

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 92

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO INSURANCE HOLDING COMPANY SYSTEMS; REPEALING CHAPTER 38, TITLE
2 41, IDAHO CODE, RELATING TO INSURANCE HOLDING COMPANY SYSTEMS; AMEND-
3 ING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 38, TITLE 41,
4 IDAHO CODE, TO STATE THE PURPOSE, TO DEFINE TERMS, TO PROVIDE FOR IN-
5 VESTMENT IN SUBSIDIARIES, TO PROVIDE FOR THE FILING OF A STATEMENT PRIOR
6 TO A MERGER OR CHANGE IN CONTROL OR DIVESTITURE OF CONTROLLING INTEREST
7 OF A DOMESTIC INSURER, TO PROVIDE FOR A SIMILAR STATEMENT PRIOR TO ANY
8 INVITATION FOR A TENDER OFFER OF CONTROL, TO PROVIDE FOR THE APPROVAL OR
9 DISAPPROVAL OF A MERGER OR CHANGE IN CONTROL AND ESTABLISH THE PROCEDURE
10 OF HEARINGS, TO PROVIDE FOR NOTICE OF ANY HEARING FROM THE INSURER TO
11 ITS SHAREHOLDERS, TO PROVIDE FOR PREACQUISITION NOTICE OF A CHANGE IN
12 CONTROL OF OTHER INSURERS AND EXEMPTIONS, TO PROVIDE FOR REGISTRATION
13 OF HOLDING COMPANY SYSTEMS BY INSURERS, TO PROVIDE FOR STANDARDS AND
14 MANAGEMENT CONCERNING TRANSACTIONS WITHIN AN INSURANCE HOLDING COMPANY
15 SYSTEM, TO PROVIDE FOR GUIDANCE ON DETERMINING THE REASONABLENESS AND
16 ADEQUACY OF AN INSURER'S SURPLUS, TO REQUIRE ADVANCE NOTICE OF DIVI-
17 DENDS AND DISTRIBUTIONS, TO PROVIDE MANAGEMENT GUIDELINES OF DOMESTIC
18 INSURERS AND TO PROVIDE AN EXEMPTION, TO PROVIDE EXAMINATION AUTHORITY,
19 TO AUTHORIZE THE DIRECTOR TO PARTICIPATE IN SUPERVISORY COLLEGES WITH
20 OTHER REGULATORS, TO PROVIDE FOR CONFIDENTIAL TREATMENT OF RECORDS AND
21 TO AUTHORIZE THE DIRECTOR TO SHARE SUCH RECORDS, TO PROVIDE FOR RULEMAK-
22 ING AUTHORITY, TO AUTHORIZE THE DIRECTOR TO SEEK INJUNCTIVE RELIEF AND
23 TO PROVIDE FOR LIMITS ON VOTING SECURITIES, TO PROVIDE FOR SANCTIONS,
24 TO AUTHORIZE RECEIVERSHIP, TO AUTHORIZE RECOVERY OF DISTRIBUTIONS OR
25 PAYMENTS BY THE DIRECTOR, TO AUTHORIZE ACTION AGAINST AN INSURER'S
26 CERTIFICATE OF AUTHORITY, TO PROVIDE FOR JUDICIAL REVIEW AND MANDAMUS,
27 TO PROVIDE FOR MUTUAL INSURANCE HOLDING COMPANIES, AND TO PROVIDE FOR
28 SEVERABILITY; AMENDING SECTION 41-706, IDAHO CODE, TO PROVIDE CORRECT
29 CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
30 41-714, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SEC-
31 TION 41-715, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE
32 TECHNICAL CORRECTIONS; AMENDING SECTION 41-731, IDAHO CODE, TO PROVIDE
33 A CORRECT CODE REFERENCE; AMENDING SECTION 41-733, IDAHO CODE, TO PRO-
34 VIDE A CORRECT CODE REFERENCE; AMENDING SECTIONS 41-901 AND 41-1702,
35 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL
36 CORRECTIONS; AMENDING SECTION 41-1951, IDAHO CODE, TO PROVIDE A CORRECT
37 CODE REFERENCE, TO PROVIDE A CORRECT CITE REFERENCE AND TO MAKE TECH-
38 NICAL CORRECTIONS; AMENDING SECTION 41-2857, IDAHO CODE, TO PROVIDE
39 CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
40 SECTION 41-3312, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO
41 MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTIONS 41-4703 AND 41-5203,
42 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
43

44 Be It Enacted by the Legislature of the State of Idaho:

1 SECTION 1. That Chapter 38, Title 41, Idaho Code, be, and the same is
2 hereby repealed.

3 SECTION 2. That Title 41, Idaho Code, be, and the same is hereby amended
4 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
5 ter 38, Title 41, Idaho Code, and to read as follows:

6 CHAPTER 38
7 ACQUISITIONS OF CONTROL AND INSURANCE HOLDING COMPANY SYSTEMS

8 41-3801. PURPOSE. The purpose of this chapter is to prevent acquisi-
9 tion or divestiture of control of an insurer or a holding company system of
10 which an insurer is a part where such acquisition would be adverse to the pub-
11 lic interest and the interests of policyholders and shareholders. A fur-
12 ther purpose of this chapter is to promote the public interest and the in-
13 terests of policyholders and shareholders by facilitating, consistent with
14 those interests, better use of management skills and services, diversifica-
15 tion through acquisitions, free access to capital markets, sound tax plan-
16 ning and open competition. An additional purpose is to monitor and regulate
17 insurance holding company systems.

18 41-3802. DEFINITIONS. As used in this chapter the following terms
19 shall have the following meanings:

20 (1) "Affiliate" of, or a person "affiliated" with, a specific person,
21 means a person who directly or indirectly through one (1) or more intermedi-
22 aries controls or is controlled by, or is under common control with, the per-
23 son specified.

24 (2) "Control," including "controlling," "controlled by" and "under
25 common control with," means the possession, direct or indirect, of the power
26 to direct or cause the direction of the management and policies of a person,
27 whether through the ownership of voting securities, by contract other than
28 a commercial contract for goods or nonmanagement services, or otherwise,
29 unless the power is the result of an official position with or a corporate
30 office held by the person. Control shall be presumed to exist if any person,
31 directly or indirectly, owns, controls, holds with the power to vote or holds
32 proxies representing ten percent (10%) or more of the voting securities of
33 any other person. This presumption may be rebutted by a showing made in the
34 manner provided in section 41-3809(11), Idaho Code, that control does not
35 exist in fact. The director may determine, after furnishing all persons in
36 interest notice and opportunity to be heard and making specific findings of
37 fact to support the determination, that control exists in fact, notwith-
38 standing the absence of a presumption to that effect.

39 (3) "Enterprise risk" means any activity, circumstance, event or se-
40 ries of events involving one (1) or more affiliates of an insurer that, if not
41 remedied promptly, is likely to have a material adverse effect upon the fi-
42 nancial condition or liquidity of the insurer or its insurance holding com-
43 pany system as a whole including, but not limited to, anything that would
44 cause the insurer's risk-based capital to fall into company action level as
45 set forth in section 41-5403, Idaho Code, or would cause the insurer to be in
46 hazardous financial condition as set forth by rule in IDAPA 18.01.66.

1 (4) "Insurance holding company system" means two (2) or more affiliated
2 persons, one (1) or more of whom is an insurer.

3 (5) "Insurer" has the same meaning as that set forth in section 41-103,
4 Idaho Code, except that it shall not include agencies, authorities or in-
5 strumentalities of the United States, its possessions and territories, the
6 Commonwealth of Puerto Rico, the District of Columbia or a state or political
7 subdivision of a state.

8 (6) "Person" means an individual, a corporation, a limited liability
9 company, a partnership, an association, a joint stock company, a business
10 trust, an unincorporated organization, or any similar entity or any combi-
11 nation of the foregoing acting in concert, but shall not include any joint
12 venture partnership exclusively engaged in owning, managing, leasing or de-
13 veloping real or tangible personal property.

14 (7) "Security holder" means a person who owns any security of a speci-
15 fied person, including common stock, preferred stock, debt obligations and
16 any other security convertible into or evidencing the right to acquire any of
17 the foregoing.

18 (8) "Subsidiary" means a specified person who is an affiliate con-
19 trolled by such person directly or indirectly through one (1) or more
20 intermediaries.

21 (9) "Voting security" means any security convertible into or evidenc-
22 ing a right to acquire a voting security.

23 41-3803. SUBSIDIARIES OF INSURERS. (1) A domestic insurer, either by
24 itself or in cooperation with one (1) or more persons, may organize or ac-
25 quire one (1) or more subsidiaries. The subsidiaries may conduct any kind of
26 business or businesses and their authority to do so shall not be limited by
27 reason of the fact that they are subsidiaries of a domestic insurer.

28 (2) In addition to investments in common stock, preferred stock, debt
29 obligations and other securities permitted under title 41, Idaho Code, a do-
30 mestic insurer may also:

31 (a) Invest in common stock, preferred stock, debt obligations and other
32 securities of one (1) or more subsidiaries in amounts that do not exceed
33 the lesser of ten percent (10%) of the insurer's assets or fifty percent
34 (50%) of the insurer's surplus regarding policyholders, provided that
35 after making such investments, the insurer's surplus regarding policy-
36 holders will be reasonable in relation to the insurer's outstanding li-
37 abilities and will be adequate to meet its financial needs. In calcula-
38 ting the amount of such investments, investments in domestic or for-
39 eign insurance subsidiaries shall be excluded, but the following shall
40 be included:

41 (i) Total net moneys or other consideration expended and obli-
42 gations assumed in the acquisition or formation of a subsidiary,
43 including all organizational expenses and contributions to capi-
44 tal and surplus of the subsidiary whether or not represented by the
45 purchase of capital stock or issuance of other securities; and

46 (ii) All amounts expended in acquiring additional common stock,
47 preferred stock, debt obligations and other securities and all
48 contributions to the capital or surplus of a subsidiary subsequent
49 to its acquisition or formation.

1 (b) Invest any amount in common stock, preferred stock, debt obliga-
2 tions and other securities of one (1) or more subsidiaries engaged or
3 organized to engage exclusively in the ownership and management of as-
4 sets authorized as investments for the insurer, provided that each sub-
5 subsidiary agrees to limit its investment in any asset so that the invest-
6 ment will not cause the amount of the total investment of the insurer to
7 exceed any of the investment limitations specified in paragraph (a) of
8 this subsection or in chapter 7, title 41, Idaho Code, applicable to the
9 insurer. For the purpose of this section, "the total investment of the
10 insurer" shall include:

11 (i) Any direct investment by the insurer in an asset; and

12 (ii) The insurer's proportionate share of any investment in an as-
13 set by any subsidiary of the insurer, which shall be calculated by
14 multiplying the amount of the subsidiary's investment by the per-
15 centage of the ownership of the subsidiary.

16 (c) With the approval of the director, invest any greater amount in com-
17 mon stock, preferred stock, debt obligations or other securities of one
18 (1) or more subsidiaries, provided that after making the investment,
19 the insurer's surplus regarding policyholders will be reasonable in re-
20 lation to the insurer's outstanding liabilities and will be adequate to
21 its financial needs.

22 (3) Investments in common stock, preferred stock, debt obligations or
23 other securities of subsidiaries made pursuant to subsection (2) (a) of this
24 section shall not be subject to any of the otherwise applicable restrictions
25 or prohibitions contained in title 41, Idaho Code, applicable to such in-
26 vestments of insurers.

27 (4) Whether any investment made pursuant to subsection (2) of this sec-
28 tion meets the applicable requirements thereof is to be determined before
29 the investment is made by calculating the applicable investment limitations
30 as though the investment had already been made, taking into account the then
31 outstanding principal balance on all previous investments in debt obliga-
32 tions and the value of all previous investments in equity securities as of
33 the day they were made, net of any return of capital invested, not including
34 dividends.

35 (5) If an insurer ceases to control a subsidiary, it shall dispose of
36 any investment therein made pursuant to this section within three (3) years
37 from the time of the cessation of control or within such further time as the
38 director may prescribe, unless at any time after the investment shall have
39 been made the investment shall have met the requirements for investment un-
40 der any other section of title 41, Idaho Code, and the insurer has so notified
41 the director.

42 41-3804. ACQUISITION OF CONTROL OF CONTROLLING INTEREST WITH DOMESTIC
43 INSURER -- ACQUISITION OF MERGER OR DIVESTITURE OF CONTROLLING INTEREST WITH
44 DOMESTIC INSURER. (1) The following filing requirements shall apply:

45 (a) No person other than the issuer shall make a tender offer for or a
46 request or invitation for tenders of, or enter into any agreement to ex-
47 change securities for, seek to acquire, or acquire, in the open market
48 or otherwise, any voting security of a domestic insurer if, after the
49 consummation thereof, such person would, directly or indirectly, or by

1 conversion or by exercise of any right to acquire, be in control of the
2 insurer, and no person shall enter into an agreement to merge with or
3 otherwise to acquire control of a domestic insurer or any person con-
4 trolling a domestic insurer unless, at the time the offer, request or
5 invitation is made or the agreement is entered into, or prior to the ac-
6 quisition of the securities if no offer or agreement is involved, such
7 person has filed with the director and has sent to the insurer, a state-
8 ment containing the information required by this section and the offer,
9 request, invitation, agreement or acquisition has been approved by the
10 director in the manner prescribed in this chapter.

11 (b) For purposes of this section, any controlling person of a domes-
12 tic insurer seeking to divest his controlling interest of the domestic
13 insurer, in any manner, shall file with the director, with a copy to
14 the insurer, confidential notice of his proposed divestiture at least
15 thirty (30) days prior to the cessation of control. The director shall
16 determine those instances in which the party seeking to divest or to ac-
17 quire a controlling interest in an insurer will be required to file for
18 and obtain approval of the transaction. The information shall remain
19 confidential until the conclusion of the transaction unless the direc-
20 tor, in his discretion, determines that confidential treatment will
21 interfere with or impede enforcement of this section. If the statement
22 referred to in paragraph (a) of this subsection is otherwise filed, this
23 section shall not apply.

24 (c) With respect to a transaction subject to this section, the acquir-
25 ing or divesting person must also file a preacquisition notification
26 with the director that contains the information set forth in section
27 41-3808(3)(a), Idaho Code, at least thirty (30) days prior to the pro-
28 posed effective date of the acquisition. A failure to timely file the
29 notification may subject the acquiring or divesting person to penalties
30 as specified in section 41-3808(5)(e), Idaho Code.

31 (d) For purposes of this section, a domestic insurer shall include any
32 person controlling a domestic insurer unless the person, as determined
33 by the director, is either directly or through his affiliates primarily
34 engaged in business other than the business of insurance. For the pur-
35 poses of this section, "person" shall not include any securities broker
36 holding, in the usual and customary broker's function, less than twenty
37 percent (20%) of the voting securities of an insurance company or of any
38 person who controls an insurance company.

39 (2) The statement to be filed with the director as referenced in this
40 section shall be made under oath or affirmation and shall contain the follow-
41 ing:

42 (a) The name and address of each person by whom or on whose behalf the
43 merger or other acquisition of control referred to in subsection (1)
44 of this section is to be effected, hereinafter called the "acquiring
45 party"; and

46 (i) If the person is an individual, his principal occupation and
47 all offices and positions held during the past five (5) years and
48 any conviction of crimes other than minor traffic violations dur-
49 ing the past ten (10) years;

1 (ii) If the person is not an individual, a report of the nature of
2 its business operations during the past five (5) years or for the
3 lesser period as the person and any predecessors shall have been in
4 existence; a detailed description of the business intended to be
5 conducted by the person and the person's subsidiaries; and a list
6 of all individuals who are or who have been selected to become di-
7 rectors or executive officers of the person, or who perform or will
8 perform functions appropriate to such positions. The list shall
9 include, for each individual, the information required by para-
10 graph (a) (i) of this subsection; and

11 (iii) For individuals who are directors or executive officers of
12 an entity, the information from time to time that is specified by
13 the director on the biographical affidavit form prescribed by the
14 department of insurance;

15 (b) The source, nature and amount of the consideration used or to be
16 used in effecting the merger or other acquisition of control, a descrip-
17 tion of any transaction where funds were or are to be obtained for any
18 such purpose, including any pledge of the insurer's stock or the stock
19 of any of its subsidiaries or controlling affiliates, and the identity
20 of persons furnishing consideration;

21 (c) Fully audited financial information as to the earnings and finan-
22 cial condition of each acquiring party for the preceding five (5) fiscal
23 years of each acquiring party, or for such lesser period as the acquir-
24 ing party and any predecessors shall have been in existence, and simi-
25 lar unaudited information as of a date not earlier than ninety (90) days
26 prior to the filing of the statement;

27 (d) Any plans or proposals that each acquiring party may have to liqui-
28 date the insurer, to sell the insurer's assets or merge or consolidate
29 the insurer with any person, or to make any other material change in the
30 insurer's business or corporate structure or management;

31 (e) The number of shares of any security referred to in subsection (1)
32 of this section that each acquiring party proposes to acquire, and the
33 terms of the offer, request, invitation, agreement or acquisition refer-
34 red to in subsection (1) of this section, and a statement as to the
35 method by which the fairness of the proposal was determined;

36 (f) The amount of each class of any security referred to in subsection
37 (1) of this section which is beneficially owned or concerning which
38 there is a right to acquire beneficial ownership by each acquiring
39 party;

40 (g) A full description of any contracts, arrangements or understand-
41 ings with respect to any security referred to in subsection (1) of this
42 section in which any acquiring party is involved including, but not
43 limited to, transfer of any of the securities, joint ventures, loan or
44 option arrangements, puts or calls, guarantees of loans, guarantees
45 against loss or guarantees of profits, division of losses or profits, or
46 the giving or withholding of proxies. The description shall identify
47 the persons with whom the contracts, arrangements or understandings
48 have been entered into;

49 (h) A description of the purchase of any security referred to in subsec-
50 tion (1) of this section during the twelve (12) calendar months preced-

1 ing the filing of the statement required by this section by any acquir-
2 ing party, including the dates of purchase, names of the purchasers and
3 consideration paid or agreed to be paid;

4 (i) A description of any recommendations to purchase any security re-
5 ferred to in subsection (1) of this section made during the twelve (12)
6 calendar months preceding the filing of the statement by any acquiring
7 party or by anyone based upon interviews or at the suggestion of the ac-
8 quiring party;

9 (j) Copies of all tender offers for, requests or invitations for ten-
10 ders of, exchange offers for, and agreements to acquire or exchange any
11 securities referred to in subsection (1) of this section, and if dis-
12 tributed, of additional solicitation material relating thereto;

13 (k) The term of any agreement, contract or understanding made with, or
14 proposed to be made with, any broker-dealer as to solicitation of secu-
15 rities referred to in subsection (1) of this section for tender and the
16 amount of any fees, commissions or other compensation to be paid to bro-
17 ker-dealers with regard thereto;

18 (l) An agreement by the person required to file the statement refer-
19 enced in subsection (1) of this section that it will provide the annual
20 report specified in section 41-3809(12), Idaho Code, for so long as its
21 control exists;

22 (m) An acknowledgment by the person required to file the statement
23 referenced in subsection (1) of this section that the person and all
24 subsidiaries within its control in the insurance holding company system
25 will provide information to the director upon request as necessary to
26 evaluate enterprise risk to the insurer; and

27 (n) Such additional information as the director may prescribe by rule
28 as necessary or appropriate for the protection of policyholders and se-
29 curity holders of the insurer or in the director's determination is in
30 the public interest.

