

TITLE 26
BANKS AND BANKING

CHAPTER 32
TRUST INSTITUTIONS -- GENERAL PROVISIONS

26-3201. TITLE. Chapters 32 through 36, title 26, Idaho Code, shall be known and may be cited as the "Idaho Trust Institutions Act."
[26-3201, added 2000, ch. 288, sec. 8, p. 975.]

26-3202. PURPOSES OF THE ACT. The purposes of this act are to permit:
(1) State banks and state trust companies to engage in the trust business in this state; and
(2) Banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions.
[26-3202, added 2000, ch. 288, sec. 8, p. 975.]

26-3203. DEFINITIONS. The following definitions shall be liberally construed to accomplish the purposes of this act. In this act, unless the context otherwise requires:

(1) "Account" means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust institution acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) Accept or execute trusts, including to:

- (i) Act as trustee under a written agreement;
- (ii) Receive money or other property in its capacity as trustee for investment in real or personal property;
- (iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
- (iv) Act as trustee of the estate of a deceased person; or
- (v) Act as trustee for a minor or incapacitated person;

(b) Administer in any other fiduciary capacity real or tangible personal property; or

(c) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Authorized trust institution" means any state trust company, trust office or representative trust office.

(4) "Bank" has the meaning set forth in 12 U.S.C. 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(5) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the office of thrift supervision and any successor to these agencies.

(6) "Branch" with respect to a depository institution has the meaning set forth in section 26-106, Idaho Code.

(7) "Charter" means the authority issued by the director or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(8) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(9) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust or another trust.

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

(11) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. 1813(c) (2) and (3).

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

(13) "Foreign bank" means a foreign bank, as defined in section 1(b) (7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than this state.

(14) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(15) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(16) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(17) "New trust office" means a trust office located in a host state which:

(a) Is originally established by the trust institution as a trust office; and

(b) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any such trust institution or trust office.

(18) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(19) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state.

(20) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(21) "Out-of-state trust institution" means a trust institution that is not a state trust institution.

(22) "Person" means an individual, a company or any other legal entity.

(23) "Principal office" with respect to:

(a) A state trust company, means a location registered with the director as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one (1) executive officer of the state trust company maintains an office.

(b) A trust institution other than a state trust company, means its principal place of business in the United States.

(24) "Representative trust office" means an office at which a trust institution has been authorized by the director to engage in a trust business other than acting as a fiduciary.

(25) "Savings association" means a depository institution that is neither a bank nor a foreign bank.

(26) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(27) "State bank" means:

(a) A bank which has received a charter from the director authorizing it to operate a trust department; or

(b) A foreign bank as defined in section 1(b)(7) of the international banking act of 1978 chartered to act as a fiduciary in this state.

(28) "State trust company" means a corporation organized under this act and chartered to act as a fiduciary by the state, including a trust company organized under the laws of this state before the effective date of this act.

(29) "State trust institution" means a trust institution having its principal office in this state.

(30) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state including, but not limited to:

(a) Acting as a fiduciary; or

(b) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(31) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(32) "Trust institution" means a depository institution, foreign bank, state bank or trust company.

(33) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the director to act as a fiduciary.

(34) "Unauthorized trust activity" means:

(a) A person, other than one identified in section 26-3204(1), Idaho Code, acting as a fiduciary within this state;

(b) A person engaging in a trust business in this state at any office of such person that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such person, unless the person has been authorized by the director, in his discretion, to engage in a trust business in this state in another manner and upon such conditions as he may require; or

(c) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the director pursuant to section 26-1115, Idaho Code, is in effect.

[26-3203, added 2000, ch. 288, sec. 8, p. 975; am. 2016, ch. 47, sec. 4, p. 102.]

26-3204. PERSONS AUTHORIZED TO ACT AS A FIDUCIARY. (1) No person shall act as a fiduciary in this state except:

(a) A state trust company;

(b) A state bank;

(c) A savings bank organized under the laws of this state and authorized to act as a fiduciary pursuant to the savings bank act, chapter 18, title 26, Idaho Code;

(d) A national bank authorized by the comptroller of the currency to act as a fiduciary pursuant to 12 U.S.C. 92a;

(e) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(f) An out-of-state bank with a branch in this state established or maintained pursuant to the interstate banking act, chapter 26, title 26, Idaho Code, or the interstate branching act, chapter 16, title 26, Idaho Code, or a trust office licensed by the director pursuant to this act;

(g) An out-of-state trust company with a trust office licensed by the director pursuant to this act;

(h) A foreign bank with a trust office licensed by the director pursuant to this act; or

(i) Such other person as may be authorized by the director, in his discretion, and upon such conditions as he may require.

(2) No person shall engage in an unauthorized trust activity.

[26-3204, added 2000, ch. 288, sec. 8, p. 978.]

26-3205. ACTIVITIES NOT REQUIRING A CHARTER. Notwithstanding any other provision of this act, a person does not engage in the trust business or in any other business in a manner requiring a charter under this act, or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(2) Obtaining trust business as a result of an existing attorney-client relationship or certified public accountant-client relationship;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Idaho real estate commission;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Idaho department of finance or the securities and exchange commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Idaho department of insurance to the extent that the activity is regulated by the Idaho department of insurance;

(7) Engaging in the lawful sale of prepaid funeral contracts under a permit issued by the Idaho board of morticians or engaging in the lawful business of a perpetual care cemetery under the Idaho endowment care cemetery act;

(8) Acting as trustee under a voting trust as provided by the Idaho business corporation act;

(9) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(10) Engaging in other activities expressly excluded from the application of this act, by rule of the director;

(11) Acting as a fiduciary for relatives;

(12) Provided the company is a trust institution and is not barred by order of the director from engaging in a trust business in this state pursuant to section 26-1115, Idaho Code:

(a) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(b) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(c) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client;

(13) Acting pursuant to court appointment as:

(a) A personal representative of a decedent's estate; or

(b) A guardian or conservator of an estate;

(14) Acting as a trustee, but only if such person is an individual and does not engage in the trust business as defined in section 26-3203(30), Idaho Code.

[26-3205, added 2000, ch. 288, sec. 8, p. 979; am. 2016, ch. 44, sec. 1, p. 94; am. 2016, ch. 47, sec. 5, p. 105.]

26-3206. TRUST BUSINESS OF STATE TRUST INSTITUTION. (1) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this act, at a branch or at any location other than an office or branch.

(2) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the director applicable to the state trust institution; provided however, that the director may waive any such prohibition if the director determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

[26-3206, added 2000, ch. 288, sec. 8, p. 980.]

26-3207. TRUST BUSINESS OF OUT-OF-STATE TRUST INSTITUTION. An out-of-state trust institution which establishes or maintains one (1) or more offices in this state under this act, may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

[26-3207, added 2000, ch. 288, sec. 8, p. 980.]

26-3208. NAME OF TRUST INSTITUTION. A state trust company or out-of-state trust institution may register any name with the director in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this act, except that the director may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

[26-3208, added 2000, ch. 288, sec. 8, p. 980.]