TITLE 41
INSURANCE

CHAPTER 1
SCOPE OF INSURANCE CODE -- GENERAL PROVISIONS

41-101. SHORT TITLE. This act constitutes the Idaho insurance code.

[41-101, added 1961, ch. 330, sec. 1, p. 645.]

41-102. "INSURANCE" DEFINED. "Insurance" is a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.

[41-102, added 1961, ch. 330, sec. 2, p. 645.]

41-103. "INSURER" DEFINED. "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

[41-103, added 1961, ch. 330, sec. 3, p. 645.]

41-104. "PERSON" DEFINED. "Person" includes any individual, insurer, company, association, organization, Lloyd's insurer, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation and every legal entity.

[41-104, added 1961, ch. 330, sec. 4, p. 645.]

41-105. "DIRECTOR," "DEPARTMENT" DEFINED. (1) "Director" means the director of the department of insurance of this state.
(2) "Department" means the department of insurance of this state.

[41-105, added 1961, ch. 330, sec. 5, p. 645.]

41-106. "DOMESTIC," "FOREIGN," "ALIEN" INSURER DEFINED. (1) A "domestic" insurer is one formed under the laws of this state or an insurer which has transferred its domicile pursuant to section 41-342, Idaho Code, to this state.
(2) A "foreign" insurer is one formed under the laws of a jurisdiction other than this state.
(3) An "alien" insurer is one formed under the laws of any country other than the United States of America, its states, districts, territories, and commonwealths.
(4) Except where distinguished by context, "foreign" insurers includes also "alien" insurers.

[41-106, added 1961, ch. 330, sec. 6, p. 645; am. 1987, ch. 302, sec. 4, p. 643.]

41-107. "STATE" DEFINED. When used in context signifying a jurisdiction other than the state of Idaho, "state" means any state, district, territory, commonwealth, or possession of the United States of America, and the Panama Canal Zone.

[41-107, added 1961, ch. 330, sec. 7, p. 645.]

41-108. "DOMICILE" DEFINED. The "domicile" of an insurer means:
(1) As to Canadian insurers, Canada and the province in which the insurer's head office is located.
(2) As to other alien insurers authorized to transact insurance in one or more states, as provided in section 41-340 (retaliatory provision).
(3) As to alien insurers not authorized to transact insurance in one or more states, the country under the laws of which the insurer was formed.
(4) As to all other insurers, the state under the laws of which the insurer was formed or the state to which the insurer has transferred its domicile.

[41-108, added 1961, ch. 330, sec. 8, p. 645; am. 1987, ch. 302, sec. 5, p. 643.]

41-109. "PRINCIPAL OFFICE" DEFINED. "Principal office" means:
(1) As to Canadian insurers, the office in Canada from which the general affairs of the insurer are directed or managed;
(2) As to other alien insurers authorized to transact insurance in one or more states, the office in United States from which the general affairs of the insurer in the United States are directed or managed;
(3) As to all other insurers, the office from which the general affairs of the insurer are directed or managed.

[41-109, added 1961, ch. 330, sec. 9, p. 645.]

41-110. "AUTHORIZED," "UNAUTHORIZED" INSURER DEFINED. (1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the director to transact insurance in this state.
(2) An "unauthorized" insurer is one not so authorized.

[41-110, added 1961, ch. 330, sec. 10, p. 645.]

41-111. "CERTIFICATE OF AUTHORITY," "LICENSE" DEFINED. (1) A "certificate of authority" is one issued by the director evidencing the authority of an insurer to transact insurance in this state.
(2) A "license" is authority granted by the director pursuant to this code authorizing the licensee to engage in a business or operation of insurance in this state other than as an insurer, and the certificate by which such authority is evidenced.

[41-111, added 1961, ch. 330, sec. 11, p. 645.]

41-112. "TRANSACTING INSURANCE" DEFINED. "Transacting insurance" includes any of the following:
(1) Solicitation and inducement.
(2) Preliminary negotiations.
(3) Effectuation of a contract of insurance.
(4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.
(5) Mailing or otherwise delivering any written solicitation to any person in this state by an insurer or any person acting on behalf of the insurer for fee or compensation.

[41-112, added 1961, ch. 330, sec. 12, p. 645; am. 1971, ch. 328, sec. 1, p. 1293.]

41-113. COMPLIANCE REQUIRED -- PUBLIC INTEREST. (1) No person shall transact a business of insurance in Idaho, or relative to a subject of insurance resident, located or to be performed in Idaho, without complying with the applicable provisions of this code.

(2) The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all concerned in insurance transactions, rests the duty of preserving the integrity of insurance.

