

IN THE SENATE

SENATE BILL NO. 1090

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT;
2 REPEALING CHAPTER 43, TITLE 41, IDAHO CODE, RELATING TO THE IDAHO LIFE
3 AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; AND AMENDING TITLE 41,
4 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 43, TITLE 41, IDAHO CODE,
5 TO PROVIDE A SHORT TITLE, TO PROVIDE PURPOSE, TO PROVIDE FOR COVERAGE
6 AND LIMITATIONS, TO PROVIDE FOR HOW THE CHAPTER IS TO BE CONSTRUED, TO
7 DEFINE TERMS, TO PROVIDE FOR THE CREATION OF THE IDAHO LIFE AND HEALTH
8 INSURANCE GUARANTY ASSOCIATION, TO PROVIDE FOR THE ASSOCIATION'S BOARD
9 OF DIRECTORS, TO PROVIDE FOR THE POWERS AND DUTIES OF THE ASSOCIATION,
10 TO PROVIDE FOR ASSESSMENT OF MEMBER INSURERS, TO PROVIDE FOR A PLAN OF
11 OPERATION, TO PROVIDE FOR THE DUTIES AND POWERS OF THE ASSOCIATION'S
12 DIRECTOR, TO PROVIDE FOR THE DETECTION AND PREVENTION OF INSURER IN-
13 SOLVENCIES OR IMPAIRMENTS, TO PROVIDE CREDITS FOR ASSESSMENTS PAID, TO
14 PROVIDE FOR CERTAIN MISCELLANEOUS PROVISIONS, TO PROVIDE FOR THE EXAM-
15 INATION AND REGULATION OF THE ASSOCIATION AND FOR AN ANNUAL REPORT, TO
16 PROVIDE FOR SPECIFIED TAX EXEMPTIONS, TO PROVIDE FOR CERTAIN IMMUNI-
17 TIES, TO PROVIDE FOR A STAY OF PROCEEDINGS UNDER SPECIFIED CONDITIONS,
18 TO PROVIDE FOR THE SETTING ASIDE OF CERTAIN JUDGMENTS, TO PROVIDE FOR
19 THE PROHIBITION OF ADVERTISEMENT OF THE ACT AND FOR EXCEPTIONS, TO PRO-
20 VIDE FOR APPLICATION OF THE CHAPTER TO CERTAIN MEMBER INSURERS.
21

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

23 SECTION 1. That Chapter 43, Title 41, Idaho Code, be, and the same is
24 hereby repealed.

25 SECTION 2. That Title 41, Idaho Code, be, and the same is hereby amended
26 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
27 ter 43, Title 41, Idaho Code, and to read as follows:

28 CHAPTER 43

29 IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

30 41-4301. SHORT TITLE. This chapter shall be known and may be cited as
31 the "Idaho Life and Health Insurance Guaranty Association Act."

32 41-4302. PURPOSE. (1) The purpose of this chapter is to protect, sub-
33 ject to certain limitations, the persons specified in section 41-4303(1),
34 Idaho Code, against failure in the performance of contractual obligations
35 under life and health insurance policies and annuity contracts specified in
36 section 41-4303(2), Idaho Code, because of the impairment or insolvency of
37 the member insurer that issued the policies or contracts.

38 (2) To provide the protection stated in subsection (1) of this section,
39 an association of insurers will pay benefits and continue coverages as pro-

1 vided for and limited by this chapter. Members of the association are sub-
2 ject to assessment to provide funds to carry out the purpose of this chapter.

3 41-4303. COVERAGE AND LIMITATIONS. (1) This chapter shall provide
4 coverage for the policies and contracts specified in subsection (2) of this
5 section:

6 (a) To persons, except for nonresident certificate holders under group
7 policies or contracts who, regardless of where they reside, are the ben-
8 efiticiaries, assignees or payees of the persons covered under paragraph
9 (b) of this subsection.

10 (b) To persons who are owners of or certificate holders under the poli-
11 cies or contracts, other than structured settlement annuities, and in
12 each case who:

13 (i) Are residents; or

14 (ii) Are not residents, but only under all of the following condi-
15 tions:

16 1. The insurer that issued the policies or contracts is
17 domiciled in this state;

18 2. The states in which the persons reside have associations
19 similar to the association created by this chapter; and

20 3. The persons are not eligible for coverage by an asso-
21 ciation in any other state due to the fact that the insurer
22 was not licensed in the state at the time specified in the
23 state's guaranty association law.

24 (c) For structured settlement annuities specified in subsection (2) of
25 this section, paragraphs (a) and (b) of this subsection shall not ap-
26 ply, and this chapter shall, except as provided in paragraphs (d) and
27 (e) of this subsection, provide coverage to a person who is a payee under
28 a structured settlement annuity, or beneficiary of a payee if the payee
29 is deceased, if the payee:

30 (i) Is a resident, regardless of where the contract owner re-
31 sides; or

32 (ii) Is not a resident, but only under both of the following condi-
33 tions:

34 1. (A) The contract owner of the structured settlement
35 annuity is a resident; or

36 (B) The contract owner of the structured settlement
37 annuity is not a resident; but the insurer that issued
38 the structured settlement annuity is domiciled in this
39 state; and the state in which the contract owner re-
40 sides has an association similar to the association
41 created in this chapter; and

42 2. Neither the payee or beneficiary nor the contract owner
43 is eligible for coverage by the association of the state in
44 which the payee or contract owner resides.

45 (d) The provisions of this chapter shall not provide coverage to a per-
46 son who is a payee or beneficiary of a contract owner resident of this
47 state, if the payee or beneficiary is afforded any coverage by the asso-
48 ciation of another state.

1 (e) This chapter is intended to provide coverage to a person who is a
2 resident of this state and, in special circumstances, to a nonresident.
3 In order to avoid duplicate coverage, if a person who would otherwise
4 receive coverage under this chapter is provided coverage under the laws
5 of any other state, the person shall not be provided coverage under this
6 chapter. In determining the application of the provisions of this para-
7 graph in situations where a person could be covered by the association
8 of more than one (1) state, whether as an owner, payee, beneficiary or
9 assignee, the provisions of this chapter shall be construed in conjunc-
10 tion with other state laws to result in coverage by only one (1) associa-
11 tion.

12 (2) (a) The provisions of this chapter shall provide coverage to
13 the persons specified in subsection (1) of this section for direct,
14 non-group life, health or annuity policies or contracts and for cer-
15 tificates under direct group policies and contracts and for supple-
16 mental contracts to any of these, except as limited by this chapter.
17 Annuity contracts and certificates under group annuity contracts in-
18 clude allocated funding agreements, structured settlement annuities
19 and any immediate or deferred annuity contracts.

