TITLE 41
INSURANCE

CHAPTER 28
ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

41-2801. SCOPE OF CHAPTER. This chapter shall apply only to domestic stock insurers and domestic mutual insurers, except that sections 41-2849 (nonassessable policies, mutual insurers), 41-2872 (health care provider contracts) and 41-2873, Idaho Code, (best price -- most favored nations clause prohibited) shall also apply as to foreign insurers.

[41-2801, added 1961, ch. 330, sec. 569, p. 645; am. 1995, ch. 289, sec. 14, p. 982; am. 2003, ch. 103, sec. 1, p. 323; am. 2007, ch. 282, sec. 1, p. 813.]

41-2802. "STOCK" INSURER -- "MUTUAL" INSURER -- DEFINITIONS. A "stock" insurer is as defined in section 41-301. A "mutual" insurer is as defined in section 41-302.

[41-2802, added 1961, ch. 330, sec. 570, p. 645.]

41-2803. APPLICABILITY OF GENERAL CORPORATION STATUTES. (1) The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic stock insurers and to domestic mutual insurers, except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Domestic stock insurers and domestic mutual insurers are exempt from the provisions of section 30-21-213, Idaho Code.

[41-2803, added 1961, ch. 330, sec. 571, p. 645; am. 1981, ch. 50, sec. 1, p. 77; am. 1999, ch. 65, sec. 6, p. 171; am. 2017, ch. 58, sec. 24, p. 118.]

41-2804. INCORPORATION. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Seven (7) or more individuals who are citizens of this state may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer.

(3) Articles of incorporation. The incorporators shall prepare and execute in triplicate articles of incorporation in accordance with the applicable provisions of chapters 21 and 29, title 30, Idaho Code, known as the "General Business Corporation" laws of this state, but subject to the following requirements:

(a) In addition to matters required or permitted under such general business corporation laws not inconsistent with this provision or this code, the articles of incorporation shall set forth:

(i) The name of the corporation, which shall comply with section 41-311, Idaho Code.

(ii) The kinds of insurance, as defined in this code, that the corporation is formed to transact.

(iii) If a stock corporation, its authorized capital stock, the number of shares of stock into which divided and the par value

of each such share, which par value shall be at least one dollar ($1.00). Shares without par value shall not be authorized.

(iv) If a stock corporation, the extent, if any, to which shares of its stock are subject to assessment.

(v) If a mutual corporation, the maximum contingent liability of its members, for payment of losses and expenses incurred, other than as to nonassessable policies issued as permitted under section 41-2849, Idaho Code; such liability shall be as stated in the articles of incorporation, but shall not be less than one (1) nor more than six (6) annual premiums for the member's policy.

(vi) The name and residence address of each incorporator, and whether each such incorporator is a citizen of this state.

(b) Articles of incorporation shall be filed as provided in section 41-2805, Idaho Code.

[41-2804, added 1961, ch. 330, sec. 572, p. 645; am. 1980, ch. 197, sec. 29, p. 453; am. 1990, ch. 383, sec. 1, p. 1061; am. 2003, ch. 163, sec. 3, p. 461; am. 2017, ch. 58, sec. 25, p. 118; am. 2021, ch. 321, sec. 27, p. 969.]

41-2805. FILING OF ARTICLES. (1) The incorporators shall submit the executed articles of incorporation of a proposed stock or mutual insurer in triplicate to the director for review. If the director finds the articles to be in compliance with this code he shall deliver an original thereof to the attorney general for examination. After examining the articles, the attorney general shall return them to the director accompanied by his opinion certifying as to whether or not he has found the articles to be in accordance with the laws of this state and not inconsistent with the constitution of this state. If the attorney general has found the articles to be in accordance with law, the director shall, upon payment of the fees prescribed by law therefor, and except as provided in subsection (2) of this section, certify his approval upon each of the three (3) originals of the articles, file one (1) of such originals in his office and deliver two (2) of such originals to the incorporators, one (1) to be retained by the corporation as part of its corporate records, and one (1) to be filed with the secretary of state.

(2) If upon reviewing or examining the articles of incorporation as hereinabove provided, the director or the attorney general finds that the articles do not comply with this code or are not in accordance with the laws of this state, or are inconsistent with the constitution of this state, as the case may be, the director shall refuse to approve the articles and shall return all originals of the articles to the incorporators accompanied by a written statement of the defects in the articles or reasons upon which his refusal is based.

(3) The secretary of state shall not permit the filing with him or in his office of any such articles of incorporation unless the same bear the director's approval endorsed thereon as hereinabove provided. The director's approval, when so endorsed, shall be deemed to relate only to the form of the articles of incorporation, and shall not be deemed to constitute an approval or commitment by the director as to any other aspect or operation of the proposed insurer.

(4) The director and the attorney general shall perform all duties required of them under this section within a reasonable time after the articles of incorporation have been submitted to the director as in subsection (1) above provided.

[41-2805, added 1961, ch. 330, sec. 573, p. 645; am. 1980, ch. 197, sec. 30, p. 454; am. 2001, ch. 85, sec. 7, p. 216; am. 2003, ch. 103, sec. 2, p. 323.]

41-2809. INVESTIGATION OF PROPOSED ORGANIZATION. Upon application of a new insurer for a certificate of authority, the director of the department of insurance shall promptly make an investigation of:

(1) The character, reputation, financial standing and purposes of the organizers, incorporators, and subscribers organizing the proposed insurer or organization;

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers and directors; and

(3) Such other aspects of the proposed insurer or financing as he may deem advisable.

[41-2809, added 1961, ch. 330, sec. 577, p. 645; am. 2003, ch. 103, sec. 4, p. 324.]

41-2818. QUALIFICATION FOR INITIAL CERTIFICATE OF AUTHORITY -- STOCK INSURERS. A newly formed domestic stock insurer shall be entitled to a certificate of authority only when its entire authorized capital stock has been subscribed for and paid for in full, and it has fulfilled the other requirements for the certificate of authority as applicable under this code to the kind or kinds of insurance proposed to be transacted. The director shall not issue a certificate of authority to any such insurer which does not meet the requirements of this section.

[41-2818, added 1961, ch. 330, sec. 586, p. 645.]

41-2820. INITIAL QUALIFICATIONS -- DOMESTIC MUTUALS. When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance defined in sections 41-502 through 41-506, Idaho Code, if it has otherwise complied with the provisions of title 41, Idaho Code, and possesses and maintains surplus funds as provided in section 41-313 or 41-3102A, Idaho Code.

[41-2820, added 1961, ch. 330, sec. 588, p. 645; am. 1995, ch. 96, sec. 2, p. 274.]

