or loss.

[26-2919, added 1994, ch. 410, sec. 1, p. 1293.]

26-2920. REVOCATION OR SUSPENSION OF AUTHORIZED REPRESENTATIVES. (1) If, after notice and a hearing, the director finds that any authorized representative of a licensee or any director, officer, employee, or controlling person of such authorized representative:

(a) Has violated any provision of this chapter, or of any rule or order issued under the provisions of this chapter;

(b) Has engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or

(c) Has made or caused to be made in any application or report filed with the director or in any proceeding before the director, any statement which was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein, the director may issue an order suspending or barring such authorized representative from continuing to be or becoming an authorized representative of any licensee during the period for which such order is in effect. Upon issuance of such order, the licensee shall terminate its relationship with such authorized representative according to the terms of the order.

(2) (a) Any authorized representative to whom an order is issued under the provisions of this section may apply to the director to modify or rescind such order. The director shall not grant such application unless the director finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when such per-

son is permitted to resume being an authorized representative of a licensee, comply with all applicable provisions of this chapter and of any rule and order issued under the provisions of this chapter.

(b) The right of any authorized representative to whom an order is issued under the provisions of this section to petition for judicial review of such order shall not be affected by the failure of such persons to apply to the director to modify or rescind the order.

[26-2920, added 1994, ch. 410, sec. 1, p. 1293.]

26-2921. LICENSEE LIABILITY. A license's [licensee's] liability to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized representative shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased.

[26-2921, added 1994, ch. 410, sec. 1, p. 1294.]

26-2922. HEARINGS -- PROCEDURES. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any hearing afforded pursuant to the provisions of this chapter.

[26-2922, added 1994, ch. 410, sec. 1, p. 1294.]

26-2923. CIVIL PENALTIES. (1) If, after notice and hearing, the director finds that a person has violated the provisions of this chapter or a rule adopted under the provisions of this chapter, the director may order the person to pay to the director a civil penalty in an amount specified by the director, not to 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 that the violation continues, but not to exceed twenty-five thousand dollars (\$25,000) in the aggregate. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to such hearing.

(2) The director, in his discretion, is authorized to compromise, settle, and collect civil penalties with any person for violations of any provision of this chapter, or of any rule or order issued or promulgated pursuant to the provisions of this chapter.

[26-2923, added 1994, ch. 410, sec. 1, p. 1294.]

26-2924. ENFORCEMENT. (1) If it appears to the director that any person has committed or is about to commit a violation of any provision of this chapter or of any rule or order of the director, the director may:

(a) Issue a cease and desist order ordering such person to cease and desist violating or continuing to violate any provision of this chapter or any rule or order issued in accordance with this chapter; or

(b) Apply to the district court for an order enjoining such person from violating or continuing to violate any provision of this chapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

(2) The director may enter into consent orders at any time with any person to resolve any matter arising under the provisions of this chapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter or any rule or order promulgated or

issued thereunder has been violated nor need it constitute a finding by the director that such person has violated any provision of this chapter or any rule or order promulgated or issued thereunder.

(3) Notwithstanding the issuance of a consent order, the director may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order unless the consent order by its terms expressly precludes the director from so doing.

[26-2924, added 1994, ch. 410, sec. 1, p. 1294.]

26-2925. CRIMINAL PENALTIES. Any person who knowingly and wilfully violates any provision of this chapter is guilty of a felony.

[26-2925, added 1994, ch. 410, sec. 1, p. 1295.]

26-2926. PROMULGATION OF RULES. All rules promulgated by the director pursuant to authority conferred in this chapter will be in accordance with the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. In addition thereto, at the time the director files a notice of proposed adoption, amendment or repeal of a rule for public comment, a copy of said notice will be sent by regular United States mail, postage prepaid, to all then current licensees and applicants for licenses under the provisions of this chapter.

[26-2926, added 1994, ch. 410, sec. 1, p. 1295.]

26-2927. SEVERABILITY. Should any provision, sentence, clause, section or part of this act for any reason be held unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this act. It is hereby declared to be the intention of this legislature that this act would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

[26-2927, added 1994, ch. 410, sec. 1, p. 1295.]

26-2928. APPOINTMENT OF DIRECTOR AS AGENT FOR SERVICE OF PROCESS. (1) Any licensee, authorized representative or other person who knowingly engages in business activities that are regulated under the provisions of this chapter, with or without filing an application, is deemed to have done both the following:

- (a) Consented to the jurisdiction of the courts of this state for all actions arising under the provisions of this chapter; and
- (b) Appointed the director as his lawful agent for the purpose of accepting service of process in any action, suit or proceeding that may arise under the provisions of this chapter.

(2) Within three (3) business days after service of process upon the director, the director shall transmit by certified mail copies of all lawful processes accepted by the director as an agent to that person at his last known address. Service of process shall be considered complete three (3) business days after the director deposits copies of the documents in the United States mail.

[26-2928, added 1994, ch. 410, sec. 1, p. 1295.]