

TITLE 41
INSURANCE

CHAPTER 33
INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION

41-3301. CONSTRUCTION AND PURPOSE. (1) This act shall be cited as the "Idaho Insurers Supervision, Rehabilitation, and Liquidation Act."

(2) This act shall not be interpreted to limit the powers granted the director by other provisions of the law.

(3) This act shall be liberally construed to effect the purpose stated in subsection (4) of this section.

(4) The purpose of this act is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers through:

- (a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;
- (b) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;
- (c) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;
- (d) Equitable apportionment of any unavoidable loss;
- (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and
- (f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

[41-3301, added 1981, ch. 249, sec. 2, p. 503.]

41-3302. PERSONS COVERED. The proceedings authorized by this act may be applied to:

(1) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future.

(2) All insurers who purport to do an insurance business in this state.

(3) All insurers who have insureds resident in this state.

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in this state.

(5) All nonprofit service plans and all fraternal benefit societies and beneficial societies.

(6) All title insurance companies.

[41-3302, added 1981, ch. 249, sec. 2, p. 504.]

41-3303. DEFINITIONS. For the purposes of this act:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Director" means the director of the department of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under sections [41-3309](#) and [41-3310](#), Idaho Code. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) The issuance or delivery of contracts of insurance to persons resident in this state;

(b) The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

(c) The collection of premiums, membership fees, assessments, or other consideration for such contracts; or

(d) The transaction of matters subsequent to execution of such contracts and arising out of them.

(e) Operating under a license or certificate of authority, as an insurer, issued by the insurance department.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" mean all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" include all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Idaho insurance guaranty association created by [chapter 36, title 41](#), Idaho Code, the Idaho life and health insurance guaranty association created by [chapter 43, title 41](#), Idaho Code, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) "Insolvency" or "insolvent" means:

(a) For an insurer issuing only assessable fire insurance policies:

1. The inability to pay any obligation within thirty (30) days after it becomes payable; or

2. If an assessment be made within thirty (30) days after such date, the inability to pay such obligation thirty (30) days fol-

lowing the date specified in the first assessment notice issued after the date of loss.

(b) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

1. Any capital and surplus required by law for its organization; or
2. The total par or stated value of its authorized and issued capital stock.

(c) As to any insurer licensed to do business in this state as of the effective date of this act which does not meet the standard established under paragraph 2, the term "insolvency" or "insolvent" shall mean, for a period not to exceed three (3) years from the effective date of this act, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the director under provisions of the insurance law.

(d) For purposes of this subsection, "liabilities" shall include, but not be limited to, reserves required by statute or by insurance department general regulations or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision or conservation by any insurance director. For purposes of this act, any other persons included under section [41-3302](#), Idaho Code, shall be deemed to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect sections [41-3318](#) (1), [41-3352](#), [41-3353](#) and [41-3355](#) through [41-3357](#), Idaho Code, are in force, and in which provisions are in force requiring that the director or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States and the Panama Canal Zone.

(19) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, volun-

tarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

[41-3303, added 1981, ch. 249, sec. 2, p. 504.]

41-3304. JURISDICTION AND VENUE. (1) No delinquency proceeding shall be commenced under this chapter by anyone other than the director of this state and no court shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other person.

(2) No court of this state shall have jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the laws of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Idaho rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation; or

(b) If the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or

(c) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer, against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer.

(4) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(5) All actions herein authorized shall be brought in the district court for Ada county, state of Idaho.

[41-3304, added 1981, ch. 249, sec. 2, p. 506.]

41-3305. INJUNCTIONS AND ORDERS. (1) Any receiver appointed in a proceeding under this act, may at any time apply for and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with a proceeding under this act;

(d) Waste of the insurer's assets;

- (e) Dissipation and transfer of bank accounts;
- (f) The institution or further prosecution of any actions or proceedings;
- (g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (h) The levying of execution against the insurer, its assets, or its policyholders;
- (i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer; or
- (j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this act.

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

[41-3305, added 1981, ch. 249, sec. 2, p. 507.]

41-3306. COOPERATIONS OF OFFICERS, OWNERS, AND EMPLOYEES. (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the director in any proceeding under this act or any investigation preliminary to the proceeding. The term "person," as used in this section, shall include any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" shall include, but shall not be limited to, the following:

- (a) To reply promptly in writing to any inquiry from the director requesting such a reply; and
- (b) To make available to the director any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody or control.

