

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 27
DEPARTMENT OF FINANCE

67-2701. DEPARTMENT OF FINANCE -- CREATION -- DIRECTOR -- ORGANIZATION -- POWERS AND DUTIES. (a) There is hereby created the department of finance. The department shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of state government. The governor shall appoint, with the advice and consent of the senate, a director of the department of finance who shall serve at the pleasure of the governor. The director shall have had at least five (5) years practical experience in the banking business, or shall have served for a like period in the banking division of this or some other state. Neither the director of the department nor any administrator of a division in the department shall be the owner of or financially interested either directly or indirectly in any banking or insurance corporation subject to the supervision of the department.

(b) The department of finance shall be composed of such divisions as are established by law and such other units as may be administratively established. The director of the department shall appoint, subject to the approval of the governor, an administrator for such divisions as may be established. The director shall, subject to the approval of the governor, fix the salary of each administrator.

(c) The director of the department of finance shall have power:

1. To exercise the rights, powers and duties vested by law in the department or in the director.
2. To execute the laws relating to banks and banking.

[(67-2701) 1919, ch. 8, sec. 28, p. 43; C.S., sec. 284; am. 1921, ch. 22, sec. 1, p. 30; am. 1921, ch. 104, sec. 7, p. 233; I.C.A., sec. 65-2601; am. 1933, ch. 146, sec. 1, p. 225; am. 1947, ch. 60, sec. 1, p. 87; am. 1947, ch. 212, sec. 1, p. 497; am. 1974, ch. 24, sec. 2, p. 744.]

67-2702. FEES -- FINES -- MISCELLANEOUS CHARGES. (1) The director of the department of finance shall collect and persons so served shall pay to the director the fees, fines, examination and miscellaneous charges provided for by the laws administered by the director of the department of finance or provided for from time to time by rule promulgated by the director of the department of finance. The director of the department of finance shall increase fees, fines, examination and miscellaneous charges as necessary to allow the department of finance to meet the appropriation as provided for by law.

(2) Finance administrative account:

(a) There is hereby created an account in the dedicated fund in the state treasury, to be designated the "finance administrative account" to provide for the expenses of the department of finance as provided for by law.

(b) The finance administrative account shall be effective December 31, 1984, and be in existence for a period of at least six (6) months prior to the dedicated account appropriation becoming effective and shall consist of the following:

- (i) all moneys appropriated by the legislature.

(ii) all fees, fines, examination and miscellaneous charges collected by the department of finance.

(c) All moneys placed in the account shall be examined, audited and allowed in the manner now or hereinafter provided by law.

(d) Pending use for purposes of the provisions of the laws of this state, moneys in the finance administrative account shall be invested by the state treasurer in the same manner as provided under section [67-1210](#), Idaho Code, with respect to other surplus or idle moneys in the state treasury.

(e) The director of the department of finance shall transmit all fees, fines, examination and miscellaneous charges collected by him to the state treasurer as provided under section [59-1014](#), Idaho Code. The director of the department of finance shall file with the state controller, a statement of each deposit thus made. All such funds received, unless otherwise specifically designated by another section of the law administered by the director of the department of finance shall be deposited into the finance administrative account.

(f) At the beginning of each fiscal year, those moneys in the finance administrative account which exceed the current year's appropriation plus any residual encumbrances made against prior year's appropriations by twenty-five percent (25%) or more shall be transferred to the general account.

[67-2702, added 1984, ch. 47, sec. 17, p. 87; am. 1994, ch. 180, sec. 199, p. 546; am. 1995, ch. 99, sec. 28, p. 325.]

67-2717. POWER TO ISSUE SUBPOENAS AND ADMINISTER OATHS -- OBSTRUCTING EXAMINATION -- PENALTY. The director of the department of finance may issue subpoenas and administer oaths, in the same manner, with the same power to enforce obedience thereof in the performance of his duties, as belongs and pertains to courts of law in this state. Any person refusing access to the department, or the director, to any such books or papers, or officers, agent, clerk, employee or other person aforesaid, or who shall obstruct such access, or who shall refuse to furnish any required information, or who shall in any manner hinder the thorough examination required by this chapter, of the officers or of the books, accounts, papers and finances pertaining to the officers, aforesaid, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or imprisonment in the state penitentiary for a period not exceeding one (1) year, or both.

[(67-2717) 1905, p. 386, sec. 14; reen. R.C., sec. 183; reen. C.L. 12:14; C.S., sec. 298; am. 1923, ch. 164, sec. 12, p. 242; I.C.A., sec. 65-2615; am. 1974, ch. 24, sec. 10, p. 744.]

67-2720. DUTY OF ATTORNEY GENERAL TO AID DEPARTMENT. The attorney general shall when called upon by the department of finance, aid it in any investigation or matter; giving legal advice, and shall supervise the prosecution of all offenders under the provisions of this chapter.

