

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 101

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING CHAPTER 5, TITLE 41, IDAHO CODE, BY THE ADDI-  
2 TION OF A NEW SECTION 41-514, IDAHO CODE, TO PROVIDE STATUTORY PURPOSE;  
3 AMENDING SECTION 41-514, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO  
4 REVISE PROVISIONS REGARDING CREDIT FOR REINSURANCE; AND AMENDING SEC-  
5 TION 41-5204, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.  
6

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

8 SECTION 1. That Chapter 5, Title 41, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 41-514, Idaho Code, and to read as follows:

11 41-514. PURPOSE. The purpose of sections 41-514 and 41-515, Idaho  
12 Code, is to protect the interest of insureds, claimants, ceding insurers,  
13 assuming insurers and the public generally. The legislature hereby declares  
14 its intent to ensure adequate regulation of insurers and reinsurers and  
15 adequate protection for those to whom they owe obligations. In furtherance  
16 of that state interest, the legislature hereby provides a mandate that upon  
17 the insolvency of a non-United States insurer or reinsurer that provides  
18 security to fund its United States obligations in accordance with this chap-  
19 ter, the assets representing the security shall be maintained in the United  
20 States, and claims shall be filed with and valued by the state insurance  
21 director with regulatory oversight, and the assets shall be distributed,  
22 in accordance with the insurance laws of the state in which the trust is  
23 domiciled that are applicable to the liquidation of domestic United States  
24 insurance companies. The legislature declares that the matters contained in  
25 this chapter are fundamental to the business of insurance in accordance with  
26 15 U.S.C. 1011 and 1012.

27 SECTION 2. That Section 41-514, Idaho Code, be redesignated as Section  
28 41-515, Idaho Code, and the same is hereby amended to read as follows:

29 41-5145. CREDIT FOR REINSURANCE. (1) Credit for reinsurance shall be  
30 allowed a domestic ceding insurer as either an asset or a ~~deduction~~ reduction  
31 from liability on account of reinsurance ceded only when the reinsurer meets  
32 the requirements of paragraph (a), ~~(b)~~, ~~(c)~~, ~~(d)~~, ~~(e)~~ or (f) of  
33 ~~this subsection. If meeting the requirements of paragraph (c) or (d) of this~~  
34 ~~subsection, the requirements of paragraph (f) must also be met~~ (2) of this  
35 section; provided further, that the director may adopt by rule pursuant to  
36 subsection (5) (a) of this section specific additional requirements relating  
37 to or setting forth:

38 (a) The valuation of assets or reserve credits;

39 (b) The amount and forms of security supporting reinsurance arrange-  
40 ments described in subsection (5) (a) of this section; and

1        (c) The circumstances pursuant to which credit will be reduced or elim-  
 2        inated.

3        (2) Credit shall be allowed under paragraph (a), (b), or (c) of this  
 4        subsection only, as respects cessions of those kinds or classes of business  
 5        which the assuming insurer is licensed or otherwise permitted to write or as-  
 6        sume in its state of domicile or, in the case of a United States branch of an  
 7        alien assuming insurer, in the state through which it is entered and licensed  
 8        to transact insurance or reinsurance. Credit shall be allowed under para-  
 9        graph (c) or (d) of this subsection only if the applicable requirements of  
 10       paragraph (g) of this subsection have been satisfied.

11       (a) Credit shall be allowed when the reinsurance is ceded to an assuming  
 12       insurer ~~which that~~ is licensed to transact insurance or reinsurance in  
 13       this state.

14       (b) Credit shall be allowed when the reinsurance is ceded to an assuming  
 15       insurer ~~which that~~ is accredited by the director as a reinsurer in this  
 16       state. ~~An accredited~~ In order to be eligible for accreditation, a rein-  
 17       surer is one which must:

18       (i) Files with the director evidence of its submission to this  
 19       state's jurisdiction;

20       (ii) Submits to this state's authority to examine its books and  
 21       records;

22       (iii) ~~Is~~ Be licensed to transact insurance or reinsurance in at  
 23       least one (1) state, ~~or,~~ in the case of a United States branch of  
 24       an alien assuming insurer, ~~is be~~ entered through and licensed to  
 25       transact insurance or reinsurance in at least one (1) state;

26       (iv) Files annually with the director a copy of its annual state-  
 27       ment filed with the insurance department of its state of domicile  
 28       and a copy of its most recent audited financial statement; and  
 29       either