41-2822. APPLICATIONS FOR INSURANCE IN FORMATION OF MUTUAL INSURER. (1) Upon receipt of the director's approval of the bond or deposit as provided in section 41-2821, Idaho Code, the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as it may accept, and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.

(3) All such applications shall provide that:

(a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) No insurance is in effect unless and until the certificate of authority has been issued; and

(c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not com-

pleted and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than one (1) year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applications for insurance shall be by licensed agents of the corporation, and the director shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subdivision (c) above to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The director may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 10, title 41, Idaho Code.

[41-2822, added 1961, ch. 330, sec. 590, p. 645; am. 1972, ch. 164, sec. 5, p. 376.]

41-2823. FORMATION OF MUTUALS -- TRUST DEPOSIT OF PREMIUMS -- ISSUANCE OF POLICIES. (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement approved by the director and consistent with this section and with section 41-2822(3)(c). The corporation shall file an executed copy of such trust agreement with the director.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

[41-2823, added 1961, ch. 330, sec. 591, p. 645.]

41-2824. FORMATION OF MUTUALS -- FAILURE TO QUALIFY. If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one (1) year from and after date of its certificate of incorporation, the corporation shall transact no further business, and the director shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under section 41-2823.

[41-2824, added 1961, ch. 330, sec. 592, p. 645.]

41-2825. ADDITIONAL KINDS OF INSURANCE -- MUTUALS. A domestic mutual insurer, after being authorized to transact one (1) kind of insurance, may be authorized to transact such additional kinds of insurance as are permitted under section 41-312, Idaho Code, while otherwise in compliance with this code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further to the additional surplus requirements of section 41-313, Idaho Code, applicable to such a stock insurer.

[41-2825, added 1961, ch. 330, sec. 593, p. 645; am. 1995, ch. 96, sec. 4, p. 276.]

41-2826. AMENDMENT OF ARTICLES OF INCORPORATION -- STOCK INSURERS. (1) A domestic stock insurer may amend its articles of incorporation or bylaws for any lawful purpose through procedures prescribed by the statutes of this state as to business corporations in general, and by complying with the requirements of subsection (2) below.

(2) No such amendment to an insurer's articles of incorporation shall be effectuated until a fully executed copy of the certificate of amendments has been filed with the director, and has been approved by him. The director shall approve the amendment unless found by him not to be in compliance with law. At time of filing, the fee therefor shall be paid in the amount prescribed in section 41-401 (fee schedule).

[41-2826, added 1961, ch. 330, sec. 594, p. 645; am. 2004, ch. 239, sec. 1, p. 702.]

41-2827. AMENDMENT OF ARTICLES OF INCORPORATION -- MUTUAL INSURER. (1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at any regular annual meeting of its members, or at any special meeting called for the purpose.

(2) Upon adoption of such an amendment the insurer shall make a certificate thereof in triplicate under its corporate seal, setting forth such amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary, and be verified by one of them before a notary public. The insurer shall deliver to the director the triplicate originals of the certificate together with the filing fee specified therefor in section 41-401 (fee schedule). The director shall transmit one (1) original of the proposed amendment to the attorney general for examination. If the director and the attorney general find that the certificate and the amendments comply with law, the director shall endorse his approval upon each of the triplicate originals, place one (1) set on file in his office and return the remaining originals to the insurer. The insurer shall file one (1) of such originals with the secretary of state and retain the third original for its corporate records. The amendment shall be effective when filed with the secretary of state.

(3) If the director or the attorney general find that the proposed amendment or certificate does not comply with law, the director shall not approve the same, and shall return all certificates of amendment to the insurer together with his written statement of reasons for nonapproval. The filing fee shall not be returnable.

[41-2827, added 1961, ch. 330, sec. 595, p. 645; am. 1985, ch. 251, sec. 2, p. 585.]

41-2828. INSURANCE BUSINESS EXCLUSIVE. A domestic insurer heretofore or hereafter formed shall not have corporate power to engage, and shall not directly or indirectly engage, in any business other than the insurance business and in business activities reasonably and necessarily incidental

to such insurance business; except that a title insurer may also engage in business as an escrow agent.

[41-2828, added 1961, ch. 330, sec. 596, p. 645.]

41-2829. MEMBERSHIP IN MUTUALS. (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer during the period of the insurance with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary may be a member of a mutual insurer.

[41-2829, added 1961, ch. 330, sec. 597, p. 645.]

41-2830. BY-LAWS OF MUTUAL. (1) A domestic mutual insurer shall have by-laws for the government of its affairs. The insurer's initial board of directors shall adopt original by-laws, subject to the approval of the insurer's members at the next meeting of members.

(2) The by-laws shall contain provisions, consistent with this code, relating to:

(a) The voting rights of members;

(b) Election of directors, and the number, qualifications, terms of office and powers of directors;

(c) Annual and special meetings of members;

(d) The number, designation, election, terms and powers and duties of the respective corporate officers;

(e) Deposit, custody, disbursement and accounting for corporate funds;

(f) Fidelity bonds covering such officers and employees of the insurer handling its funds, to be issued by corporate surety and to be in such amount as may be reasonable; and

(g) Such other matters as may be customary, necessary, or convenient for the management or regulation of corporate affairs.

(3) The insurer shall promptly file with the director a copy, certified by the insurer's secretary, of its by-laws and of every modification thereof or addition thereto. The director shall disapprove any by-law provision deemed by him, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any by-law provision so disapproved.

[41-2830, added 1961, ch. 330, sec. 598, p. 645.]

41-2831. RIGHTS OF MUTUAL MEMBERS IN GENERAL. (1) A domestic mutual insurer is owned by and shall be operated in the interest of its members.

(2) With respect to the management, records and affairs of the insurer, a member of a mutual insurer shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer, subject to the provisions of this code.

[41-2831, added 1961, ch. 330, sec. 599, p. 645.]

41-2832. MEETINGS OF MEMBERS OF MUTUAL INSURER. (1) Meetings of members of a domestic mutual insurer shall be held in the city or town of its registered office in this state, except as may otherwise be provided in the insurer's by-laws with the director's approval.

(2) Each such insurer shall, during the first six (6) months of each calendar year, hold the annual meeting of its members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.

(3) Notice of the time and place of the annual meeting of members shall be given by imprinting such notice plainly on the policies issued by the insurer. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

(b) Unless the director otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four (24) months immediately following such meeting.

(4) If more than six (6) months are allowed to elapse after an annual meeting of members is due to be held and without such annual meeting being held, the director shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter. The director shall attend the meeting.

(5) Subsections (2) and (3) above shall not apply as to a fraternal insurer, as defined in section 41-3101(2), which shall hold the annual meeting of its members and give notice thereof, at such reasonable time and place and in such reasonable manner as may be provided by the insurer's by-laws with the director's approval.