20 (b) The provisions of this chapter shall not provide coverage for:

21 (i) A portion of a policy or contract not guaranteed by the in-
22 surer, or under which the risk is borne by the policy or contract
23 owner;

24 (ii) A policy or contract of reinsurance, unless assumption cer-
25 tificates have been issued pursuant to the reinsurance policy or
26 contract;

27 (iii) A portion of a policy or contract to the extent that the rate
28 of interest on which it is based, or the interest rate, crediting
29 rate or similar factor determined by use of an index or other ex-
30 ternal reference stated in the policy or contract employed in cal-
31 culating returns or changes in value:

32 1. Averaged over the period of four (4) years prior to the
33 date on which the member insurer becomes an impaired or in-
34 solvent insurer under this chapter, whichever is earlier,
35 exceeds the rate of interest determined by subtracting two
36 (2) percentage points from Moody's corporate bond yield av-
37 erage averaged for that same four (4) year period or for such
38 lesser period if the policy or contract was issued less than
39 four (4) years before the member insurer becomes an impaired
40 or insolvent insurer under the provisions of this chapter,
41 whichever is earlier; and

42 2. On and after the date on which the member insurer be-
43 comes an impaired or insolvent insurer under the provisions
44 of this chapter, whichever is earlier, exceeds the rate of
45 interest determined by subtracting three (3) percentage
46 points from Moody's corporate bond yield average as most re-
47 cently available;

48 (iv) A portion of a policy or contract issued to a plan or pro-
49 gram of an employer, association or other person to provide life,
50 health or annuity benefits to its employees, members or others, to

1 the extent that the plan or program is self-funded or uninsured in-
2 cluding, but not limited to, benefits payable by an employer, as-
3 sociation or other person under:

- 4 1. A multiple employer welfare arrangement as defined in
5 section 3(40) of the employee retirement income security act
6 of 1974, 29 U.S.C. section 1002(40);
- 7 2. A minimum premium group insurance plan;
- 8 3. A stop-loss group insurance plan; or
- 9 4. An administrative services only contract;

10 (v) A portion of a policy or contract to the extent that it pro-
11 vides for:

- 12 1. Dividends or experience rating credits;
- 13 2. Voting rights; or
- 14 3. Payment of any fees or allowances to any person, includ-
15 ing the policy or contract owner, in connection with the ser-
16 vice to or administration of the policy or contract;

17 (vi) A policy or contract issued in this state by a member insurer
18 at a time when it was not licensed or did not have a certificate of
19 authority to issue the policy or contract in this state;

20 (vii) A portion of a policy or contract to the extent that the as-
21 sessments required in section 41-4309, Idaho Code, with respect to
22 the policy or contract are preempted by federal or state law;

23 (viii) An obligation that does not arise under the express written
24 terms of the policy or contract issued by the insurer to the con-
25 tract owner or policy owner, including without limitation:

- 26 1. Claims based on marketing materials;
- 27 2. Claims based on side letters, riders or other documents
28 that were issued by the insurer without meeting applicable
29 policy form filing or approval requirements;
- 30 3. Misrepresentations of or regarding policy benefits;
- 31 4. Extra-contractual claims; or
- 32 5. A claim for penalties or consequential or incidental dam-
33 ages;

34 (ix) A contractual agreement that establishes the member in-
35 surer's obligations to provide a book value accounting guaranty
36 for defined contribution benefit plan participants by reference
37 to a portfolio of assets that is owned by the benefit plan or its
38 trustee, which in each case is not an affiliate of the member in-
39 surer;

40 (x) An unallocated annuity contract;

41 (xi) A portion of a policy or contract to the extent it provides
42 for interest or other changes in value to be determined by the use
43 of an index or other external reference stated in the policy or
44 contract, but which have not been credited to the policy or con-
45 tract, or as to which the policy or contract owner's rights are
46 subject to forfeiture, as of the date the member insurer becomes an
47 impaired or insolvent insurer under the provisions of this chap-
48 ter, whichever is earlier. If a policy's or contract's interest or
49 changes in value are credited less frequently than annually, then
50 for purposes of determining the values that have been credited and

1 are not subject to forfeiture under this subparagraph, the inter-
2 est or change in value determined by using the procedures defined
3 in the policy or contract will be credited as if the contractual
4 date of crediting interest or changing values was the date of im-
5 pairment or insolvency, whichever is earlier, and will not be sub-
6 ject to forfeiture; and

7 (xii) A policy or contract providing any hospital, medical, pre-
8 scription drug or other health care benefits pursuant to 42 U.S.C.
9 part C or 42 U.S.C. part D, commonly known as medicare parts C and
10 D, or any regulations issued pursuant thereto.

11 (3) The benefits that the association may become obligated to cover
12 shall in no event exceed the lesser of:

13 (a) The contractual obligations for which the insurer is liable or
14 would have been liable if it were not an impaired or insolvent insurer;
15 or

16 (b) Subject to the aggregate per life limitation in paragraph (c) of
17 this subsection with respect to one (1) policy or contract:

18 (i) Three hundred thousand dollars (\$300,000) in life insurance
19 death benefits, but not more than one hundred thousand dollars
20 (\$100,000) in net cash surrender and net cash withdrawal values
21 for life insurance;

22 (ii) Three hundred thousand dollars (\$300,000) in health insur-
23 ance claims or benefit payments or one hundred thousand dollars
24 (\$100,000) in net cash surrender and net cash withdrawal values
25 for health benefits, except for major medical insurance as defined
26 in section 41-4305, Idaho Code, and as provided for in subpara-
27 graph (iii) of this paragraph;

28 (iii) Five hundred thousand dollars (\$500,000) for major medical
29 insurance as defined in section 41-4305, Idaho Code;

30 (iv) Two hundred fifty thousand dollars (\$250,000) in the present
31 value of annuity benefits, including net cash surrender and net
32 cash withdrawal values;

33 (v) With respect to each payee of a structured settlement annu-
34 ity, or beneficiary or beneficiaries of the payee if deceased, two
35 hundred fifty thousand dollars (\$250,000) in present value annu-
36 ity benefits, in the aggregate, including net cash surrender and
37 net cash withdrawal values;

38 (c) However, in no event shall the association be obligated to cover
39 more than:

40 (i) An aggregate of three hundred thousand dollars (\$300,000) in
41 benefits with respect to any one (1) life under paragraph (b) of
42 this subsection, except with respect to benefits for major medical
43 insurance as provided in paragraph (b) (iii) of this subsection,
44 in which case the aggregate liability of the association shall not
45 exceed five hundred thousand dollars (\$500,000) with respect to
46 any one (1) life; or

47 (ii) With respect to one (1) owner of multiple non-group poli-
48 cies of life insurance, whether the policy owner is an individual,
49 firm, corporation or other person, and whether the persons insured
50 are officers, managers, employees or other persons, more than five

1 million dollars (\$5,000,000) in benefits, regardless of the num-
2 ber of policies and contracts held by the owner; or

3 (d) The limitations set forth in this subsection are limitations on
4 the benefits for which the association is obligated before taking into
5 account either its subrogation and assignment rights or the extent to
6 which those benefits could be provided out of the assets of the impaired
7 or insolvent insurer attributable to covered policies. The costs of the
8 association's obligations under the provisions of this chapter may be
9 met by the use of assets attributable to covered policies or reimbursed
10 to the association pursuant to its subrogation and assignment rights.

11 (4) In performing its obligations to provide coverage under section
12 41-4308, Idaho Code, the association shall not be required to guarantee, as-
13 sume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or
14 performed, the contractual obligations of the insolvent or impaired insurer
15 under a covered policy or contract that do not materially affect the economic
16 values or economic benefits of the covered policy or contract.

17 41-4304. CONSTRUCTION. The provisions of this chapter shall be con-
18 strued to effect the purpose under section 41-4302, Idaho Code.

19 41-4305. DEFINITIONS. As used in this chapter:

20 (1) "Account" means any of the three (3) accounts maintained pursuant
21 to section 41-4306, Idaho Code.

22 (2) "Association" means the Idaho life and health insurance guaranty
23 association.

24 (3) "Authorized assessment" or "authorized," when used in the context
25 of assessments, means a resolution by the board of directors has been passed
26 whereby an assessment will be called immediately or in the future from member
27 insurers for a specified amount. An assessment is authorized when the reso-
28 lution is passed.

29 (4) "Benefit plan" means a specific employee, union or association of
30 natural persons benefit plan.

31 (5) "Called assessment" or "called," when used in the context of as-
32 sessments, means that a notice has been issued by the association to mem-
33 ber insurers requiring that an authorized assessment be paid within the time
34 frame set forth within the notice. An authorized assessment becomes a called
35 assessment when notice is mailed by the association to member insurers.