30       (v) Demonstrate to the satisfaction of the director that it has  
 31       adequate financial capacity to meet its reinsurance obligations  
 32       and is otherwise qualified to assume reinsurance from domestic in-  
 33       surers. An assuming insurer is deemed to meet this requirement as  
 34       of the time of its application if it

35       A. ~~M~~maintains a surplus as regards policyholders in  
 36       an amount ~~which is~~ not less than twenty million dollars  
 37       (\$20,000,000) and ~~whose its~~ accreditation has not been de-  
 38       nied by the director within ninety (90) days ~~of its~~ after  
 39       submission, or of its application

40       B. ~~Maintains a surplus as regards policyholders in an amount~~  
 41       ~~less than twenty million dollars (\$20,000,000) and whose ac-~~  
 42       ~~creditation has been approved by the director.~~

43       ~~No credit shall be allowed a domestic ceding insurer, if the assum-~~  
 44       ~~ing insurers' accreditation has been revoked by the director after~~  
 45       ~~notice and hearing.~~

46       (c) Credit shall be allowed when the reinsurance is ceded to an assum-  
 47       ing insurer ~~which that~~ is domiciled and licensed in, or in the case of a  
 48       United States branch of an alien assuming insurer is entered through,  
 49       a state ~~which that~~ employs standards regarding credit for reinsurance

1 substantially similar to those applicable under this statute and the  
 2 assuming insurer or United States branch of an alien assuming insurer:

- 3 (i) Maintains a surplus as regards policyholders in an amount not  
 4 less than twenty million dollars (\$20,000,000); and  
 5 (ii) Submits to the authority of this state to examine its books  
 6 and records.

7 ~~Provided, however, that t~~The requirement of subparagraph (e) (i) of this  
 8 ~~subsection paragraph~~ does not apply to reinsurance ceded and assumed  
 9 pursuant to pooling arrangements among insurers in the same holding  
 10 company system.

11 (d) (i) Credit shall be allowed when the reinsurance is ceded to an  
 12 assuming insurer ~~which that~~ maintains a trust fund in a qualified  
 13 United States financial institution, as defined in subsection  
 14 (34) (b) of this section for the payment of the valid claims of its  
 15 United States policyholders and ceding insurers, their assigns  
 16 and successors in interest. The assuming insurer shall report an-  
 17 nually to the director information substantially the same as that  
 18 required to be reported on the national association of insurance  
 19 commissioners (NAIC) annual statement form by licensed insurers  
 20 to enable the director to determine the sufficiency of the trust  
 21 fund. The assuming insurer shall submit to examination of its  
 22 books and records by the director and bear the expense of examina-  
 23 tion.

24 (ii) Credit for reinsurance shall not be granted under this para-  
 25 graph, unless the form of the trust and any amendments to the trust  
 26 have been approved by:

- 27 1. The director of the state where the trust is domiciled; or  
 28 2. The director of another state who, pursuant to the terms  
 29 of the trust instrument, has accepted principal regulatory  
 30 oversight of the trust.

31 The form of the trust and any trust amendments also shall be filed  
 32 with the director of every state in which the ceding insurer bene-  
 33 ficiaries of the trust are domiciled. The trust instrument shall  
 34 provide that contested claims shall be valid and enforceable upon  
 35 the final order of any court of competent jurisdiction in the  
 36 United States. The trust shall vest legal title to its assets  
 37 in its trustees for the benefit of the assuming insurer's United  
 38 States ceding insurers, their assigns and successors in interest.  
 39 The trust and the assuming insurer shall be subject to examination  
 40 as determined by the director. The trust shall remain in effect  
 41 for as long as the assuming insurer has outstanding obligations  
 42 due under the reinsurance agreements subject to the trust. No  
 43 later than February 28 of each year, the trustees of the trust  
 44 shall report to the director in writing the balance of the trust  
 45 and listing the trust's investments at the preceding year-end and  
 46 shall certify the date of termination of the trust, if so planned,  
 47 or certify that the trust shall not expire prior to the next fol-  
 48 lowing December 31.

49 (iii) The following requirements apply to the following cate-  
 50 gories of assuming insurer:

1 1. In the case of The trust fund for a single assuming  
2 insurer, the trust shall consist of a trustee account rep-  
3 resenting funds in trust in an amount not less than the  
4 assuming insurer's liabilities attributable to business  
5 written in the reinsurance ceded by United States ceding in-  
6 surers and, in addition, the assuming insurer shall maintain  
7 a trustee surplus of not less than twenty million dollars  
8 (\$20,000,000), except as provided in subparagraph (iii)2.  
9 of this paragraph.