[41-2832, added 1961, ch. 330, sec. 600, p. 645.]

41-2833. SPECIAL MEETINGS OF MEMBERS OF MUTUAL INSURER. (1) A special meeting of the members of a mutual insurer may be held for any lawful purpose. The meeting shall be called by the corporate secretary pursuant to request of the insurer's president or of its board of directors, or upon request in writing signed by not less than one-tenth (1/10) of the insurer's members. The meeting shall be held at such time as the secretary may fix, but not less than ten (10) nor more than thirty (30) days after receipt of the request. If the secretary fails to issue such call, the president, directors, or members making the request may do so.

(2) Not less than ten (10) days' written notice of the meeting shall be given. Notice addressed to the insurer's members at their respective post office addresses last of record with the insurer and deposited, postage prepaid, in a letter depository of the United States post office, shall be deemed to have been given when so mailed. In lieu of mailed notice the insurer may publish the notice in such publication or publications as shall afford a majority of its members a reasonable opportunity to have actual advance notice of the meeting. The notice shall state the purposes of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

[41-2833, added 1961, ch. 330, sec. 601, p. 645.]

41-2834. VOTING RIGHTS OF MUTUAL MEMBERS. (1) Each member of a mutual insurer is entitled to one (1) vote upon each matter coming to a vote at meetings of members.

(2) A member shall have the right to vote in person or by his written proxy filed with the corporate secretary not less than five (5) days prior to the meeting. No such proxy shall be made irrevocable, nor be valid beyond the earlier of the following dates:

(a) The date of expiration set forth in the proxy; or

(b) The date of termination of membership; or

(c) Five (5) years from the date of execution of the proxy.

(3) No member's vote upon any proposal to divest the insurer of its business or assets, or the major part thereof, shall be registered or taken except in person or by proxy newly executed and specific as to the matter to be voted upon.

[41-2834, added 1961, ch. 330, sec. 602, p. 645.]

41-2835. DIRECTORS. (1) The affairs of every domestic insurer shall be managed by a board of directors consisting of not less than five (5) directors or more than twenty-five (25) directors.

(2) Directors shall be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than five (5) years each and until their successors are elected and have qualified and if, to be elected for terms of more than one (1) year, the insurer's bylaws shall provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors shall expire on the date of each annual meeting of stockholders or members.

(3) A director of a mutual insurer shall be a policyholder thereof.

(4) As to an insurer operating as an authorized insurer only in the state of Idaho, a majority of the members of the insurer's board of directors shall be citizens of and shall actually reside in this state.

(5) Notwithstanding the provisions of subsection (1) of this section, a service corporation converted to a mutual insurer pursuant to section 41-2854A, Idaho Code, shall be managed by a board of directors consisting of not less than five (5) directors or more than twenty-five (25) directors. In the case of a service corporation that was a professional service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date may include professionals of the kind or kinds designated in the corporation's articles of incorporation as participant licensees immediately prior to such effective date, as long as a majority of directors are not professionals of the kind or kinds so designated. In the case of a service corporation that was a hospital service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date shall include one (1) or more individuals representing a hospital or hospitals, as long as a majority of directors are not representing or employed by any hospital. In the case of a service corporation that was a combined professional service and hospital service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date shall

include one (1) or more individuals representing a hospital or hospitals, and one (1) or more professionals of the kind or kinds designated in the corporation's articles of incorporation as participant licensees immediately prior to such effective date, as long as a majority of directors are neither such professionals nor representing or employed by any hospital, nor any combination thereof; further, the number of directors who are hospital representatives shall equal the number of directors who are professionals of the kind or kinds designated as participant licensees in the corporation's articles of incorporation in effect immediately prior to such effective date. Notwithstanding the provisions of subsection (3) of this section, a director elected as a hospital representative need not be a policyholder as long as the represented hospital is a policyholder.

[41-2835, added 1961, ch. 330, sec. 603, p. 645; am. 1994, ch. 78, sec. 2, p. 177; am. 2003, ch. 163, sec. 4, p. 461; am. 2021, ch. 145, sec. 1, p. 397.]

41-2836. NOTICE OF CHANGE OF DIRECTORS OR OFFICERS. An insurer shall promptly give the director written notice of any change of personnel among its directors or principal officers.

[41-2836, added 1961, ch. 330, sec. 604, p. 645.]

41-2837. PROHIBITED PECUNIARY INTEREST OF OFFICIALS. (1) Any officer or director, or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge or deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

(3) This section shall not prohibit such a director or officer, or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders, nor shall it prohibit any such officer, director or member of a committee or employee from participating as beneficiary in any pension trust, deferred compensation plan, profit sharing plan or stock option plan authorized by the insurer and to which he may be eligible, nor shall it prohibit any director or member of a committee from receiving a reasonable fee for lawful services actually rendered to such insurer.

(4) The director may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

[41-2837, added 1961, ch. 330, sec. 605, p. 645.]

41-2838. MANAGEMENT AND EXCLUSIVE AGENCY CONTRACTS. (1) No domestic insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and approved by the director. The contract shall be deemed approved unless disapproved by the director within twenty (20) days after date of filing, subject to such reasonable extension of time as the director may require by notice given within such twenty (20) days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) Any such contract, or contract holder, shall provide that any such manager or producer of its business shall within ninety (90) days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, officers, and other principal management personnel of the manager or producer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.

(3) The director shall disapprove any such contract if he finds that it:

(a) Subjects the insurer to unreasonable or excessive charges; or

(b) Is to extend for an unreasonable length of time; or

(c) Does not contain fair and adequate standards of performance; or

(d) Contains other inequitable provision or provisions which impair the proper interests of stockholders or policyholders of the insurer.

(4) The director may, after a hearing held thereon, withdraw his approval of any such contract theretofore approved by him, if he finds that the bases of his original approval no longer exist, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) above.

(5) This section does not apply as to contracts entered into prior to the effective date of this code, nor to extensions or amendments to such contracts.

[41-2838, added 1961, ch. 330, sec. 606, p. 645; am. 1969, ch. 214, sec. 67, p. 625.]