[(67-2720) 1905, p. 386, sec. 17; reen. R.C., sec. 186; reen. C.L. 12:17; C.S., sec. 301; am. 1923, ch. 164, sec. 4, p. 242; I.C.A., sec. 65-2618; am. 1974, ch. 24, sec. 12, p. 744.]

67-2723. EXPENSES OF CARRYING OUT PROVISIONS OF STATE DEPOSITORY LAW -- AUDIT AND PAYMENT. Any expenses incurred in carrying out the provisions of the state depository law shall be audited by the state board of examiners and paid out of the general fund of the state.

[(67-2723) (See 1905, p. 305, sec. 5; R.C., sec. 131.) R.C., sec. 127c, as added by 1915, ch. 168, sec. 2, p. 379; reen. C.L. 13:4; C.S., sec. 304; I.C.A., sec. 65-2621.]

67-2724. OFFICERS AND PERSONS AUTHORIZED TO MAKE INSPECTIONS AND EXAMINATIONS. The governor, state controller, or the department of finance, or any person authorized in writing by them or it, may, during business hours, in the presence of the treasurer or his deputy, inspect and examine the books of account in the office of the treasurer, and all contracts, writings, securities, and other papers belonging to the state, or pertaining to the business thereof, held by the treasurer, and may inspect and count the moneys belonging to this state and the several funds thereof in the custody of the treasurer, and it is hereby made the duty of the state treasurer to furnish all reasonable facilities for the purpose.

And the governor, state treasurer, or the department of finance, or any person authorized in writing by them or it, may, likewise, during business hours, in the presence of the state controller or his deputy, inspect and examine the books of account in the office of the state controller, and all contracts, writings, securities, bonds, and other papers belonging to the state, or pertaining to the business thereof in the custody of the state controller, and it is hereby made the duty of the state controller to furnish all reasonable facilities for the purpose.

[(67-2724) Based upon 1905, p. 305, sec. 5; R.C., sec. 131; R.C., sec. 127d, as added by 1915, ch. 168, sec. 2, p. 379; reen. C.L. 13:5; C.S., sec. 305; am. 1923, ch. 164, sec. 16, p. 242; I.C.A., sec. 65-2622; am. 1994, ch. 180, sec. 200, p. 547; am. 2015, ch. 244, sec. 52, p. 1035.]

67-2725. BANKS ELIGIBLE AS DEPOSITORIES. Any national bank or any state bank or trust company doing a banking business in this state may become a state depository by making application for that purpose to the state treasurer. Provided, as to banking corporations or national banking associations operating branches, that they first comply with section [67-2739](#), Idaho Code.

[(67-2725) Based upon 1905, p. 305, sec.sec. 1, 3 and R.C., sec.sec. 127, 130; am. 1909, p. 363; am. 1911, ch. 122, p. 384; R.C., sec. 128, as added by 1915, ch. 168, sec. 3, p. 380; reen. C.L. 13:6; C.S., sec. 306; I.C.A., sec. 65-2623; am. 1935, ch. 135, sec. 1, p. 326; am. 1976, ch. 238, sec. 1, p. 831; am. 1983, ch. 38, sec. 9, p. 94.]

67-2725A. STATE TREASURER PROHIBITED FROM MAKING DEPOSITS IN BANKS OR TRUST COMPANIES WHICH HAVE FAILED TO PAY ALL STATE AND LOCAL TAXES. The state treasurer shall not deposit moneys of the state in a bank or trust company which has failed to pay all state and local taxes, including corporate income or franchise taxes upon its corporate income or franchise, sales and use taxes upon its purchases of tangible personal property, and real and personal property taxes upon property owned or leased by such bank or trust company.

[67-2725A, added I.C., sec. 67-2725A, as added by 1969, ch. 141, sec. 2, p. 447.]

67-2726. BANKS TO WHICH OFFICIALS SECRETLY INDEBTED INELIGIBLE. No bank is eligible to become or remain a state depository, to which the state treasurer, state controller, or the chief deputy of either of them is directly indebted, unless the fact of such indebtedness is made known to the department of finance, but the amount and character of such indebtedness shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, and said department of finance shall treat such information in strict confidence. Any member of the department violating this provision shall be guilty of a misdemeanor, and punished therefor as provided by law.

In case of a violation by a state depository of this provision, the department of finance shall immediately cause all funds therein to be withdrawn and such bank shall be ineligible again to become a state depository during the incumbency of the official so indebted to said bank.

[(67-2726) R.C., sec. 128a, added 1915, ch. 168, sec. 4, p. 380; reen. C.L. 13:7; C.S., sec. 307; I.C.A., sec. 65-2624; am. 1980, ch. 84, sec. 4, p. 186; am. 1990, ch. 213, sec. 93, p. 554; am. 1994, ch. 180, sec. 201, p. 547.; am. 2015, ch. 141, sec. 168, p. 513.]