10 2. At any time after the assuming insurer has permanently  
11 discontinued underwriting new business secured by the trust  
12 for at least three (3) full years, the director with principal  
13 regulatory oversight of the trust may authorize a  
14 reduction in the required trustee surplus, but only after  
15 a finding, based on an assessment of the risk, that the new  
16 required surplus level is adequate for the protection of  
17 United States ceding insurers, policyholders and claimants  
18 in light of reasonably foreseeable adverse loss develop-  
19 ment. The risk assessment may involve an actuarial review,  
20 including an independent analysis of reserves and cash  
21 flows, and shall consider all material risk factors includ-  
22 ing, when applicable, the lines of business involved, the  
23 stability of the incurred loss estimates and the effect of  
24 the surplus requirements on the assuming insurer's liquid-  
25 ity or solvency. The minimum required trustee surplus may  
26 not be reduced to an amount less than thirty percent (30%) of  
27 the assuming insurer's liabilities attributable to reinsur-  
28 ance ceded by United States ceding insurers covered by the  
29 trust.

30 3. In the case of a group which that includes incorporated  
31 and individual unincorporated underwriters:

32 (A) For reinsurance ceded under reinsurance agree-  
33 ments with an inception, amendment or renewal date on  
34 or after January 1, 1993, the trust shall consist of a  
35 trustee account representing the group's in an amount  
36 not less than the respective underwriters' several  
37 liabilities attributable to business written in the  
38 ceded by United States domiciled ceding insurers to any  
39 underwriter of the group;

40 (B) For reinsurance ceded under reinsurance agree-  
41 ments with an inception date on or before December 31,  
42 1992, and not amended or renewed after that date, the  
43 trust shall consist of a trustee account in an amount  
44 not less than the respective underwriters' several in-  
45 surance and reinsurance liabilities attributable to  
46 business written in the United States; and

47 (C) ~~+~~In addition to these trusts, the group shall  
48 maintain in trust a trustee surplus of which one hun-  
49 dred million dollars (\$100,000,000) shall be held  
50 jointly for the benefit of United States ceding insur-

ers of any member of the group, for all years of the account.

~~The~~ incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and. Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall make available provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter by the groups domiciliary regulator and its member; or if certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

(ii)v) In the case of a group of incorporated insurers underwriters under common administration which complies with the filing requirements contained in the previous paragraph, and which is under the supervision of the department of trade and industry of the United Kingdom and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has, the group shall:

1. Have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation;

2. Maintain aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000);

3. ~~the~~ Maintain a trust shall be fund in an amount equal to not less than the group's several liabilities attributable to business written in the ceded by United States plus the group shall domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

4. ~~M~~maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group, as additional security for these liabilities; and

5. ~~each member of the group shall~~ Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the director an annual certification of the each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountants.

~~(iii) Such trust shall be established in a form approved by the director of insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of~~

1 ~~the trust for its United States policyholders and ceding insur-~~  
2 ~~ers, their assigns and successors in interest. The trust and the~~  
3 ~~assuming insurer shall be subject to examination as determined by~~  
4 ~~the director. The trust described herein must remain in effect for~~  
5 ~~as long as the assuming insurer shall have outstanding obligations~~  
6 ~~due under the reinsurance agreements subject to the trust.~~

7 ~~(iv) No later than February 28 of each year the trustees of the~~  
8 ~~trust shall report to the director in writing setting forth the~~  
9 ~~balance of the trust and listing the trust's investments at the~~  
10 ~~preceding year end and shall certify the date of termination of the~~  
11 ~~trust, if so planned, or certify that the trust shall not expire~~  
12 ~~prior to the next following December 31.~~

13 (e) Credit shall be allowed when the reinsurance is ceded to an assuming  
14 insurer that has been certified by the director as a reinsurer in this  
15 state and has secured its obligations in accordance with the following  
16 requirements:

17 (i) In order to be eligible for certification, the assuming in-  
18 surer must:

19 1. Be domiciled and licensed to transact insurance or rein-  
20 surance in a qualified jurisdiction, as determined by the  
21 director pursuant to subparagraph (iii) of this paragraph;

22 2. Maintain minimum capital and surplus, or the equivalent,  
23 in an amount to be determined by the director pursuant to  
24 rule;