31 (3) If the person required to file the statement referenced in subsec-
32 tion (1) of this section is a partnership, limited partnership, syndicate or
33 other group, the director may require that the information required by sub-
34 section (2) (a) through (n) of this section shall be provided to the director
35 with respect to each partner of the partnership or limited partnership, each
36 member of the syndicate or group, and each person who controls the partner
37 or member. If any partner, member or person is a corporation, or the person
38 required to file the statement referenced in subsection (1) of this section
39 is a corporation, the director may require that the information required by
40 subsection (2) (a) through (n) of this section shall be provided to the direc-
41 tor with respect to the corporation, each officer and director of the corpo-
42 ration, and each person who is directly or indirectly the beneficial owner of
43 more than ten percent (10%) of the outstanding voting securities of the cor-
44 poration.

45 (4) If any material change occurs in the facts set forth in the state-
46 ment filed with the director and sent to the insurer pursuant to this sec-
47 tion, an amendment setting forth the change, together with copies of all doc-
48 uments and other material relevant to the change, shall be filed with the di-
49 rector and sent to the insurer within two (2) business days after the person
50 learns of the change.

1 (5) If any offer, request, invitation, agreement or acquisition ref-
2 erenced in subsection (1) of this section is proposed to be made by means
3 of a registration statement under the securities act of 1933, or in circum-
4 stances requiring the disclosure of similar information under the securi-
5 ties exchange act of 1934, or under a state law requiring similar registra-
6 tion or disclosure, the person required to file the statement referred to in
7 subsection (1) of this section may use the documents in furnishing the infor-
8 mation required by that statement.

9 41-3805. TENDER OFFER MATERIAL. All requests or invitations for ten-
10 ders or advertisements making a tender offer or requesting or inviting ten-
11 ders of such voting securities for control of a domestic insurer made by or
12 on behalf of any person shall contain the information specified in section
13 41-3804, Idaho Code, as the director may prescribe and shall be filed with
14 the director at least ten (10) days prior to the time such material is first
15 published or sent or provided to security holders. Copies of any additional
16 material soliciting or requesting such tender offers subsequent to the ini-
17 tial solicitation or request shall contain information as the director may
18 prescribe as necessary or appropriate in the public interest or for the pro-
19 tection of policyholders and stockholders and shall be filed with the direc-
20 tor at least ten (10) days prior to the time copies of the material are first
21 published or sent or provided to security holders.

22 41-3806. APPROVAL BY DIRECTOR -- HEARINGS. (1) The director shall
23 approve any purchase, exchange, merger or other acquisition of control re-
24 ferred to in section 41-3804(1), Idaho Code, or in section 41-3824, Idaho
25 Code, unless, after a public hearing, the director finds that:

26 (a) After the change of control, the domestic insurer referenced in
27 section 41-3804(1), Idaho Code, would be unable to satisfy the re-
28 quirements for the issuance of a license to write the line or lines of
29 insurance for which it is presently licensed;

30 (b) The effect of the purchase, exchange, merger or other acquisition
31 of control would substantially lessen competition in the business of
32 insurance in this state or tend to create a monopoly. In applying the
33 competitive standard in this paragraph:

34 (i) The informational requirements of section 41-3808(3)(a),
35 Idaho Code, and the standards of section 41-3808(4)(b), Idaho
36 Code, shall apply;

37 (ii) The merger or other acquisition shall not be disapproved if
38 the director finds that any of the situations meeting the criteria
39 provided by section 41-3808(4)(c), Idaho Code, exist; and

40 (iii) The director may condition the approval of the merger or
41 other acquisition on the removal of the basis of disapproval
42 within a specified period of time;

43 (c) The financial condition of any acquiring party may jeopardize the
44 financial stability of the insurer or prejudice the interest of its pol-
45 icyholders or, in the case of an acquisition of control, the interest of
46 any remaining stockholders who are unaffiliated with the acquiring per-
47 son;

1 (d) The plans or proposals of the acquiring party to liquidate the in-
2 surer, sell its assets or consolidate or merge it with any person, or to
3 make any other material change in its business or corporate structure or
4 management, are unfair and unreasonable to policyholders of the insurer
5 and are not in the public interest;

6 (e) The competence, experience and integrity of the persons who would
7 control the operation of the insurer are such that it would not be in the
8 interest of policyholders and stockholders of the insurer or of the pub-
9 lic to permit the merger or other acquisition of control; or

10 (f) The acquisition is likely to be hazardous or prejudicial to the in-
11 surance-buying public.

12 (2) The public hearing referenced in subsection (1) of this section
13 shall be held within thirty-five (35) days after the statement required by
14 section 41-3804(1), Idaho Code, is filed or as otherwise agreed to by the
15 director and the person filing the statement, and at least twenty-one (21)
16 days' notice of such hearing shall be given by the director to the person
17 filing the statement. Not less than seven (7) days' notice of the public
18 hearing shall be given by the person filing the statement to the insurer and
19 to such other persons as may be designated by the director. All discovery
20 proceedings to the extent agreed to by the parties or allowed by the direc-
21 tor shall be concluded not later than three (3) business days prior to the
22 commencement of the public hearing. The director shall make a determination
23 within fifty-six (56) days after conclusion of such hearing. At the hearing,
24 the person filing the statement, the insurer, any person to whom notice of
25 hearing was sent, and any other person whose interest may be affected shall
26 have the right to present evidence, examine and cross-examine witnesses, and
27 offer oral and written arguments and shall be entitled to conduct discovery
28 proceedings in the same manner as allowed under chapter 2, title 41, Idaho
29 Code, and applicable rules.

30 (3) If the proposed acquisition of control will require the approval of
31 more than one (1) commissioner, the public hearing referenced in subsection
32 (2) of this section may be held on a consolidated basis, upon written request
33 to all affected commissioners by the person filing the statement referenced
34 in section 41-3804(1), Idaho Code. Such person shall file the statement ref-
35 erenced in section 41-3804(1), Idaho Code, with the national association of
36 insurance commissioners within five (5) days of making the request for a pub-
37 lic hearing. A commissioner may opt out of a consolidated hearing and shall
38 provide notice to the applicant of the opt-out within fourteen (14) days of
39 the receipt of the statement referenced in section 41-3804(1), Idaho Code. A
40 hearing conducted on a consolidated basis shall be public and shall be held
41 within the United States before the commissioners of the states in which the
42 affected insurers are domiciled. Such commissioners shall hear and receive
43 evidence. A commissioner may attend such hearing in person or by telecommu-
44 nication.

45 (4) In connection with a change of control of a domestic insurer, any
46 determination by the director that the person acquiring control of the in-
47 surer shall be required to maintain or restore the capital of the insurer to
48 the level required by the laws and regulations of this state shall be made
49 not later than sixty (60) days after the date of notification of the change in
50 control submitted pursuant to section 41-3804(1) (a) of this chapter. Fail-

1 ure of the director to provide a determination within the prescribed time
2 shall not negate the application of capital requirements otherwise required
3 by title 41, Idaho Code, but may affect the time within which such require-
4 ments must be met.

5 (5) The director may retain at the acquiring person's expense any at-
6 torneys, actuaries, accountants and other experts not otherwise a part of
7 the director's staff as may be reasonably necessary to assist the director in
8 reviewing the proposed acquisition of control. The director may require the
9 acquiring party to post a bond in an amount not to exceed twenty-five thou-
10 sand dollars (\$25,000) as security for payment of such expenses.

11 (6) The provisions of this section shall not apply to any offer, re-
12 quest, invitation, agreement or acquisition that the director by order shall
13 exempt as not having been made or entered into for the purpose and not having
14 the effect of changing or influencing the control of a domestic insurer, or
15 as otherwise not anticipated by this section.

16 (7) The following shall be violations of this section:

17 (a) The failure to file any statement, amendment or other material re-
18 quired to be filed pursuant to the provisions of section 41-3804(1) or
19 (2), Idaho Code; or

20 (b) The effectuation or any attempt to effectuate an acquisition of
21 control of, divestiture of, or merger with a domestic insurer unless the
22 director has given prior approval.

23 (8) The district courts of the state of Idaho are hereby vested with
24 jurisdiction over every person not resident, domiciled or authorized to do
25 business in this state who files a statement with the director under the pro-
26 visions of section 41-3804, Idaho Code, and over all actions involving such
27 person arising out of violations of this section, and each such person shall
28 be deemed to have performed acts equivalent to and constituting an appoint-
29 ment by the person of the director to be his true and lawful attorney upon
30 whom may be served all lawful process in any action, suit or proceeding aris-
31 ing out of violations of this section. Copies of all lawful process shall be
32 served on the director and transmitted by registered or certified mail by the
33 director to the person at his last known address.

34 41-3807. MAILING -- PAYMENT OF EXPENSES. (1) All notices of public
35 hearings held pursuant to section 41-3806, Idaho Code, shall be mailed by the
36 insurer to its shareholders within five (5) business days after the insurer
37 has received such notices. The expenses of such mailing shall be borne by the
38 person making the filing. As security for the payment of such expenses, such
39 person shall file with the director a bond or other deposit deemed acceptable
40 and in an amount determined by the director.

41 (2) The provisions of this section shall not apply to any offers, re-
42 quests, invitations, agreements or acquisitions by the person referred to
43 in section 41-3804, Idaho Code, of any voting security referred to in sec-
44 tion 41-3804, Idaho Code, which, immediately prior to the consummation of
45 such offer, request, invitation, agreement or acquisition, was not issued
46 and outstanding.

47 41-3808. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED. (1)
48 The following definitions shall apply for the purposes of this section only:

1 (a) "Acquisition" means any agreement, arrangement or activity, the
2 consummation of which results in a person acquiring directly or indi-
3 rectly the control of another person, and includes, but is not limited
4 to, the acquisition of voting securities, the acquisition of assets,
5 bulk reinsurance and mergers;

6 (b) "Involved insurer" means an insurer that either acquires or is ac-
7 quired, is affiliated with an acquirer or acquired, or is the result of a
8 merger.

9 (2) This section applies to any acquisition in which there is a change
10 in control of an insurer authorized to do business in this state. This sec-
11 tion shall not apply to the following:

12 (a) An acquisition subject to approval or disapproval by the director
13 pursuant to sections 41-3804 and 41-3806, Idaho Code;

14 (b) A purchase of securities solely for investment purposes, so long as
15 the securities are not used by voting or otherwise to cause or attempt
16 to cause the substantial lessening of competition in any insurance mar-
17 ket in this state. If a purchase of securities results in a presumption
18 of control under the provisions of section 41-3802(2), Idaho Code, it
19 is not solely for investment purposes unless the commissioner of the in-
20 surer's state of domicile accepts a disclaimer of control or affirma-
21 tively finds that control does not exist, and the disclaimer action or
22 affirmative finding is communicated by the domiciliary commissioner to
23 the director;

24 (c) The acquisition of a person by another person when both persons
25 are neither directly nor through affiliates primarily engaged in the
26 business of insurance, if preacquisition notification is filed with the
27 director in accordance with subsection (3) (a) of this section thirty
28 (30) days prior to the proposed effective date of the acquisition. How-
29 ever, such preacquisition notification is not required for exclusion
30 from this section if the acquisition would otherwise be excluded from
31 this section by any other subsection of this section;

32 (d) The acquisition of already affiliated persons;

33 (e) An acquisition if, as an immediate result of the acquisition:

34 (i) In no market would the combined market share of the involved
35 insurers exceeds five percent (5%) of the total market;

36 (ii) There would be no increase in any market share; or

37 (iii) In no market would:

38 1. The combined market share of the involved insurers ex-
39 ceeds twelve percent (12%) of the total market; and

40 2. The market share increases by more than two percent (2%)
41 of the total market.

42 For the purpose of paragraph (e) of this subsection, a market means di-
43 rect written insurance premium in this state for a line of business as
44 contained in the annual statement required to be filed by insurers li-
45 censed to do business in this state;

46 (f) An acquisition for which a preacquisition notification would be re-
47 quired pursuant to the provisions of this section due solely to the re-
48 sulting effect on the ocean marine insurance line of business; or

49 (g) An acquisition of an insurer whose domiciliary commissioner affir-
50 matively finds that the insurer is in failing condition; there is a lack

1 of feasible alternative to improving such condition; the public bene-
 2 fits of improving the insurer's condition through the acquisition ex-
 3 ceed the public benefits that would arise from not lessening competi-
 4 tion; and the findings are communicated by the domiciliary commissioner
 5 to the director.

6 (3) An acquisition covered by subsection (2) of this section may be sub-
 7 ject to the issuance of an order pursuant to subsection (5) of this section,
 8 unless the acquiring person files a preacquisition notification and the
 9 waiting period has expired. The acquired person may file a preacquisition
 10 notification with the director. The director shall give confidential treat-
 11 ment to information submitted under the provisions of this subsection in the
 12 same manner as provided in section 41-3816, Idaho Code.

13 (a) The preacquisition notification shall be in such form and contain
 14 such information as prescribed by the director relating to those mar-
 15 kets which, under subsection (2) (e) of this section, cause the acquisi-
 16 tion not to be exempted from the provisions of this section. The direc-
 17 tor may require such additional material and information as deemed nec-
 18 essary to determine whether the proposed acquisition, if consummated,
 19 would violate the competitive standard of subsection (4) of this sec-
 20 tion. The required information may include an opinion of an economist
 21 as to the competitive impact of the acquisition in this state accompa-
 22 nied by a summary of the education and experience of such person indi-
 23 cating his ability to render an informed opinion.

24 (b) The waiting period required shall begin on the date of receipt by
 25 the director of a preacquisition notification and shall end on the ear-
 26 lier of the thirtieth day after the date of receipt or termination of the
 27 waiting period by the director. Prior to the end of the waiting period,
 28 the director may require the submission of additional needed informa-
 29 tion relevant to the proposed acquisition, in which event the waiting
 30 period shall end on the earlier of the thirtieth day after receipt of
 31 the additional information by the director or termination of the wait-
 32 ing period by the director.

33 (4) (a) The director may enter an order under subsection (5) (a) of this
 34 section with respect to an acquisition if there is substantial evidence
 35 that the effect of the acquisition may be substantially to lessen compe-
 36 tition in any line of insurance in this state or tend to create a monop-
 37 oly, or if the insurer fails to file adequate information in compliance
 38 with subsection (3) of this section.

39 (b) In determining whether a proposed acquisition would violate the
 40 competitive standard of paragraph (a) of this subsection, the director
 41 shall consider the following:

42 (i) Any acquisition covered under subsection (2) of this section
 43 involving two (2) or more insurers competing in the same market is
 44 prima facie evidence of violation of the competitive standards.

45 1. If the market is highly concentrated and the involved in-
 46 surers possess the following shares of the market:

47	Insurer A	Insurer B
48	4%	4% or more

1 10% 2% or more

2 15% 1% or more

3 2. Or, if the market is not highly concentrated and the in-
4 volved insurers possess the following shares of the market:

5 Insurer A Insurer B

6 5% 5% or more

7 10% 4% or more

8 15% 3% or more

9 19% 1% or more

10 A highly concentrated market is one in which the share of the
11 four (4) largest insurers is seventy-five percent (75%) or
12 more of the market. Percentages not shown in the tables are
13 interpolated proportionately to the percentages that are
14 shown. If more than two (2) insurers are involved, exceed-
15 ing the total of the two (2) columns in the table is prima
16 facie evidence of violation of the competitive standard in
17 paragraph (a) of this subsection. For the purpose of this
18 determination, the insurer with the largest share of the
19 market shall be deemed to be insurer A.