41-2839. HOME OFFICE -- RECORDS -- ASSETS -- PENALTY FOR UNLAWFUL REMOVAL. (1) Except as provided in subsection (5) of this section, every domestic insurer shall have and maintain its principal place of business and home office in this state, and shall keep therein accurate and complete accounts and records of its assets, transactions, and affairs in accordance with the usual and accepted principles and practices of insurance accounting and recordkeeping as applicable to the kinds of insurance transacted by the insurer.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state;

(b) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and "regional home offices" located outside this state as referred to in subsection (4) below; and

(c) Such assets of any insurer that has redomesticated to this state pursuant to section 41-342, Idaho Code, and satisfies the conditions of subsection (5) of this section.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the director under this code, or for such reasonable purposes and periods of time as may be approved by the director in writing in advance of such removal, or concealment of such records or assets or such material part thereof from the director, is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state, or who conceals or attempts to conceal the same from the director, in violation of this section, shall upon conviction thereof be guilty of a felony, punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the penitentiary for not more than five (5) years, or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state, beyond the period therefor specified in the director's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the director may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 33, title 41, Idaho Code.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) Establishing and maintaining branch offices or "regional home offices" in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the director at his request.

(b) Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this state required by the law of such jurisdiction or as reasonably and customarily required in the regular course of its business.

(c) Using custodial arrangements for the holding of book-entry securities owned by the insurer, either in or outside of this state, and either segregated from or commingled with securities owned by others, if the arrangements conform to rules adopted by the director for safeguarding the assets and facilitating the director's examination of insurers using such custodial arrangements.

(5) A stock insurer that has redomesticated to this state pursuant to section 41-342, Idaho Code, is not required to maintain its home office and principal place of business in this state and is not required to maintain its assets in this state so long as:

(a) The majority of the stock of the insurer is owned directly or indirectly by a mutual insurance holding company that maintains its home office and principal place of business in this state;
(b) The insurer can and shall produce the accounts and records of the insurer in their entirety in this state upon request from the director in a form satisfactory to the director;
(c) Material administrative and financial activities of the insurer are conducted in this state, initial evidence of which is submitted by the insurer under oath to the director as part of the insurer's application for a certificate of authority or certificate of redomestication under section 41-342, Idaho Code;
(d) At least one (1) officer and one (1) director of the insurer are residents of this state. The officer and director contemplated in this paragraph shall not be the same person; and
(e) In addition to those examination expenses payable by the insurer under section 41-228, Idaho Code, the insurer pays all examination expenses that exceed the costs and fees necessary to examine an insurer with its principal place of business and home office in this state including, without limitation, actual travel expenses, reasonable living expense allowance, and compensation of employees, agents and contractors of the department, as determined and approved by the director.

[41-2839, added 1961, ch. 330, sec. 607, p. 645; am. 1981, ch. 174, sec. 1, p. 306; am. 2016, ch. 92, sec. 2, p. 283.]

41-2840. VOUCHERS FOR EXPENDITURES. (1) No insurer shall make any disbursement of twenty-five dollars ($25) or more, unless evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.
(2) If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.
(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher or other document shall also correctly describe the nature of the matter and of the insurer's interest therein.

[41-2840, added 1961, ch. 330, sec. 608, p. 645.]

41-2841. BORROWED SURPLUS. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest at such rate or rates approved by the director, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess or surplus, as stipulated in the agreement. A commission or promotion expense may be paid in connection with any such loan upon approval of the director.
(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff, but until repaid, financial

statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan shall be subject to the director's approval. The insurer shall, in advance of the loan, file with the director a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after the date of such filing the insurer is notified of the director's disapproval and the reasons therefor. The director shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a mutual insurer unless approved in advance by the director.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

[41-2841, added 1961, ch. 330, sec. 609, p. 645; am. 1973, ch. 11, sec. 1, p. 24; am. 1982, ch. 171, sec. 1, p. 451; am. 2006, ch. 25, sec. 1, p. 83.]

41-2842. PARTICIPATING POLICIES. (1) As provided in its articles of incorporation, a domestic stock insurer or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, unabsorbed portions of premiums, or surplus; may classify policies issued and risks insured on a participating and nonparticipating basis, and, subject to section 41-1933(3), Idaho Code, may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable.

(2) A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged.

(3) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy; except, that a participating life or disability insurance policy providing for participation at the end of the first or second policy year may provide that the dividend or dividends will be paid subject to payment of premium for the next ensuing year.

[41-2842, added 1961, ch. 330, sec. 610, p. 645; am. 1972, ch. 70, sec. 1, p. 145.]

41-2843. DIVIDENDS TO STOCKHOLDERS. A domestic stock insurer shall not pay any dividend to stockholders except out of earned surplus. Prior to payment thereof, the director, in his discretion, may approve the payment of a dividend from other than earned surplus. For purposes of this section, "earned surplus" shall include surplus arising from unrealized capital gains or revaluation of assets.

[41-2843, added 1961, ch. 330, sec. 611, p. 645; am. 1993, ch. 194, sec. 14, p. 506.]

41-2844. DIVIDENDS TO POLICY HOLDERS. (1) The directors of a domestic mutual insurer may from time to time apportion any pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings, net realized earnings, and net realized capital gains, all in excess of the surplus required by law to be maintained by the insurer.

(2) A dividend otherwise proper may be payable out of such savings, earnings, and gains even though the insurer's total surplus is then less than the aggregate of contributed surplus remaining unpaid by the insurer.

(3) A domestic stock insurer may pay dividends to holders of its participating policies out of any available surplus funds.

(4) No dividend shall be paid which is inequitable, or which unfairly discriminates as between classifications of policies or policies within the same classification.

(5) This section is subject to section 41-1933(3) (provision, etc. of dividends out of earnings on nonparticipating policies).

[41-2844, added 1961, ch. 330, sec. 612, p. 645.]

41-2845. ILLEGAL DIVIDENDS -- PENALTY. (1) Any director of a domestic stock insurer or domestic mutual insurer who knowingly votes for or concurs in declaration or payment of a dividend to stockholders or policyholders other than as authorized under sections 41-2843 or 41-2844 shall upon conviction thereof be subject to the penalties provided by section 41-117 (general penalty), and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by creditors of the insurer to the extent of such dividend.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The director may revoke or suspend the certificate of authority of any insurer which has declared or paid such an illegal dividend.

[41-2845, added 1961, ch. 330, sec. 613, p. 645.]

41-2846. CONTINGENT LIABILITY OF MUTUAL MEMBERS. (1) Except as provided otherwise in section 41-2849 with respect to nonassessable policies, each member of a domestic mutual insurer shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be in such maximum amount as is specified in the insurer's articles of incorporation consistent with section 41-2804(3)(a)(v).

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force as provided in section 41-2847.

(4) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

[41-2846, added 1961, ch. 330, sec. 614, p. 645.]

41-2847. LEVY OF CONTINGENT LIABILITY. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for author-

ity to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the director, levy an assessment only on its members who held the policies providing for contingent liability at any time within the twelve (12) months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.

(2) The levy of assessment shall be for such an amount, subject to the director's approval, as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five per cent (5%) of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.

(3) As to the respective policies subject to the levy, the assessment shall be computed upon such reasonable basis as may be approved by the director in writing in advance of the levy.