67-2737. FUNDS TO BE DEPOSITED. The state treasurer shall deposit, subject to the provisions of this chapter and of section [67-1210](#), Idaho Code, in designated state depositories, all moneys of the state of Idaho coming into his hands.

[(67-2737) Based upon 1905, p. 305, sec. 1; R.C., sec. 127; am. 1909, p. 363; R.C., sec. 130, as added by 1915, ch. 168, sec. 7, p. 385; reen. C.L. 13:18; C.S., sec. 318; I.C.A., sec. 65-2635; am. 1969, ch. 331, sec. 1, p. 1038.]

67-2738. PERMANENT ENDOWMENT FUNDS TEMPORARILY IN HANDS OF TREASURER. All moneys temporarily in the hands of the state treasurer belonging to the permanent charitable, educational, public school or university lands endowment funds, or other funds under the control of the investment board, shall be deposited by him, subject to the provisions of this chapter, pending the investment thereof by the said board, who shall have control of the disposition and investment thereof, as is now or may hereafter be provided by law, and the treasurer shall withdraw the said funds from deposit at all times immediately upon the call of the said board.

[(67-2738) Based upon 1905, p. 305, sec. 10; R.C., sec. 136; am. 1909, p. 362; R.C., sec. 130a, as added by 1915, ch. 168, sec. 8, p. 385; compiled and reen. C.L. 13:19; C.S., sec. 319; am. 1921, ch. 243, sec. 1, p. 534; I.C.A., sec. 65-2636; am. 1974, ch. 24, sec. 15, p. 744.]

67-2739. DESIGNATION OF DEPOSITORY -- REPORTING OF CAPITAL AND SURPLUS. (1) The state treasurer shall designate institutions qualified under this chapter as a state depository or depositories. Such designation shall be determined by competitive bidding or by other means generally accepted as standard business practice. In no case shall the deposit or deposits of state funds in any state depository above the total covered by federal insurance exceed at any one time, in the aggregate, the total of the capital

and surplus of such state depository. In the event that any bank has been designated as a depository under this chapter, such designation shall continue in force until revoked by the treasurer.

(2) Every banking corporation or national banking association designated as a state depository and holding any deposit of the funds of the state of Idaho under the provisions of this section shall, on or before beginning to hold such deposits or the effective date of this act, whichever shall be sooner, file with the state treasurer, the affidavit of one of its officers containing the following:

(a) The amount of the capital stock and surplus of such association or corporation; and

(b) A certification that such association or corporation is not currently engaged in, and will not for the duration of its designation as a state depository engage in, a boycott of any individual or company because the individual or company:

(i) Engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or

(ii) Engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in section [18-3302](#) (2) (d), Idaho Code.

(3) Upon receipt of the affidavit pursuant to subsection (2) of this section, the state treasurer shall determine, subject to the uniform prudent investor act, [chapter 5, title 68](#), Idaho Code, whether to maintain deposits with such banking corporation or national banking association. In the event that such corporation or association has such an affidavit on file with the state treasurer on the effective date of this section, such affidavit or affidavits shall satisfy the requirement of this section until January 31 of the year next following the effective date of this section. Affidavits shall be effective for the purposes of this section for a period of one (1) year following the date of their filing. If such corporation or association is to continue as a designated state depository under this section, a like affidavit shall be filed in like manner for the succeeding year, on or before the date specified by the state treasurer. No such corporation or national banking association shall receive deposits from or act as depository for the funds of the state of Idaho unless and until the affidavit required pursuant to this section is on file with the state treasurer in accordance with this section.

(4) Subsection (2) (b) of this section shall not apply to a state depository designation issued by the state treasurer if the state treasurer determines the requirements of subsection (2) (b) of this section would be inconsistent with the constitutional or statutory duties of the state treasurer or would be contrary to the business needs of the state of Idaho and prevent the state of Idaho from fulfilling its legal duties or obligations.

(5) The state treasurer shall revoke the state depository designation of any banking corporation or national banking association determined by the state treasurer to be currently engaged in any activities prohibited by this section. In determining if a banking corporation or national banking association has engaged in activities prohibited by this section, the state treasurer shall rely only upon publicly available statements or information made by any person authorized to speak on behalf of such corporation or association or in the corporation or association's official external communica-

tions. Prior to any such revocation of a state depository designation, the state treasurer shall provide the banking corporation or national banking association with sixty (60) days' prior written notice identifying the specific prohibited activities at issue and providing the banking corporation or national banking association the opportunity to refute in writing having engaged in the specified prohibited activities. A decision by the treasurer revoking a depository designation may be appealed by the banking corporation or national banking association to district court within twenty-eight (28) days of the treasurer's decision, and the reviewing court shall review the appeal under the standard for appeals set forth in section [67-5279](#), Idaho Code.