(2) No person shall obstruct or interfere with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) Any person included within subsection (1) of this section who fails to cooperate with the director, or any person who obstructs or interferes with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any order the director issued validly under this act may:

- (a) Be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000) or to undergo imprisonment for a term of not more than one (1) year, or both; or
- (b) After a hearing, be subject to the imposition by the director, of a civil penalty not to exceed ten thousand dollars (\$10,000) and shall be subject further to the revocation or suspension of any insurance licenses issued by the director.

[41-3306, added 1981, ch. 249, sec. 2, p. 508.]

41-3307. BONDS. In any proceeding under this act, the director and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the director or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of administration.

[41-3307, added 1981, ch. 249, sec. 2, p. 508.]

41-3308. CONTINUATION OF DELINQUENCY PROCEEDINGS. Every proceeding heretofore commenced under the laws in effect before the enactment of this act shall be deemed to have commenced under this act for the purpose of conducting the proceeding henceforth, except that in the discretion of the director the proceeding may be continued, in whole or in part, as it would have been continued had this act not been enacted.

[41-3308, added 1981, ch. 249, sec. 2, p. 508.]

41-3309. DIRECTOR'S SUMMARY ORDERS AND SUPERVISION PROCEEDINGS. (1) Whenever the director has reasonable cause to believe, and determines, after a hearing held under subsection 5 of this section, that any domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice, or transaction that would subject it to delinquency proceedings under this act, he may make and serve upon the insurer and any other persons involved, such orders as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

(2) If upon examination, or at any other time, the director has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such domestic insurer gives its consent, then the director shall, upon his determination:

- (a) Notify the insurer of his determination; and
- (b) Furnish to the insurer a written list of the director's requirements to abate his determination.

(3) If the director makes a determination to supervise an insurer subject to an order under subsections (1) and (2) of this section, he shall notify the insurer that it is under the supervision of the director. During the period of supervision, the director may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) of this section and may also require that the insurer may not do any of the following things, during the period of supervision, without the prior approval of the director or his supervisor:

- (a) Dispose of, convey or encumber any of its assets or its business in force;
- (b) Withdraw from any of its bank accounts;
- (c) Lend any of its funds;
- (d) Invest any of its funds;
- (e) Transfer any of its property;
- (f) Incur any debt, obligation or liability;
- (g) Merge or consolidate with another company; or
- (h) Enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under the provisions of this section shall comply with the lawful requirements of the director and, if placed

under supervision, shall have sixty (60) days from the date the supervision order is served within which to comply with the requirements of the director. In the event of such insurer's failure to comply within such times, the director may institute proceedings under sections [41-3312](#) or [41-3317](#), Idaho Code, to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(5) The notice of hearing under subsection (1) of this section and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the director would base his order. Unless mutually agreed between the director and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Ada county or in some other place convenient to the parties to be designated by the director. The director shall hold all hearings under subsection (1) of this section privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) (a) Any insurer subject to an order under subsection (2) of this section may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5) hereof, but the request for a hearing shall not stay the effect of the order.

(b) If the director issues an order under subsection (2) of this section, the insurer may, at any time, waive a director's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the director.

(7) During the period of supervision the insurer may request the director to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under the provisions of this section which, as applied to him was then still in effect, he shall be liable to pay a civil penalty imposed by the district court not to exceed ten thousand dollars (\$10,000).

(9) The director may apply for and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(10) In the event that any person, subject to the provisions of this act, including those persons described in section [41-3306](#)(1), Idaho Code, shall knowingly violate any valid order of the director issued under the provisions of this section and, as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, said person shall become personally liable to the insurer for the amount of any such reduction or loss. The director or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs.

41-3310. COURT'S SEIZURE ORDER. (1) The director may file in the district court of this state a petition alleging, with respect to a domestic insurer:

- (a) That any grounds exist that would justify a court order for a formal delinquency proceeding against an insurer under this act;
- (b) That the interests of policyholders, creditors, or the public will be endangered by delay; and
- (c) The contents of an order deemed necessary by the director.

(2) Upon a filing under subsection (1) of this section, the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the director to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the director.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the director to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the director fails to commence a formal proceeding under this act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this act shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under the provisions of this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under the provisions of this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen (15) days after the request. A hearing under the provisions of this subsection may be held privately in chambers and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

[41-3310, added 1981, ch. 249, sec. 2, p. 510.]