36 (6) "Contractual obligation" means an obligation under a policy or con-
37 tract or certificate under a group policy or contract, or portion thereof for
38 which coverage is provided under section 41-4303, Idaho Code.

39 (7) "Covered policy" means a policy or contract or portion of a pol-
40 icy or contract for which coverage is provided under section 41-4303, Idaho
41 Code.

42 (8) "Director" means the director of the Idaho department of insurance.

43 (9) "Extra-contractual claims" shall include, for example, claims re-
44 lating to bad faith in the payment of claims, punitive or exemplary damages
45 or attorney's fees and costs.

46 (10) "Impaired insurer" means a member insurer:

1 (a) Deemed by the director after the effective date of this chapter to
2 be potentially unable to fulfill its contractual obligations and not an
3 insolvent insurer; or

4 (b) Which, after the effective date of this chapter, is not an insol-
5 vent insurer and is placed under an order of rehabilitation or conserva-
6 tion by a court of competent jurisdiction.

7 (11) "Insolvent insurer" means a member insurer which, after the effec-
8 tive date of this chapter, is placed under an order of liquidation by a court
9 of competent jurisdiction with a finding of insolvency.

10 (12) (a) "Major medical insurance" means, solely for purposes of this
11 chapter, health insurance policies, contracts or certificates that are
12 issued to provide hospital and medical-surgical coverage.

13 (b) "Major medical insurance" shall not include insurance policies,
14 contracts or certificates:

15 (i) Issued by an insurer providing only accident-only, credit,
16 dental, vision, long-term care or disability income insurance or
17 specified disease or hospital confinement indemnity insurance; or

18 (ii) For medicare supplement insurance or for coverage supplement-
19 tal to the coverage provided under the civilian health and medical
20 program of the uniformed services (CHAMPUS).

21 (13) (a) "Member insurer" means an insurer licensed or that holds a
22 certificate of authority to transact in this state any kind of insur-
23 ance for which coverage is provided under section 41-4303, Idaho Code,
24 and includes an insurer whose license or certificate of authority in
25 this state may have been suspended, revoked, not renewed or voluntarily
26 withdrawn.

27 (b) "Member insurer" does not include:

28 (i) A hospital or medical service corporation or organization,
29 whether profit or nonprofit;

30 (ii) A fraternal benefit society;

31 (iii) A mandatory state pooling plan;

32 (iv) A mutual assessment company or other person that operates on
33 an assessment basis;

34 (v) An insurance exchange;

35 (vi) An organization that issues charitable gift annuities under
36 section 41-120, Idaho Code;

37 (vii) A mutual benefit association;

38 (viii) A reciprocal insurer;

39 (ix) A limited managed care plan; or

40 (x) A self-funded health care plan.

41 (14) "Moody's corporate bond yield average" means the monthly average
42 corporates as published by Moody's investors service, inc., or any successor
43 thereto.

44 (15) "Owner," "policy owner" or "contract owner" means the person who is
45 identified as the legal owner under the terms of the policy or contract or
46 who is otherwise vested with legal title to the policy or contract through
47 a valid assignment completed in accordance with the terms of the policy or
48 contract and properly recorded as the owner on the books of the insurer. The
49 terms owner, contract owner and policy owner do not include persons with a
50 mere beneficial interest in a policy or contract.

1 (16) "Person" means an individual, corporation, limited liability com-
2 pany, partnership, association, governmental body or entity or voluntary
3 organization.

4 (17) (a) "Premiums" means amounts or considerations, by whatever name
5 called, received on covered policies or contracts less returned pre-
6 miums, considerations and deposits and less dividends and experience
7 credits.

8 (b) "Premiums" does not include amounts or considerations received for
9 policies or contracts or for the portions of policies or contracts for
10 which coverage is not provided under section 41-4303(2), Idaho Code,
11 except that assessable premium shall not be reduced on account of sec-
12 tion 41-4303(2) (b) (iii), Idaho Code, relating to interest limitations
13 and section 41-4303(3) (b), (c) and (d), Idaho Code, relating to limi-
14 tations with respect to one (1) individual, one (1) participant and one
15 (1) contract owner. "Premiums" shall not include:

16 (i) Premiums on an unallocated annuity contract; or

17 (ii) With respect to multiple non-group policies of life insur-
18 ance owned by one (1) owner, whether the policy owner is an indi-
19 vidual, firm, corporation or other person, and whether the persons
20 insured are officers, managers, employees or other persons, pre-
21 miums in excess of five million dollars (\$5,000,000) with respect
22 to these policies or contracts, regardless of the number of poli-
23 cies or contracts held by the owner.

24 (18) (a) "Principal place of business" of a plan sponsor or a person
25 other than a natural person means the single state in which the natural
26 persons who establish policy for the direction, control and coordina-
27 tion of the operations of the entity as a whole primarily exercise that
28 function, determined by the association in its reasonable judgment by
29 considering the following factors:

30 (i) The state in which the primary executive and administrative
31 headquarters of the entity is located;

32 (ii) The state in which the principal office of the chief execu-
33 tive officer of the entity is located;

34 (iii) The state in which the board of directors, or similar govern-
35 ing person or persons, of the entity conducts the majority of its
36 meetings;

37 (iv) The state in which the executive or management committee of
38 the board of directors, or similar governing person or persons, of
39 the entity conducts the majority of its meetings;

40 (v) The state from which the management of the overall operations
41 of the entity is directed; and

42 (vi) In the case of a benefit plan sponsored by affiliated compa-
43 nies comprising a consolidated corporation, the state in which the
44 holding company or controlling affiliate has its principal place
45 of business as determined using the factors contained in subpara-
46 graphs (i) through (v) of this paragraph.

47 However, in the case of a plan sponsor, if more than fifty percent (50%)
48 of the participants in the benefit plan are employed in a single state,
49 that state shall be deemed to be the principal place of business of the
50 plan sponsor.

1 (b) "Principal place of business" of a plan sponsor of a benefit plan
2 shall be deemed to be the principal place of business of the associa-
3 tion, committee, joint board of trustees or other similar group of rep-
4 resentatives of the parties who establish or maintain the benefit plan
5 that, in lieu of a specific or clear designation of a principal place
6 of business, shall be deemed to be the principal place of business of
7 the employer or employee organization that has the largest investment
8 in the benefit plan in question.

9 (19) "Receivership court" means the court in the insolvent or impaired
10 insurer's state having jurisdiction over the conservation, rehabilitation
11 or liquidation of the insurer.

12 (20) "Resident" means a person to whom a contractual obligation is owed
13 and who resides in this state on the date of entry of a court order that de-
14 termines a member insurer to be an impaired insurer or a court order that
15 determines a member insurer to be an insolvent insurer. A person may be a
16 resident of only one (1) state, which in the case of a person other than a
17 natural person shall be its principal place of business. Citizens of the
18 United States that are either (a) residents of foreign countries, or (b) res-
19 idents of United States possessions, territories or protectorates that do
20 not have an association similar to the association created in this chapter,
21 shall be deemed residents of the state of domicile of the insurer that issued
22 the policies or contracts.

23 (21) "State" means a state or a commonwealth of the United States, the
24 District of Columbia, Puerto Rico, and a United States possession, territory
25 or protectorate.

26 (22) "Structured settlement annuity" means an annuity purchased in or-
27 der to fund periodic payments for a plaintiff or other claimant in payment
28 for or with respect to personal injury suffered by the plaintiff or other
29 claimant.

30 (23) "Supplemental contract" means a written agreement entered into for
31 the distribution of proceeds under a life, health or annuity policy or con-
32 tract.

33 (24) "Unallocated annuity contract" means an annuity contract or group
34 annuity certificate which is not issued to and owned by an individual, except
35 to the extent of any annuity benefits guaranteed to an individual by an in-
36 surer under the contract or certificate.