(6) The state treasurer is authorized in his or her discretion and from time to time to negotiate for the payment to designated state depositories of reasonable compensation for services rendered in acting as such depositories. The method and/or rate of such compensation and the terms and conditions thereof shall be fixed by the state treasurer after such negotiation, which may include the calling for bids for specific services. All bids received, whether by a formal bidding process or by negotiation, and the compensation fixed by the treasurer, which shall be in the form of a written agreement, shall be a matter of public record.

(7) For the purposes of this section, a boycott means that the banking corporation or national banking association, without a reasonable business purpose, refuses to offer financial services to an individual or organization, terminates business with an individual or organization, or takes another action that is intended to penalize, inflict economic harm on, or limit commercial relations with an individual or organization because the individual or organization:

- (a) Engages in a particular business sector;
- (b) Engages in a particular business sector and does not commit or pledge to meet standards beyond applicable federal and state law; or
- (c) Does business with an individual or organization that engages in a particular business sector.

(8) For purposes of this section, reasonable business purpose means any purpose directly related to:

- (a) Promoting the financial success or stability of a financial institution;
- (b) Mitigating risk to a financial institution;
- (c) Complying with legal or regulatory requirements; or
- (d) Limiting liability of a financial institution.

[67-2739, added I.C., sec. 67-2339, as added by 1973, ch. 66, sec. 3, p. 111; am. 1998, ch. 239, sec. 1, p. 796; am. 2023, ch. 235, sec. 2, p. 730.]

67-2741. EXCESS DEPOSITS. Where the amount to be deposited exceeds the amount which all state depositories in the state are willing to accept on the terms specified in this chapter, the state treasurer may, with the consent of the investment board, deposit the excess in any one (1) or more banks or trust companies in the state designated by the director of the department of finance, or if there be no bank or trust company in the state satisfactory to the investment board which is willing to accept such excess on the terms and conditions specified by the board, then in a bank or banks designated by said board outside the state, having a paidup capital and unimpaired surplus of not less than \$5,000,000, located in a reserve city, as designated by the

United States comptroller of the currency, subject to such regulations, upon such conditions and with such security as the board may fix and determine, and except as in this section otherwise provided and in the special cases for which express statutory provision is made otherwise, the state treasurer shall not deposit the funds of the state in his custody in banks or trust companies located outside the state of Idaho.

[(67-2741) R.C., sec. 130d, as added by 1915, ch. 168, sec. 8, p. 386; reen. C.L. 13:22; C.S., sec. 322; I.C.A., sec. 65-2639; am. 1935, ch. 4, sec. 1, p. 15; am. 1935, ch. 135, sec. 4, p. 326; am. 1969, ch. 331, sec. 4, p. 1038; am. 1974, ch. 24, sec. 17, p. 744.]

67-2742. WITHDRAWAL OF MONEYS FROM DEPOSITORIES -- TIME DEPOSITS. All deposits in state depositories shall be demand deposits or deposits in accounts upon which negotiable orders of withdrawal may be written, or in similar transaction deposit accounts except time deposits of idle moneys, as defined in section [67-1210](#), Idaho Code, which the treasurer is hereby authorized to make. If the proceeds of a time certificate of deposit are not credited or paid to the state treasury on the maturity date of the certificate after demand by the state, the depository shall pay a penalty of one-fourth of one percent (.0025) per day on the principal amount of such certificate commencing on the day following the date of maturity and continuing until the whole amount is credited or paid to the state.

[(67-2742) Based upon 1905, p. 305, sec. 1; R.C., sec. 127; am. 1909, p. 363; R.C., sec. 130e, as added by 1915, ch. 168, sec. 8, p. 386; reen. C.L. 13:23; C.S., sec. 323; am. 1925, ch. 190, sec. 8, p. 349; I.C.A., sec. 65-2640; am. 1969, ch. 331, sec. 5, p. 1038; am. 1970, ch. 122, sec. 1, p. 295; am. 1971, ch. 133, sec. 2, p. 516; am. 1973, ch. 272, sec. 1, p. 569; am. 1976, ch. 42, sec. 40, p. 114; am. 1981, ch. 2, sec. 3, p. 5; am. 1983, ch. 38, sec. 12, p. 95.]

67-2743. INTEREST ON TIME DEPOSITS. Every state depository shall pay interest upon time deposits made by the state treasurer at rates not less than those paid to investors for a deposit of the same amount and under like circumstances and conditions; provided, however, that such time deposits shall bear interest at a rate not in excess of the maximum rate permitted by any applicable government regulation.