20 (ii) There is a significant trend toward increased concentration
21 when the aggregate market share of any grouping of the largest in-
22 surers in the market, from the two (2) largest to the eight (8)
23 largest, has increased by seven percent (7%) or more of the mar-
24 ket over a period of time extending from any base year five (5) to
25 ten (10) years prior to the acquisition up to the time of the ac-
26 quisition. Any acquisition or merger covered under subsection (2)
27 of this section involving two (2) or more insurers competing in the
28 same market is prima facie evidence of violation of the competi-
29 tive standard in paragraph (a) of this subsection if:

30 1. There is a significant trend toward increased concentra-
31 tion in the market;

32 2. One (1) of the insurers involved is one of the insurers in
33 a grouping of large insurers showing the requisite increase
34 in the market share; and

35 3. Another involved insurer's market is two percent (2%) or
36 more.

37 (iii) For the purposes of paragraph (b) of this subsection:

38 1. "Insurer" means any company or group of companies under
39 common management, ownership or control;

40 2. "Market" means the relevant product and geographical
41 markets. In determining the relevant product and geograph-
42 ical markets, the director shall give due consideration to,
43 among other things, the definitions or guidelines, if any,
44 promulgated by the national association of insurance com-
45 missioners and to information, if any, submitted by parties
46 to the acquisition. In the absence of sufficient informa-
47 tion to the contrary, the relevant product market is assumed

1 to be the direct written insurance premium for a line of
2 business, which line is that used in the annual statement
3 required to be filed by insurers doing business in this state
4 and the relevant geographical market is assumed to be this
5 state;

6 3. The burden of showing prima facie evidence of violation
7 of the competitive standard rests upon the director.

8 (iv) Even if an acquisition is not prima facie violative of the
9 competitive standard under subsection (4) (b) (i) and (ii) of this
10 section, the director may establish the requisite anticompetitive
11 effect based upon other substantial evidence. Even if an acqui-
12 sition is prima facie violative of the competitive standard under
13 subsection (4) (b) (i) and (ii) of this section, a party may estab-
14 lish the absence of the requisite anticompetitive effect based
15 upon other substantial evidence. Relevant factors in making a
16 determination under this subsection include, but are not limited
17 to, the following: market shares, volatility of ranking of market
18 leaders, number of competitors, concentration, trend of concen-
19 tration in the industry and ease of entry and exit into the market.

20 (c) An order may not be entered under subsection (5) (a) of this section
21 if:

22 (i) The acquisition will yield substantial economies of scale
23 or economies in resource utilization that cannot be feasibly
24 achieved in any other way, and the public benefits that would arise
25 from such economies exceed the public benefits that would arise
26 from not lessening competition; or

27 (ii) The acquisition will substantially increase the availabil-
28 ity of insurance, and the public benefits of the increase exceed
29 the public benefits that would arise from not lessening competi-
30 tion.

31 (5) (a) If an acquisition violates the provisions of this section, the
32 director may enter an order:

33 (i) Requiring an involved insurer to cease and desist from doing
34 business in this state with respect to the line or lines of insur-
35 ance involved in the violation; or

36 (ii) Denying the application of an acquired or acquiring insurer
37 for a certificate of authority to do business in this state.

38 (b) Such an order shall not be entered unless:

39 (i) A hearing has been held in accordance with chapter 2, title
40 41, Idaho Code;

41 (ii) Notice of the hearing was issued prior to the end of the wait-
42 ing period and not less than fourteen (14) days prior to the hear-
43 ing; and

44 (iii) The hearing was concluded and the order issued no later than
45 fifty-six (56) days after the date of the filing of the preacqui-
46 sition notification with the director.

47 Every order shall be accompanied by a written decision of the director
48 setting forth findings of fact and conclusions of law.

49 (c) An order entered under the provisions of this subsection shall not
50 become final earlier than twenty-eight (28) days after it is issued,

1 during which time the involved insurer may submit a plan to remedy the
2 anticompetitive impact of the acquisition within a reasonable time.
3 Based upon such plan or other information, the director shall specify
4 the conditions, if any, under the time period during which the aspects
5 of the acquisition causing a violation of the provisions of this section
6 would be remedied and the order vacated or modified.

7 (d) An order pursuant to this section shall not apply if the acquisition
8 is not consummated.

9 (e) Any person who violates a cease and desist order of the director is-
10 sued pursuant to subsection (5) (a) of this section and while the order
11 is in effect may, after notice and the opportunity for a hearing and upon
12 order of the director, be subject at the discretion of the director to
13 one (1) or more of the following:

14 (i) A monetary penalty of not more than ten thousand dollars
15 (\$10,000) for every day of violation; and/or

16 (ii) Suspension or revocation of the person's certificate of au-
17 thority in this state.

18 (f) Any insurer or other person who fails to make any filing required
19 by this section, and who also fails to demonstrate a good faith effort
20 to comply with any filing requirement, shall be subject to a fine of not
21 more than fifty thousand dollars (\$50,000).

22 (6) Sections 41-3818(2) and (3) and 41-3820, Idaho Code, do not apply to
23 acquisitions covered under subsection (2) of this section.

24 41-3809. REGISTRATION OF HOLDING COMPANY SYSTEM INSURERS. (1) Every
25 insurer authorized to do business in this state and that is a member of an
26 insurance holding company system shall register with the director, except a
27 foreign insurer subject to registration requirements and standards adopted
28 by statute or regulation in the jurisdiction of its domicile, which are sub-
29 stantially similar to those contained in this section and in:

30 (a) Sections 41-3810(1), 41-3811 and 41-3812, Idaho Code; and

31 (b) The provisions of section 41-3810(2), Idaho Code, or a provision
32 such as the following: Each registered insurer shall keep current the
33 information required to be disclosed in its registration statement by
34 reporting all material changes or additions within fifteen (15) days
35 after the end of the month in which it learns of each change or addition.

36 Any insurer that is subject to registration under this section shall regis-
37 ter within fifteen (15) days after it becomes subject to registration, and
38 annually thereafter for the year ending December 31 immediately preceding,
39 on the due date provided for filing of audited financial reports, or, if the
40 insurer is not subject to filing of audited financial reports, on June 1, un-
41 less the director, for good cause shown, extends the time for registration,
42 and then within the extended time. The director may require any insurer au-
43 thorized to do business in the state that is a member of an insurance hold-
44 ing company system, and which is not subject to registration under this sec-
45 tion, to furnish a copy of the registration statement, the summary specified
46 in subsection (3) of this section or other information filed by the insurance
47 company with the insurance regulatory authority of its domiciliary juris-
48 diction. Upon request of the insurer or of the insurance regulatory author-
49 ity of another jurisdiction in which the insurer is authorized to transact

1 insurance, the director at the insurer's expense shall furnish a copy of the
2 registration statement or other information filed by a domestic insurer with
3 the director pursuant to this chapter.

4 (2) Every insurer subject to registration under this chapter shall file
5 the registration statement with the director on a form and in a manner pre-
6 scribed by the director. The registration statement shall contain the fol-
7 lowing current information:

8 (a) The capital structure, general financial condition, ownership and
9 management of the insurer and any person controlling the insurer;

10 (b) The identity and relationship of every member of the insurance
11 holding company system;

12 (c) The following agreements in force and transactions currently out-
13 standing or that have occurred during the last calendar year between the
14 insurer and its affiliates:

15 (i) Loans, other investments or purchases, sales or exchanges of
16 securities of the affiliates by the insurer or of the insurer by
17 its affiliates;

18 (ii) Purchases, sales or exchange of assets;

19 (iii) Transactions not in the ordinary course of business;

20 (iv) Guarantees or undertakings for the benefit of an affiliate
21 that result in an actual contingent exposure of the insurer's as-
22 sets to liability, other than insurance contracts entered into in
23 the ordinary course of the insurer's business;

24 (v) All management agreements, service contracts and all cost-
25 sharing arrangements;

26 (vi) Reinsurance agreements;

27 (vii) Dividends and other distributions to shareholders; and

28 (viii) Consolidated tax allocation agreements.

29 (d) Any pledge of the insurer's stock, including stock of any sub-
30 subsidiary or controlling affiliate, for a loan made to any member of the
31 insurance holding company system;

32 (e) If requested by the director, the insurer shall provide to the di-
33 rector financial statements of or within an insurance holding company
34 system, including all affiliates. Financial statements may include,
35 but are not limited to, annual audited financial statements filed with
36 the U.S. securities and exchange commission (SEC) pursuant to the secu-
37 rities act of 1933, as amended, or the securities exchange act of 1934,
38 as amended. An insurer required to file financial statements pursuant
39 to this section may satisfy the request by providing the director with
40 the most recently filed parent corporation financial statements that
41 have been filed with the SEC;

42 (f) Other matters concerning transactions between registered insurers
43 and any affiliates as may be included from time to time in any registra-
44 tion forms adopted or approved by the director;

45 (g) Certification that the insurer's board of directors is responsible
46 for and oversees corporate governance and internal controls and that
47 the insurer's officers or senior management have approved, implemented
48 and continue to maintain and monitor corporate governance and internal
49 control procedures; and

50 (h) Any other information required by the director by statute or rule.

1 (3) All registration statements shall contain a summary outlining all
2 items constituting changes from the prior registration statement.

3 (4) No information need be disclosed on the registration statement
4 filed pursuant to subsection (2) of this section if the information is not
5 material for the purposes of this section. Unless the director by rule or or-
6 der provides otherwise, sales, purchases, exchanges, loans or extensions of
7 credit, investments or guarantees involving one-half of one percent (.5%) or
8 less of an insurer's admitted assets as of the December 31 of the year immedi-
9 ately preceding shall not be deemed material for purposes of this chapter.

10 (5) Subject to section 41-3810, Idaho Code, each registered insurer
11 shall report to the director all dividends and other distributions to
12 shareholders within fifteen (15) business days following the declaration
13 thereof.

14 (6) Any person within an insurance holding company system subject to
15 registration shall be required to provide complete and accurate information
16 to an insurer, where the information is reasonably necessary to enable the
17 insurer to comply with the provisions of this chapter.

18 (7) The director shall terminate the registration of any insurer that
19 demonstrates that it no longer is a member of an insurance holding company
20 system.

21 (8) The director may require or allow two (2) or more affiliated insur-
22 ers subject to registration to file a consolidated registration statement.

23 (9) The director may allow any insurer that is authorized to do business
24 in this state and that is part of an insurance holding company system, to reg-
25 ister on behalf of any affiliated insurer that is required to register under
26 subsection (1) of this section and to comply with all filing requirements un-
27 der this chapter.

28 (10) The provisions of this section shall not apply to any insurer, in-
29 formation or transaction if and to the extent that the director by rule or or-
30 der shall exempt the same from the provisions of this section. In consider-
31 ing whether to issue an exemption, the director may consider the following:

32 (a) The size of the insurer and all affiliates;

33 (b) The structure of ownership within the insurance holding company
34 system;

35 (c) The nature and amounts of transactions within the insurance holding
36 company system;

37 (d) The nature and complexity of the business of the insurer and affili-
38 ates; and

39 (e) Any other factors the director deems appropriate.

40 Prior to issuing an exemption, the director shall notify all other insurance
41 regulators where the insurer or its affiliates hold a certificate of author-
42 ity.

43 (11) Any person may file with the director a disclaimer of affiliation
44 with any authorized insurer, or such a disclaimer may be filed by the insurer
45 or any member of an insurance holding company system. The disclaimer shall
46 fully disclose all material relationships and bases for affiliation between
47 the person and the insurer as well as the basis for disclaiming the affil-
48 iation. A disclaimer of affiliation shall be deemed to have been granted
49 unless the director, within thirty (30) days following receipt of a complete
50 disclaimer, notifies the filing party that the disclaimer is disallowed.

1 In the event of disallowance, the disclaiming party may request an admin-
2 istrative hearing pursuant to chapter 2, title 41, Idaho Code, which shall
3 be granted. The disclaiming party shall be relieved of its duty to register
4 under this section if approval of the disclaimer has been granted by the di-
5 rector, or if the disclaimer is deemed to have been approved.

6 (12) The ultimate controlling person of every insurer subject to regis-
7 tration shall also file an annual enterprise risk report. The report shall,
8 to the best of the ultimate controlling person's knowledge and belief, iden-
9 tify the material risks within the insurance holding company system that
10 could pose enterprise risk to the insurer. The report shall be filed with the
11 lead state director of the insurance holding company system as determined
12 by the procedures within the financial analysis handbook adopted by the na-
13 tional association of insurance commissioners.

14 (13) The failure to file a registration statement or any summary of the
15 registration statement or enterprise risk filing required in this section
16 within the time specified for filing shall be a violation of the provisions
17 of this section.

18 41-3810. STANDARDS AND MANAGEMENT OF AN INSURER WITHIN AN INSURANCE
19 HOLDING COMPANY SYSTEM. (1) Transactions within an insurance holding com-
20 pany system to which an insurer subject to registration is a party shall be
21 subject to the following standards:

22 (a) The terms shall be fair and reasonable;

23 (b) Agreements for cost-sharing services and management shall include
24 such provisions as required by rule promulgated by the director;

25 (c) Charges or fees for services performed shall be reasonable;

26 (d) Expenses incurred and payment received shall be allocated to the
27 insurer in conformity with customary insurance accounting practices
28 consistently applied;

29 (e) The books, accounts and records of each party to all such transac-
30 tions shall be so maintained as to clearly and accurately disclose the
31 precise nature and details of the transactions, including such account-
32 ing information as is necessary to support the reasonableness of the
33 charges or fees to the respective parties; and

34 (f) The insurer's surplus regarding policyholders following any divi-
35 dends or distributions to shareholder affiliates shall be reasonable in
36 relation to the insurer's outstanding liabilities and adequate to meet
37 its financial needs.

38 (2) The following transactions involving a domestic insurer and any
39 person in its insurance holding company system, including amendments or
40 modifications of affiliate agreements previously filed pursuant to this
41 section, that are subject to any materiality standards contained in para-
42 graphs (a) through (g) of this subsection, may not be entered into unless
43 the insurer has notified the director in writing of its intention to enter
44 into the transaction at least thirty (30) days prior thereto, or such shorter
45 period as the director may permit, and the director has not disapproved it
46 within that period. The notice for amendments or modifications shall in-
47 clude the reasons for the change and the financial impact on the domestic
48 insurer. Informal notice shall be reported to the director within thirty

1 (30) days after the termination of a previously filed agreement, for deter-
2 mination of the type of filing required, if any.

3 (a) Sales, purchases, exchanges, loans, extensions of credit, guaran-
4 tees or investments, provided the transactions are equal to or exceed:

5 (i) With respect to non-life insurers, the lesser of three per-
6 cent (3%) of the insurer's admitted assets or twenty-five percent
7 (25%) of surplus regarding policyholders as of December 31 of the
8 year immediately preceding;

9 (ii) With respect to life insurers, three percent (3%) of the in-
10 surer's admitted assets as of December 31 of the year immediately
11 preceding;

12 (b) Loans or extensions of credit to any person who is not an affiliate,
13 where the insurer makes loans or extensions of credit with the agree-
14 ment or understanding that the proceeds of the transactions, in whole
15 or in substantial part, are to be used to make loans or extensions of
16 credit to, to purchase assets of, or to make investments in, any affil-
17 iate of the insurer making the loans or extensions of credit, provided
18 the transactions are equal to or exceed:

19 (i) With respect to non-life insurers, the lesser of three per-
20 cent (3%) of the insurer's admitted assets or twenty-five percent
21 (25%) of surplus regarding policyholders as of December 31 of the
22 year immediately preceding;

23 (ii) With respect to life insurers, three percent (3%) of the in-
24 surer's admitted assets as of December 31 of the year immediately
25 preceding;

26 (c) Reinsurance agreements or modifications thereto, including:

27 (i) All reinsurance pooling agreements;

28 (ii) Agreements in which the reinsurance premium or a change in
29 the insurer's liabilities, or the projected reinsurance premium
30 or a change in the insurer's liabilities, in any of the next three
31 (3) years, equals or exceeds five percent (5%) of the insurer's
32 surplus regarding policyholders, as of December 31 of the year im-
33 mediately preceding, including those agreements which may require
34 as consideration the transfer of assets from an insurer to a non-
35 affiliate, if an agreement or understanding exists between the in-
36 surer and the nonaffiliate that any portion of the assets will be
37 transferred to one (1) or more affiliates of the insurer;

38 (d) All management agreements, service contracts, tax allocation
39 agreements, guarantees and all cost-sharing arrangements;

40 (e) Guarantees when made by a domestic insurer, provided however, that
41 a guarantee that is quantifiable as to amount is not subject to the
42 notice requirement of this section, unless it exceeds the lesser of
43 one-half of one percent (.5%) of the insurer's admitted assets or ten
44 percent (10%) of surplus regarding policyholders as of December 31 of
45 the year immediately preceding. Further, all guarantees that are not
46 quantifiable as to amount are subject to the notice requirements of this
47 section;

48 (f) Direct or indirect acquisitions or investments in a person that
49 controls the insurer or in an affiliate of the insurer in an amount
50 that, together with the insurer's present holdings in such invest-

1 ments, exceeds two and one-half percent (2.5%) of the insurer's surplus
2 to policyholders. Direct or indirect acquisitions or investments in
3 subsidiaries acquired pursuant to section 41-3803, Idaho Code, or au-
4 thorized under any other section of this chapter, or in nonsubsidiary
5 insurance affiliates that are subject to the provisions of this chap-
6 ter, are exempt from this requirement; and

7 (g) Any material transactions, specified by statute or rule, that the
8 director determines may adversely affect the interests of the insurer's
9 policyholders.