25 3. Maintain financial strength ratings from two (2) or more  
26 rating agencies deemed acceptable by the director pursuant  
27 to rule;

28 4. Agree to submit to the jurisdiction of this state, ap-  
29 point the director as its agent for service of process in  
30 this state and agree to provide security for one hundred per-  
31 cent (100%) of the assuming insurer's liabilities attribut-  
32 able to reinsurance ceded by United States ceding insurers  
33 if it resists enforcement of a final United States judgment;

34 5. Agree to meet applicable information filing requirements  
35 as determined by the director, both with respect to an ini-  
36 tial application for certification and on an ongoing basis;  
37 and

38 6. Satisfy any other requirements for certification deemed  
39 relevant by the director.

40 (ii) An association including incorporated and individual unin-  
41 corporated underwriters may be a certified reinsurer. In order to  
42 be eligible for certification, in addition to satisfying the re-  
43 quirements of subparagraph (i) of this paragraph:

44 1. The association shall satisfy its minimum capital and  
45 surplus requirements through the capital and surplus equiv-  
46 alents (net of liabilities) of the association and its mem-  
47 bers, which shall include a joint central fund that may be  
48 applied to any unsatisfied obligation of the association or  
49 any of its members, in an amount determined by the director  
50 to provide adequate protection;

1           2. The incorporated members of the association shall not be  
2           engaged in any business other than underwriting as a member  
3           of the association and shall be subject to the same level of  
4           regulation and solvency control by the association's domi-  
5           ciliary regulator as are the unincorporated members; and

6           3. Within ninety (90) days after its financial statements  
7           are due to be filed with the association's domiciliary regu-  
8           lator, the association shall provide to the director an an-  
9           annual certification by the association's domiciliary regula-  
10           tor of the solvency of each underwriter member; or if a cer-  
11           tification is unavailable, financial statements, prepared  
12           by independent public accountants, of each underwriter mem-  
13           ber of the association.

14           (iii) The director shall create and publish a list of qualified  
15           jurisdictions under which an assuming insurer licensed and domi-  
16           ciled in such jurisdiction is eligible to be considered for certi-  
17           fication by the director as a certified reinsurer.

18           1. In order to determine whether the domiciliary jurisdic-  
19           tion of a non-United States assuming insurer is eligible  
20           to be recognized as a qualified jurisdiction, the direc-  
21           tor shall evaluate the appropriateness and effectiveness  
22           of the reinsurance supervisory system of the jurisdiction,  
23           both initially and on an ongoing basis, and consider the  
24           rights, benefits and the extent of reciprocal recognition  
25           afforded by the non-United States jurisdiction to reinsur-  
26           ers licensed and domiciled in the United States. A qualified  
27           jurisdiction must agree to share information and cooperate  
28           with the director with respect to all certified reinsurers  
29           domiciled within that jurisdiction. A jurisdiction may not  
30           be recognized as a qualified jurisdiction if the director  
31           has determined that the jurisdiction does not adequately and  
32           promptly enforce final United States judgments and arbitra-  
33           tion awards. Additional factors may be considered in the  
34           discretion of the director.

35           2. A list of qualified jurisdictions shall be published  
36           through the NAIC committee process. The director shall con-  
37           sider this list in determining qualified jurisdictions. If  
38           the director approves a jurisdiction as qualified that does  
39           not appear on the list of qualified jurisdictions, the di-  
40           rector shall provide thoroughly documented justification in  
41           accordance with criteria to be developed under rulemaking.

42           3. United States jurisdictions that meet the requirement  
43           for accreditation under the NAIC financial standards and  
44           accreditation program shall be recognized as qualified ju-  
45           risdictions.

46           4. If a certified reinsurer's domiciliary jurisdiction  
47           ceases to be a qualified jurisdiction, the director has the  
48           discretion to suspend the reinsurer's certification indefi-  
49           nitely, in lieu of revocation.

1           (iv) The director shall assign a rating to each certified rein-  
2 surer, giving due consideration to the financial strength ratings  
3 that have been assigned by rating agencies deemed acceptable to  
4 the director pursuant to rulemaking. The director shall publish a  
5 list of all certified reinsurers and their ratings.

6           (v) A certified reinsurer shall secure obligations assumed from  
7 United States ceding insurers under this subsection at a level  
8 consistent with its rating, as specified in rulemaking promul-  
9 gated by the director.