41-3311. HEARINGS. In all proceedings and judicial reviews thereof under sections [41-3309](#) and [41-3310](#), Idaho Code, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code.

[41-3311, added 1981, ch. 249, sec. 2, p. 511; am. 1990, ch. 213, sec. 58, p. 526; am. 2015, ch. 141, sec. 112, p. 462.]

41-3312. GROUNDS FOR REHABILITATION. The director may apply by petition to the district court for an order authorizing him to rehabilitate a do-

mestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:

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

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

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

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

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

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

(7) Without first obtaining the written consent of the director, the insurer has transferred, or attempted to transfer, in a manner contrary to [chapter 38, title 41](#), Idaho Code, or sections [41-2856](#) and [41-2858](#), Idaho Code, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this act.

(9) Within the previous six (6) years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the director under the provisions of section [41-3309](#), Idaho Code.

(10) The insurer has failed to pay within sixty (60) days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter except that such nonpayment shall not be

a ground until sixty (60) days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the director or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

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

(12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in section [41-3802](#), Idaho Code, request or consent to rehabilitation under this act.

[41-3312, added 1981, ch. 249, sec. 2, p. 511; am. 2013, ch. 266, sec. 12, p. 688.]

41-3313. REHABILITATION ORDERS. (1) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the director and his successors in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or recorder of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order.

(3) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer.

[41-3313, added 1981, ch. 249, sec. 2, p. 513.]

41-3314. POWERS AND DUTIES OF THE REHABILITATOR. (1) The director as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under the provisions of this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the director may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the director for the use of the insurance department out of the first available money of the insurer.

(2) The rehabilitator may take such action as he deems necessary or appropriate to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under the provisions of this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections [41-3326](#) and [41-3327](#), Idaho Code, to avoid fraudulent transfers.

[41-3314, added 1981, ch. 249, sec. 2, p. 513.]

41-3315. ACTIONS BY AND AGAINST REHABILITATOR. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety (90) days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the order of rehabilitation is entered or the petition is denied.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer

if such association is or may become liable to act as a result of the rehabilitation.

[41-3315, added 1981, ch. 249, sec. 2, p. 514.]

41-3316. TERMINATION OF REHABILITATION. (1) Whenever the director believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the director may petition the district court for an order of liquidation. A petition under the provisions of this subsection shall have the same effect as a petition under the provisions of section [41-3317](#), Idaho Code. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require. 2

(2) The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the district court finds that rehabilitation has been accomplished and that grounds for rehabilitation under the provisions of section [41-3312](#), Idaho Code, no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The district court may also make that finding and issue that order at any time upon its own motion.

[41-3316, added 1981, ch. 249, sec. 2, p. 515.]

41-3317. GROUNDS FOR LIQUIDATION. The director may petition the district court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of any ground for an order of rehabilitation as specified in section [41-3312](#), Idaho Code, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

(3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

[41-3317, added 1981, ch. 249, sec. 2, p. 515.]

41-3318. LIQUIDATION ORDERS. (1) An order to liquidate the business of a domestic insurer shall appoint the director and his successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale,

or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections [41-3319](#) and [41-3337](#), Idaho Code.

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(4) At the time of petitioning for an order of liquidation, or at any time thereafter, the director, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper the court may make the declaration.

(5) Any order issued under the provisions of this section shall require accounting to the court by the liquidator. Accountings shall be at such intervals as the court specifies in its order.

[41-3318, added 1981, ch. 249, sec. 2, p. 515.]

41-3319. CONTINUANCE OF COVERAGE. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

- (a) A period of thirty (30) days from the date of entry of the liquidation orders;
- (b) The expiration of the policy coverage;
- (c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or
- (d) The liquidator has effected a transfer of the policy obligation pursuant to section [41-3321](#)(1)(h), Idaho Code.

(2) An order or liquidation under the provisions of section [41-3318](#), Idaho Code, shall terminate coverages at the time specified in subsection (1) of this section for purposes of any other statute.

(3) Policies of life or health insurance or annuities shall continue in force for such period and under such terms as are provided for by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under the provisions of subsections (1) and (2) hereof.

[41-3319, added 1981, ch. 249, sec. 2, p. 516.]

41-3320. INSURER -- DISSOLUTION. The director may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the director upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent, but may be ordered by the court upon the discharge of

the liquidator if the insurer is under a liquidation order for some other reason.

[41-3320, added 1981, ch. 249, sec. 2, p. 516.]