[41-113, added 1961, ch. 330, sec. 13, p. 645.]

41-114. APPLICATION OF CODE AS TO PARTICULAR TYPES OF INSURERS. No provision of chapter 1, title 41, Idaho Code, shall apply with respect to:

(1) County mutual insurers (as identified in chapter 31, title 41, Idaho Code), except as stated in chapter 31, title 41, Idaho Code (County Mutual Insurers).

(2) Fraternal benefit societies (as identified in chapter 32, title 41, Idaho Code), except as stated in chapter 32, title 41, Idaho Code (Fraternal Benefit Societies).

(3) Hospital and medical professional service corporations (as identified in chapter 34, title 41, Idaho Code), except as stated in chapter 34, title 41, Idaho Code (Hospital and Professional Service Corporations).

(4) Religious corporations or societies which are exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, as amended, and that provide only first-party property or casualty coverages exclusively to their members.

(5) Any organization described by section 501(c)(3) of the Internal Revenue Code, as amended, but only with respect to the organization's issuance of charitable gift annuities in accordance with the terms of section 41-120, Idaho Code.

[41-114, added 1961, ch. 330, sec. 14, p. 645; am. 1977, ch. 204, sec. 1, p. 556; am. 1984, ch. 253, sec. 1, p. 604; am. 1986, ch. 119, sec. 1, p. 313; am. 1996, ch. 409, sec. 1, p. 1354; am. 2020, ch. 115, sec. 2, p. 365.]

41-114A. SERVICE CONTRACTS. (1) The term "service contract," as used in this section, means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to reimburse, in whole or in part, the owner of such property for the repair, replacement or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear. A service contract may contain a provision for incidental payment under such contract where service, repair or replacement is not feasible or economical. Service contracts, other than motor vehicle service contracts subject to the provisions of the Idaho motor vehicle service contract act, chapter 62, title 41, Idaho Code, may provide for the repair, replacement or maintenance of property for damage resulting from power surges and accidental damage from handling.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of a service contract is exempt from the provisions of title 41, Idaho Code.

(3) Service contracts shall be subject to the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

[41-114A, added 2000, ch. 249, sec. 1, p. 702; am 2008, ch. 137, sec. 1, p. 396; am. 2018, ch. 116, sec. 3, p. 247.]

41-114B. LEGAL SERVICE EXPENSE PLANS. (1) The term "legal service expense plan," as used in this section, means a contract or agreement for a stated consideration between a plan administrator and a member or group of members, whereby the member pays the administrator, in advance or by installments, for the receipt of professional legal services, advice or representation. Such services in Idaho shall be provided by attorneys at law licensed in Idaho. The attorneys shall be prepaid under a contract or agreement with the administrator to provide specified legal services for the express benefit of the plan member and shall agree to render services to the member when required.

(2) The marketing, sale, contracting, issuance of a contract, plan administration and delivery of services under a legal service expense plan are exempt from all other provisions of title 41, Idaho Code. In addition, such plans shall not be characterized as "insurance" when marketed in Idaho.

(3) Legal service expense plans, but not law firm retainer agreements, shall be subject to the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code, and attorneys providing service shall be subject to the provisions relating to the regulation of the practice of law under title 3, Idaho Code.

[41-114B, added 2001, ch. 127, sec. 1, p. 449.]

41-115. PARTICULAR PROVISIONS PREVAIL. Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

[41-115, added 1961, ch. 330, sec. 15, p. 645.]

41-116. CAPTIONS NOT TO AFFECT MEANING. The scope and meaning of any provision of this code shall not be limited or otherwise affected by the caption or heading of any chapter, section or provision.

[41-116, added 1961, ch. 330, sec. 16, p. 645.]

41-117. GENERAL PENALTY. Each violation of this code for which a greater penalty is not provided by another provision of this code or by other applicable laws of this state, shall in addition to any applicable prescribed denial, suspension, or revocation of certificate of authority or license be punishable by an administrative penalty of not more than one thousand dollars ($1,000) for any individual or natural person and not more than five thousand dollars ($5,000) for any other person, imposed by the director, and upon conviction by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for a period not to exceed six

(6) months, or by both such fine and imprisonment in the discretion of the court. Each instance of violation may be considered a separate offense.

[41-117, added 1961, ch. 330, sec. 17, p. 645; am. 1999, ch. 96, sec. 1, p. 298.]

41-117A. PENALTY FOR TRANSACTING INSURANCE WITHOUT PROPER LICENSING. The director may impose an administrative penalty not to exceed fifteen thousand dollars ($15,000), for deposit in the general account of the state of Idaho, upon any person who transacts insurance of any kind or character or transmits for a person, other than himself, an application for a policy of insurance without proper licensing, or after such licensing shall have been suspended or revoked.