10           1. In order for a domestic ceding insurer to qualify for full  
11 financial statement credit for reinsurance ceded to a certi-  
12 fied reinsurer, the certified reinsurer shall maintain se-  
13 curity in a form acceptable to the director and consistent  
14 with the provisions of subsection (3) of this section, or in  
15 a multibeneficiary trust in accordance with paragraph (d) of  
16 this subsection, except as otherwise provided in this para-  
17 graph.

18           2. If a certified reinsurer maintains a trust to fully  
19 secure its obligations subject to paragraph (d) of this  
20 subsection and chooses to secure its obligations incurred  
21 as a certified reinsurer in the form of a multibeneficiary  
22 trust, the certified reinsurer shall maintain separate  
23 trust accounts for its obligations incurred under reinsur-  
24 ance agreements issued or renewed as a certified reinsurer  
25 with reduced security as permitted by this paragraph or com-  
26 parable laws of other United States jurisdictions and for  
27 its obligations subject to paragraph (d) of this subsection.  
28 It shall be a condition to the grant of certification under  
29 this paragraph that the certified reinsurer shall have bound  
30 itself by the language of the trust and agreement with the  
31 director with principal regulatory oversight of each such  
32 trust account to fund, upon termination of any such trust  
33 account, out of the remaining surplus of such trust, any de-  
34 ficiency of any other such trust account.

35           3. The minimum trustee surplus requirements provided in  
36 paragraph (d) of this subsection are not applicable with  
37 respect to a multibeneficiary trust maintained by a cer-  
38 tified reinsurer for the purpose of securing obligations  
39 incurred under this paragraph, except that such trust shall  
40 maintain a minimum trustee surplus of ten million dollars  
41 (\$10,000,000).

42           4. With respect to obligations incurred by a certified  
43 reinsurer under this subparagraph, if the security is in-  
44 sufficient, the director shall reduce the allowable credit  
45 by an amount proportionate to the deficiency and has the  
46 discretion to impose further reductions in allowable credit  
47 upon finding that there is a material risk that the certified  
48 reinsurer's obligations will not be paid in full when due.

49           5. For purposes of this subparagraph, a certified reinsurer  
50 whose certification has been terminated for any reason shall



1           be treated as a certified reinsurer required to secure one  
 2           hundred percent (100%) of its obligations. As used here,  
 3           the term "terminated" refers to revocation, suspension,  
 4           voluntary surrender and inactive status. If the director  
 5           continues to assign a higher rating as permitted by other  
 6           provisions of this section, this requirement does not apply  
 7           to a certified reinsurer in inactive status or to a reinsurer  
 8           whose certification has been suspended.

9           (vi) If an applicant for certification has been certified as a  
 10           reinsurer in an NAIC-accredited jurisdiction, the director has  
 11           the discretion to defer to that jurisdiction's certification and  
 12           has the discretion to defer to the rating assigned by that juris-  
 13           isdiction, and such assuming insurer shall be considered to be a  
 14           certified reinsurer in this state.

15           (vii) A certified reinsurer that ceases to assume new business in  
 16           this state may request to maintain its certification in inactive  
 17           status in order to continue to qualify for a reduction in security  
 18           for its in-force business. An inactive certified reinsurer shall  
 19           continue to comply with all applicable requirements of subpara-  
 20           graph (v) of this paragraph, and the director shall assign a rat-  
 21           ing that takes into account, if relevant, the reasons why the rein-  
 22           surer is not assuming new business.

23           (f) Credit shall be allowed when the reinsurance is ceded to an assum-  
 24           ing insurer not meeting the requirements of paragraph (a), (b), (c), ~~or~~  
 25           (d) or (e) of this ~~section~~ subsection, but only with respect to the in-  
 26           surance of risks located in jurisdictions where such reinsurance is re-  
 27           quired by applicable law or regulation of that jurisdiction.

28           (~~g~~) If the assuming insurer is not licensed, ~~or~~ accredited or certi-  
 29           fied to transact insurance or reinsurance in this state, the credit per-  
 30           mitted in paragraphs (c) and (d) of this subsection shall not be allowed  
 31           unless the assuming insurer agrees in the reinsurance agreements:

32           (i) That in the event of the failure of the assuming insurer to  
 33           perform its obligations under the terms of the reinsurance agree-  
 34           ment, the assuming insurer, at the request of the ceding insurer,  
 35           shall submit to the jurisdiction of any court of competent juris-  
 36           isdiction in any state of the United States, will comply with all  
 37           requirements necessary to give such court jurisdiction, and will  
 38           abide by the final decision of such court or of any appellate court  
 39           in the event of an appeal; and

40           (ii) To designate the director or a designated attorney as its  
 41           true and lawful attorney upon whom may be served any lawful process  
 42           in any action, suit or proceeding instituted by or on behalf of the  
 43           ceding company.