41-3321. POWERS OF LIQUIDATOR. (1) The liquidator shall have the power:

- (a) To appoint a special deputy to act for him under this act, and to determine his reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
- (b) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he may deem necessary to assist in the liquidation;
- (c) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court;
- (d) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the director may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the director for the use of the insurance department out of the first available monies of the insurer;
- (e) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry;
- (f) To collect all debts and monies due and claims belonging to the insurer, wherever located, and for this purpose:
 1. To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 2. To do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems best; and
 3. To pursue any creditor's remedies available to enforce his claims.
- (g) To conduct public and private sales of the property of the insurer;
- (h) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under the provisions of section [41-3342](#), Idaho Code;
- (i) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments

necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(j) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party;

(l) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under the provisions of section [41-3320](#), Idaho Code, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff;

(m) To prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person;

(n) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

(o) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) To invest all sums not currently needed, unless the court orders otherwise;

(q) To file any necessary documents for record in the office of any recorder of deeds or records office in this state or elsewhere where property of the insurer is located;

(r) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(s) To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included within sections [41-3326](#) through [41-3328](#), Idaho Code;

(t) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered;

(u) To enter into agreements with any receiver or director of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states; and

(v) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this act.

(2) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

[41-3321, added 1981, ch. 249, sec. 2, p. 517.]

41-3322. NOTICE TO CREDITORS AND OTHERS. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) By first class mail and either by telegram or telephone to the insurance director of each jurisdiction in which the insurer is doing business;

(b) By first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) By first class mail to all insurance agents of the insurer;

(d) By first class mail to all persons known or reasonably expected to have claims against the insurer, including, but not limited to, all policyholders, at their last known address as indicated by the records of the insurer and the director of the department of finance and the secretary of state; and

(e) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

(2) Notice to potential claimants under the provisions of subsection (1) of this section shall require claimants to file their claims with the liquidator together with proper proofs thereof under the provisions of section [41-3336](#), Idaho Code, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(3) If notice is given in accordance with the provisions of this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

[41-3322, added 1981, ch. 249, sec. 2, p. 519.]

41-3323. DUTIES OF AGENTS. (1) Every person who receives notice in the form prescribed in section [41-3322](#), Idaho Code, that an insurer which he represents as an agent is the subject of a liquidation order, shall within fifteen (15) days of such notice give notice of the liquidation order. The notice shall be sent by first class mail to the last address contained in the agent's records to each policyholder or other person named in any policy issued through the agent by the insurer, if he has a record of the address of the policyholder or other person. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and

address of the agent, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section [41-3319](#), Idaho Code. Notice by a general agent satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under the provisions of this section shall file a report of compliance with the liquidator.

(2) Any agent failing to give notice or file a report of compliance as required in subsection (1) of this section may be subject to payment of a penalty of not more than one thousand dollars (\$1,000) and may have his license suspended, said penalty to be imposed after a hearing held by the director.

(3) The liquidator may waive the duties imposed by this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate.

[41-3323, added 1981, ch. 249, sec. 2, p. 519.]

41-3324. ACTIONS BY AND AGAINST LIQUIDATOR. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under the provisions of this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within two (2) years or such time in addition to two (2) years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of one hundred eighty (180) days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was

filed may be commenced for at least sixty (60) days after the petition is denied.

(4) Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

[41-3324, added 1981, ch. 249, sec. 2, p. 520.]

41-3325. COLLECTION AND LIST OF ASSETS. (1) As soon as practicable after the liquidation order but not later than one hundred twenty (120) days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One (1) copy shall be filed in the office of the clerk of the district court and one (1) copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with section [41-3334](#), Idaho Code, fulfills the requirements of subsection (1) of this section.

[41-3325, added 1981, ch. 249, sec. 2, p. 521.]

41-3326. FRAUDULENT TRANSFERS PRIOR TO PETITION. (1) Every transfer made or suffered and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under this act is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this act, which is fraudulent under the provisions of this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2) (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under the provisions of section [41-3328](#) (3), Idaho Code.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one (1) year prior to the date of filing of the petition through which the receivership was commenced.

[41-3326, added 1981, ch. 249, sec. 2, p. 521.]

41-3327. FRAUDULENT TRANSFER AFTER PETITION. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the

petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Nothing in this act shall impair the negotiability of currency or negotiable instruments.

[41-3327, added 1981, ch. 249, sec. 2, p. 522.]