37 41-4306. CREATION OF THE ASSOCIATION. (1) This chapter continues the
38 existence of the nonprofit legal entity known as the Idaho life and health
39 insurance guaranty association. All member insurers shall be and remain
40 members of the association as a condition of their authority to transact
41 insurance in this state. The association shall perform its functions under
42 the plan of operation established and approved under section 41-4310, Idaho
43 Code, and shall exercise its powers through a board of directors provided
44 for under section 41-4307, Idaho Code. For purposes of administration and
45 assessment, the association shall continue the existence and maintenance of
46 three (3) accounts:

47 (a) Life insurance account;

48 (b) Health insurance account, formerly designated the "disability in-
49 surance account"; and

1 (c) Annuity account.

2 (2) The association shall come under the immediate supervision of the
3 director and shall be subject to the applicable provisions of the insurance
4 laws of this state.

5 41-4307. BOARD OF DIRECTORS. (1) The board of directors of the asso-
6 ciation shall consist of not fewer than five (5) nor more than nine (9) mem-
7 ber insurers serving terms as established in the plan of operation. The mem-
8 bers of the board of directors shall be selected by member insurers subject
9 to the approval of the director. Vacancies on the board of directors shall be
10 filled for the remaining period of the term by a majority vote of the remain-
11 ing board members subject to the approval of the director.

12 (2) In approving selections, the director shall consider, among other
13 things, whether all member insurers are fairly represented.

14 (3) Members of the board of directors may be reimbursed from the assets
15 of the association for expenses incurred by them as members of the board of
16 directors, but members of the board of directors shall not otherwise be com-
17 pensated by the association for their services.

18 41-4308. POWERS AND DUTIES OF THE ASSOCIATION. (1) If a member insurer
19 is an impaired insurer, the association may, in its discretion, and subject
20 to any conditions imposed by the association that do not impair the contrac-
21 tual obligations of the impaired insurer and that are approved by the direc-
22 tor:

23 (a) Guarantee, assume or reinsure, or cause to be guaranteed, assumed,
24 or reinsured, any or all of the policies or contracts of the impaired in-
25 surer; and

26 (b) Provide such moneys, pledges, loans, notes, guarantees or other
27 means as are proper to effectuate paragraph (a) of this subsection and
28 assure payment of the contractual obligations of the impaired insurer
29 pending action under paragraph (a) of this subsection.

30 (2) If a member insurer is an insolvent insurer, the association shall,
31 in its discretion, either:

32 (a) (i) 1. Guarantee, assume or reinsure, or cause to be
33 guaranteed, assumed or reinsured, the policies or contracts
34 of the insolvent insurer; or

35 2. Assure payment of the contractual obligations of the in-
36 solvent insurer; and

37 (ii) Provide moneys, pledges, loans, notes, guarantees, or other
38 means reasonably necessary to discharge the association's duties;
39 or

40 (b) Provide benefits and coverages in accordance with the following
41 provisions:

42 (i) With respect to life and health insurance policies and an-
43 nuities, assure payment of benefits for premiums identical to the
44 premiums and benefits, except for terms of conversion and renewa-
45 bility, that would have been payable under the policies or con-
46 tracts of the insolvent insurer, for claims incurred:

47 1. With respect to group policies and contracts, not later
48 than the earlier of the next renewal date under those poli-

1 cies or contracts or forty-five (45) days, but in no event
2 less than thirty (30) days, after the date on which the as-
3 sociation becomes obligated with respect to the policies and
4 contracts;

5 2. With respect to non-group policies, contracts, and annu-
6 ities not later than the earlier of the next renewal date, if
7 any, under the policies or contracts or one (1) year, but in
8 no event less than thirty (30) days, from the date on which
9 the association becomes obligated with respect to the poli-
10 cies or contracts;

11 (ii) Make diligent efforts to provide all known insureds or an-
12 nuityants, for non-group policies and contracts, or group policy
13 owners with respect to group policies and contracts, thirty (30)
14 days' notice of the termination, pursuant to subparagraph (i) of
15 this paragraph, of the benefits provided;

16 (iii) With respect to non-group life and health insurance poli-
17 cies and annuities covered by the association, make available to
18 each known insured or annuitant, or owner if other than the insured
19 or annuitant, and with respect to an individual formerly insured
20 or formerly an annuitant under a group policy who is not eligible
21 for replacement group coverage, make available substitute cover-
22 age on an individual basis in accordance with the provisions of
23 subparagraph (iv) of this paragraph, if the insureds or annuitants
24 had a right under law or the terminated policy or annuity to con-
25 vert coverage to individual coverage or to continue an individual
26 policy or annuity in force until a specified age or for a specified
27 time, during which the insurer had no right unilaterally to make
28 changes in any provision of the policy or annuity or had a right
29 only to make changes in premium by class:

30 (iv) 1. In providing the substitute coverage required under
31 subparagraph (iii) of this paragraph, the association may
32 offer either to reissue the terminated coverage or to issue
33 an alternative policy;

34 2. Alternative or reissued policies shall be offered with-
35 out requiring evidence of insurability, and shall not pro-
36 vide for any waiting period or exclusion that would not have
37 applied under the terminated policy; and

38 3. The association may reinsure any alternative or reissued
39 policy;

40 (v) 1. Alternative policies adopted by the association
41 shall be subject to the approval of the domiciliary in-
42 surance director. The association may adopt alternative
43 policies of various types for future issuance without regard
44 to any particular impairment or insolvency;

45 2. Alternative policies shall contain at least the mini-
46 mum statutory provisions required in this state and provide
47 benefits that shall not be unreasonable in relation to the
48 premium charged. The association shall set the premium in
49 accordance with a table of rates that it shall adopt. The
50 premium shall reflect the amount of insurance to be provided

1 and the age and class of risk of each insured, but shall not
2 reflect any changes in the health of the insured after the
3 original policy was last underwritten; and

4 3. Any alternative policy issued by the association shall
5 provide coverage of a type similar to that of the policy is-
6 sued by the impaired or insolvent insurer, as determined by
7 the association;

8 (vi) If the association elects to reissue terminated coverage at
9 a premium rate different from that charged under the terminated
10 policy, the premium shall be set by the association in accordance
11 with the amount of insurance provided and the age and class of
12 risk, subject to approval of the domiciliary insurance director;

13 (vii) The association's obligations with respect to coverage un-
14 der any policy of the impaired or insolvent insurer or under any
15 reissued or alternative policy shall cease on the date the cover-
16 age or policy is replaced by another similar policy by the policy
17 owner, the insured or the association; and

18 (viii) When proceeding under this paragraph (b) of this subsec-
19 tion with respect to a policy or contract carrying guaranteed
20 minimum interest rates, the association shall assure the pay-
21 ment or crediting of a rate of interest consistent with section
22 41-4303(2)(b)(iii), Idaho Code.

23 (3) Nonpayment of premiums within thirty-one (31) days after the date
24 required under the terms of any guaranteed, assumed, alternative or reissued
25 policy or contract or substitute coverage shall terminate the association's
26 obligations under the policy or coverage under this chapter with respect to
27 the policy or coverage, except with respect to any claims incurred or any net
28 cash surrender value which may be due in accordance with the provisions of
29 this chapter.

30 (4) Premiums due for coverage after entry of an order of liquidation of
31 an insolvent insurer shall belong to and be payable at the direction of the
32 association. If the liquidator of an insolvent insurer requests, the asso-
33 ciation shall provide a report to the liquidator regarding such premium col-
34 lected by the association. The association shall be liable for unearned pre-
35 miums due to policy or contract owners arising after the entry of the order.