(4) No member shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the director as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of the member.

[41-2847, added 1961, ch. 330, sec. 615, p. 645.]

41-2848. ENFORCEMENT OF CONTINGENT LIABILITY. (1) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the member's address last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(2) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than twenty (20) days after mailing, the insurer may institute suit to collect the same.

[41-2848, added 1961, ch. 330, sec. 616, p. 645.]

41-2849. NONASSESSABLE POLICIES -- MUTUAL INSURERS. (1) A domestic mutual insurer while maintaining unimpaired surplus funds not less in amount than the minimum paid-in capital stock required of a domestic stock insurer formed under this code for authority to transact the same kind or kinds of insurance, may, upon receipt of the director's order so authorizing, extinguish the contingent liability to assessment of its members as to all its policies in force and may omit provisions imposing contingent liability in all policies currently issued.

(2) The director shall not authorize a domestic insurer to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it.

(3) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its charter and the laws of its domicile.

[41-2849, added 1961, ch. 330, sec. 617, p. 645.]

41-2850. NONASSESSABLE POLICIES -- REVOCATION OF AUTHORITY. (1) The director shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if

(a) At any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

(b) The insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked.

(2) During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is then in force without endorsing the same to provide for such contingent liability.

[41-2850, added 1961, ch. 330, sec. 618, p. 645.]

41-2851. SOLICITATIONS IN OTHER STATES. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio, television and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The director shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

[41-2851, added 1961, ch. 330, sec. 619, p. 645.]

41-2852. IMPAIRMENT OF CAPITAL OR ASSETS. (1) If the assets of a domestic insurer are less than its liabilities and the minimum amount of capital funds required to be maintained by it under section 41-313, Idaho Code, for authority to transact the kinds of insurance being transacted, the director shall at once determine the amount of deficiency and serve notice upon the insurer to cure the deficiency and file proof thereof with him within the period specified in the notice, which period shall be not less than thirty (30) nor more than ninety (90) days from the date of the notice. Such notice may be so served by delivery to the insurer, or by mailing to the insurer addressed to its registered office in this state.

(2) The deficiency may be made good in cash or in assets eligible under chapter 7 (investments) for the investment of the insurer's funds; or by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital stock (if a stock insurer) or surplus (if a mutual insurer) under this code; or, if a stock insurer, by reduction of the number of shares

of the insurer's authorized capital stock or the par value thereof through amendment of its articles of incorporation, to an amount of authorized and paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

(3) After any such reduction of authorized capital stock the insurer shall require the surrender to it of outstanding stock certificates in exchange for new certificates to be issued in lieu thereof for such number and/or par value of shares as the respective stockholders are proportionately entitled to receive.

(4) If the deficiency is not made good and proof thereof filed with the director within the period required by the notice as specified in subsection (1) above, the insurer shall be deemed insolvent and the director shall institute delinquency proceedings against it under chapter 33 of this code.

[41-2852, added 1961, ch. 330, sec. 620, p. 645; am. 1999, ch. 65, sec. 7, p. 172.]

41-2853. ASSESSMENT OF STOCKHOLDERS OR MEMBERS. (1) Any insurer receiving the director's notice required in section 41-2852(1):

(a) If a stock insurer and to the extent that stockholders are subject to assessment under the insurer's articles of incorporation, by resolution of its board of directors the insurer may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person, or by mail addressed to him at his address last of record with the insurer, or in such other manner as may be approved by the director, the insurer may require the return of the certificates of stock theretofore held by the stockholder, and in cancellation and in lieu thereof issue new certificates for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the director to be remaining unimpaired at the time of the determination of the amount of impairment under section 41-2852, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or issue fractional shares under this subsection.

(b) If a mutual insurer, may levy an assessment upon members as is provided for under section 41-2847.

(2) Neither this section nor section 41-2852 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

[41-2853, added 1961, ch. 330, sec. 621, p. 645.]

41-2854. MUTUALIZATION OF STOCK INSURERS. (1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the director after a hearing thereon.

(2) The director shall not approve any such plan, procedure or mutualization unless:

(a) It is equitable to stockholders and policyholders;

(b) It is subject to approval by the holders of not less than a majority of the insurer's outstanding capital stock having voting rights, and by not less than a majority of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the director;

(c) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one (1) year;

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by the general corporation law of the state as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

(3) No director, officer, agent or employee of the insurer, nor any other person, shall receive any fee, commission or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the plan of mutualization as approved by the director.

(4) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 33.

[41-2854, added 1961, ch. 330, sec. 623, p. 645.]

41-2854A. MUTUALIZATION OF SERVICE CORPORATIONS. (1) Every corporation organized or existing under chapter 34, title 41, Idaho Code, as a hospital service corporation, a combined professional service and hospital service corporation, or a professional service corporation whose articles of incorporation specify participant licensee services are to be provided by physicians or surgeons, of either medicine and surgery or of osteopathic medicine and surgery, shall file with the director of the department of insurance a plan of mutualization on or before January 1, 1995. Any other corporation organized under chapter 34, title 41, Idaho Code, may at any time file a plan of mutualization. Any corporation organized under chapter 34, title 41, Idaho Code, may hereafter be referred to in this section as a "service corporation." The director of the department of insurance shall approve any plan of mutualization so filed, and forthwith issue a certificate of authority to the filing corporation to transact insurance in this state pursuant thereto, if:

(a) Except as herein provided and except as consistent with or implicit in the conversion of the service corporation to a mutual insurer, the plan does not deprive existing corporate members of statutory rights expressly set forth in chapter 34, title 41, Idaho Code;

(b) The plan has been approved by the corporation's board of directors;

(c) The corporation satisfies the minimum surplus or deposit requirements of this title for the type or types of mutual insurer to which it will convert, as specified by the corporation in its plan; and

(d) The plan requires the corporation to honor subscribers' existing contractual rights in their subscriber agreements as if the corporation had not been converted to a mutual insurer. Approval by the service cor-

poration's board of directors of the plan of mutualization shall be sufficient and effective without the approval or vote of the service corporation's members, notwithstanding any other provision of law to the contrary or of the service corporation's bylaws or articles of incorporation. The filing of such a board-approved plan, together with the issuance by the director of the department of insurance of a certificate of authority, shall constitute legal authority, effective from and after the effective date of the plan, specified in the plan, for the corporation to transact insurance in Idaho as a nonprofit mutual insurer pursuant to such plan.