[(67-2743) Based upon 1905, p. 305, sec. 1, R.C., sec. 127; am. 1909, p. 363, R.C., sec. 131, as added by 1915, ch. 168, sec. 9, p. 386; reen. C.L. 13:34; C.S., sec. 324; am. 1925, ch. 190, sec. 9, p. 349; I.C.A., sec. 65-2641; am. 1933, ch. 96, sec. 2, p. 151; am. 1937, ch. 100, sec. 1, p. 146, rep. and reen. 1969, ch. 331, sec. 6, p. 1038; am. 1970, ch. 142, sec. 1, p. 423; am. 1971, ch. 134, sec. 2, p. 518; am. 1973, ch. 272, sec. 2, p. 569; am. 1974, ch. 149, sec. 2, p. 1367; am. 1981, ch. 2, sec. 4, p. 6; am. 1981, ch. 146, sec. 2, p. 252; am. 1983, ch. 38, sec. 13, p. 96.]

67-2743E. DISCLOSURE OR USE OF INFORMATION RELATING TO DEPOSITORIES -- PENALTY. Information regarding the solvency of the bank obtained by the board, the department of finance, or office of state treasurer, shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, except that such disclosure is subject to the privilege set out in subsection (3) of section [26-1111](#), Idaho Code, and provided further, that the board, the

department of finance and the office of state treasurer may disclose such information to federal or state bank examiners having a lawful right to examine said bank or to proper officials legally empowered to investigate criminal charges relating to said bank or to any of its directors or employees, provided that the provisions of this section shall not apply to information included as part of the daily, monthly, biennial or other official reports of the state treasurer's office. Any public official who violates any provision of this section shall forfeit his office or employment and shall also be guilty of a felony. Any person who is not lawfully entitled to such information and who attempts to obtain such information illegally or who misuses such information as he may have obtained shall be guilty of a felony.

[67-2743E, added 1969, ch. 331, sec. 11, p. 1047; am. 1970, ch. 155, sec. 1, p. 479; am. 1974, ch. 24, sec. 19, p. 744; am. 1990, ch. 213, sec. 94, p. 555; am. 1993, ch. 187, sec. 3, p. 479; am. 2015, ch. 141, sec. 169, p. 513.]

67-2744. DEPOSITORIES TO RENDER MONTHLY STATEMENTS. The treasurer shall require, and it is hereby made the duty of every such depository to keep accurate accounts of all such moneys deposited with it, showing the amount deposited and when deposited, and to render, at the beginning of each and every month, to the treasurer and to the state controller when requested, a statement, in duplicate, showing the daily balance of the treasurer's moneys held by it during the month next preceding.

[67-2744, added 1905, p. 305, sec. 2; am. 1907, p. 95, sec. 1; reen. R.C., sec. 128; am. R.C., sec. 131a, as added by 1915, ch. 168, sec. 10, p. 387; reen. C.L. 13:25; C.S., sec. 325; am. 1925, ch. 190, sec. 10, p. 349; I.C.A., sec. 65-2642; am. 1937, ch. 100, sec. 2, p. 146; am. 1980, ch. 84, sec. 5, p. 187; am. 1994, ch. 180, sec. 202, p. 547.]

67-2745. DUTY OF TREASURER UPON RECEIPT OF NOTICE OF CANCELLATION. Upon receiving the notice of cancellation hereinbefore provided for, the state treasurer shall cease to make any further deposits in said depository, unless and until it is reinstated by the department of finance and he shall give immediate notice to said depository of his intention to withdraw all time deposits after the expiration of the period fixed by said notice, which period shall be in accordance with the agreement in respect thereto made at the time of the deposit.

He shall withdraw all checking deposits before the expiration of ninety (90) days from the receipt of said notice of cancellation. Such withdrawals shall be made at such times and in such amounts as the treasurer shall deem advisable, subject to the supervisory control of the department of finance, but in no case shall he fail within ten (10) days after receipt of said notice to withdraw at least 25 per cent of the pro rata amount of the treasurer's deposit secured by said bond and to withdraw at least 25 per cent of said amount during every 25-day period thereafter until the whole amount has been withdrawn.

[(67-2745) R.C., sec. 131b, as added by 1915, ch. 168, sec. 10, p. 387; reen. C.L. 13:26; C.S., sec. 326; am. 1925, ch. 190, sec. 11, p. 349; I.C.A., sec. 65-2643.]

67-2746. RESPONSIBILITY FOR LOSS THROUGH INSOLVENCY OF BANK. The state treasurer shall not be liable personally or upon his official bond for any moneys that may be lost by reason of the failure or insolvency of any bank which becomes a depository under the state depository law, except insofar as his violation of any trust devolving upon him as such treasurer or any of the provisions of this chapter shall contribute to such loss.

[(67-2746) Based upon 1905, p. 305, sec. 5; R.C., sec. 131; R.C., sec. 131c, as added by 1915, ch. 168, sec. 10, p. 387; reen. C.L. 13:27; C.S., sec. 327; I.C.A., sec. 65-2644.]