44           This provision is not intended to conflict with or override the obliga-  
 45           tion of the parties to a reinsurance agreement to arbitrate their dis-  
 46           putes, if such an obligation is created in the agreement.

47           (h) If the assuming insurer does not meet the requirements of paragraph  
 48           (a), (b) or (c) of this subsection, the credit permitted by paragraph  
 49           (d) or (e) of this subsection shall not be allowed unless the assuming  
 50           insurer agrees in the trust agreements to the following conditions:

1 (i) If the trust fund is inadequate because it contains an amount  
2 less than the amount required by paragraph (d) (iii) of this sub-  
3 section, or if the grantor of the trust has been declared insolvent  
4 or placed into receivership, rehabilitation, liquidation or simi-  
5 lar proceedings under the laws of its state or country of domicile,  
6 the trustee shall comply with an order of the director with regula-  
7 tory oversight over the trust or with an order of a court of compe-  
8 tent jurisdiction directing the trustee to transfer to the direc-  
9 tor with regulatory oversight all of the assets of the trust fund.

10 (ii) The assets shall be distributed by, and claims shall be filed  
11 with and valued by, the director with regulatory oversight in ac-  
12 cordance with the laws of the state in which the trust is domiciled  
13 that are applicable to the liquidation of domestic insurance com-  
14 panies.

15 (iii) If the director with regulatory oversight determines that  
16 the assets of the trust fund or any part thereof are not necessary  
17 to satisfy the claims of the United States ceding insurers of the  
18 grantor of the trust, the assets or part thereof shall be returned  
19 by the director with regulatory oversight to the trustee for dis-  
20 tribution in accordance with the trust agreement.

21 (iv) The grantor shall waive any right otherwise available to it  
22 under United States law that is inconsistent with this provision.

23 (i) If an accredited or certified reinsurer ceases to meet the require-  
24 ments for accreditation or certification, the director may suspend or  
25 revoke the reinsurer's accreditation or certification.

26 (i) The director must give the reinsurer notice and opportunity  
27 for hearing. The suspension or revocation may not take effect un-  
28 til after the director's order on hearing, unless:

29 1. The reinsurer waives its right to hearing;

30 2. The director's order is based on regulatory action by  
31 the reinsurer's domiciliary jurisdiction or the voluntary  
32 surrender or termination of the reinsurer's eligibility to  
33 transact insurance or reinsurance business in its domicil-  
34 iary jurisdiction or in the primary certifying state of the  
35 reinsurer under paragraph (e) (vi) of this subsection; or

36 3. The director finds that an emergency requires immediate  
37 action and a court of competent jurisdiction has not stayed  
38 the director's order.

39 (ii) While a reinsurer's accreditation or certification is  
40 suspended, no reinsurance contract issued or renewed after the  
41 effective date of the suspension qualifies for credit, except to  
42 the extent that the reinsurer's obligations under the contract are  
43 secured in accordance with subsection (3) of this section. If a  
44 reinsurer's accreditation or certification is revoked, no credit  
45 for reinsurance may be granted after the effective date of the  
46 revocation, except to the extent that the reinsurer's obligations  
47 under the contract are secured in accordance with paragraph (e) (v)  
48 of this subsection or with subsection (3) of this section.

49 (j) The following provisions apply regarding the concentration of  
50 risk:

1           (i) A ceding insurer shall take steps to manage its reinsurance  
 2 recoverables proportionate to its own book of business. A domes-  
 3 tic ceding insurer shall notify the director within thirty (30)  
 4 days after reinsurance recoverables from any single assuming in-  
 5 surer, or group of affiliated assuming insurers, exceeds fifty  
 6 percent (50%) of the domestic ceding insurer's last reported sur-  
 7 plus to policyholders, or after it is determined that reinsurance  
 8 recoverables from any single assuming insurer, or group of af-  
 9 filiated assuming insurers, is likely to exceed this limit. The  
 10 notification shall demonstrate that the exposure is safely man-  
 11 aged by the domestic ceding insurer.