(2) A plan of mutualization shall provide that, from and after its effective date, the corporation's reserves shall not be used for any purpose or distributed in any manner contrary to this title. A plan of mutualization shall also provide for a "transition period" commencing with the plan's effective date and ending with a date identified as the "transition period termination date," which shall be a date not later than the first anniversary of the effective date of such plan. Prior to the expiration of the transition period, the corporation's reserves shall not be used for any purpose or distributed in any manner contrary to section 41-3421, Idaho Code. Following conversion, the corporation shall continue to be a nonprofit corporation; provided however, the board of directors of a mutualized service corporation may from time to time declare, apportion, and pay or credit to the corporation's members dividends pursuant to this title if the corporation's articles of incorporation (as amended, if applicable, in conjunction with the filing or after the effective date of its plan of mutualization) expressly so provide. Notwithstanding any other provision of law to the contrary, no corporation (including by way of illustration and not limitation, any direct or indirect successor corporation or entity, by merger or acquisition of substantially all its assets) mutualizing under this section shall, in the event of its dissolution, distribute any of its assets except as provided by its articles of incorporation in effect immediately before the effective date of its plan of mutualization; nor shall any such corporation take or fail to take any action that would prevent it from making such distributions at the time of its dissolution.

(3) From and after the transition period termination date, the obligations of participant hospitals, participant physicians, and other licensees under sections 41-3415, 41-3415A, 41-3416 and 41-3431, Idaho Code, and all voting rights held by participant hospitals, participant physicians, and any other participant licensees by virtue of participant status under chapter 34, title 41, Idaho Code, shall be extinguished, but until such transition period termination date, they shall retain such voting rights and obligations as they held and for which they were accountable prior to mutualization hereunder, including duties and responsibilities to the corporation and its subscribers. Each policyholder of a policy issued on or after such plan's effective date shall have all the rights and liabilities of a member of a mutual insurer under the policy, under the corporation's articles of incorporation and bylaws, and as provided by law. Before such transition period termination date, the corporation shall replace, convert by agreement with subscribers, or allow to lapse pursuant to their express terms all subscriber agreements, so that from and after such transition period termination date the corporation shall have no subscriber agreements in force. From and after the effective date of its plan of mutualization, the corporation shall issue no subscriber agreements, but shall be authorized to

accept applications for and to issue insurance policies of the kind or kinds specified by the plan and the corporation is qualified to issue pursuant to law.

(4) The service corporation shall file with the director of the department of insurance, as part of its plan of mutualization, amended bylaws and articles of amendment to articles of incorporation, approved by its board of directors, which articles and bylaws shall conform in all respects with the requirements of this chapter and any applicable rules duly promulgated hereunder, and shall become effective on the effective date of such plan. Approval by the service corporation's board of directors of such amendments to its articles and bylaws shall be sufficient and effective without the approval or vote of the corporation's members, notwithstanding any contrary provision of law or of the service corporation's bylaws or articles of incorporation. Pursuant to the Idaho nonprofit corporation act, the service corporation shall also file with the Idaho secretary of state articles of amendment to its articles of incorporation.

(5) For the period ending on the transition period termination date, the corporation's plan of mutualization and its articles of incorporation and bylaws may contain provisions the corporation's board of directors, in the exercise of its discretion and in fulfillment of its duties, deems necessary, convenient or prudent to implement the plan of mutualization, including, but not limited to, transition provisions, expressly identified as such, that allocate voting power among policyholder members, participant licensees and participant hospitals, as applicable and as the board of directors may deem reasonably appropriate; provided however, all transition provisions, whether in the corporation's articles of incorporation, bylaws or plan of mutualization, shall, without further action or filing, expire upon the transition period termination date.

(6) Within forty-two (42) days of the filing date of a corporation's plan of mutualization, the director shall approve the same and issue a certificate of authority to the corporation unless the director finds such plan does not comply with subsection (1) of this section, in which case the director shall within such forty-two (42) day period issue a written order disapproving such plan and specifying the reasons therefor. The corporation may preserve the legal effectiveness and effective date of its plan by curing or otherwise responsibly addressing each asserted deficiency identified by the director and filing within fourteen (14) days of the effective date of the director's order an amended plan of mutualization that reflects corrections and responses made. Within fourteen (14) days of such filing, the director shall issue a certificate of authority or a final order disapproving such amended plan and specifying the reasons therefor, which final order may, within forty-two (42) days after its effective date, be appealed to the district court for Ada county, state of Idaho. Notwithstanding the director's final order, the corporation shall be legally authorized to transact business pursuant to its plan of mutualization until the forty-second day following the latest of:

(a) The effective date of the director's final order;

(b) The entry of final judgment by the district court in which review of the director's final order has been sought; and

(c) The director's compliance and the district court's compliance (by entry of a final judgment) with the opinion issued by the last appellate court to which appeal may be taken that has reviewed the district court's judgment concerning the director's final order. If the direc-

tor has prevailed upon final judgment being entered, the corporation's legal authority to transact business pursuant to its plan of mutualization shall expire at the end of such period; however, if the corporation has prevailed or corrected all deficiencies identified in the director's final order, the director shall, before or upon the expiration of such period, issue a certificate of authority to the corporation. Issuance of a certificate of authority under this section shall not preclude the director from commencing any proceedings for alleged violations of this title. The procedure in this subsection shall apply to corporations existing under chapter 34, title 41, Idaho Code, on December 31, 1993.

(7) Section 41-2805, Idaho Code, and any other provision of this title dealing with newly organized mutual insurers as such, shall have no application to a plan of mutualization under this section or to the corporation adopting or implementing such plan.

(8) If, pursuant to section 41-3406, Idaho Code, a mutualizing service corporation is also operating as a health maintenance organization immediately prior to the effective date of its plan of mutualization, it shall be legally authorized to continue such operations in the manner provided for in said plan after the effective date thereof as if such service corporation had not become a mutual insurer under this section.

(9) From and after the effective date of a plan of mutualization, a corporation mutualizing under this section shall be liable for the tax imposed and provided for in section 41-402, Idaho Code, but only with respect to insurance policies (as opposed to subscriber agreements) issued by it, and subject to refunds, reductions and other adjustments applicable to other domestic mutual insurers. Until all subscriber agreements are terminated, expire or are otherwise converted to policies of insurance issued by the corporation as a mutual insurer, the corporation shall continue to be liable for and pay the tax on subscriber contracts in the manner provided in section 41-3427, Idaho Code, subject to the same exemptions provided in that section, except for premium taxes paid pursuant to this subsection on policies issued as a mutual insurer.

(10) Except as modified in this section and other applicable law, after the effective date of a service corporation's plan of mutualization, all contracts, rights, powers, privileges, liabilities and obligations of such corporation shall continue unchanged and in effect until repealed, terminated, canceled, amended, waived, satisfied or otherwise legally extinguished.

[41-2854A, added 1994, ch. 78, sec. 1, p. 173; am. 2003, ch. 103, sec. 5, p. 324.]