36 (5) The protection provided by this chapter shall not apply where any
37 guarantee protection is provided to residents of this state by the laws of
38 the domiciliary state or jurisdiction of the impaired or insolvent insurer
39 other than this state.

40 (6) In carrying out its duties under subsection (2) of this section, the
41 association may:

42 (a) Subject to approval by a court in this state, impose permanent
43 policy or contract liens in connection with a guarantee, assumption or
44 reinsurance agreement, if the association finds that the amounts which
45 can be assessed under this chapter are less than the amounts needed to
46 assure full and prompt performance of the association's duties under
47 this chapter, or that the economic or financial conditions as they af-
48 fect member insurers are sufficiently adverse to render the imposition
49 of such permanent policy or contract liens, to be in the public inter-
50 est; or

1 (b) Subject to approval by a court in this state, impose temporary
2 moratoriums or liens on payments of cash values and policy loans, or any
3 other right to withdraw funds held in conjunction with policies or con-
4 tracts, in addition to any contractual provisions for deferral of cash
5 or policy loan value. In addition, in the event of a temporary morato-
6 rium or moratorium charge imposed by the receivership court on payment
7 of cash values or policy loans, or on any other right to withdraw funds
8 held in conjunction with policies or contracts, out of the assets of the
9 impaired or insolvent insurer, the association may defer the payment
10 of cash values, policy loans or other rights by the association for the
11 period of the moratorium or moratorium charge imposed by the receiver-
12 ship court, except for claims covered by the association to be paid in
13 accordance with a hardship procedure established by the liquidator or
14 rehabilitator and approved by the receivership court.

15 (7) A deposit in this state, held pursuant to law or required by the
16 director for the benefit of creditors, including policy owners, not turned
17 over to the domiciliary liquidator upon the entry of a final order of liqui-
18 dation or order approving a rehabilitation plan of an insurer domiciled in
19 this state or in a reciprocal state, pursuant to chapter 8, title 41, Idaho
20 Code, shall be promptly paid to the association. The association shall be
21 entitled to retain a portion of any amount so paid to it equal to the per-
22 centage determined by dividing the aggregate amount of policy owners' claims
23 related to that insolvency for which the association has provided statutory
24 benefits by the aggregate amount of all policy owners' claims in this state
25 related to that insolvency and shall remit to the domiciliary receiver the
26 amount so paid to the association less the amount retained pursuant to this
27 subsection. Any amount so paid to the association and retained by it shall
28 be treated as a distribution of state assets pursuant to applicable state re-
29 ceivership law dealing with early access disbursements.

30 (8) If the association fails to act within a reasonable period of time
31 with respect to an insolvent insurer, as provided in subsection (2) of this
32 section, the director shall have the powers and duties of the association un-
33 der this chapter with respect to the insolvent insurer.

34 (9) The association may render assistance and advice to the director,
35 upon the director's request, concerning rehabilitation, payment of claims,
36 continuance of coverage or the performance of other contractual obligations
37 of an impaired or insolvent insurer.

38 (10) The association shall have standing to appear or intervene before a
39 court or agency in this state with jurisdiction over an impaired or insolvent
40 insurer concerning which the association is or may become obligated under
41 this chapter or with jurisdiction over any person or property against which
42 the association may have rights through subrogation or otherwise. Standing
43 shall extend to all matters germane to the powers and duties of the associ-
44 ation including, but not limited to, proposals for reinsuring, modifying or
45 guaranteeing the policies or contracts of the impaired or insolvent insurer
46 and the determination of the policies or contracts and contractual obliga-
47 tions. The association shall also have the right to appear or intervene be-
48 fore a court or agency in another state with jurisdiction over an impaired
49 or insolvent insurer for which the association is or may become obligated or

1 with jurisdiction over any person or property against whom the association
2 may have rights through subrogation or otherwise.

3 (11) (a) A person receiving benefits under this chapter shall be deemed
4 to have assigned the rights under, and any causes of action against any
5 person for losses arising under, resulting from or otherwise relating
6 to the covered policy or contract to the association to the extent of
7 the benefits received because of this chapter, whether the benefits are
8 payments of, or on account of, contractual obligations, continuation of
9 coverage or provision of substitute or alternative coverages. The as-
10 sociation may require a written instrument of assignment to it of such
11 rights and cause of action by any payee, policy or contract owner, bene-
12 ficiary, insured or annuitant as a condition precedent to the receipt of
13 any right or benefits conferred by this chapter upon the person.

14 (b) The subrogation rights of the association under this subsection
15 shall have the same priority against the assets of the impaired or in-
16 solvent insurer as that possessed by the person entitled to receive
17 benefits under this chapter.

18 (c) In addition to paragraphs (a) and (b) of this subsection, the as-
19 sociation shall have all common law rights of subrogation and any other
20 equitable or legal remedy that would have been available to the impaired
21 or insolvent insurer or owner, beneficiary or payee of a policy or con-
22 tract with respect to the policy or contract, including without limi-
23 tation, in the case of a structured settlement annuity, any rights of
24 the owner, beneficiary or payee of the annuity, to the extent of ben-
25 efits received pursuant to this chapter, against a person originally
26 or by succession responsible for the losses arising from the personal
27 injury relating to the annuity or payment therefor, excepting any such
28 person responsible solely by reason of serving as an assignee in respect
29 of a qualified assignment under Internal Revenue Code, section 130.

30 (d) If the preceding provisions of this subsection are invalid or inef-
31 fective with respect to any person or claim for any reason, the amount
32 payable by the association with respect to the related covered obliga-
33 tions shall be reduced by the amount realized by any other person with
34 respect to the person or claim that is attributable to the policies, or
35 portion thereof, covered by the association.

36 (e) If the association has provided benefits with respect to a covered
37 obligation and a person recovers amounts as to which the association has
38 rights as described in paragraphs (a) through (d) of this subsection,
39 the person shall pay to the association the portion of the recovery at-
40 tributable to the policies, or portion thereof, covered by the associa-
41 tion.

42 (12) In addition to the rights and powers elsewhere in this chapter, the
43 association may:

44 (a) Enter into such contracts as are necessary or proper to carry out
45 the provisions and purposes of this chapter;

46 (b) Sue or be sued, including taking any legal actions necessary or
47 proper to recover any unpaid assessments under section 41-4309, Idaho
48 Code, and to settle claims or potential claims against it;

49 (c) Borrow money to effect the purposes of this chapter; any notes or
50 other evidence of indebtedness of the association not in default shall

1 be legal investments for domestic insurers and may be carried as admit-
2 ted assets;

3 (d) Employ or retain such persons as are necessary or appropriate to
4 handle the financial transactions of the association, and to perform
5 such other functions as become necessary or proper under this chapter;

6 (e) Take such legal action as may be necessary or appropriate to avoid
7 or recover payment of improper claims;

8 (f) Exercise, for the purposes of this chapter and to the extent ap-
9 proved by the director, the powers of a domestic life or health insurer,
10 but in no case may the association issue insurance policies or annuity
11 contracts other than those issued to perform its obligations under this
12 chapter;

13 (g) Reorganize itself with the prior written approval of the director
14 from a nonprofit association into a corporation or other legal form of
15 nonprofit entity permitted by the laws of the state of Idaho;

16 (h) Request information from a person seeking coverage from the asso-
17 ciation in order to aid the association in determining its obligations
18 under this chapter with respect to the person, and the person shall
19 promptly comply with the request; and

20 (i) Take other necessary or appropriate action to discharge its duties
21 and obligations under this chapter or to exercise its powers under this
22 chapter.

23 (13) The association may join an organization of one (1) or more other
24 state associations of similar purposes, to further the purposes and adminis-
25 ter the powers and duties of the association.