10 Nothing in this section shall be deemed to authorize or permit any
11 transactions that, in the case of an insurer not a member of the same insur-
12 ance holding company system, would be otherwise contrary to law.

13 (3) A domestic insurer may not enter into transactions that are part of
14 a plan or series of like transactions with persons within the insurance hold-
15 ing company system if the purpose of those separate transactions is to avoid
16 the statutory threshold amount and thus avoid the review that would occur
17 otherwise. If the director determines that separate transactions were en-
18 tered into over any twelve (12) month period for that purpose, the director
19 may exercise his authority pursuant to section 41-3819, Idaho Code.

20 (4) The director, in reviewing transactions pursuant to subsection (2)
21 of this section, shall consider whether the transactions comply with the
22 standards set forth in subsection (1) of this section and whether they may
23 adversely affect the interests of policyholders.

24 (5) The director shall be notified within thirty (30) days of any in-
25 vestment of the domestic insurer in any one (1) corporation, if the total in-
26 vestment in the corporation by the insurance holding company system exceeds
27 ten percent (10%) of the corporation's voting securities.

28 41-3811. ADEQUACY OF SURPLUS. For purposes of this chapter, in deter-
29 mining whether an insurer's surplus regarding policyholders is reasonable
30 in relation to the insurer's outstanding liabilities and adequate to meet
31 its financial needs, the following factors, among others, shall be consid-
32 ered:

33 (1) The size of the insurer as measured by its assets, capital and sur-
34 plus, reserves, premium writings, insurance in force and other appropriate
35 criteria;

36 (2) The extent to which the insurer's business is diversified among
37 several lines of insurance;

38 (3) The number and size of risks insured in each line of business;

39 (4) The extent of the geographical dispersion of the insurer's insured
40 risks;

41 (5) The nature and extent of the insurer's reinsurance program;

42 (6) The quality, diversification and liquidity of the insurer's in-
43 vestment portfolio;

44 (7) The recent past and projected future trend in the size of the in-
45 surer's investment portfolio;

46 (8) The surplus regarding policyholders maintained by other comparable
47 insurers;

48 (9) The adequacy of the insurer's reserves;

1 (10) The quality and liquidity of investments in affiliates; the direc-
2 tor may treat any investment in an affiliate as a disallowed asset for pur-
3 poses of determining the adequacy of surplus regarding policyholders when-
4 ever in the judgment of the director the investment so warrants; and

5 (11) The quality of the insurer's earnings and the extent to which the
6 reported earnings include extraordinary items.

7 41-3812. DIVIDENDS AND OTHER DISTRIBUTIONS. (1) No domestic insurer
8 shall pay any extraordinary dividend or make any other extraordinary distri-
9 bution to its shareholders until thirty (30) days after the director has re-
10 ceived notice of the declaration thereof and has not within that period dis-
11 approved the payment, or until the director has approved the payment within
12 the thirty (30) day period. For purposes of this section, an extraordinary
13 dividend or distribution includes any dividend or distribution of cash or
14 other property, whose fair market value together with that of other divi-
15 dends or distributions made within the preceding twelve (12) months exceeds
16 the lesser of:

17 (a) Ten percent (10%) of the insurer's surplus regarding policyholders
18 as of December 31 of the year immediately preceding; or

19 (b) The net gain from operations of the insurer, if the insurer is a life
20 insurer, or the net income, if the insurer is not a life insurer, not in-
21 cluding realized capital gains, for the twelve (12) month period ending
22 December 31 of the year immediately preceding, but shall not include pro
23 rata distributions of any class of the insurer's own securities.

24 In determining whether a dividend or distribution is extraordinary, an in-
25 surer other than a life insurer may carry forward net income from the previ-
26 ous two (2) calendar years that has not already been paid out as dividends.
27 This carryforward shall be computed by taking the net income from the second
28 and third preceding calendar years, not including realized capital gains,
29 less dividends paid in the second and immediate preceding calendar years.
30 Notwithstanding any other provision of law, an insurer may declare an extra-
31 ordinary dividend or distribution that is conditional upon the director's
32 approval, and the declaration shall confer no rights upon shareholders un-
33 til the director has approved the payment of the dividend or distribution or
34 until the director has not disapproved payment within the thirty (30) day pe-
35 riod referred to in this subsection.

36 (2) A domestic insurer that is a member of a holding company system
37 shall notify the director in writing of any nonextraordinary dividends to
38 be paid or other distributions to be made to shareholders within five (5)
39 business days following the declaration of the dividend or distribution, and
40 shall notify the director in writing at least ten (10) days, commencing from
41 the date of receipt by the director, prior to the payment of any dividends or
42 the making of any other distribution.

43 41-3813. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO REGISTRATION. (1)
44 Notwithstanding the control of a domestic insurer by any person, the offi-
45 cers and directors of the insurer shall not thereby be relieved of any obli-
46 gation or liability to which they would otherwise be subject by law, and the
47 insurer shall be managed so as to assure its separate operating identity con-
48 sistent with this chapter.

1 (2) Nothing in this section shall preclude a domestic insurer from hav-
2 ing or sharing a common management or cooperative or joint use of personnel,
3 property or services with one (1) or more other persons under arrangements
4 meeting the standards of section 41-3810(1), Idaho Code.

5 (3) Not less than one-third (1/3) of the directors of a domestic in-
6 surer, and not less than one-third (1/3) of the members of each committee
7 of the board of directors of any domestic insurer, shall be persons who are
8 not officers or employees of the insurer or of any entity controlling, con-
9 trolled by or under common control with the insurer and who are not benefi-
10 cial owners of a controlling interest in the voting stock of the insurer or
11 entity. At least one (1) person must be included in any quorum for the trans-
12 action of business at any meeting of the board of directors or any committee
13 thereof.

14 (4) The board of directors of a domestic insurer shall establish one (1)
15 or more committees comprised solely of directors who are not officers or em-
16 ployees of the insurer or of any entity controlling, controlled by or under
17 common control with the insurer and who are not beneficial owners of a con-
18 trolling interest in the voting stock of the insurer or any such entity. The
19 committee or committees shall have responsibility for nominating candidates
20 for director for election by shareholders or policyholders, evaluating the
21 performance of officers deemed to be principal officers of the insurer and
22 recommending to the board of directors the selection and compensation of the
23 principal officers.

24 (5) The provisions of subsections (3) and (4) of this section shall not
25 apply to a domestic insurer if the person controlling the insurer, such as an
26 insurer, a mutual insurance holding company or a publicly held corporation,
27 has a board of directors and committees thereof that meet the requirements
28 of subsections (3) and (4) of this section with respect to such controlling
29 entity.

30 (6) An insurer may make application to the director for a waiver from
31 the requirements of this section, if the insurer's annual direct written and
32 assumed premium, excluding premiums reinsured with the federal crop insur-
33 ance corporation and federal flood program, is less than three hundred mil-
34 lion dollars (\$300,000,000). An insurer may also make application to the di-
35 rector for a waiver from the requirements of this section based upon unique
36 circumstances. The director may consider various factors including, but not
37 limited to, the type of business entity, volume of business written, avail-
38 ability of qualified board members or the ownership or organizational struc-
39 ture of the entity.

40 41-3814. EXAMINATION. (1) Power of director. Subject to the limita-
41 tion contained in this section and in addition to the authority the director
42 has under chapter 2, title 41, Idaho Code, relating to the examination of in-
43 surers, the director shall have the power to examine any insurer registered
44 under section 41-3809, Idaho Code, and its affiliates to ascertain the fi-
45 nancial condition of the insurer, including the enterprise risk to the in-
46 surer by the ultimate controlling party, or by any entity or combination of
47 entities within the insurance holding company system, or by the insurance
48 holding company system on a consolidated basis.

1 (2) The director may order any insurer registered under section
2 41-3809, Idaho Code, to produce such records, books or other information in
3 the possession or control of the insurer or its affiliates as are reasonably
4 necessary to determine compliance with this chapter. For such purpose,
5 the director may order any insurer registered under section 41-3809, Idaho
6 Code, to produce information not in the possession of the insurer if the
7 insurer can obtain access to such information pursuant to contractual rela-
8 tionships, statutory obligations or other method. In the event the insurer
9 cannot obtain the information requested by the director, the insurer shall
10 provide the director with a detailed explanation of the reason that the
11 insurer cannot obtain the information and the identity of the holder of
12 information. Whenever it appears to the director that the detailed ex-
13 planation is without merit, the director may require, after notice and the
14 opportunity for a hearing, that the insurer pay a penalty in the amount and
15 in the manner provided in section 41-3819(1), Idaho Code, and may suspend or
16 revoke the insurer's license.

17 (3) The director may retain at the registered insurer's expense such
18 attorneys, actuaries, accountants and other experts not otherwise a part of
19 the director's staff as shall be reasonably necessary to assist in the con-
20 duct of the examination referenced in subsection (1) of this section. Per-
21 sons so retained shall be under the direction and control of the director for
22 the purposes stated herein and shall act in a purely advisory capacity.

23 (4) Each registered insurer producing for examination records, books
24 and papers pursuant to subsection (1) of this section shall be liable for and
25 shall pay the expense of examination in accordance with the provisions of
26 section 41-228, Idaho Code, and applicable rules promulgated by the direc-
27 tor.

28 (5) In the event the insurer fails to comply with an order issued by
29 the director, the director shall have the power to examine the insurer's af-
30 filiates to obtain the information. The director shall also have the power
31 to issue subpoenas, to administer oaths and to examine under oath any per-
32 son for purposes of determining compliance with the provisions of this sec-
33 tion. Upon the failure or refusal of any person to obey a subpoena issued
34 by the director, the director may petition a court of competent jurisdiction
35 and, upon proper showing, the court may enter an order compelling the wit-
36 ness to appear and testify or produce documentary evidence. Failure to obey
37 the court order shall be punishable as contempt of court. Every person shall
38 be obligated to attend as a witness at the place specified in the subpoena,
39 when subpoenaed, anywhere within the state. He shall be entitled to the same
40 fees and mileage, if claimed, as a witness in the district court, which fees,
41 mileage and actual expense, if any, necessarily incurred in securing the at-
42 tendance of witnesses, and their testimony, shall be itemized and charged
43 against and be paid by the company being examined.

44 41-3815. SUPERVISORY COLLEGES. (1) With respect to any insurer regis-
45 tered under section 41-3809, Idaho Code, and in accordance with subsection
46 (3) of this section, the director is authorized to participate in a super-
47 visory college for any domestic insurer that is part of an insurance holding
48 company system with international operations in order to determine compli-
49 ance by the insurer with this chapter. The powers of the director with re-

1 spect to supervisory colleges include, but are not limited to, the follow-
2 ing:

3 (a) Initiating the establishment of a supervisory college;

4 (b) Clarifying the membership and participation of other supervisors
5 in the supervisory college;

6 (c) Clarifying the functions of the supervisory college and the role of
7 other regulators, including the establishment of a group-wide supervi-
8 sor;

9 (d) Coordinating the ongoing activities of the supervisory college,
10 including planning meetings, supervisory activities and processes for
11 information sharing; and

12 (e) Establishing a crisis management plan.

13 (2) Each registered insurer subject to this section shall be liable for
14 and shall pay the reasonable expenses of the director's participation in a
15 supervisory college in accordance with subsection (3) of this section, in-
16 cluding reasonable travel expenses. For purposes of this section, a super-
17 visory college may be convened as either a temporary or permanent forum for
18 communication and cooperation between the regulators charged with the su-
19 pervision of the insurer or its affiliates and the director may establish a
20 regular assessment to the insurer for the payment of these expenses.

21 (3) In order to assess the business strategy, financial position, legal
22 and regulatory position, risk exposure, risk management and governance pro-
23 cesses, and as part of the examination of individual insurers in accordance
24 with section 41-3813, Idaho Code, the director may participate in a supervi-
25 sory college with other regulators charged with supervision of the insurer
26 or its affiliates, including other state, federal and international regu-
27 latory agencies. The director may enter into agreements in accordance with
28 section 41-3816(3), Idaho Code, providing the basis for cooperation among
29 the director and the other regulatory agencies, and the activities of the su-
30 pervisory college. Nothing in this section shall delegate to the supervi-
31 sory college the authority of the director to regulate or supervise the in-
32 surer or its affiliates within its jurisdiction.

33 41-3816. CONFIDENTIAL TREATMENT. (1) Documents, materials or other
34 information in the possession or control of the department that are obtained
35 by or disclosed to the director or any other person in the course of an ex-
36 amination or investigation made pursuant to section 41-3814, Idaho Code,
37 and all information reported pursuant to sections 41-3804(2), 41-3809 and
38 41-3810, Idaho Code, shall be confidential by law and privileged, shall be
39 exempt from public disclosure, shall not be subject to subpoena and shall not
40 be subject to discovery or admissible in evidence in any private civil ac-
41 tion. However, the director is authorized to use such documents, materials
42 or other information in the furtherance of any regulatory or legal action
43 brought as a part of the director's official duties. The director shall not
44 otherwise make the documents, materials or other information public without
45 the prior written consent of the insurer to which it pertains, unless the
46 director, after giving the insurer and its affiliates who would be affected
47 notice and opportunity to be heard, determines that the interest of policy-
48 holders, shareholders or the public will be served by the publication, in

1 which event the director may publish all or any part in such manner as may be
2 deemed appropriate.

3 (2) Neither the director nor any person who receives documents, materi-
4 als or other information while acting under the authority of the director or
5 with whom such documents, materials or other information is shared pursuant
6 to this chapter, shall be permitted or required to testify in any private
7 civil action concerning any confidential documents, materials or informa-
8 tion subject to subsection (1) of this section absent a specific finding by
9 a court of competent jurisdiction that the need for such testimony outweighs
10 the need to maintain confidentiality.

11 (3) In order to assist in the performance of the director's duties under
12 title 41, Idaho Code, the director:

13 (a) May share documents, materials or other information, including the
14 confidential and privileged documents, materials or information sub-
15 ject to subsection (1) of this section, with other state, federal and
16 international regulatory agencies, with the national association of
17 insurance commissioners and its affiliates and subsidiaries, and with
18 state, federal and international law enforcement authorities, includ-
19 ing members of any supervisory college described in section 41-3815,
20 Idaho Code, provided that the recipient agrees in writing to maintain
21 the confidentiality and privileged status of the document, material or
22 other information and has verified in writing the legal authority to
23 maintain confidentiality.

24 (b) Notwithstanding the provisions of subsection (3)(a) of this
25 section, the director may only share confidential and privileged
26 documents, materials or information reported pursuant to section
27 41-3809(12), Idaho Code, with commissioners of states having statutes
28 or regulations substantially similar to subsection (1) of this section
29 and who have agreed in writing not to disclose such information.

30 (c) May receive documents, materials or information, including other-
31 wise confidential and privileged documents, materials or information
32 from the national association of insurance commissioners and its
33 affiliates and subsidiaries and from regulatory and law enforcement of-
34 ficials of other foreign or domestic jurisdictions, and shall maintain
35 as confidential or privileged any document, material or information
36 received with notice or the understanding that it is confidential or
37 privileged under the laws of the jurisdiction that is the source of the
38 document, material or information; and

39 (d) Shall enter into written agreements with the national association
40 of insurance commissioners governing sharing and use of information
41 provided pursuant to the provisions of this chapter consistent with
42 this subsection, which agreements shall:

43 (i) Specify procedures and protocols regarding the confiden-
44 tiality and security of information shared with the national
45 association of insurance commissioners and its affiliates and
46 subsidiaries pursuant to this chapter, including procedures and
47 protocols for sharing by the national association of insurance
48 commissioners with other state, federal or international regula-
49 tors;

1 (ii) Specify that ownership of information shared with the na-
2 tional association of insurance commissioners and its affiliates
3 and subsidiaries pursuant to this chapter remains with the direc-
4 tor, and the national association of insurance commissioners' use
5 of the information is subject to the direction of the director;

6 (iii) Require prompt notice to be given to an insurer whose con-
7 fidential information is in the possession of the national asso-
8 ciation of insurance commissioners pursuant to this chapter that
9 disclosure of such confidential information has been requested or
10 subpoenaed or otherwise sought; and

11 (iv) Require the national association of insurance commission-
12 ers and its affiliates and subsidiaries to consent to intervention
13 by an insurer in any judicial, administrative or similar action in
14 which the national association of insurance commissioners and its
15 affiliates and subsidiaries may be required to disclose confiden-
16 tial information about the insurer shared with the national asso-
17 ciation of insurance commissioners and the insurer's affiliates
18 and subsidiaries pursuant to this chapter.

19 (4) The sharing of information by the director pursuant to this chapter
20 shall not constitute a delegation of regulatory authority or rulemaking, and
21 the director is solely responsible for the administration, execution and en-
22 forcement of the provisions of this chapter.

23 (5) No waiver of any applicable privilege or claim of confidentiality
24 in the documents, materials or information shall occur as a result of disclo-
25 sure to the director under the provisions of this section or as a result of
26 sharing as authorized in subsection (3) of this section.