41-2855. CONVERSION OF MUTUAL INSURER TO STOCK INSURER. (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the director after a hearing thereon.

(2) The director shall not approve any conversion plan or procedure unless:

(a) It is equitable to the insurer's members;

(b) It is subject to approval by vote of not less than a majority of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the director. If a life insurer, the right to vote may be limited to members who hold policies

other than term or group policies and whose policies have been in force for not less than one (1) year;

(c) The equity of each policyholder in the insurer is determinable under a fair formula approved by the director, which equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within three (3) years prior to the date such plan was submitted to the director;

(e) The plan gives to each policyholder of the insurer, as specified in paragraph (d) of this subsection, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph (c) of this subsection;

(f) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others but at not more than double the par value of such shares;

(g) The plan provides for payment of cash in the amount of not less than fifty percent (50%) of the amount of the policyholder's equity not so used for the purchase of stock to each policyholder not electing to exercise his preemptive right to apply his equity in the insurer toward the purchase of capital stock as provided in paragraph (e) of this subsection. The cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer;

(h) The plan, when completed, would provide for the converted insurer paid-up capital stock and additional surplus in amounts not less than the minimum paid-up capital and surplus required of a domestic stock insurer transacting like kinds of insurance, as provided in section 41-313, Idaho Code; and

(i) It contains additional provisions or standards as the director may reasonably require.

(3) No director, officer, agent or employee of the insurer, nor any other person, shall receive any fee, commission or other valuable consideration whatsoever for aiding, promoting, or assisting therein except as set forth in the plan as approved by the director.

(4) Except as otherwise specifically provided in subsection (5) of this section, prior to and for a period of five (5) years following the director's approval of a new stock insurer under subsection (2) of this section, no person other than the new stock insurer shall, without the prior approval of the director, directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the new stock insurer or of any institution which owns a majority or all of the voting securities of the stock insurer.

(5) Nothing in this section shall prohibit the inclusion in the plan of conversion of provisions under which individuals comprising the new stock insurer's board of directors, officers, employees, agents, and persons acting as trustees of employee stock ownership plans or other employee benefit plans may be entitled to purchase for cash capital stock of the new stock in-

surer at the same price initially issued by the new stock insurer under the plan of conversion. Nothing in this section shall prohibit a management-incentive compensation program which is contained in the plan of conversion and approved by the director to be adopted upon conversion to the new stock insurer or prohibit such a program to be later adopted by the new stock insurer.

[41-2855, added 1990, ch. 284, sec. 2, p. 794; am. 1998, ch. 304, sec. 1, p. 1004.]

41-2856. MERGERS AND CONSOLIDATIONS OF STOCK INSURERS. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers, or ordinary business corporations having as their principal assets, cash or assets of a character allowed by investment by domestic insurers pursuant to the provisions of chapter 7, title 41, Idaho Code, provided the surviving corporation shall be a domestic or foreign stock insurer, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2), (3) and (4) below.

(2) The agreement and plan of merger may provide for the restatement of the capital and surplus accounts of the surviving corporation, constituting all surplus in excess of stated capital, borrowed surplus and allowance for non-admitted assets, if any, as unassigned surplus, thereby increasing or decreasing the stated capital or gross paid in and contributed surplus accounts of the constituent corporations and providing additional surplus in any forms specified in the agreement and plan of merger; provided any reorganization of capital or surplus account must be indicated on the annual financial statement.

(3) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the director and approved in writing by him after a hearing thereon after notice to the stockholders of each insurer involved. The director shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) Is contrary to law; or

(b) Inequitable to the stockholders of any insurer involved; or

(c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere; or

(d) Is subject to other material and reasonable objections.

(4) No director, officer, agent or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

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

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Reinsurance of all or substantially all of the insurance in force of an insurer by another insurer, shall also be subject to the provisions of this section as if a merger.

[41-2856, added 1961, ch. 330, sec. 624, p. 645; am. 1971, ch. 122, sec. 12, p. 408.]

41-2857. MERGERS AND CONSOLIDATIONS OF MUTUAL INSURERS. (1) Except as set forth in section 41-3824, Idaho Code, a domestic mutual insurer shall not merge or consolidate with a stock insurer.

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

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

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the director and approved by him in writing after a hearing thereon. The director shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

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

(b) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere; or

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

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

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

[41-2857, added 1961, ch. 330, sec. 625, p. 645; am. 1998, ch. 303, sec. 2, p. 1001; am. 2013, ch. 266, sec. 11, p. 687.]

41-2858. BULK REINSURANCE -- MUTUAL INSURERS. (1) A domestic mutual insurer may reinsure all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the director and approved by him in writing.

(2) The director shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved, and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the director does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

(3) If for reinsurance of all or substantially all of its business in force, the plan and agreement for such reinsurance must be approved by vote of not less than two-thirds (2/3) of each domestic mutual insurer's members

voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the director may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one (1) year.

(4) If for reinsurance in a stock insurer of all or substantially all of the insurance in force of a mutual insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto of his equity, if any, in the business reinsured as determined under a fair formula approved by the director, as based upon the reserves, assets (whether or not "admitted" assets) and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

(5) No director, officer, agent or employee of any insurer party to such reinsurance, nor any other person, shall receive any fee, commission or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the reinsurance agreement.

[41-2858, added 1961, ch. 330, sec. 626, p. 645.]

41-2859. MUTUAL MEMBER'S SHARE OF ASSETS ON LIQUIDATION. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to currently existing persons who had been members of the insurer for at least one year and who were its members at any time within thirty-six (36) months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority whichever date is the earlier; except, that if the director has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, he may enlarge the thirty-six (36) month qualification period above provided for by such additional period as he may deem to be reasonable.

(2) The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the director.

[41-2859, added 1961, ch. 330, sec. 627, p. 645.]

41-2860. EQUITY SECURITIES OF DOMESTIC STOCK INSURANCE COMPANIES -- STATEMENTS OF OWNERSHIP. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the director of the department of insurance on or before the 1st day of July, 1965, or within ten (10) days after he becomes such beneficial owner, director or officer, a statement, in such form as the director of the department of insurance may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the director of the department of insurance a statement, indicating his ownership at the close of the

calendar month and such changes in his ownership as have occurred during such calendar month.

[41-2860, added 1965, ch. 294, sec. 1, p. 782.]

41-2861. RECOVERY OF PROFITS RESULTING FROM UNFAIR USE OF INFORMATION. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the director of the department of insurance by rules and regulations may exempt as not comprehended within the purpose of this section.

[41-2861, added 1965, ch. 294, sec. 2, p. 782.]