[41-117A, added 1988, ch. 169, sec. 1, p. 299.]

41-118. "CHAPTER" DEFINED. As used in this code and except as otherwise required by context, "chapter" means a particular numbered chapter of this code as indicated by context.

[41-118, added 1961, ch. 330, sec. 804, p. 645.]

41-119. APPLICABILITY OF CODE UNDER UNREPEALED LAWS. Any laws of Idaho, other than this code, remaining in force after the effective date of this code which refer to certain provisions of law repealed under section 809 of this act, shall be deemed to refer to those provisions of this code which are in substance the same or substantially the same as such repealed provisions.

[41-119, added 1961, ch. 330, sec. 805, p. 645.]

41-120. CHARITABLE GIFT ANNUITIES. (1) As used in this section:

(a) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one (1) or two (2) lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(b) "Charitable organization" means an entity described by sections 501(c)(3) or 170(c) of the internal revenue code of 1986 (26 U.S.C. 501(c)(3) or 170(c)).

(c) "Qualified charitable gift annuity" means a charitable gift annuity described in sections 501(m)(5) and 514(c)(5) of the internal revenue code of 1986 (26 U.S.C. 501(m)(5) and (514(c)(5)), that is issued by a charitable organization that, on the date of the annuity agreement:

(i) Has a minimum of one hundred thousand dollars ($100,000) (after being adjusted annually by the department for inflation, beginning on July 1, 1997, by reference to the city index of the consumer price index or some equivalent measure) in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and

(ii) Has been in continuous operation for at least three (3) years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three (3) years.

(2) It is hereby declared that the issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state. A charitable gift annuity issued before July 1, 1996, is a qualified charitable gift annuity for purposes of this section and the issuance of such a charitable gift annuity does not constitute engaging in the business of insurance in this state.

(3) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose in writing to the donor, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the department of insurance or protected by a guaranty association affiliated with the department. The notice provisions of this subsection must be written in a separate paragraph in the annuity agreement in a print size no smaller than that employed in the annuity agreement generally.

(4) A charitable organization that issues qualified charitable gift annuities shall notify the department in writing within ninety (90) days after the effective date of this section, or on the date on which it enters into the organization's first qualified charitable gift annuity agreement, whichever is later. Notice to the department must:

(a) Be signed by the officer or director of the charitable organization;

(b) Identify the charitable organization;

(c) Certify that:

(i) The organization is a charitable organization;

(ii) The annuities issued by the charitable organization are qualified charitable gift annuities as defined in this section.

The organization shall not be required by the department to submit additional information except to enable the department to determine appropriate penalties that may be applicable under subsection (5) of this section.

(5) The failure of a charitable organization to comply with the notice requirements imposed by this section does not prevent a charitable gift annuity that otherwise meets the requirements of this section from constituting a qualified charitable gift annuity. However, the director of the department may enforce performance of the notice requirements of this section by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of subsections (3) and (4) of this section. The department may fine the charitable organization in an amount not to exceed one thousand dollars ($1,000) per qualified charitable gift annuity agreement issued until the charitable organization complies with subsections (3) and (4) of this section.

(6) It is hereby declared that the issuance of a qualified charitable gift annuity does not constitute an unfair or deceptive act or practice in the conduct of trade or commerce prohibited by chapter 6, title 48, Idaho Code.

[41-120, added 1996, ch. 409, sec. 2, p. 1355.]

41-121. EXEMPTION OF HEALTH CARE SHARING MINISTRIES FROM THE INSURANCE CODE. (1) A health care sharing ministry shall not be considered to be engaging in the business of insurance for purposes of this title.

(2) As used in this section, "health care sharing ministry" means a faith-based nonprofit organization that is tax exempt under the Internal Revenue Code which:

(a) Limits its participants to those who are of a similar faith;

(b) Acts as a facilitator among participants who have financial or medical needs and matches those participants with other participants with the present ability to assist those with financial or medical needs in accordance with criteria established by the health care sharing ministry;

(c) Provides for the financial or medical needs of a participant through contributions from one (1) participant to another;

(d) Provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants;

(e) Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution; and

(f) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads, in substance: "Notice: The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills."

(3) It is hereby declared that participation in or operation of a health care sharing ministry does not constitute an unfair or deceptive act or practice in the conduct of trade or commerce prohibited by chapter 6, title 48, Idaho Code.

[41-121, added 2013, ch. 156, sec. 2, p. 369.]