67-2746A. DEPOSIT FOR SAFEKEEPING -- RESPONSIBILITY. The state treasurer may deposit for safekeeping with a state or national bank or a federal reserve bank any bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the moneys of the state of Idaho or its agencies are invested pursuant to law; provided the treasurer shall take from the bank a receipt for the securities deposited. The state treasurer may accept securities in authorized book entry form. The state treasurer shall not be responsible for securities so deposited until they are withdrawn by the treasurer from the bank, except insofar as a violation by the treasurer of the prudent man investment rule contributes to any loss.

[67-2746A, added I.C., sec. 67-2746A, as added by 1974, ch. 147, sec. 2, p. 1362; am. 1983, ch. 38, sec. 14, p. 96.]

67-2747. TREASURER TO MAKE NO PROFIT -- PENALTY. The making of profit, directly or indirectly, by the state treasurer, out of any money in the state treasury, belonging to the state, the custody of which the state treasurer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or the removal by the state treasurer or by his consent, of such moneys, or a part thereof, out of the vault or safe of the treasurer's department, after the same shall have been provided by the state, or out of any legal depository of such moneys, except for the payment of warrants legally drawn, or for the purpose of investing the same, or for the purpose of depositing the same, under the provisions of this chapter, in banks which shall have qualified as depositories, shall constitute a felony, and, on conviction thereof, shall subject the treasurer to imprisonment in the state penitentiary for a term not exceeding two (2) years or a fine not exceeding five thousand dollars (\$5000), or to both such fine and imprisonment, and the treasurer shall be liable upon his official bond for all profits or losses realized from such unlawful use of such funds.

[(67-2747) 1905, p. 305, sec. 6; am. R.C., sec. 132; reen. C.L. 13:28; C.S., sec. 328; I.C.A., sec. 65-2645; am. 1980, ch. 84, sec. 6, p. 187.]

67-2748. NEGLECT OF TREASURER A MISDEMEANOR -- PENALTY. If the state treasurer shall willfully fail or refuse at any time to do or perform any act required of him by the state depository law, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be sentenced to pay a fine not exceeding \$5000.

[(67-2748) 1905, p. 305, sec. 7; reen. R.C., sec. 133; reen. C.L. 13:29; C.S., sec. 329; I.C.A., sec. 65-2646.]

67-2749. BRIBERY OF TREASURER A FELONY -- PENALTY. The offering, or giving, directly or indirectly, by any bank or depository, or by any officer or stockholder thereof, or by any other person or persons in its or their behalf, or by its or their knowledge, acquiescence or authority, or in its or their interest, to the state treasurer, of any gift, compensation, reward or inducement, with the intent or for the purpose of inducing said treasurer to deposit funds of the state in any bank contrary to any law of this state, shall constitute a felony, and shall, upon conviction thereof, subject the party or parties offending to imprisonment in the state penitentiary for a period not exceeding two (2) years, or to a fine not exceeding \$5000, or to both such fine and imprisonment.

[(67-2740) 1905, p. 305, sec. 8; am. R.C., sec. 134; reen. C.L. 13:30; C.S., sec. 330; I.C.A., sec. 65-2647.]

67-2750. SHORT TITLE. This act shall be known and may be cited as the "Idaho Financial Fraud Prevention Act."

[67-2750, added 2005, ch. 265, sec. 2, p. 810.]

67-2751. DEFINITIONS. As used in sections [67-2750](#) through [67-2762](#), Idaho Code:

(1) "Act" or "Idaho Financial Fraud Prevention Act" means sections [67-2750](#) through [67-2762](#), Idaho Code.

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

(3) "Director" means the director of the Idaho department of finance or his designee.

(4) "Financial institution" means any state or federally chartered bank, savings bank, savings and loan association, thrift institution, holding company, credit union, credit union service organization, "regulated lender" as defined in section [28-41-301](#), Idaho Code, collection agency licensed under the Idaho collection agency act, mortgage lender, mortgage broker, or loan originator licensed under the Idaho residential mortgage practices act, licensee under the Idaho money transmitters act, escrow agency, or broker-dealer or investment advisor licensed under the Idaho securities act or federal law, or such an institution licensed under the laws of another state, and doing business in Idaho.

(5) "Person" means a natural person, firm, partnership, association, corporation, limited liability company, limited liability partnership, trust, or any other association of individuals, however organized, and whether or not citizens or residents of this state.

[67-2751, added 2005, ch. 265, sec. 3, p. 810; am. 2013, ch. 54, sec. 17, p. 124.]