12           (ii) A ceding insurer shall take steps to diversify its reinsur-  
 13 ance program. A domestic ceding insurer shall notify the direc-  
 14 tor within thirty (30) days after ceding to any single assuming in-  
 15 surer, or group of affiliated assuming insurers, more than twenty  
 16 percent (20%) of the ceding insurer's gross written premium in the  
 17 prior calendar year, or after it has determined that the reinsur-  
 18 ance ceded to any single assuming insurer, or group of affiliated  
 19 assuming insurers, is likely to exceed this limit. The notifica-  
 20 tion shall demonstrate that the exposure is safely managed by the  
 21 domestic ceding insurer.

22           (23) An asset or aA reduction from liability for the reinsurance ceded  
 23 by a domestic insurer to an assuming insurer not meeting the requirements in  
 24 subsection (12) of this section shall be allowed in an amount not exceed-  
 25 ing the liabilities carried by the ceding insurer and such; provided fur-  
 26 ther, that the director may adopt by rule pursuant to subsection (5) (a) of  
 27 this section specific additional requirements relating to or setting forth  
 28 the valuation of assets or reserve credits, the amount and forms of security  
 29 supporting reinsurance arrangements described in subsection (5) (a) of this  
 30 section, and the circumstances pursuant to which credit will be reduced or  
 31 eliminated. The reduction shall be in the amount of funds held by or on be-  
 32 half of the ceding insurer, including funds held in trust for the ceding in-  
 33 surer, under a reinsurance contract with such the assuming insurer as secu-  
 34 rity for the payment of obligations thereunder, if such the security is held  
 35 in the United States subject to withdrawal solely by, and under the exclusive  
 36 control of, the ceding insurer; or, in the case of a trust, held in a quali-  
 37 fied United States financial institution, as defined in subsection (4) (b) of  
 38 this section. This security may be in the form of:

39           (a) Cash;

40           (b) Securities listed by the securities valuation office of the  
 41 national association of insurance commissioners NAIC, including those  
 42 deemed exempt from filing as defined by the purposes and procedures  
 43 manual of the securities valuation office, and qualifying as admitted  
 44 assets;

45           (c) Clean, irrevocable, unconditional letters of credit, as defined in  
 46 subsection (3) (a) of this section, issued or confirmed by a qualified  
 47 United States financial institution as defined in subsection (4) (a) of  
 48 this section no later than December 31 in respect of the year for which  
 49 the filing is being made, and in the possession of, or in trust for, the  
 50 ceding company on or before the filing date of its annual statement.

1 Letters of credit meeting applicable standards of issuer acceptability  
 2 as of the dates of their issuance (or confirmation) shall, notwith-  
 3 standing the issuing (or confirming) institution's subsequent failure  
 4 to meet applicable standards of issuer acceptability, continue to be  
 5 acceptable as security until their expiration, extension, renewal,  
 6 modification or amendment, whichever first occurs; or

7 (d) Any other form of security acceptable to the director.

8 ~~(34)~~ (a) For purposes of subsection ~~(23)~~ (c) of this section a "quali-  
 9 fied United States financial institution" means an institution that:

10 (a) Is organized or (in the case of a United States office of  
 11 a foreign banking organization) licensed, under the laws of the  
 12 United States or any state thereof;

13 (b) Is regulated, supervised and examined by United States fed-  
 14 eral or state authorities having regulatory authority over banks  
 15 and trust companies; and

16 (c) Has been determined by either the director or the secu-  
 17 rities valuation office of the ~~national association of insurance~~  
 18 ~~commissioners~~ NAIC, to meet such standards of financial condition  
 19 and standing as are considered necessary and appropriate to regu-  
 20 late the quality of financial institutions whose letters of credit  
 21 will be acceptable to the director.

22 (4b) A "qualified United States financial institution" means, for pur-  
 23 poses of the provisions of this statute specifying those institutions  
 24 that are eligible to act as a fiduciary of a trust, an institution that:

25 (a) Is an organization, or (in the case of a United States branch  
 26 or agency office of a foreign banking organization) licensed, un-  
 27 der the laws of the United States or any state thereof and has been  
 28 granted authority to operate with fiduciary powers; and

29 (b) Is regulated, supervised and examined by federal or state  
 30 authorities having regulatory authority over banks and trust com-  
 31 panies.

32 (5) The director may adopt rules implementing the provisions of this  
 33 chapter.

34 (a) The director is further authorized to adopt rules applicable to  
 35 reinsurance arrangements described in subparagraph (i) of this para-  
 36 graph.