41-2862. RESTRICTIONS ON SALE OF EQUITY SECURITIES. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(a) does not own the security sold; or

(b) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

[41-2862, added 1965, ch. 294, sec. 3, p. 782.]

41-2863. PURCHASES AND SALES WHICH ARE EXEMPT. The provisions of section 41-2861 shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 41-2862 shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The director of the department of insurance may, by such rules and regulations as he deems necessary or ap-

propriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

[41-2863, added 1965, ch. 294, sec. 4, p. 782.]

41-2864. FOREIGN OR DOMESTIC ARBITRAGE TRANSACTIONS EXEMPT. The provisions of sections 41-2860--41-2862 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the director of the department of insurance may adopt in order to carry out the purposes of this act.

[41-2864, added 1965, ch. 294, sec. 5, p. 782.]

41-2865. "EQUITY SECURITY" DEFINED. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the director of the department of insurance shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[41-2865, added 1965, ch. 294, sec. 6, p. 782.]

41-2866. CONDITIONS EXEMPTING EQUITY SECURITIES. The provisions of sections 41-2860--41-2862 shall not apply to equity securities of a domestic stock insurance company if:

(a) Such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(b) Such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 41-2860--41-2862 except for the provisions of this subsection (b).

[41-2866, added 1965, ch. 294, sec. 7, p. 782.]

41-2867. RULES AND REGULATIONS. The director of the department of insurance shall have the power to make such rules and regulations as may be necessary for the execution of the functions invested in him by sections 41-2860--41-2862, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 41-2860--41-2862 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the director of the department of insurance, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

[41-2867, added 1965, ch. 294, sec. 8, p. 782.]

41-2868. PROXY REGULATIONS. (1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred (100) stockholders; except, that if ninety-five per cent (95%) or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred (500) or more stockholders.

(b) Domestic stock insurers which, relative to the voting and other securities involved, file with the securities and exchange commission forms of proxies, consents and authorizations pursuant to the Securities Exchange Act of 1934, as amended.

(2) Every insurer to which this section is applicable shall furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock or other voting security of such an insurer unless he furnishes the person so solicited with written information reasonably adequate as to:

(a) The material matters in regard to which the powers so solicited are proposed to be used; and

(b) The person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote in any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The director shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states.

(8) Any proxy, consent or authorization obtained in violation of this section or of the lawful rules and regulations of the director hereunder, shall be void.

[I.C., sec. 41-2868, as added by 1969, ch. 214, sec. 68, p. 625.]

41-2869. PURPOSE. The purpose of sections 41-2870 through 41-2871, 41-2839(4)(c), and 41-804(3), Idaho Code, is to authorize insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulations by the director of the department of insurance for safeguarding the assets and facilitating the director's examination of the insurance company's financial condition.

[41-2869, added 1981, ch. 174, sec. 2, p. 307.]

41-2870. DEFINITIONS. As used in this act:

(1) "Securities" means instruments as defined in section 28-8-102(1)(o), Idaho Code.

(2) "Clearing corporation" means a corporation as defined in section 28-8-102(1)(e), Idaho Code.

(3) "Direct participant" means a national bank, state bank or trust company that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(4) "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks that are members of the federal reserve system.

(5) "Member bank" means a national bank, state bank or trust company that is a member of the federal reserve system and to which an insurance company participates in the federal reserve book-entry system.

[41-2870, added 1981, ch. 174, sec. 2, p. 308; am. 2021, ch. 321, sec. 28, p. 970.]

41-2871. USE OF BOOK-ENTRY SYSTEMS. (1) A domestic insurer may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any member bank through which an insurer holds securities in the federal reserve book-entry system, and the records of any custodian banks through which an insurer holds securities in a clearing corporation, shall at all times show that such securities are held for such insurer and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation

or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

(2) The director of the department of insurance is authorized to promulgate rules and regulations governing the deposit by insurers of securities with clearing corporations and in the federal reserve book-entry system.

[41-2871, added 1981, ch. 174, sec. 2, p. 308.]

41-2872. HEALTH CARE PROVIDER CONTRACTS -- GRIEVANCE PROCEDURE. (1) Any stock or mutual insurer (hereinafter insurance company) issuing benefits pursuant to the provisions of this chapter shall be ready and willing at all times to enter into health care provider service contracts with all qualified health care providers of the category or categories which are necessary to provide the health care services covered by the insurance company's policy of insurance if such health care providers: are qualified under the laws of the state of Idaho, desire to become participant health care providers of the insurance company, meet the requirements of the insurance company, and practice within the general area served by the insurance company.

(2) Nothing in this section shall preclude an insurance company from refusing to contract with a health care provider who is unqualified or who does not meet the terms and conditions of the participating provider contract of the insurance company or from terminating or refusing to renew the contract of a participating health care provider who is unqualified or who does not comply with, or who refuses to comply with, the terms and conditions of the participating health care provider contract including, but not limited to, practice standards and quality requirements. The contract shall provide for written notice to the participating health care provider setting forth any breach of contract for which the insurance company proposes that the contract be terminated or not renewed and shall provide for a reasonable period of time for the participating health care provider to cure such breach prior to termination or nonrenewal. If the breach has not been cured within such period of time the contract may be terminated or not renewed. Provided however, that if the breach of contract for which the insurance company proposes that the contract be terminated or not renewed is a willful breach, fraud or a breach which poses an immediate danger to the public health or safety, the contract may be terminated or not renewed immediately.

(3) Every insurance company issuing benefits pursuant to this chapter shall establish a grievance system for health care providers. Such grievance system shall provide for arbitration according to chapter 9, title 7, Idaho Code, or for such other system which provides reasonable due process provisions for the resolution of grievances and the protection of the rights of the parties.

(4) Subsections (1) and (2) of this section shall apply to health care provider participation contracts entered into after July 1, 1994.

[41-2872, added 1994, ch. 275, sec. 1, p. 853.]

41-2873. BEST PRICE -- MOST FAVORED NATIONS CLAUSE PROHIBITED. (1) No stock or mutual insurance company (hereafter, insurance company) may require, as an element of any health care provider participation contract, that any provider agree:

(a) To the unnegotiated adjustment by the insurance company of the provider's contractual reimbursement rate to equal the lowest reimbursement rate the provider has agreed to charge any other payor;

(b) To a requirement that the provider adjust, or enter into negotiations to adjust, his or her charges to the insurance company if the provider agrees to charge another payor lower rates; or

(c) To a requirement that the provider disclose his or her contractual reimbursement rates from other payors.

(2) For the purposes of this section, "provider" means any physician, hospital, or other person licensed or otherwise authorized to furnish health care services in Idaho.

[41-2873, added 1998, ch. 422, sec. 2, p. 1334.]