67-2752. FINANCIAL FRAUD ILLEGAL. It is unlawful for any person, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud a financial institution;

(2) To obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations, or promises or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument;

(3) To falsely represent that a person is a financial institution or a representative of a financial institution, for the purpose of obtaining money, goods, or services from any person;

(4) To obtain or record or attempt to obtain or record, personal identifying information of another person without the authorization of that person, for the purpose of obtaining money, goods, or services from any person, through a false or fraudulent representation that the person doing so is a financial institution. "Personal identifying information" has the same meaning as set forth in section [18-3122](#) (10), Idaho Code, or any successor to that section;

(5) To fraudulently make, emboss, encode, or use a financial transaction card, financial transaction card account number, personal identification code or credit card sales draft, as defined in sections [18-3122](#), [18-3123](#), [18-3124](#) and [18-3125A](#), Idaho Code, or any successors to those sections, for the purpose of obtaining money, goods, or services from any person; or

(6) While serving as an employee, agent or representative of a financial institution, to obtain or attempt to obtain the money, funds, credits, assets, securities, or other property owned by, held by, or under the custody or control of, the financial institution by means of false or fraudulent pretenses, representations, or promises or by means of any fraudulent device, scheme or artifice, or through the use of a fraudulent monetary instrument.

(7) To use in a manner likely to cause confusion or mistake or to deceive, the name, trademark, service mark, or logo of a financial institution in connection with the sale, offering for sale, distribution or advertising of any product or service without the consent of the financial institution.

[67-2752, added 2005, ch. 265, sec. 4, p. 811; am. 2007, ch. 126, sec. 8, p. 380.]

67-2753. EMPLOYMENT OR AFFILIATION OF CERTAIN PERSONS. Except with the prior written consent of the director, no person who has been convicted of, or who has pled nolo contendere [contendere] to, any criminal offense involving dishonesty, breach of trust or fiduciary duty, or money laundering, or who has been granted a withheld judgment based on such offense, or who has been found to have violated this act, shall seek employment with, accept employment by, become employed by, or continue in their employment with an Idaho state chartered or licensed financial institution.

[67-2753, added 2005, ch. 265, sec. 5, p. 811.]

67-2754. POWERS OF DIRECTOR. The director shall have the following powers and authority under this act:

(1) Investigations. The director may make such public or private investigations within or without this state as he deems necessary to determine whether any person has violated this act or is attempting or conspiring to violate this act. The investigative powers of the director under this act shall include, but not be limited to, participating in joint or multi-state investigations with any regulatory or law enforcement agencies of this state, any other state, the federal government or authorized agency thereof, or any regulatory or law enforcement agency of another country. The director may also participate in any antifraud or criminal information network or service available to the director or the department.

(2) Statements. The director may require or permit any person to file a statement in writing, under oath, to appear before the director and give testimony, or otherwise, as the director may determine, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publication. The director may publish information concerning any violation or attempted violation of this act, or any rule or order hereunder.

(4) Subpoenas and production. Either in the course of an investigation, or in any administrative proceeding brought pursuant to this act, in addition to the powers and penalties set forth in section [67-2717](#), Idaho Code, the director may subpoena documents and witnesses, take evidence, require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in any form or on any media, which the director, in his discretion, deems material or relevant.

(a) Failure to comply. In case of contumacy or refusal to obey a subpoena or order to compel production 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 the officer designated by him, to produce documentary evidence if so ordered, to appear and produce testimony if so ordered, or to give evidence relating to the matter under investigation or proceeding and any failure to obey such order of the court may be punished by the court as a contempt of court.

(b) Use of evidence or testimony. No person is excused from attending and testifying, from producing any document or record before the director or obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(5) Licensing and registration. The director may approve a multistate licensing system for use by persons seeking to obtain, maintain and retain a license under the laws administered by the department of finance. A person who chooses to use an approved multistate licensing system for licensure shall comply with all procedures, requirements and policies of that licensing system including, but not limited to, fees, renewal dates, reinstatement periods, reports and deadlines and may not convert to an alternative licensing system without the prior written consent of the director.

[67-2754, added 2005, ch. 265, sec. 6, p. 812; am. 2013, ch. 53, sec. 1, p. 106.]

67-2755. INJUNCTIONS -- OTHER REMEDIES. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion:

(1) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder, if, in the determination of the director, it is necessary to protect any financial institution or the public, or a person is violating or is about to violate this

act, or other good cause justifies the same, without prior notice to the person or opportunity for hearing.

(2) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder and, after giving reasonable notice and opportunity for a hearing, issue the following:

(a) An order restoring to any financial institution or person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, or any rule or order hereunder, pay a civil penalty to the department of finance in an amount not to exceed five thousand dollars (\$5,000) for each violation. In the event a person violating this act knowingly accepts money representing (i) equity in a person's home, (ii) a withdrawal from any individual retirement account or similar account or (iii) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(c) In addition to the penalties set forth in paragraph (b) of this subsection, in the event a person violating this act has knowledge that the victim is an elder or dependent adult, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation. As used in this section, "elder" means any person who is sixty-five (65) years of age or older. As used in this section, "dependent adult" means any person who is between the ages of eighteen (18) and sixty-four (64) years, who has physical or mental limitations which restrict the person's ability to carry out normal activities or to protect the person's rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age or illness;

(d) An order that the person violating this act, or any rule or order hereunder, pay costs, which in the discretion of the director may include an amount representing reasonable attorney's fees and reimbursements of investigative efforts; or

(e) An order granting other appropriate remedies.