27 (6) Documents, materials or other information in the possession or con-
28 trol of the national association of insurance commissioners pursuant to this
29 chapter shall be confidential and privileged, shall not be a public record,
30 shall not be subject to public disclosure and shall not be subject to sub-
31 poena absent a specific finding by a court of competent jurisdiction that the
32 need for production outweighs the need to maintain confidentiality.

33 41-3817. RULES. The director may promulgate rules and issue orders as
34 shall be necessary to carry out the provisions of this chapter.

35 41-3818. INJUNCTIONS, PROHIBITIONS AGAINST VOTING SECURITIES, SE-
36 QUESTRATION OF VOTING SECURITIES. (1) Whenever it appears to the director
37 that any insurer or any director, officer, employee or agent thereof has
38 committed or is about to commit a violation of the provisions of this chapter
39 or of any rule or order issued by the director hereunder, the director may
40 apply to the district court, fourth judicial district for Ada county, for an
41 order enjoining the insurer or director, officer, employee or agent thereof
42 from violating or continuing to violate the provisions of this chapter or any
43 rule or order thereunder, and for such other equitable relief as the nature
44 of the case and the interests of the insurer's policyholders, creditors and
45 shareholders or the public may require.

46 (2) No security that is the subject of any agreement or arrangement re-
47 garding acquisition, or that is acquired or to be acquired, in contravention
48 of the provisions of this chapter or of any rule or order issued by the direc-

1 tor hereunder, may be voted at any shareholders' meeting, or may be counted
2 for quorum purposes, and any action of shareholders requiring the affirma-
3 tive vote of a percentage of shares may be taken as though the securities
4 were not issued and outstanding; however, no action taken at any such meet-
5 ing shall be invalidated by the voting of such securities, unless the ac-
6 tion would materially affect control of the insurer or unless the courts of
7 this state so order. If an insurer or the director has reason to believe that
8 any security of the insurer has been or is about to be acquired in contra-
9 vention of the provisions of this chapter or of any rule or order issued by
10 the director hereunder, the insurer or the director may apply to the fourth
11 judicial district court for Ada county to enjoin any offer, request, invi-
12 tation, agreement or acquisition made in contravention of section 41-3804,
13 Idaho Code, or any rule or order issued by the director to enjoin the voting
14 of any security so acquired, to void any vote of the security already cast at
15 any meeting of shareholders, and for such other equitable relief as the na-
16 ture of the case and the interest of the insurer's policyholders, creditors
17 and shareholders or the public may require.

18 (3) In any case where a person has acquired or is proposing to acquire
19 any voting securities in violation of the provisions of this chapter or any
20 rule or order issued by the director hereunder, the fourth judicial district
21 court for Ada county, on such notice as the court deems appropriate, upon the
22 application of the insurer or the director, shall seize or sequester any vot-
23 ing securities of the insurer owned directly or indirectly by the person, and
24 issue such order as may be appropriate to effectuate the provisions of this
25 chapter.

26 (4) Notwithstanding any other provisions of law, for the purposes of
27 this chapter, the situs of the ownership of the securities of domestic insur-
28 ers shall be deemed to be in this state.

29 41-3819. SANCTIONS. (1) Any insurer failing, without just cause, to
30 file any registration statement as required in this chapter shall be re-
31 quired, after notice and the opportunity for a hearing, to pay a penalty of
32 two hundred dollars (\$200) for each day of delay, to be recovered by the di-
33 rector, and the penalty so received shall be distributed to the general fund
34 of the state of Idaho. The maximum penalty under this section is ten thousand
35 dollars (\$10,000). The director may reduce the penalty if the insurer demon-
36 strates to the director that the imposition of the penalty would constitute a
37 financial hardship to the insurer.

38 (2) Every director or officer of an insurance holding company system
39 who knowingly violates, participates in or assents to, or who knowingly per-
40 mits any of the officers or agents of the insurer to engage in transactions or
41 make investments that have not been properly reported or submitted pursuant
42 to section 41-3809(1), 41-3810(2) or 41-3812, Idaho Code, or who violates
43 the provisions of this chapter shall pay, in their individual capacity, an
44 administrative penalty of not more than five thousand dollars (\$5,000) per
45 violation, after notice and the opportunity for a hearing before the direc-
46 tor. In determining the amount of the administrative penalty, the director
47 shall take into account the appropriateness of the penalty with respect to
48 the gravity of the violation, the history of any previous violations and such
49 other matters as the interests of justice may require.

1 (3) Whenever it appears to the director that any insurer subject to this
2 chapter or any director, officer, employee or agent thereof has engaged in
3 any transaction or entered into a contract that is subject to section 41-3810
4 or 41-3812, Idaho Code, and that would not have been approved had approval
5 been requested, the director may order the insurer to cease and desist imme-
6 diately from any further activity under that transaction or contract. After
7 notice and the opportunity for a hearing, the director may also order the in-
8 surer to void any contracts and restore the status quo if such action is in
9 the best interest of the policyholders, creditors or the public.

10 (4) Whenever it appears to the director that any insurer or any direc-
11 tor, officer, employee or agent thereof has committed a willful violation of
12 this chapter, the director may seek criminal proceedings to be instituted
13 by referring the matter to the attorney general or the county prosecutor in
14 the county in which the principal office of the insurer is located, or if the
15 insurer has no office in this state, then in Ada county, Idaho, against the
16 insurer or the responsible director, officer, employee or agent thereof.
17 Any insurer who willfully violates the provisions of this chapter shall
18 be guilty of a felony and may be fined not more than five thousand dollars
19 (\$5,000). Any individual who willfully violates the provisions of this
20 chapter shall be guilty of a felony and may be imprisoned in the state peni-
21 tentiary for not more than two (2) years or fined in his individual capacity
22 not more than five thousand dollars (\$5,000), or both.

23 (5) Any officer, director or employee of an insurance holding company
24 system who willfully and knowingly subscribes to or makes or causes to be
25 made any false statements or false reports or false filings with the intent
26 to deceive the director in the performance of his duties under the provisions
27 of this chapter, upon conviction shall be imprisoned for not more than three
28 (3) years or fined five thousand dollars (\$5,000), or both. Any fines im-
29 posed shall be paid by the officer, director or employee in his individual
30 capacity.

31 (6) Whenever it appears to the director that any person has committed a
32 violation of the provisions of section 41-3804, Idaho Code, and which pre-
33 vents the director from fully understanding the enterprise risk to the in-
34 surer by affiliates or by the insurance holding company system, such viola-
35 tion may serve as an independent basis for the director's disapproval of div-
36 idends or distributions and for placing the insurer under an order of super-
37 vision in accordance with chapter 33, title 41, Idaho Code.

38 41-3820. RECEIVERSHIP. Whenever it appears to the director that any
39 person has committed a violation of the provisions of this chapter that so
40 impairs the financial condition of a domestic insurer as to threaten insol-
41 vency or make its further transaction of business hazardous to its policy-
42 holders, creditors, shareholders or the public, the director may proceed as
43 provided in chapter 33, title 41, Idaho Code, to take possession of the prop-
44 erty of the domestic insurer and to conduct its business in the capacity of a
45 receiver.

46 41-3821. RECOVERY. (1) If an order for liquidation or rehabilitation
47 of a domestic insurer has been entered, the receiver appointed under the or-
48 der shall be authorized to recover on behalf of the insurer:

1 (a) From any parent corporation or holding company or person or affili-
2 ate who otherwise controlled the insurer, the amount of distributions,
3 other than distributions of shares of the same class of stock, paid by
4 the insurer on its capital stock; or

5 (b) Any payment in the form of a bonus, termination settlement or ex-
6 traordinary lump sum salary adjustment made by the insurer or its sub-
7 sidiary to a director, officer or employee, where the distribution or
8 payment pursuant to this subsection is made at any time during the one

9 (1) year period preceding the petition for liquidation, conservation or
10 rehabilitation, as the case may be, subject to the limitations of sub-
11 sections (2), (3) and (4) of this section.

12 (2) No distribution shall be recoverable if the parent or affiliate of
13 such domestic insurer shows that when paid the distribution was lawful and
14 reasonable, and that the insurer did not know and could not reasonably have
15 known that the distribution might adversely affect the ability of the in-
16 surer to fulfill its contractual obligations.

17 (3) Any person who was a parent corporation or holding company or a per-
18 son who otherwise controlled the insurer or affiliate at the time the distri-
19 butions were paid shall be liable up to the amount of distributions or pay-
20 ments under subsection (1) of this section, that the person received. Any
21 person who otherwise controlled the insurer at the time the distributions
22 were declared shall be liable up to the amount of distributions that would
23 have been received if they had been paid immediately. If two (2) or more per-
24 sons are liable with respect to the same distributions, they shall be jointly
25 and severally liable.

26 (4) The maximum amount recoverable pursuant to this section shall be
27 the amount needed in excess of all other available assets of the impaired or
28 insolvent insurer to pay the contractual obligations of the impaired or in-
29 solvent insurer and to reimburse any guaranty funds.

30 (5) To the extent that any person liable under subsection (3) of this
31 section is insolvent or otherwise fails to pay claims due pursuant to subsec-
32 tion (3) of this section, its parent corporation or holding company or person
33 who otherwise controlled it at the time the distribution was paid shall be
34 jointly and severally liable for any resulting deficiency in the amount re-
35 covered from the parent corporation or holding company or person who other-
36 wise controlled it.

37 41-3822. REVOCATION, SUSPENSION OR NONRENEWAL OF INSURER'S LI-
38 CENSE. Whenever it appears to the director that any person has committed a
39 violation of the provisions of this chapter that makes the continued opera-
40 tion of an insurer contrary to the interests of policyholders or the public,
41 the director may, after giving notice and the opportunity for a hearing,
42 suspend, revoke or refuse to renew the insurer's license or certificate of
43 authority to do business in this state for such period as the director finds
44 is required for the protection of policyholders or the public. Any such
45 determination shall be accompanied by specific findings of fact and conclu-
46 sions of law.

47 41-3823. JUDICIAL REVIEW -- MANDAMUS. (1) Any person aggrieved by any
48 act, determination, rule or order or any other action of the director pur-

1 suant to this chapter may appeal to the fourth judicial district court for
2 Ada county, Idaho. The court shall conduct its review in accordance with the
3 provisions of chapter 52, title 67, Idaho Code, or other applicable provi-
4 sions of law.

5 (2) The filing of an appeal pursuant to this section shall stay the ap-
6 plication of any rule, order or other action of the director to the party pur-
7 suing such appeal, unless the court, after providing the party with notice
8 and the opportunity for a hearing, determines that a stay would be detrimen-
9 tal to the interest of policyholders, shareholders, creditors or the public.

10 (3) Any person aggrieved by any failure of the director to act or make a
11 determination required by this chapter may petition the fourth judicial dis-
12 trict court for Ada county for a writ in the nature of a mandamus or a peremp-
13 tory mandamus directing the director to act or make a determination.

14 41-3824. MUTUAL INSURANCE HOLDING COMPANIES.

15 (1) (a) A domestic mutual insurer, upon approval of the director, may
16 reorganize by forming an insurance holding company system, which shall
17 be designated as "a mutual insurance holding company," based upon a
18 mutual insurance company plan and continuing the corporate existence
19 of the reorganizing insurer as a stock insurer. The director, after a
20 public hearing as provided in section 41-3806, Idaho Code, if satisfied
21 that the interests of the policyholders are properly protected and that
22 the plan of reorganization is fair and equitable to the policyholders,
23 may approve the proposed plan of reorganization and may require as a
24 condition of approval such modifications of the proposed plan of reor-
25 ganization as the director finds necessary for the protection of the
26 policyholders' interests. The director may retain consultants for this
27 purpose as provided in section 41-3806(5), Idaho Code. A reorganiza-
28 tion pursuant to this section is subject to the requirements of sections
29 41-3804 and 41-3805, Idaho Code. The director shall retain jurisdic-
30 tion over a mutual insurance holding company organized pursuant to this
31 section to assure that policyholder interests are protected.

32 (b) All of the initial shares of the capital stock of the reorganized
33 insurer shall be issued to the mutual insurance holding company. The
34 membership interests of the policyholders of the reorganized insurer
35 shall become membership interests in the mutual insurance holding com-
36 pany. Policyholders of the reorganized insurer shall be members of the
37 mutual insurance holding company in accordance with the articles of in-
38 corporation and bylaws of the mutual insurance holding company. The mu-
39 tual insurance holding company shall at all times own a majority of the
40 voting shares of the capital stock of the reorganized insurer.

41 (2) (a) A domestic mutual insurer, upon the approval of the director,
42 may reorganize by merging its policyholders' membership interests into
43 a mutual insurance holding company formed pursuant to subsection (1) of
44 this section and continuing the corporate existence of the reorganizing
45 insurer as a stock insurer subsidiary of the mutual insurance holding
46 company. The director, after a public hearing as provided in section
47 41-3806, Idaho Code, if satisfied that the interests of the policyhold-
48 ers are properly protected and that the merger is fair and equitable to
49 the policyholders, may approve the proposed merger and may require as a

1 condition of approval such modifications of the proposed merger as the
2 director finds necessary for the protection of the policyholders' in-
3 terests. For this purpose, the director may retain consultants as pro-
4 vided in section 41-3806(5), Idaho Code. A merger pursuant to this sub-
5 section is subject to sections 41-3804 and 41-3805, Idaho Code. The di-
6 rector shall retain jurisdiction over the mutual insurance holding com-
7 pany organized pursuant to this section to assure that policyholder in-
8 terests are protected.

9 (b) All of the initial shares of the capital stock of the reorganized
10 insurer shall be issued to the mutual insurance holding company. The
11 membership interests of the policyholders of the reorganized insurance
12 company shall become membership interests in the mutual insurance hold-
13 ing company. Policyholders of the reorganized insurer shall be members
14 of the mutual insurance holding company in accordance with the articles
15 of incorporation and bylaws of the mutual insurance holding company.
16 The mutual insurance holding company shall at all times own a majority
17 of the voting shares of the capital stock of the reorganized insurer.
18 A merger of policyholders' membership interests in a mutual insurer
19 into a mutual insurance holding company shall be deemed to be a merger
20 of insurance companies pursuant to section 41-2857, Idaho Code, and is
21 subject to the requirements of section 41-2857, Idaho Code.

22 (c) A foreign mutual insurer that is a domestic insurer organized under
23 chapter 3, title 41, Idaho Code, may reorganize upon the approval of
24 the director and in compliance with the requirements of any law or rule
25 applicable to the foreign mutual insurer by merging its policyholders'
26 membership interests into a mutual insurance holding company formed
27 pursuant to subsection (1) of this section and continuing the corporate
28 existence of the reorganizing foreign mutual insurer as a foreign stock
29 insurer subsidiary of the mutual insurance holding company. The direc-
30 tor, after a public hearing as provided in section 41-3806, Idaho Code,
31 may approve the proposed merger. The director may retain consultants
32 as provided in section 41-3806(5), Idaho Code. A merger pursuant to
33 this paragraph is subject to the requirements of sections 41-3804 and
34 41-3805, Idaho Code. The reorganizing foreign mutual insurer may re-
35 main a foreign company or foreign corporation after the merger and may
36 be admitted to do business in this state, upon approval by the direc-
37 tor. A foreign mutual insurer that is a party to the merger may at the
38 same time redomesticate in this state by complying with the applicable
39 requirements of this state and its state of domicile. The provisions
40 of subsection (2) (b) of this section shall apply to a merger authorized
41 under this paragraph.

42 (3) A mutual insurance holding company resulting from the reorganiza-
43 tion of a domestic mutual insurer organized under chapter 1, title 30, Idaho
44 Code, shall be incorporated pursuant to chapter 1, title 30, Idaho Code.
45 This requirement shall supersede any conflicting provisions of chapter 1,
46 title 30, Idaho Code. The articles of incorporation and any amendments to
47 such articles of the mutual insurance holding company shall be subject to
48 approval of the director in the same manner as those of an insurance company.

49 (4) A mutual insurance holding company is deemed to be an insurer sub-
50 ject to chapter 33, title 41, Idaho Code, and shall automatically be a party

1 to any proceeding under chapter 33, title 41, Idaho Code, involving an in-
2 surer that, as a result of a reorganization pursuant to subsection (1) or (2)
3 of this section, is a subsidiary of the mutual insurance holding company.
4 In any proceeding under chapter 33, title 41, Idaho Code, involving the re-
5 organized insurer, the assets of the mutual insurance holding company are
6 deemed to be assets of the estate of the reorganized insurer for purposes of
7 satisfying the claims of the reorganized insurer's policyholders. A mutual
8 insurance holding company shall not be dissolved or liquidated without the
9 prior approval of the director or as ordered by the district court pursuant
10 to chapter 33, title 41, Idaho Code.

11 (5) (a) Section 41-2855, Idaho Code, is not applicable to a reorganiza-
12 tion or merger pursuant to this section.

13 (b) Section 41-2855, Idaho Code, is applicable to demutualization of
14 a mutual insurance holding company that resulted from the reorganiza-
15 tion of a domestic mutual insurer organized pursuant to chapter 3, title
16 41, Idaho Code, as if the domestic mutual insurer were a mutual life in-
17 surer.

18 (6) A membership interest in a domestic mutual insurance holding com-
19 pany shall not constitute a security as defined in section 30-14-102(28),
20 Idaho Code.