26 (14) With respect to covered policies for which the association becomes
27 obligated after an entry of an order of liquidation, the association may
28 elect to succeed to the rights of the insolvent insurer arising after the or-
29 der of liquidation under any contract of reinsurance to which the insolvent
30 insurer was a party, to the extent that such contract provides coverage for
31 losses occurring after the date of the order of liquidation. As a condition
32 to making this election, the association must pay all unpaid premiums due
33 under the contract for coverage relating to periods before and after the date
34 of the order of liquidation.

35 (15) The board of directors of the association shall have discretion and
36 may exercise reasonable business judgment to determine the means by which
37 the association is to provide the benefits of this chapter in an economical
38 and efficient manner.

39 (16) Where the association has arranged or offered to provide the ben-
40 efits of this chapter to a covered person under a plan or arrangement that
41 fulfills the association's obligations under this chapter, the person shall
42 not be entitled to benefits from the association in addition to or other than
43 those provided under the plan or arrangement.

44 (17) Venue in a suit against the association arising under this chapter
45 shall be in Ada county. The association shall not be required to give an ap-
46 peal bond in an appeal that relates to a cause of action arising under the
47 provisions of this chapter.

48 (18) In carrying out its duties in connection with guaranteeing, assum-
49 ing or reinsuring policies or contracts under subsection (1) or (2) of this
50 section, the association may, subject to approval of the receivership court,

1 issue substitute coverage for a policy or contract that provides an interest
2 rate, crediting rate or similar factor determined by use of an index or other
3 external reference stated in the policy or contract employed in calculating
4 returns or changes in value by issuing an alternative policy or contract in
5 accordance with the following provisions:

6 (a) In lieu of the index or other external reference provided for in the
7 original policy or contract, the alternative policy or contract pro-
8 vides for:

9 (i) A fixed interest rate;

10 (ii) Payment of dividends with minimum guarantees; or

11 (iii) A different method for calculating interest or changes in
12 value;

13 (b) There is no requirement for evidence of insurability, waiting pe-
14 riod or other exclusion that would not have applied under the replaced
15 policy or contract; and

16 (c) The alternative policy or contract is substantially similar to the
17 replaced policy or contract in all other material terms.

18 41-4309. ASSESSMENTS. (1) For the purpose of providing the funds nec-
19 essary to carry out the powers and duties of the association, the board of
20 directors shall assess the member insurers, separately for each account, at
21 such time and for such amounts as the board of directors finds necessary. As-
22 sessments shall be due not less than thirty (30) days after prior written no-
23 tice to the member insurers and shall accrue interest at eight percent (8%)
24 per annum on and after the due date.

25 (2) There shall be two (2) classes of assessments:

26 (a) Class A assessments shall be authorized and called for the purpose
27 of meeting administrative and other expenses. Class A assessments may
28 be authorized and called whether or not related to a particular impaired
29 or insolvent insurer.

30 (b) Class B assessments shall be authorized and called to the extent
31 necessary to carry out the powers and duties of the association under
32 section 41-4308, Idaho Code, with regard to an impaired or an insolvent
33 insurer.

34 (3) (a) The amount of a class A assessment shall be determined by the
35 board of directors and may be authorized and called on a pro rata or non-
36 pro rata basis. If pro rata, the board of directors may provide that it
37 be credited against future class B assessments. The total of all non-
38 pro rata assessments shall not exceed three hundred dollars (\$300) per
39 member insurer in any one (1) calendar year. The amount of a class B as-
40 sessment shall be allocated for assessment purposes among the accounts
41 pursuant to an allocation formula, which may be based on the premiums
42 or reserves of the impaired or insolvent insurer or any other standard
43 deemed by the board of directors in its sole discretion as being fair and
44 reasonable under the circumstances.

45 (b) Class B assessments against member insurers for each account shall
46 be in the proportion that the premiums received on business in this
47 state by each assessed member insurer on policies covered by each ac-
48 count for the calendar year preceding the assessments bears to such

1 premiums received on business in this state for the calendar year pre-
2 ceding the assessment by all assessed member insurers.

3 (c) Assessments for funds to meet the requirements of the association
4 with respect to an impaired or insolvent insurer shall not be authorized
5 or called until necessary to implement the purposes of this chapter.
6 Classification of assessments under this subsection and subsection (2)
7 of this section and computation of assessments under this subsection
8 shall be made with a reasonable degree of accuracy, recognizing that
9 exact determinations may not always be possible. The association shall
10 notify each member insurer of its anticipated pro rata share of an au-
11 thorized assessment not yet called within one hundred eighty (180) days
12 after the assessment is authorized.

13 (4) The association may abate or defer, in whole or in part, the assess-
14 ment of a member insurer if, in the opinion of the board of directors, payment
15 of the assessment would endanger the ability of the member insurer to ful-
16 fill its contractual obligations. In the event an assessment against a mem-
17 ber insurer is abated, or deferred in whole or in part, the amount by which
18 the assessment is abated or deferred may be assessed against the other mem-
19 ber insurers in a manner consistent with the basis for assessments set forth
20 in this section. Once the conditions that caused a deferral have been re-
21 moved or rectified, the member insurer shall pay all assessments that were
22 deferred pursuant to a repayment plan approved by the association.

23 (5) (a) The total of all class B assessments authorized by the associ-
24 ation with respect to a member insurer for each account shall not in one
25 (1) calendar year exceed two percent (2%) of such insurer's premiums re-
26 ceived in this state during the calendar year preceding the assessment
27 on the policies covered by the account. If the maximum assessment, to-
28 gether with the other assets of the association in an account, does not
29 provide in any one (1) year in an account an amount sufficient to carry
30 out the responsibilities of the association, the necessary additional
31 funds shall be assessed as soon thereafter as permitted by this chapter.

32 (b) The board of directors may provide in the plan of operation a method
33 of allocating funds among claims, whether relating to one (1) or more
34 impaired or insolvent insurers, when the maximum assessment will be in-
35 sufficient to cover anticipated claims.

36 (6) The board of directors may, by an equitable method as established in
37 the plan of operation, refund to member insurers, in proportion to the con-
38 tribution of each insurer to that account, the amount by which the assets of
39 the account exceed the amount the board of directors finds is necessary to
40 carry out during the coming year the obligations of the association with re-
41 gard to that account, including assets accruing from assignment, subroga-
42 tion, net realized gains and income from investments.

43 A reasonable amount, as determined by the board of directors in its dis-
44 cretion, may be retained by the association in any account to provide funds
45 for the continuing and future expenses of the association and for future loss
46 claims.

47 (7) It shall be proper for any member insurer, in determining its pre-
48 mium rates and policy owner dividends as to any kind of insurance within the
49 scope of this chapter, to consider the amount reasonably necessary to meet
50 its assessment obligations under this chapter.

1 (8) The association shall issue to each insurer paying an assessment
2 under this chapter, other than a class A assessment, a certificate of contri-
3 bution in a form prescribed by the director for the amount of the assessment
4 so paid. All outstanding certificates shall be of equal dignity and prior-
5 ity without reference to amounts or dates of issue. A certificate of contri-
6 bution may be shown by the insurer in its financial statement as an asset in
7 such form and for such amount, if any, and period of time as the director may
8 approve.

9 (9) (a) A member insurer that wishes to protest all or part of an as-
10 sessment shall pay when due the full amount of the assessment as set
11 forth in the notice provided by the association. The payment shall be
12 available to meet association obligations during the pendency of the
13 protest or any subsequent appeal. Payment shall be accompanied by a
14 statement in writing that the payment is made under protest and setting
15 forth a brief statement of the grounds for the protest.

16 (b) Within sixty (60) days following the payment of an assessment under
17 protest by a member insurer, the association shall notify the member in-
18 surer in writing of its determination with respect to the protest unless
19 the association notifies the member insurer that additional time is re-
20 quired to resolve the issues raised by the protest.