(3) Enter into a consent order, or other administrative order or agreement, setting forth requirements, limitations and restrictions on the future conduct or practices of a person violating this act. A consent order, or other administrative order or agreement entered into pursuant to this act, may include assessment of any of the penalties authorized in subsection (2) of this section.

(4) Bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in any act or practice constituting a violation of this act or any rule hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The director shall not be required to furnish a bond.

(5) In addition to the remedies in subsection (4) of this section, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated the provisions of this act or any rule or order hereunder, may be granted the following additional remedies:

(a) An order restoring to any financial institution or to any person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, rules or any order hereunder pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation;

(c) An order awarding the director all costs incurred, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursements for investigative efforts; or

(d) An order granting other appropriate remedies.

(6) Liability for sanctions, both civil and criminal, and personal jurisdiction shall extend to all persons who engaged in violations or attempted violations or who aided and abetted others or conspired with others in violations or attempted violations of this act and rules and orders hereunder. Officers and directors of corporations shall not be exempt from actions brought for violations, merely because of their capacity as officers or directors, if they have participated in acts making the violations possible or if they have actual or constructive knowledge of violations by the corporation while acting as an officer, director or member.

[67-2755, added 2005, ch. 265, sec. 7, p. 813.]

67-2756. PRIVATE REMEDIES. (1) In the event a financial institution indemnifies its customer for damages caused by a violation of this act, or assumes the loss caused its customer by a violation of this act, the financial institution shall be entitled to sue the violator, at law or in equity, to recover any actual damages suffered by its customer, plus costs and attorney's fees incurred in the bringing of the action.

(2) A financial institution may bring an action to enjoin the use prohibited in section [67-2752](#)(7), Idaho Code, and recover all damages suffered by reason of the prohibited use, including reasonable attorney's fees. The financial institution may recover any profits derived from the prohibited use.

[67-2756, added 2005, ch. 265, sec. 8, p. 814; am. 2007, ch. 126, sec. 9, p. 381.]

67-2757. INSTITUTION OF CRIMINAL PROCEEDINGS. The director may refer such evidence as may be available concerning violations of this act or any rule or order hereunder to the attorney general, prosecuting attorney, United States attorney, county, state or federal law enforcement agency, or foreign law enforcement agency or prosecutor. Any county prosecuting attorney, or the attorney general may, in his discretion, with or without such a referral, institute appropriate criminal proceedings under this act.

[67-2757, added 2005, ch. 265, sec. 9, p. 815.]

67-2758. CRIMINAL PENALTIES FOR VIOLATIONS -- LIMITATION OF ACTIONS. (1) Any person who violates any provision of this act or who violates any rule or order hereunder, shall be guilty of a felony and, upon conviction, be fined not more than five thousand dollars (\$5,000) or imprisoned not more than three (3) years, or both.

(2) In the event a person violates any provision of this act or any rule or order hereunder, and accepts money under any of the circumstances

described in section [67-2755](#)(2)(b), Idaho Code, or accepts money under any of the facts described in section [67-2755](#)(2)(c), Idaho Code, shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than five (5) years for each violation, or both.

(3) No indictment or information may be returned under this act more than five (5) years after the alleged violation.

[67-2758, added 2005, ch. 265, sec. 10, p. 815.]

67-2759. CRIMINAL PUNISHMENT UNDER THIS ACT NOT EXCLUSIVE. Nothing in this act limits the power of the state or any other law enforcement agency to proceed against and punish any person for any conduct which constitutes a crime under any applicable law, statute, code or ordinance.

[67-2759, added 2005, ch. 265, sec. 11, p. 815.]

67-2760. JUDICIAL REVIEW OF ORDERS. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of [chapter 52, title 67](#), Idaho Code.

[67-2760, added 2005, ch. 265, sec. 12, p. 815.]

67-2761. ADMINISTRATION OF ACT -- RULES, FORMS AND ORDERS. The administration of the provisions of this act shall be under the general supervision and control of the director. The director may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of financial institutions and consistent with the purposes of this act.

[67-2761, added 2005, ch. 265, sec. 13, p. 816.]

67-2762. ADMINISTRATIVE PUBLIC HEARINGS -- EXCEPTION. Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request that the hearing be conducted privately.

[67-2762, added 2005, ch. 265, sec. 14, p. 816.]