21 (7) The majority of the voting shares of the capital stock of the reor-
22 ganized insurer, which is required by this section to be at all times owned
23 by a mutual insurance holding company, shall not be conveyed, transferred,
24 assigned, pledged, subject to a security interest or lien, encumbered or
25 otherwise hypothecated or alienated by the mutual insurance holding company
26 or intermediate holding company. Any conveyance, transfer, assignment,
27 pledge, security interest, lien, encumbrance, hypothecation or alienation
28 of, in or on the majority of the voting shares of the reorganized insurer that
29 is required by this section to be at all times owned by a mutual insurance
30 holding company, is in violation of the provisions of this section and shall
31 be void in inverse chronological order of the date of such conveyance, trans-
32 fer, assignment, pledge, security interest, lien, encumbrance or hypothe-
33 cation or alienation, as to the shares necessary to constitute a majority of
34 such voting shares. The majority of the voting shares of the capital stock of
35 the reorganized insurer that is required by this section to be at all times
36 owned by a mutual insurance holding company shall not be subject to execution
37 and levy as provided in title 11, Idaho Code. The shares of the capital stock
38 of the surviving or new company resulting from a merger or consolidation of
39 two (2) or more reorganized insurers or two (2) or more intermediate holding
40 companies that were subsidiaries of the same mutual insurance holding com-
41 pany are subject to the same requirements, restrictions and limitations as
42 provided in this section to which the shares of the merging or consolidating
43 reorganized insurers or intermediate holding companies were subject as pro-
44 vided in this section prior to the merger or consolidation.

45 (a) As used in this section, "majority of the voting shares of the capi-
46 tal stock of the reorganized insurer" means shares of the capital stock
47 of the reorganized insurer that carry the right to cast a majority of the
48 votes entitled to be cast by all of the outstanding shares of the capi-
49 tal stock of the reorganized insurer for the election of directors and
50 on all other matters submitted to a vote of the shareholders of the re-

1 organized insurer. The ownership of a majority of the voting shares of
 2 the capital stock of the reorganized insurer that is required pursuant
 3 to this section to be at all times owned by a parent mutual insurance
 4 holding company includes indirect ownership through one (1) or more in-
 5 termediate holding companies in a corporate structure approved by the
 6 director. However, indirect ownership through one (1) or more interme-
 7 diate holding companies shall not result in the mutual insurance hold-
 8 ing company owning less than the equivalent of a majority of the voting
 9 shares of the capital stock of the reorganized insurer. The director
 10 shall have jurisdiction over an intermediate holding company as if it
 11 were a mutual insurance holding company.

12 (b) As used in this section, "intermediate holding company" means a
 13 holding company that is a subsidiary of a mutual insurance holding
 14 company and that either directly or through a subsidiary intermediate
 15 holding company has one (1) or more subsidiary-reorganized insurers of
 16 which a majority of the voting shares of the capital stock would other-
 17 wise have been required pursuant to this section to be at all times owned
 18 by the mutual insurance holding company.

19 (8) It is the intent of the legislature that the formation of a mutual
 20 insurance holding company shall not increase the Idaho tax burden of the mu-
 21 tual insurance holding company system and that a stock insurance subsidiary
 22 shall continue to be subject to Idaho insurance premium taxation in lieu of
 23 all other taxes except real property taxes as provided in section 41-405,
 24 Idaho Code. Subject to approval by the director as required under Idaho law,
 25 a stock insurance subsidiary may issue dividends or distributions to the mu-
 26 tual insurance holding company or any intermediate holding company and such
 27 dividends or distributions shall be excluded from the Idaho taxable income
 28 of the recipients; provided however, that such exclusion shall not apply if,
 29 in the year preceding the year in which the dividends or distributions were
 30 made, the subsidiary insurer's liability for Idaho premium tax was less than
 31 the amount of Idaho income tax, computed after allowance for income tax cred-
 32 its, for which the insurer would have been liable in such year had the insurer
 33 been subject to Idaho income taxation rather than premium taxation.

34 41-3825. SEVERABILITY. The provisions of this chapter are hereby de-
 35 clared to be severable and if any provision of this chapter or the applica-
 36 tion of such provision to any person or circumstance is declared invalid for
 37 any reason, such declaration shall not affect the validity of the remaining
 38 portions of this chapter.

39 SECTION 3. That Section 41-706, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 41-706. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in or
 42 hold as assets categories of investments within applicable limits as follows
 43 only:

44 (1) One (1) person. An insurer shall not, except with the consent of the
 45 director, have at any one (1) time any combination of investments in or loans
 46 upon the security of the obligations, property, or securities of any one (1)
 47 person, institution, corporation, or municipal corporation, aggregating an
 48 amount exceeding ten ~~per cent~~ percent (10%) of the insurer's assets. This

1 restriction shall not apply as to investments or deposits fully insured by
 2 the ~~F~~ederal ~~D~~eposit ~~I~~nsurance ~~C~~orporation or to general obligations of
 3 the United States of America or of any state or include policy or annuity con-
 4 tract loans made under section 41-718, Idaho Code, or to assets subject to
 5 section 41-715 or ~~41-3801B~~ 41-3803, Idaho Code, or to any one (1) domestic
 6 reciprocal insurer which exclusively insures members who are political sub-
 7 divisions, as defined by section 6-902 2., Idaho Code, provided that all such
 8 investments comply with the public depository laws.

9 (2) Voting stock. An insurer shall not invest in or hold at any one (1)
 10 time more than ten ~~per cent~~ percent (10%) of the outstanding voting stock of
 11 any corporation, except with the consent of the director given with respect
 12 to voting rights of preference stock during default of dividends. This pro-
 13 vision does not apply as to stock of subsidiaries of the insurer or a com-
 14 panion company or companies under substantially the same management at the
 15 time of purchase, as referred to in section 41-715 or ~~41-3801B~~ 41-3803, Idaho
 16 Code.

17 (3) Minimum capital. An insurer (other than title insurer) shall in-
 18 vest and maintain invested funds not less in amount than the minimum paid-in
 19 capital stock required under this code of a domestic stock insurer trans-
 20 acting like kinds of insurance, only in cash and the securities provided for
 21 under the following sections of this chapter: section 41-707, Idaho Code,
 22 (public obligations), and section 41-721, Idaho Code, (real estate mort-
 23 gages and contracts).

24 (4) Life insurance reserves. A life insurer shall also invest and keep
 25 invested its funds in an amount not less than the reserves under its life in-
 26 surance policies and annuity contracts in force, as prescribed by section
 27 41-612, Idaho Code, in cash and/or the securities or investments allowed un-
 28 der this chapter, other than in common stocks, insurance stocks and stocks of
 29 subsidiaries of the insurer.

30 (5) Other specific limits. Limits as to investments in the category of
 31 real estate shall be as provided in section 41-728, Idaho Code; and other
 32 specific limits shall apply as stated in the sections dealing with other re-
 33 spective kinds of investments.

34 SECTION 4. That Section 41-714, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 41-714. COMMON STOCKS. After satisfying the requirements of section
 37 41-706(3) and (4), Idaho Code, (investment of capital and life reserves), an
 38 insurer may invest funds in an aggregate amount not in excess of fifteen per-
 39 cent (15%) of its assets in common shares of stock of any solvent institution
 40 existing under the laws of the United States or of any state, district or ter-
 41 ritory thereof, or of the government of Canada or any province thereof, that
 42 qualify as a sound investment, in addition to the shares of a substantially
 43 owned or wholly owned subsidiary corporation.

44 For the purpose of determining the investment limitation imposed by
 45 this section, the insurer shall value securities subject to the provisions
 46 of this section at the cost of the security or at the market value of the
 47 security, whichever is lower. However, investments in the shares of sub-
 48 sidiaries or companion insurance companies shall be governed by sections
 49 41-715 and ~~41-3801B~~ 41-3803, Idaho Code.

1 The limitations as to investment in common stocks as provided herein
2 shall not apply to nor limit the right of investments in investment trust
3 securities as provided for in section 41-716, Idaho Code.

4 SECTION 5. That Section 41-715, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 41-715. INSURANCE STOCKS. (1) An insurer may invest in subsidiary
7 and/or companion insurance companies not to exceed fifteen ~~per cent~~ percent
8 (15%) of assets. For the purpose of calculating this fifteen ~~per cent~~
9 percent (15%) limitation, all investments made under this section and sec-
10 tion 41-3801B 41-3803, Idaho Code, ~~and section 41-715, Idaho Code,~~ must be
11 valued at market value of the security if actively traded, or at cost if not
12 actively traded.

13 (2) The limitations on investments in insurance stocks set forth in
14 this section shall not apply to stocks acquired under a plan for merger of the
15 insurers which has been approved by the director or as to shares received as
16 stock dividends upon shares already owned.

17 (3) Shares acquired and held under this section shall not, for the pur-
18 poses of the limitations provided under section 41-714, Idaho Code, be in-
19 cluded among other common stocks held by the insurer.

20 SECTION 6. That Section 41-731, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 41-731. PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING. (1) In
23 addition to investments excluded under other provisions of this code, an
24 insurer shall not directly or indirectly invest in or loan its funds upon the
25 security of:

26 (a) Issued shares of its own capital stock, except for the purpose
27 of mutualization under section 41-2854, Idaho Code, or in connection
28 with a plan approved by the director for purchase of such shares by
29 the insurer's officers, employees, or agents, or for other reasonable
30 purposes under a plan filed with and approved by the director. No such
31 stock shall, however, constitute an asset of the insurer in any determi-
32 nation of its financial condition.

33 (b) Except with the director's consent, any security issued by any cor-
34 poration or enterprise the controlling interest of which is, or will af-
35 ter such acquisition by the insurer be, held directly or indirectly by
36 the insurer or any combination of the insurer and the insurer's direc-
37 tors, officers, parent corporation, subsidiaries, controlling stock-
38 holders, and the spouses and children of any of the foregoing individu-
39 als. Investments in subsidiaries under sections 41-706(2), 41-715 and
40 ~~41-3801B~~ 41-3803, Idaho Code, shall not be subject to this provision.

41 (c) Any note or other evidence of indebtedness of any director, offi-
42 cer, or controlling stockholder of the insurer, or the spouse or child
43 of any of the foregoing individuals, except as to policy loans autho-
44 rized under section 41-718, Idaho Code.

45 (d) Any investment or security which is found by the director to be de-
46 signed to evade any prohibition of this chapter.

1 (2) No insurer shall underwrite or participate in the underwriting of
2 an offering of securities or property by any other person.

3 SECTION 7. That Section 41-733, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 41-733. SUBSIDIARY INVESTMENTS. An insurer may invest in subsidiaries
6 in accordance with section ~~41-3801B~~ 41-3803, Idaho Code.

7 SECTION 8. That Section 41-901, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 41-901. DEFINITIONS. For the purposes of this chapter:

10 (1) "Administrator" or "third party administrator" or "TPA" means any
11 person who directly or indirectly underwrites, collects charges or premiums
12 from or adjusts or settles claims on residents of this state in connection
13 with life, annuity or health insurance coverage offered or provided by an in-
14 surer, except any of the following:

15 (a) An employer, or a wholly owned direct or indirect subsidiary of an
16 employer, on behalf of its employees or the employees of one (1) or more
17 subsidiaries or affiliated corporations of such employer.

18 (b) A union on behalf of its members.

19 (c) An insurance company that is either authorized to transact insur-
20 ance in this state or acting as an insurer with respect to a policy law-
21 fully issued and delivered by such company in and pursuant to the laws
22 of a state in which the insurer was authorized to transact an insurance
23 business, or a hospital, medical, dental or optometric service corpora-
24 tion or a health care service organization, including their sales rep-
25 resentatives, possessing a valid certificate of authority in this state
26 when engaged in the performance of their duties.

27 (d) An insurance producer licensed to sell life, annuities or health
28 coverage in this state whose activities are limited exclusively to the
29 sale, solicitation and negotiation of insurance.

30 (e) A creditor on behalf of its debtors with respect to insurance cover-
31 ing a debt between the creditor and its debtors.

32 (f) A trust, its trustees, agents and employees acting pursuant to such
33 trust established in conformity with 29 U.S.C. 186.

34 (g) A trust exempt from taxation under section 501(a) of the Internal
35 Revenue Code, its trustees and employees acting pursuant to such trust
36 or a custodian and the custodian's agents or employees acting pursuant
37 to a custodian account that meets the requirements of section 401(f) of
38 the Internal Revenue Code.

39 (h) A credit union or a financial institution that is subject to su-
40 pervision or examination by federal or state banking authorities, or a
41 mortgage lender, to the extent they collect and remit premiums to li-
42 censed insurance producers or to limited lines producers or authorized
43 insurers in connection with loan payments.

44 (i) A credit card issuing company that advances for and collects premi-
45 ums or charges from its credit cardholders who have authorized such col-
46 lection.

1 (j) A person who adjusts or settles claims in the normal course of that
2 person's practice or employment as an attorney at law and who does not
3 collect charges or premiums in connection with life, annuity or health
4 insurance coverage.

5 (k) A person licensed as a managing general agent in this state whose
6 activities are limited exclusively to the scope of activities conveyed
7 under such license.

8 (l) A person who is affiliated with an insurer and who acts solely as
9 an administrator for the direct and assumed insurance business of an af-
10 filiated insurer. The insurer is responsible for the acts of the ad-
11 ministrator and is responsible for providing all of the administrator's
12 books and records to the insurance director upon a request from the in-
13 surance director. For purposes of this paragraph, "insurer" means a li-
14 censed insurance company, hospital or professional service corporation
15 or a managed care organization.

16 (2) "Affiliate" or "affiliated" means an entity or person who directly
17 or indirectly through one (1) or more intermediaries controls or is con-
18 trolled by, or is under common control with, a specified entity or person.

19 (3) "Control," including the terms "controlling," "controlled by" and
20 "under common control with," means the possession, direct or indirect, of
21 the power to direct or cause the direction of the management and policies
22 of a person whether through the ownership of voting securities, by contract
23 other than a commercial contract for goods or nonmanagement services, or
24 otherwise, unless the power is the result of an official position with or
25 corporate office held by the person. Control shall be presumed to exist if
26 any person, directly or indirectly, owns, controls, holds with the power to
27 vote, or holds proxies representing ten percent (10%) or more of the voting
28 securities of any other person. This presumption may be rebutted by a show-
29 ing made in the manner provided in section 41-3806~~9~~(11), Idaho Code, that
30 control does not exist in fact. The director may determine, after furnishing
31 all persons in interest notice and an opportunity to be heard and making spe-
32 cific findings of fact to support the determination, that control exists in
33 fact, notwithstanding the absence of a presumption to that effect.

34 (4) "Director" means the director of the Idaho department of insurance.

35 (5) "GAAP" means United States "Generally Accounting
36 Pprinciples" consistently applied.

37 (6) "Home state" means the District of Columbia and any state or terri-
38 tory of the United States in which an administrator is incorporated or main-
39 tains its principal place of business. If neither the state in which the ad-
40 ministrator is incorporated nor the state in which it maintains its princi-
41 pal place of business has adopted the provisions of this chapter, or a sub-
42 stantially similar law governing administrators, the administrator may de-
43 clare another state in which it conducts business to be its "home state."

44 (7) "Insurer" means a person undertaking to provide life, annuity or
45 health coverage or self-funded coverage who is subject to regulation under
46 title 41, Idaho Code.

47 (8) "NAIC" means the "National Association of Insurance
48 Commissioners."

49 (9) "Nonresident administrator" means an administrator with a home
50 state other than Idaho.

1 (10) "Underwrites" or "underwriting" means, but is not limited to, the
2 acceptance of employer or individual applications for coverage of individu-
3 als in accordance with the written rules of the insurer or self-funded plan,
4 or the overall planning and coordinating of a benefits program.

5 (11) "Uniform application" means the current version of the NAIC uni-
6 form application for third party administrators.

7 SECTION 9. That Section 41-1702, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 41-1702. DEFINITIONS. As used in this chapter:

10 (1) "Accredited state" means a state in which the insurance department
11 or regulatory agency has qualified as meeting the minimum financial regula-
12 tory standards promulgated and established from time to time by the national
13 association of insurance commissioners (NAIC).

14 (2) "Broker" means an insurance broker or brokers or any other person,
15 firm, association or corporation, when, for any compensation, commission or
16 other thing of value, such person, firm, association or corporation acts or
17 aids in any manner in soliciting, negotiating or procuring the making of any
18 insurance contract on behalf of an insured other than the person, firm, asso-
19 ciation or corporation.

20 (3) "Control" or "controlled" has the meaning ascribed in section
21 ~~41-3820~~ 41-3802(2), Idaho Code.

22 (4) "Controlled insurer" means a licensed insurer which is controlled,
23 directly or indirectly, by a broker.

24 (5) "Controlling broker" means a broker who, directly or indirectly,
25 controls an insurer.