21 (c) Within thirty (30) days after a final decision has been made, the
22 association shall notify the protesting member insurer in writing of
23 that final decision. Within sixty (60) days of receipt of notice of the
24 final decision, the protesting member insurer may appeal that final
25 action to the director.

26 (d) In the alternative to rendering a final decision with respect to a
27 protest based on a question regarding the assessment base, the associ-
28 ation may refer protests to the director for a final decision, with or
29 without a recommendation from the association.

30 (e) If the protest or appeal on the assessment is upheld, the amount
31 paid in error or excess shall be returned to the member insurer.

32 (10) The association may request information of member insurers in or-
33 der to aid in the exercise of its power under this section, and member insur-
34 ers shall promptly comply with the request.

35 41-4310. PLAN OF OPERATION. (1) The association shall submit to the
36 director a plan of operation and any amendments thereto necessary or suit-
37 able to assure the fair, reasonable and equitable administration of the as-
38 sociation. The plan of operation and any amendments thereto shall become ef-
39 fective upon the director's written approval or unless it has not been disap-
40 proved within thirty (30) days.

41 (2) All member insurers shall comply with the plan of operation.

42 (3) The plan of operation shall, in addition to requirements enumerated
43 elsewhere in this chapter:

44 (a) Establish procedures for handling the assets of the association;

45 (b) Establish the amount and method of reimbursing members of the board
46 of directors under section 41-4307, Idaho Code;

47 (c) Establish regular places and times for meetings including tele-
48 phone conference calls of the board of directors;

1 (d) Establish procedures for records to be kept of all financial trans-
2 actions of the association, its agents and the board of directors;

3 (e) Establish the procedures whereby selections for the board of direc-
4 tors will be made and submitted to the director;

5 (f) Establish any additional procedures for assessments under section
6 41-4309, Idaho Code; and

7 (g) Contain additional provisions necessary or proper for the execu-
8 tion of the powers and duties of the association.

9 (4) The plan of operation may provide that any or all powers and duties
10 of the association, except those under section 41-4308(12) (c), Idaho Code,
11 and section 41-4309, Idaho Code, are delegated to a corporation, associa-
12 tion or other organization which performs or will perform functions similar
13 to those of this association, or its equivalent, in two (2) or more states.
14 Such a corporation, association or organization shall be reimbursed for any
15 payments made on behalf of the association and shall be paid for its perfor-
16 mance of any function of the association. A delegation under this subsection
17 shall take effect only with the approval of both the board of directors and
18 the director, and may be made only to a corporation, association or organi-
19 zation which extends protection not substantially less favorable and effec-
20 tive than that provided by this chapter.

21 41-4311. DUTIES AND POWERS OF THE DIRECTOR. In addition to the duties
22 and powers enumerated elsewhere in this chapter:

23 (1) The director shall:

24 (a) Upon request of the board of directors, provide the association
25 with a statement of the premiums in this and any other appropriate
26 states for each member insurer; and

27 (b) When an impairment is declared and the amount of the impairment is
28 determined, serve a demand upon the impaired insurer to make good the
29 impairment within a reasonable time. Notice to the impaired insurer
30 shall constitute notice to its shareholders, if any. The failure of the
31 insurer to promptly comply with such demand shall not excuse the associ-
32 ation from the performance of its powers and duties under this chapter.

33 (2) The director may suspend or revoke, after notice and hearing, the
34 certificate of authority to transact insurance in this state of any member
35 insurer that fails to pay an assessment when due or fails to comply with the
36 plan of operation. As an alternative, the director may levy a forfeiture on
37 any member insurer that fails to pay an assessment when due. The forfeiture
38 shall not exceed five percent (5%) of the unpaid assessment per month, but no
39 forfeiture shall be less than one hundred dollars (\$100) per month.

40 (3) A final action of the board of directors or the association may be
41 appealed to the director by a member insurer if the appeal is taken within
42 sixty (60) days of its receipt of notice of the final action being appealed.
43 A final action or order of the director shall be subject to judicial review in
44 a court of competent jurisdiction in accordance with the laws of this state
45 that apply to the actions or orders of the director.

46 (4) The liquidator, rehabilitator or conservator of an impaired or in-
47 solvent insurer may notify all interested persons of the effect of this chap-
48 ter.

1 41-4312. PREVENTION OF INSOLVENCIES. (1) To aid in the detection and
2 prevention of insurer insolvencies or impairments, it shall be the duty of
3 the director to:

4 (a) Notify the insurance directors or commissioners of all the other
5 states, territories of the United States and the District of Colum-
6 bia within thirty (30) days following the action taken or the date the
7 action occurs, when the director takes any of the following actions
8 against a member insurer:

9 (i) Revokes a license;

10 (ii) Suspends a license; or

11 (iii) Makes a formal order that the company restrict its premium
12 writing, obtain additional contributions to surplus, withdraw
13 from the state, reinsure all or any part of its business, or in-
14 crease capital, surplus, or any other account for the security of
15 policy owners or creditors.

16 (b) Report to the board of directors when the director has taken any
17 of the actions set forth in paragraph (a) of this subsection or has re-
18 ceived a report from any other director indicating that any such action
19 has been taken in another state. The report to the board of directors
20 shall contain all significant details of the action taken or the report
21 received from another director.

22 (c) Report to the board of directors when the director has reasonable
23 cause to believe from an examination, whether completed or in process,
24 of any member insurer that the insurer may be an impaired or insolvent
25 insurer.

26 (d) Furnish to the board of directors the national association of in-
27 surance commissioners (NAIC) insurance regulatory information system
28 (IRIS) ratios and listings of companies not included in the ratios de-
29 veloped by the NAIC, and the board of directors may use the information
30 contained therein in carrying out its duties and responsibilities under
31 this section. The report and the information contained therein shall be
32 kept confidential by the board of directors until such time as made pub-
33 lic by the director or other lawful authority.

34 (2) The director may seek the advice and recommendations of the board of
35 directors concerning any matter affecting the duties and responsibilities
36 of the director regarding the financial condition of member insurers and
37 companies seeking admission to transact insurance business in this state.

38 (3) The board of directors may, upon majority vote, make reports and
39 recommendations to the director upon any matter germane to the solvency,
40 liquidation, rehabilitation or conservation of any member insurer or ger-
41 mane to the solvency of any company seeking to do an insurance business in
42 this state. The reports and recommendations shall not be considered public
43 documents.

44 (4) The board of directors may, upon majority vote, notify the director
45 of any information indicating a member insurer may be an impaired or insol-
46 vent insurer.

47 (5) The board of directors may, upon majority vote, make recommenda-
48 tions to the director for the detection and prevention of insurer insolvenc-
49 cies.

1 41-4313. CREDITS FOR ASSESSMENTS PAID. (1) A member insurer may offset
2 against its premium tax liability to this state an assessment described in
3 section 41-4309(8), Idaho Code, to the extent of twenty percent (20%) of the
4 amount of the assessment for each of the five (5) calendar years following
5 the year in which the assessment was paid. An allowable offset, or portion
6 thereof, not used in any calendar year cannot be carried over or back to any
7 other year.

8 (2) Any sums acquired by refund, pursuant to section 41-4309(6), Idaho
9 Code, from the association which have theretofore been written off by con-
10 tributing insurers and offset against premium taxes as provided in subsec-
11 tion (1) of this section, and are not then needed for purposes of this chap-
12 ter, shall be paid by the association to the director and by him deposited
13 with the state treasurer for credit to the general account of the state oper-
14 ating fund.