37 (i) A rule adopted pursuant to this subparagraph may apply only  
 38 to reinsurance relating to: life insurance policies with guar-  
 39 anteed nonlevel gross premiums or guaranteed nonlevel benefits;  
 40 universal life insurance policies with provisions resulting in  
 41 the ability of a policyholder to keep a policy in force over a  
 42 secondary guarantee period; variable annuities with guaranteed  
 43 death or living benefits; long-term care insurance policies; or  
 44 such other life and health insurance and annuity products as to  
 45 which the NAIC adopts model regulatory requirements with respect  
 46 to credit for reinsurance.

47 (ii) A rule adopted pursuant to subparagraph (i) of this paragraph  
 48 concerning life insurance policies with guaranteed nonlevel gross  
 49 premiums or guaranteed nonlevel benefits or universal life insur-  
 50 ance policies with provisions resulting in the ability of a poli-

1 cyholder to keep a policy in force over a secondary guarantee pe-  
 2 riod may apply to any treaty containing policies issued on or after  
 3 January 1, 2015, and policies issued prior to January 1, 2015, if  
 4 risk pertaining to such pre-2015 policies is ceded in connection  
 5 with the treaty, in whole or in part, on or after January 1, 2015.

6 (iii) A rule adopted pursuant to this paragraph may require the  
 7 ceding insurer, in calculating the amounts or forms of security  
 8 required to be held under rules promulgated under this authority,  
 9 to use the valuation manual referenced in section 41-612, Idaho  
 10 Code.

11 (iv) A rule adopted pursuant to this paragraph shall not apply to  
 12 cessions to an assuming insurer that:

13 1. Is certified in this state or, if this state has not  
 14 adopted provisions substantially equivalent to subsection  
 15 (2) (e) of this section, certified in a minimum of five (5)  
 16 other states; or

17 2. Maintains at least two hundred fifty million dollars  
 18 (\$250,000,000) in capital and surplus when determined in ac-  
 19 cordance with the NAIC accounting practices and procedures  
 20 manual, referenced in section 41-335, Idaho Code, and is:

21 (A) Licensed in at least twenty-six (26) states; or

22 (B) Licensed in at least ten (10) states, and licensed  
 23 or accredited in a total of at least thirty-five (35)  
 24 states.

25 (b) The authority to adopt rules pursuant to paragraph (a) of this sub-  
 26 section does not limit the director's general authority to adopt rules  
 27 pursuant to this subsection.

28 (6) The provisions of this section shall apply to all ~~sessions~~ cessions  
 29 after the effective date of this act under reinsurance agreements ~~which~~ that  
 30 have had an inception, anniversary, or renewal date not less than six (6)  
 31 months after the effective date of this act.

32 SECTION 3. That Section 41-5204, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 41-5204. APPLICABILITY AND SCOPE. To the extent permitted by federal  
 35 law, the provisions of this chapter shall apply to any health benefit plan  
 36 delivered or issued for delivery in the state of Idaho that provides coverage  
 37 to eligible individuals or their dependents if not otherwise subject to the  
 38 provisions of chapter 22, 40, 47 or 55, title 41, Idaho Code.

39 (1) Except as provided in subsection (2) of this section, for the pur-  
 40 poses of this chapter, carriers that are affiliated companies or that are el-  
 41 igible to file a consolidated tax return shall be treated as one (1) carrier  
 42 and any restrictions or limitations imposed in this chapter shall apply as if  
 43 all health benefit plans delivered or issued for delivery to individuals in  
 44 this state by such affiliated carriers were insured by one (1) carrier.

45 (2) An affiliated carrier that is a managed care organization having a  
 46 certificate of authority pursuant to the provisions of chapter 39, title 41,  
 47 Idaho Code, may be considered to be a separate carrier for the purposes of  
 48 this chapter.

1           (3) Unless otherwise authorized by the director, an individual car-  
2 rier shall not enter into one (1) or more ceding arrangements with respect  
3 to health benefit plans delivered or issued for delivery to individuals in  
4 this state if such arrangements would result in less than fifty percent (50%)  
5 of the insurance obligation or risk for such health benefit plans being re-  
6 tained by the ceding carrier. The provisions of sections 41-510, 41-511 and  
7 41-5145, Idaho Code, shall apply if an individual carrier cedes or assumes  
8 all of the insurance obligation or risk with respect to one (1) or more health  
9 benefit plans delivered or issued for delivery to individuals in this state.