26 (6) "Licensed insurer" or "insurer" means any person, firm, associa-
27 tion or corporation duly licensed to transact a property/casualty insurance
28 business in this state. The following inter alia, are not licensed insurers
29 for the purposes of this chapter:

30 (a) All risk retention groups as defined in the superfund amendments
31 reauthorization act of 1986, ~~Pub. L. No. P.L.~~ 99-499, 100 Stat. 1613
32 (1986) and the risk retention act 15 U.S.C. section 3901 et seq. (1982 &
33 and supp. 1986) and chapter 48, title 41, Idaho Code;

34 (b) All residual market pools and joint underwriting authorities or as-
35 sociations; and

36 (c) All captive insurers. ~~{For purposes of this chapter, captive in-~~
37 ~~surers are insurance companies owned by another organization whose ex-~~
38 ~~clusive purpose is to insure risks of the parent organization and af-~~
39 ~~filiated companies or, in the case of groups and associations, insur-~~
40 ~~ance organizations owned by the insureds whose exclusive purpose is to~~
41 ~~insure risks to member organizations and/or group members and their af-~~
42 ~~filiates}.~~

43 SECTION 10. That Section 41-1951, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 41-1951. DEFINITIONS. In sections 41-1950 through 41-1965, Idaho
46 Code:

1 (1) "Advertising" means any written, electronic or printed communica-
2 tion or any communication by means of recorded telephone messages or trans-
3 mitted on radio, television, the internet or similar communications media,
4 including film strips, motion pictures and videos, published, disseminated,
5 circulated or placed directly before the public, in this state, for the pur-
6 pose of creating an interest in or inducing a person to sell, assign, devise,
7 bequest or transfer the death benefit or ownership of a life insurance policy
8 pursuant to a life settlement contract.

9 (2) "Business of life settlements" means an activity involved in, but
10 not limited to, the offering to enter into, soliciting, negotiating, procur-
11 ing or effectuating a life settlement contract. The transaction of the busi-
12 ness of life settlements is within the scope of the transaction of the busi-
13 ness of insurance as provided in section 41-112, Idaho Code.

14 (3) "Chronically ill" means:

15 (a) Being unable to perform at least two (2) activities of daily liv-
16 ing such as eating, toileting, transferring, bathing, dressing or con-
17 tinence; or

18 (b) Requiring substantial supervision to protect the individual from
19 threats to health and safety due to severe cognitive impairment.

20 (4) "Financing entity" means an underwriter, placement agent, lender,
21 purchaser of securities, purchaser of a policy or certificate from a life
22 settlement provider, credit enhancer or any entity that has a direct owner-
23 ship in a policy or certificate that is the subject of a life settlement con-
24 tract, but:

25 (a) Whose principal activity related to the transaction is providing
26 funds to effect the life settlement or purchase of one (1) or more set-
27 tled policies; and

28 (b) Who has an agreement in writing with one (1) or more licensed life
29 settlement providers to finance the acquisition of life settlement con-
30 tracts.

31 "Financing entity" does not include a nonaccredited investor. An "accred-
32 ited investor" is defined by rule 501 of regulation D, 17 CFR 230.501 (a).

33 (5) "Life insurance producer" means any person licensed in this state
34 as a resident or nonresident insurance producer who has received qualifica-
35 tion or authority for life insurance coverage or a life line of coverage pur-
36 suant to section 41-1008, Idaho Code.

37 (6) "Life settlement broker" or "broker" means a person who, working
38 exclusively on behalf of an owner and for a fee, commission or other valuable
39 consideration, offers or attempts to negotiate life settlement contracts
40 between an owner and one (1) or more life settlement providers or one (1) or
41 more life settlement brokers. Notwithstanding the manner in which the life
42 settlement broker is compensated, a life settlement broker is deemed to rep-
43 resent only the owner, and not the insurer or the life settlement provider,
44 and owes a fiduciary duty to the owner to act according to the owner's in-
45 structions and in the best interest of the owner. Nothing in this definition
46 reduces or impairs the scope of the definitions in section 30-14-102, Idaho
47 Code, including, but not limited to, agent, broker-dealer, investment ad-
48 viser, and investment adviser representative. The term does not include an
49 attorney, certified public accountant or a financial planner accredited by
50 a nationally recognized accreditation agency, who is retained to represent

1 the owner and whose compensation is not paid directly or indirectly by the
2 life settlement provider or purchaser.

3 (7) "Life settlement contract" means an agreement between an owner and
4 a life settlement provider or any affiliate, as that term is defined in sec-
5 tion 41-3804~~2~~(1), Idaho Code, of the life settlement provider establishing
6 the terms under which compensation or anything of value is or will be paid,
7 which compensation or value is less than the expected death benefits of the
8 policy, in return for the owner's present or future assignment, transfer,
9 sale, hypothecation, devise or bequest of the death benefit or ownership of
10 any portion of the insurance policy or certificate of insurance. Nothing in
11 this definition reduces or impairs the scope of the definition of security
12 contained in section 30-14-102(28), Idaho Code.

13 (a) "Life settlement contract" includes a premium finance loan made for
14 a life insurance policy on or before the date of issuance of the policy
15 where one (1) or more of the following conditions apply:

16 (i) The loan proceeds are not used solely to pay premiums for the
17 policy and any costs or expenses incurred by the lender or the bor-
18 rower in connection with the financing;

19 (ii) The owner or the insured receives on the date of the premium
20 finance loan a guarantee of a future life settlement value of the
21 policy; or

22 (iii) The owner or the insured agrees on the date of the premium
23 finance loan to sell the policy or any portion of its death benefit
24 on any date following the issuance of the policy.

25 (b) "Life settlement contract" includes the transfer, for compensation
26 or value, of ownership or beneficial interest in a trust or other entity
27 that owns such policy if the trust or other person was formed or availed
28 of for the principal purpose of acquiring one (1) or more life insurance
29 policies which life insurance contract insures the life of a person re-
30 siding in this state.

31 (c) "Life settlement contract" does not include any of the following:

32 (i) A policy loan or accelerated death benefit made by the in-
33 surer pursuant to the policy's terms;

34 (ii) A loan, the proceeds of which are used solely to pay:

35 (A) Premiums for the policy; and

36 (B) The costs of the loan, including, without limitation,
37 interest, arrangement fees, utilization fees and similar
38 fees, closing costs, legal fees and expenses, trustee fees
39 and expenses, and third party collateral provider fees and
40 expenses, including fees payable to letter of credit is-
41 suers;

42 (iii) A loan made by a bank or other licensed financial institu-
43 tion in which the lender takes an interest in a life insurance pol-
44 icy solely to secure repayment of a loan or, if there is a default
45 on the loan and the policy is transferred, the transfer of such a
46 policy by the lender, provided that neither the default itself nor
47 the transfer of the policy in connection with the default is pur-
48 suant to an agreement or understanding with any other person for
49 the purpose of evading regulation under sections 41-1950 through
50 41-1965, Idaho Code;

1 (iv) A loan made by a lender that does not violate the Idaho
 2 ~~consumer~~ credit code, provided that the premium finance loan is
 3 not described in paragraph (a) of this subsection;

4 (v) An agreement where all the parties are closely related to the
 5 insured by blood or law or have a lawful substantial economic in-
 6 terest in the continued life, health and bodily safety of the per-
 7 son insured, or are trusts established primarily for the benefit
 8 of such parties;

9 (vi) Any designation, consent or agreement by an insured who is
 10 an employee of an employer in connection with the purchase by the
 11 employer, or trust established by the employer, of life insurance
 12 on the life of the employee;

13 (vii) A bona fide business succession planning arrangement:

14 (A) Between one (1) or more shareholders in a corporation or
 15 between a corporation and one (1) or more of its shareholders
 16 or one (1) or more trusts established by its shareholders;

17 (B) Between one (1) or more partners in a partnership or be-
 18 tween a partnership and one (1) or more of its partners or one
 19 (1) or more trusts established by its partners; or

20 (C) Between one (1) or more members in a limited liability
 21 company or between a limited liability company and one (1) or
 22 more of its members or one (1) or more trusts established by
 23 its members;

24 (viii) An agreement entered into by a service recipient, or a trust
 25 established by the service recipient, and a service provider, or a
 26 trust established by the service provider, who performs signifi-
 27 cant services for the service recipient's trade or business; or

28 (ix) Any other contract, transaction or arrangement exempted
 29 from the definition of life settlement contract by the director
 30 based on a determination that the contract, transaction or ar-
 31 rangement is not of the type intended to be regulated by sections
 32 41-1950 through 41-1965, Idaho Code.

33 (8) "Life settlement provider" or "provider" means a person, other than
 34 an owner, who enters into or effectuates a life settlement contract with an
 35 owner resident in this state. Nothing in this definition reduces or impairs
 36 the scope of the definitions of section 30-14-102, Idaho Code, including,
 37 but not limited to, agent, broker-dealer, investment adviser, and invest-
 38 ment adviser representative. "Life settlement provider" does not include:

39 (a) A bank, savings bank, savings and loan association, credit union
 40 or other licensed lending institution that takes an assignment of a life
 41 insurance policy solely as collateral for a loan;

42 (b) A premium finance company making premium finance loans that takes
 43 an assignment of a life insurance policy solely as collateral for a
 44 loan;

45 (c) The insurer of the life insurance policy;

46 (d) An authorized or eligible insurer that provides stop loss cover-
 47 age or financial guaranty insurance to a life settlement provider, pur-
 48 chaser, financing entity, special purpose entity or related provider
 49 trust;

50 (e) A financing entity;

- 1 (f) A special purpose entity;
2 (g) A related provider trust; or
3 (h) Any other person that the director determines is not the type of
4 person intended to be covered by the definition of life settlement
5 provider.
- 6 (9) "Owner" means the owner of a life insurance policy or a certificate
7 holder under a group policy who resides in this state and enters or seeks to
8 enter into a life settlement contract. For the purposes of sections 41-1950
9 through 41-1965, Idaho Code, an owner shall not be limited to an owner of a
10 life insurance policy or a certificate holder under a group policy insuring
11 the life of an individual with a terminal or chronic illness or condition ex-
12 cept where specifically addressed.
- 13 (a) If there is more than one (1) owner on a single policy and the owners
14 are residents of different states, the transaction shall be governed by
15 the law of the state in which the owner having the largest percentage
16 ownership resides or, if the owners hold equal ownership, the state of
17 residence of one (1) owner agreed upon in writing by all the owners.
- 18 (b) "Owner" does not include:
19 (i) A licensee under sections 41-1950 through 41-1965, Idaho
20 Code, including a life insurance producer acting as a life settle-
21 ment broker pursuant to sections 41-1950 through 41-1965, Idaho
22 Code;
23 (ii) Qualified institutional buyer as defined, respectively, in
24 rule 144A, 17 CFR 230.144A, promulgated under the federal securi-
25 ties act of 1933, 15 USC section 77a et seq., as amended;
26 (iii) A financing entity;
27 (iv) A special purpose entity; or
28 (v) A related provider trust.
- 29 (10) "Policy" means an individual or group policy, group certificate,
30 contract or arrangement of life insurance owned by a resident of this state,
31 regardless of whether delivered or issued for delivery in this state.
- 32 (11) "Premium finance loan" means a loan made primarily for the purpose
33 of making premium payments on a life insurance policy, which loan is secured
34 by an interest in such life insurance policy.
- 35 (12) "Related provider trust" means a titling trust or other trust es-
36 tablished by a licensed life settlement provider or a financing entity for
37 the sole purpose of holding the ownership or beneficial interest in pur-
38 chased policies in connection with a financing transaction. The trust shall
39 have a written agreement with the licensed life settlement provider under
40 which the licensed life settlement provider is responsible for ensuring
41 compliance with all statutory and regulatory requirements and under which
42 the trust agrees to make all records and files related to life settlement
43 transactions available to the director as if those records and files were
44 maintained directly by the licensed life settlement provider.
- 45 (13) "Settled policy" means a life insurance policy or certificate that
46 has been acquired by a life settlement provider pursuant to a life settlement
47 contract.
- 48 (14) "Special purpose entity" means a corporation, partnership, trust,
49 limited liability company or other similar entity formed solely to provide
50 either directly or indirectly access to institutional capital markets:

1 (a) For a financing entity or licensed life settlement provider;

2 (b) In connection with a transaction in which the securities in the spe-
3 cial purposes entity are acquired by the owner or by "qualified institu-
4 tional buyers" as defined in rule 144A ~~of~~, 17 CFR 230.144A, promulgated
5 under the federal securities act of 1933, as amended; or

6 (c) In connection with a transaction in which the securities pay a fixed
7 rate of return commensurate with established asset-backed institu-
8 tional capital markets.

9 (15) "Stranger-originated life insurance" or "STOLI" means an act,
10 plan, practice, or arrangement to initiate a life insurance policy for the
11 benefit of a third party investor who, at the time of policy origination,
12 has no insurable interest in the insured. STOLI practices include, but are
13 not limited to, cases in which life insurance is purchased with resources or
14 guarantees from or through a person, who, at the time of policy inception,
15 could not lawfully initiate the policy himself or itself, and where, at the
16 time of inception, there is an arrangement or agreement, whether oral or
17 written, to directly or indirectly transfer the ownership of the policy or
18 the policy benefits to a third party. Trusts that are created to give the
19 appearance of an insurable interest and are used to initiate policies for
20 investors violate insurable interest laws and the prohibition against wa-
21 gering on life. STOLI arrangements do not include those practices set forth
22 in subsection (7) (c) of this section.

23 (16) "Terminally ill" means having an illness or sickness that can rea-
24 sonably be expected to result in death within twenty-four (24) months or
25 less.

26 SECTION 11. That Section 41-2857, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 41-2857. MERGERS AND CONSOLIDATIONS OF MUTUAL INSURERS. (1) Except as
29 set forth in section 41-382~~4~~, Idaho Code, a domestic mutual insurer shall
30 not merge or consolidate with a stock insurer.

31 (2) A domestic mutual insurer may merge or consolidate with another mu-
32 tual insurer under the applicable procedures prescribed by the statutes of
33 this state applying to corporations formed for profit, except as hereinbelow
34 provided.

35 (3) The plan and agreement for merger or consolidation shall be submit-
36 ted to and approved by at least two-thirds (2/3) of the members of each mu-
37 tual insurer voting thereon at meetings called for the purpose pursuant to
38 such reasonable notice and procedure as has been approved by the director.
39 If a life insurer, right to vote may be limited to members whose policies are
40 other than term and group policies, and have been in effect for more than one
41 (1) year.

42 (4) No such merger or consolidation shall be effectuated unless in ad-
43 vance thereof the plan and agreement therefor have been filed with the di-
44 rector and approved by him in writing after a hearing thereon. The director
45 shall give such approval within a reasonable time after such filing unless he
46 finds such plan or agreement:

47 (a) Inequitable to the policyholders of any domestic insurer involved;
48 or

1 (b) Would substantially reduce the security of and service to be ren-
2 dered to policyholders of the domestic insurer in this state and else-
3 where; or

4 (c) Is subject to other material and reasonable objections.

5 (5) If the director does not approve such plan or agreement, he shall so
6 notify the insurers in writing specifying his reasons therefor.

7 (6) No director, officer, agent or employee of any insurer party to such
8 merger or consolidation, nor any other person, shall receive any fee, com-
9 mission or other valuable consideration whatsoever for in any manner aiding,
10 promoting, or assisting therein except as set forth in the plan and agreement
11 approved by the director.

12 SECTION 12. That Section 41-3312, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 41-3312. GROUNDS FOR REHABILITATION. The director may apply by peti-
15 tion to the district court for an order authorizing him to rehabilitate a do-
16 mestic insurer or an alien insurer domiciled in this state on any one (1) or
17 more of the following grounds:

18 (1) The insurer is in such condition that the further transaction of
19 business would be hazardous, financially, to its policyholders, creditors,
20 or the public.

21 (2) There is reasonable cause to believe that there has been embezzle-
22 ment from the insurer, wrongful sequestration or diversion of the insurer's
23 assets, forgery or fraud affecting the insurer, or other illegal conduct in,
24 by, or with respect to the insurer that if established would endanger assets
25 in an amount threatening the solvency of the insurer.

26 (3) The insurer has failed to remove any person who in fact has execu-
27 tive authority in the insurer, whether an officer, manager, general agent,
28 employee, or other person, if the person has been found after notice and
29 hearing by the director to be dishonest or untrustworthy in a way affecting
30 the insurer's business.

31 (4) Control of the insurer, whether by stock ownership or otherwise,
32 and whether direct or indirect, is in a person or persons found after notice
33 and hearing to be untrustworthy.

34 (5) Any person who in fact has executive authority in the insurer,
35 whether an officer, manager, general agent, director or trustee, employee,
36 or other person, has refused to be examined under oath by the director
37 concerning its affairs, whether in this state or elsewhere, and after rea-
38 sonable notice of the fact the insurer has failed promptly and effectively
39 to terminate the employment and status of the person and all his influence on
40 management.

41 (6) After demand by the director under the provisions of section
42 41-223, Idaho Code, under this act, the insurer has failed to promptly make
43 available for examination any of its own property, books, accounts, docu-
44 ments, or other records, or those of any subsidiary or related company within
45 the control of the insurer, or those of any person having executive authority
46 in the insurer so far as they pertain to the insurer.

47 (7) Without first obtaining the written consent of the director, the
48 insurer has transferred, or attempted to transfer, in a manner contrary to
49 chapter 38, title 41, Idaho Code, or sections 41-2856 and 41-2858, Idaho

1 Code, substantially its entire property or business, or has entered into
 2 any transaction the effect of which is to merge, consolidate, or reinsure
 3 substantially its entire property or business in or with the property or
 4 business of any other person.

5 (8) The insurer or its property has been or is the subject of an appli-
 6 cation for the appointment of a receiver, trustee, custodian, conservator or
 7 sequestrator or similar fiduciary of the insurer or its property otherwise
 8 than as authorized under the insurance laws of this state, and such appoint-
 9 ment has been made or is imminent, and such appointment might oust the courts
 10 of this state of jurisdiction or might prejudice orderly delinquency pro-
 11 ceedings under this act.