15 (3) Any sums acquired by refund, pursuant to section 41-4309(6), Idaho
16 Code, from the association which have theretofore been written off by con-
17 tributing insurers and offset against premium taxes as provided in subsec-
18 tion (1) of this section, and are not then needed for purposes of this chap-
19 ter, shall be paid by the association to the director and by him deposited
20 with the state treasurer for credit to the general account of the state oper-
21 ating fund.

22 41-4314. MISCELLANEOUS PROVISIONS. (1) This chapter shall not be con-
23 strued to reduce the liability for unpaid assessments of the insureds of an
24 impaired or insolvent insurer operating under a plan with assessment liabil-
25 ity.

26 (2) Records shall be kept of all meetings of the board of directors to
27 discuss the activities of the association in carrying out its powers and du-
28 ties under section 41-4308, Idaho Code. The records of the association with
29 respect to an impaired or insolvent insurer shall not be disclosed prior to
30 the termination of a liquidation, rehabilitation or conservation proceeding
31 involving the impaired or insolvent insurer, except upon the:

- 32 (a) Termination of the impairment or insolvency of the insurer; or
- 33 (b) Order of a court of competent jurisdiction.

34 Nothing in this subsection shall limit the duty of the association to render
35 a report of its activities under section 41-4315, Idaho Code.

36 (3) For the purpose of carrying out its obligations under this chapter,
37 the association shall be deemed to be a creditor of the impaired or insolvent
38 insurer to the extent of assets attributable to covered policies reduced by
39 any amounts to which the association is entitled as subrogee pursuant to sec-
40 tion 41-4308(11), Idaho Code. Assets of the impaired or insolvent insurer
41 attributable to covered policies shall be used to continue all covered poli-
42 cies and pay all contractual obligations of the impaired or insolvent in-
43 surer as required by this chapter. Assets attributable to covered policies,
44 as used in this subsection, are that proportion of the assets which the re-
45 serves that should have been established for such policies bear to the re-
46 serves that should have been established for all policies of insurance writ-
47 ten by the impaired or insolvent insurer.

48 (4) As a creditor of the impaired or insolvent insurer, as established
49 in subsection (3) of this section and consistent with section 41-3334, Idaho

1 Code, the association and other similar associations shall be entitled to
2 receive a disbursement of assets out of the marshaled assets, from time to
3 time as the assets become available to reimburse it, as a credit against con-
4 tractual obligations under this chapter. If the liquidator has not, within
5 one hundred twenty (120) days of a final determination of insolvency of an
6 insurer by the receivership court, made an application to the court for the
7 approval of a proposal to disburse assets out of marshaled assets to guaranty
8 associations having obligations because of the insolvency, then the associ-
9 ation shall be entitled to make application to the receivership court for ap-
10 proval of its own proposal to disburse these assets.

11 (5) (a) Prior to the termination of any liquidation, rehabilitation or
12 conservation proceeding, the court may take into consideration the con-
13 tributions of the respective parties, including the association, the
14 shareholders and policy owners of the insolvent insurer, and any other
15 party with a bona fide interest, in making an equitable distribution of
16 the ownership rights of the insolvent insurer. In such a determination,
17 consideration shall be given to the welfare of the policy owners of the
18 continuing or successor insurer.

19 (b) No distribution to stockholders, if any, of an impaired or insol-
20 vent insurer shall be made until and unless the total amount of valid
21 claims of the association with interest thereon for funds expended in
22 carrying out its powers and duties under section 41-4308, Idaho Code,
23 with respect to the insurer have been fully recovered by the associa-
24 tion.

25 (6) (a) If an order for liquidation or rehabilitation of an insurer
26 domiciled in this state has been entered, the receiver appointed under
27 the order shall have a right to recover on behalf of the insurer, from
28 any affiliate that controlled it, the amount of distributions, other
29 than stock dividends paid by the insurer on its capital stock, made at
30 any time during the five (5) years preceding the petition for liquida-
31 tion or rehabilitation subject to the limitations of paragraphs (b),
32 (c) and (d) of this subsection.

33 (b) No such distribution shall be recoverable if the insurer shows that
34 when paid the distribution was lawful and reasonable, and that the in-
35 surer did not know and could not reasonably have known that the distri-
36 bution might adversely affect the ability of the insurer to fulfill its
37 contractual obligations.

38 (c) Any person who was an affiliate that controlled the insurer at the
39 time the distributions were paid shall be liable up to the amount of dis-
40 tributions received. Any person who was an affiliate that controlled
41 the insurer at the time the distributions were declared shall be liable
42 up to the amount of distributions which would have been received if they
43 had been paid immediately. If two (2) or more persons are liable with
44 respect to the same distributions, they shall be jointly and severally
45 liable.

46 (d) The maximum amount recoverable under this subsection shall be the
47 amount needed in excess of all other available assets of the insolvent
48 insurer to pay the contractual obligations of the insolvent insurer.

49 (e) If any person liable under paragraph (c) of this subsection is in-
50 solvent, all its affiliates that controlled it at the time the distri-

1 bution was paid shall be jointly and severally liable for any resulting
2 deficiency in the amount recovered from the insolvent affiliate.

3 41-4315. EXAMINATION OF THE ASSOCIATION -- ANNUAL REPORT. The associ-
4 ation shall be subject to examination and regulation by the director. The
5 board of directors shall submit to the director each year, not later than May
6 1 of each year, a financial report in a form approved by the director and a
7 report of its activities during the preceding fiscal year. Upon the request
8 of a member insurer, the association shall provide the member insurer with a
9 copy of the report.

10 41-4316. TAX EXEMPTIONS. The association shall be exempt from payment
11 of all fees and all taxes levied by this state or any of its subdivisions, ex-
12 cept taxes levied on real property.

13 41-4317. IMMUNITY. There shall be no liability on the part of and no
14 cause of action of any nature shall arise against any member insurer or its
15 agents or employees, the association or its agents or employees, members of
16 the board of directors or the director or the director's representatives,
17 for any action or omission by them in the performance of their powers and du-
18 ties under this chapter. This immunity shall extend to the participation in
19 any organization of one (1) or more other state associations of similar pur-
20 poses and to any such organization and its agents or employees.

21 41-4318. STAY OF PROCEEDING -- REOPENING DEFAULT JUDGMENTS. All pro-
22 ceedings in which the insolvent insurer is a party in any court in this state
23 shall be stayed one hundred eighty (180) days from the date an order of liq-
24 uidation, rehabilitation or conservation is final to permit proper legal ac-
25 tion by the association on any matters germane to its powers or duties. As to
26 judgment under any decision, order, verdict or finding based on default, the
27 association may apply to have such judgment set aside by the same court that
28 made such judgment and shall be permitted to defend against such suit on the
29 merits.

30 41-4319. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION
31 ACT IN COMMERCIAL SALES. No person, including an insurer, agent or affiliate
32 of an insurer shall make, publish, disseminate, circulate or place before
33 the public, or cause directly or indirectly, to be made, published, dissem-
34 inated, circulated or placed before the public, in any newspaper, magazine
35 or other publication, or in the form of a notice, circular, pamphlet, letter
36 or poster, or over any radio station or television station, or in any other
37 way, any advertisement, announcement or statement, written or oral, which
38 uses the existence of the insurance guaranty association of this state for
39 the purpose of sales, solicitation or inducement to purchase any form of in-
40 surance covered by the Idaho life and health insurance guaranty association
41 act. Provided however, that this section shall not apply to the Idaho life
42 and health insurance guaranty association or any other entity which does not
43 sell or solicit insurance. This section shall also not prohibit the furnish-
44 ing of written information that is in a form prepared by the association and
45 approved by the director upon request of the policy owner.

1 41-4320. APPLICATION. This chapter shall apply to coverage the guar-
2 anty association provides in connection with any member insurer that was
3 first placed under an order of liquidation on or after January 1, 2011.