12 (9) Within the previous six (6) years the insurer has willfully vio-
 13 lated its charter or articles of incorporation, its bylaws, any insurance
 14 law of this state, or any valid order of the director under the provisions of
 15 section 41-3309, Idaho Code.

16 (10) The insurer has failed to pay within sixty (60) days after due date
 17 any obligation to any state or any subdivision thereof or any judgment en-
 18 tered in any state, if the court in which such judgment was entered had ju-
 19 risdiction over such subject matter except that such nonpayment shall not be
 20 a ground until sixty (60) days after any good faith effort by the insurer to
 21 contest the obligation has been terminated, whether it is before the direc-
 22 tor or in the courts, or the insurer has systematically attempted to compro-
 23 mise or renegotiate previously agreed settlements with its creditors on the
 24 ground that it is financially unable to pay its obligations in full.

25 (11) The insurer has failed to file its annual report or other financial
 26 report required by statute within the time allowed by law and, after written
 27 demand by the director, has failed to give an adequate explanation immedi-
 28 ately.

29 (12) The board of directors or the holders of a majority of the shares
 30 entitled to vote, or a majority of those individuals entitled to the control
 31 of those entities specified in section 41-380~~1~~2, Idaho Code, request or con-
 32 sent to rehabilitation under this act.

33 SECTION 13. That Section 41-4703, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 41-4703. DEFINITIONS. As used in this chapter:

36 (1) "Actuarial certification" means a written statement by a member of
 37 the American academy of actuaries or other individual acceptable to the di-
 38 rector that a small employer carrier is in compliance with the provisions of
 39 section 41-4706, Idaho Code, based upon the person's examination and includ-
 40 ing a review of the appropriate records and the actuarial assumptions and
 41 methods used by the small employer carrier in establishing premium rates for
 42 applicable health benefit plans.

43 (2) "Affiliate" or "affiliated" means any entity or person who directly
 44 or indirectly through one (1) or more intermediaries, controls or is con-
 45 trolled by, or is under common control with, a specified entity or person.

46 (3) "Agent" means a producer as defined in section 41-1003(8), Idaho
 47 Code.

48 (4) "Base premium rate" means, for each class of business as to a rating
 49 period, the lowest premium rate charged or that could have been charged under

1 a rating system for that class of business by the small employer carrier to
2 small employers with similar case characteristics for health benefit plans
3 with the same or similar coverage.

4 (5) "Board" means the board of directors of the small employer reinsur-
5 ance program and the individual high risk reinsurance pool as provided for in
6 section 41-5502, Idaho Code.

7 (6) "Carrier" means any entity that provides, or is authorized to pro-
8 vide, health insurance in this state. For the purposes of this chapter, car-
9 rier includes an insurance company, a hospital or professional service cor-
10 poration, a fraternal benefit society, a health maintenance organization,
11 any entity providing health insurance coverage or benefits to residents of
12 this state as certificate holders under a group policy issued or delivered
13 outside of this state, and any other entity providing a plan of health insur-
14 ance or health benefits subject to state insurance regulation.

15 (7) "Case characteristics" means demographic or other objective char-
16 acteristics of a small employer that are considered by the small employer
17 carrier in the determination of premium rates for the small employer, pro-
18 vided that claim experience, health status and duration of coverage shall
19 not be case characteristics for the purposes of this chapter.

20 (8) "Catastrophic health benefit plan" means a higher limit health ben-
21 efit plan developed pursuant to section 41-4712, Idaho Code.

22 (9) "Class of business" means all or a separate grouping of small em-
23 ployers established pursuant to section 41-4705, Idaho Code.

24 (10) "Control" shall be defined in the same manner as in section
25 41-3804~~2~~(2), Idaho Code.

26 (11) "Dependent" in any new or renewing plan means a spouse, an unmar-
27 ried child under the age of twenty-five (25) years and who receives more than
28 one-half (1/2) of his financial support from the parent, or an unmarried
29 child of any age who is medically certified as disabled and dependent upon
30 the parent.

31 (12) "Director" means the director of the department of insurance of the
32 state of Idaho.

33 (13) "Eligible employee" means an employee who works on a full-time ba-
34 sis and has a normal work week of thirty (30) or more hours or, by agreement
35 between the employer and the carrier, an employee who works between twenty
36 (20) and thirty (30) hours per week. The term includes a sole proprietor, a
37 partner of a partnership, and an independent contractor, if the sole propri-
38 etor, partner or independent contractor is included as an employee under a
39 health benefit plan of a small employer, but does not include an employee who
40 works on a part-time, temporary, seasonal or substitute basis. The term el-
41 igible employee may include public officers and public employees without re-
42 gard to the number of hours worked when designated by a small employer.

43 (14) "Established geographic service area" means a geographic area, as
44 approved by the director and based on the carrier's certificate of authority
45 to transact insurance in this state, within which the carrier is authorized
46 to provide coverage.

47 (15) "Health benefit plan" means any hospital or medical policy or cer-
48 tificate, any subscriber contract provided by a hospital or professional
49 service corporation, or managed care organization subscriber contract.
50 Health benefit plan does not include policies or certificates of insur-

1 ance for specific disease, hospital confinement indemnity, accident-only,
2 credit, dental, vision, medicare supplement, long-term care, or disability
3 income insurance, student health benefits only coverage issued as a supple-
4 ment to liability insurance, worker's compensation or similar insurance,
5 automobile medical payment insurance or nonrenewable short-term coverage
6 issues for a period of twelve (12) months or less.

7 (16) "Index rate" means, for each class of business as to a rating period
8 for small employers with similar case characteristics, the arithmetic aver-
9 age of the applicable base premium rate and the corresponding highest pre-
10 mium rate.

11 (17) "Late enrollee" means an eligible employee or dependent who re-
12 quests enrollment in a health benefit plan of a small employer following the
13 initial enrollment period during which the individual is entitled to enroll
14 under the terms of the health benefit plan, provided that the initial enroll-
15 ment period is a period of at least thirty (30) days. However, an eligible
16 employee or dependent shall not be considered a late enrollee if:

17 (a) The individual meets each of the following:

18 (i) The individual was covered under qualifying previous cover-
19 age at the time of the initial enrollment;

20 (ii) The individual lost coverage under qualifying previous cov-
21 erage as a result of termination of employment or eligibility, or
22 the involuntary termination of the qualifying previous coverage;
23 and

24 (iii) The individual requests enrollment within thirty (30) days
25 after termination of the qualifying previous coverage.

26 (b) The individual is employed by an employer which offers multiple
27 health benefit plans and the individual elects a different plan during
28 an open enrollment period.

29 (c) A court has ordered coverage be provided for a spouse or minor or
30 dependent child under a covered employee's health benefit plan and re-
31 quest for enrollment is made within thirty (30) days after issuance of
32 the court order.

33 (d) The individual first becomes eligible.

34 (e) If an individual seeks to enroll a dependent during the first sixty
35 (60) days of eligibility, the coverage of the dependent shall become ef-
36 fective:

37 (i) In the case of marriage, not later than the first day of the
38 first month beginning after the date the completed request for en-
39 rollment is received;

40 (ii) In the case of a dependent's birth, as of the date of such
41 birth; or

42 (iii) In the case of a dependent's adoption or placement for adop-
43 tion, the date of such adoption or placement for adoption.

44 (18) "New business premium rate" means, for each class of business as to
45 a rating period, the lowest premium rate charged or offered or which could
46 have been charged or offered by the small employer carrier to small employers
47 with similar case characteristics for newly issued health benefit plans with
48 the same or similar coverage.

49 (19) "Plan of operation" means the plan of operation of the program es-
50 tablished pursuant to section 41-4711, Idaho Code.

1 (20) "Plan year" means the year that is designated as the plan year in
2 the plan document of a group health benefit plan, except that if the plan doc-
3 ument does not designate a plan year or if there is no plan document, the plan
4 year is:

5 (a) The deductible/limit year used under the plan;

6 (b) If the plan does not impose deductibles or limits on a yearly basis,
7 then the plan year is the policy year;

8 (c) If the plan does not impose deductibles or limits on a yearly basis
9 or the insurance policy is not renewed on an annual basis, then the plan
10 year is the employer's taxable year; or

11 (d) In any other case, the plan year is the calendar year.

12 (21) "Premium" means all moneys paid by a small employer and eligible
13 employees as a condition of receiving coverage from a small employer car-
14 rier, including any fees or other contributions associated with the health
15 benefit plan.

16 (22) "Program" means the Idaho small employer reinsurance program cre-
17 ated in section 41-4711, Idaho Code.

18 (23) "Qualifying previous coverage" and "qualifying existing coverage"
19 mean benefits or coverage provided under:

20 (a) Medicare or medicaid, civilian health and medical program for uni-
21 formed services (CHAMPUS), the Indian health service program, a state
22 health benefit risk pool or any other similar publicly sponsored pro-
23 gram; or

24 (b) Any other group or individual health insurance policy or health
25 benefit arrangement whether or not subject to the state insurance laws,
26 including coverage provided by a health maintenance organization,
27 hospital or professional service corporation, or a fraternal benefit
28 society, that provides benefits similar to or exceeding benefits pro-
29 vided under the basic health benefit plan.

30 (24) "Rating period" means the calendar period for which premium rates
31 established by a small employer carrier are assumed to be in effect.

32 (25) "Reinsuring carrier" means a small employer carrier participating
33 in the reinsurance program pursuant to section 41-4711, Idaho Code.

34 (26) "Restricted network provision" means any provision of a health
35 benefit plan that conditions the payment of benefits, in whole or in part,
36 on the use of health care providers that have entered into a contractual
37 arrangement with the carrier to provide health care services to covered in-
38 dividuals.

39 (27) "Risk-assuming carrier" means a small employer carrier whose ap-
40 plication is approved by the director pursuant to section 41-4710, Idaho
41 Code.

42 (28) "Small employer" means any person, firm, corporation, partnership
43 or association that is actively engaged in business that employed an average
44 of at least two (2) but no more than fifty (50) eligible employees on business
45 days during the preceding calendar year and that employs at least two (2) but
46 no more than fifty (50) eligible employees on the first day of the plan year,
47 the majority of whom were and are employed within this state. In determining
48 the number of eligible employees, companies that are affiliated companies,
49 or that are eligible to file a combined tax return for purposes of state taxa-
50 tion, shall be considered one (1) employer.

1 (29) "Small employer basic health benefit plan" means a lower cost
2 health benefit plan developed pursuant to section 41-4712, Idaho Code.

3 (30) "Small employer carrier" means a carrier that offers health bene-
4 fit plans covering eligible employees of one (1) or more small employers in
5 this state.

6 (31) "Small employer catastrophic health benefit plan" means a higher
7 limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

8 (32) "Small employer standard health benefit plan" means a health bene-
9 fit plan developed pursuant to section 41-4712, Idaho Code.

10 SECTION 14. That Section 41-5203, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 41-5203. DEFINITIONS. As used in this chapter:

13 (1) "Actuarial certification" means a written statement by a member of
14 the American academy of actuaries or other individual acceptable to the di-
15 rector that an individual carrier is in compliance with the provisions of
16 section 41-5206, Idaho Code, based upon the person's examination and includ-
17 ing a review of the appropriate records and the actuarial assumptions and
18 methods used by the individual carrier in establishing premium rates for ap-
19 plicable health benefit plans.

20 (2) "Affiliate" or "affiliated" means any entity or person who directly
21 or indirectly through one (1) or more intermediaries, controls or is con-
22 trolled by, or is under common control with, a specified entity or person.

23 (3) "Agent" means a producer as defined in section 41-1003(8), Idaho
24 Code.

25 (4) "Base premium rate" means, as to a rating period, the lowest pre-
26 mium rate charged or that could have been charged under a rating system by
27 the individual carrier to individuals with similar case characteristics for
28 health benefit plans with the same or similar coverage.

29 (5) "Carrier" means any entity that provides health insurance in this
30 state. For purposes of this chapter, carrier includes an insurance company,
31 a hospital or professional service corporation, a fraternal benefit soci-
32 ety, a health maintenance organization, any entity providing health insur-
33 ance coverage or benefits to residents of this state as certificate hold-
34 ers under a group policy issued or delivered outside of this state, and any
35 other entity providing a plan of health insurance or health benefits subject
36 to state insurance regulation.

37 (6) "Case characteristics" means demographic or other objective char-
38 acteristics of an individual that are considered by the individual carrier
39 in the determination of premium rates for the individual, provided that
40 claim experience, health status and duration of coverage shall not be case
41 characteristics for the purposes of this chapter.

42 (7) "Control" shall be defined in the same manner as in section
43 41-3801~~2~~(2), Idaho Code.

44 (8) "Dependent" in any new or renewing plan means a spouse, an unmarried
45 child under the age of twenty-five (25) years and who receives more than one-
46 half (1/2) of his financial support from the parent, or an unmarried child of
47 any age who is medically certified as disabled and dependent upon the parent.

48 (9) "Director" means the director of the department of insurance of the
49 state of Idaho.

1 (10) "Eligible individual" means an Idaho resident individual or depen-
2 dent of an Idaho resident:

3 (a) Who is under the age of sixty-five (65) years, is not eligible for
4 coverage under a group health plan, part A or part B of title XVIII of the
5 social security act (medicare), or a state plan under title XIX (medic-
6 aid) or any successor program, and who does not have other health insur-
7 ance coverage; or

8 (b) Who is a federally eligible individual (one who meets the eligibil-
9 ity criteria set forth in the federal health insurance portability and
10 accountability act of 1996 Public Law 104-191, Sec. 2741(b) (HIPAA)).

11 An "eligible individual" can be the dependent of an eligible employee, which
12 eligible employee is receiving health insurance benefits subject to the reg-
13 ulation of title 41, Idaho Code.

14 (11) "Established geographic service area" means a geographic area, as
15 approved by the director and based on the carrier's certificate of authority
16 to transact insurance in this state, within which the carrier is authorized
17 to provide coverage.

18 (12) "Health benefit plan" means any hospital or medical policy or
19 certificate, any subscriber contract provided by a hospital or profes-
20 sional service corporation, or health maintenance organization subscriber
21 contract. Health benefit plan does not include policies or certificates
22 of insurance for specific disease, hospital confinement indemnity, acci-
23 dent-only, credit, dental, vision, medicare supplement, long-term care, or
24 disability income insurance, student health benefits only, coverage issued
25 as a supplement to liability insurance, worker's compensation or similar in-
26 surance, automobile medical payment insurance, or nonrenewable short-term
27 coverage issued for a period of twelve (12) months or less.

28 (13) "Index rate" means, as to a rating period for individuals with
29 similar case characteristics, the arithmetic average of the applicable base
30 premium rate and the corresponding highest premium rate.

31 (14) "Individual basic health benefit plan" means a lower cost health
32 benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

33 (15) "Individual catastrophic A health benefit plan" means a higher
34 limit health benefit plan developed pursuant to chapter 55, title 41, Idaho
35 Code.

36 (16) "Individual catastrophic B health benefit plan" means a health
37 benefit plan with limits higher than an individual catastrophic A health
38 benefit plan developed pursuant to chapter 55, title 41, Idaho Code.

39 (17) "Individual HSA compatible health benefit plan" means a health
40 savings account compatible health benefit plan developed pursuant to sec-
41 tion 41-5511, Idaho Code.

42 (18) "Individual standard health benefit plan" means a health benefit
43 plan developed pursuant to chapter 55, title 41, Idaho Code.

44 (19) "New business premium rate" means, as to a rating period, the low-
45 est premium rate charged or offered or which could have been charged or of-
46 fered by the individual carrier to individuals with similar case character-
47 istics for newly issued health benefit plans with the same or similar cover-
48 age.

1 (20) "Premium" means all moneys paid by an individual and eligible de-
2 pendants as a condition of receiving coverage from a carrier, including any
3 fees or other contributions associated with the health benefit plan.

4 (21) "Qualifying previous coverage" and "qualifying existing coverage"
5 mean benefits or coverage provided under:

6 (a) Medicare or medicaid, civilian health and medical program for uni-
7 formed services (CHAMPUS), the Indian health service program, a state
8 health benefit risk pool, or any other similar publicly sponsored pro-
9 gram; or

10 (b) Any group or individual health insurance policy or health benefit
11 arrangement whether or not subject to the state insurance laws, in-
12 cluding coverage provided by a managed care organization, hospital or
13 professional service corporation, or a fraternal benefit society, that
14 provides benefits similar to or exceeding benefits provided under the
15 basic health benefit plan.

16 (22) "Rating period" means the calendar period for which premium rates
17 established by a carrier are assumed to be in effect.

18 (23) "Reinsuring carrier" means a carrier participating in the Idaho
19 individual high risk reinsurance pool established in chapter 55, title 41,
20 Idaho Code.

21 (24) "Restricted network provision" means any provision of a health
22 benefit plan that conditions the payment of benefits, in whole or in part,
23 on the use of health care providers that have entered into a contractual
24 arrangement with the carrier to provide health care services to covered in-
25 dividuals.

26 (25) "Risk-assuming carrier" means a carrier whose application is ap-
27 proved by the director pursuant to section 41-5210, Idaho Code.

28 (26) "Individual carrier" means a carrier that offers health benefit
29 plans covering eligible individuals and their dependents.