41-3328. VOIDABLE PREFERENCES AND LIENS. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one (1) year before the filing of a successful petition for liquidation under this act, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one (1) year before the filing of the successful petition for rehabilitation or within two (2) years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

1. The insurer was insolvent at the time of the transfer;
2. The transfer was made within four (4) months before the filing of the petition;
3. The creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
4. The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such position, or any shareholder holding directly or indirectly more than five per cent (5%) of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(2) (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section, through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section, to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one (21) days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under subsection (1) (b) hereof has been dissolved by the furnishing of a bond or other obligation, the surety, which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under the provisions of this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of

a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien; and if the value is less than the amount for which the property is indemnified or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within such reasonable times as the court shall fix.

(8) The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying lien nullified and voided by the liquidator, or where the property is retained under subsection (7) of this section to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for the property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

(10) If an insurer shall, directly or indirectly, within four (4) months before the filing of a successful petition for liquidation under this act, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provisions of subsection (1) (b) 4 of this section.

(11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within four (4) months before the date of filing of this successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

[41-3328, added 1981, ch. 249, sec. 2, p. 523.]

41-3329. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS. (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this act, shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within

thirty (30) days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) of this section by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under section [41-3335](#), Idaho Code, if filed within thirty (30) days from the date of the avoidance, or within the further time allowed by the court under subsection (1) hereof.

[41-3329, added 1981, ch. 249, sec. 2, p. 526.]

41-3330. SETOFFS. (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this act shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section and section [41-3333](#), Idaho Code.

(2) No setoff shall be allowed in favor of any person where:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; or

(c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

[41-3330, added 1981, ch. 249, sec. 2, p. 526; am. 1996, ch. 304, sec. 1, p. 1000.]

41-3331. ASSESSMENTS. (1) As soon as practicable but not more than two (2) years from the date of an order of liquidation under section [41-3318](#), Idaho Code, of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) The reasonable value of the assets of the insurer;

(b) The insurer's probable total liabilities;

(c) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) A recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided in subsection (1) of this section, including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2) of this section, the liquidator shall issue an order directing each member who has not paid the

assessment pursuant to the order, to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first class mail to each member liable thereunder, mailed to his last known address as it appears on the insurer's records, at least twenty (20) days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3) hereof, the court shall make an order adjudging the member liable for the amount of the assessment against him, pursuant to subsection (3) hereof, together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on or before such return day, the member appears and serves duly verified objections upon the liquidator, the director may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. In the event that the director determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) of this section by any lawful means.

[41-3331, added 1981, ch. 249, sec. 2, p. 527.]

41-3332. REINSURER'S LIABILITY. The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

[41-3332, added 1981, ch. 249, sec. 2, p. 527.]

41-3333. RECOVERY OF PREMIUMS OWED. (1) (a) An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person.

(b) An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

[41-3333, added 1981, ch. 249, sec. 2, p. 528.]

41-3334. DOMICILIARY LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS. (1) Within one hundred twenty (120) days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines

that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section [41-3342](#), Idaho Code, classes 1 and 2;

(b) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available;

(c) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section [41-3342](#), Idaho Code, in accordance with such priorities. No bond shall be required of any such association; and

(e) A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(5) Notice of such application shall be given to the association in and to the directors of the department of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsection (2) (a) and (2) (b) of this section.

[41-3334, added 1981, ch. 249, sec. 2, p. 528.]

41-3335. FILING OF CLAIMS. (1) Proof of all claims shall be filed with the liquidator in the form required by section [41-3336](#), Idaho Code, on or before the last day for filing specified in the notice required under section [41-3322](#), Idaho Code, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) The existence of the claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;

(b) A transfer to a creditor was avoided under sections [41-3326](#) through [41-3328](#), Idaho Code, or was voluntarily surrendered under section [41-3329](#), Idaho Code, and that the filing satisfies the conditions of section [41-3329](#), Idaho Code; and

(c) The valuation under section [41-3341](#), Idaho Code, of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late which is not covered by subsection (2) of this section, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

[41-3335, added 1981, ch. 249, sec. 2, p. 529.]

41-3336. PROOF OF CLAIM. (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(a) The particulars of the claim including the consideration given for it;

(b) The identity and amount of the security on the claim;

(c) The payments made on the debt, if any;

(d) That the sum claimed is justly owing and that there is not setoff, counterclaim, or defense to the claim;

(e) Any right of priority of payment or other specific right asserted by the claimants;

(f) A copy of the written instrument which is the foundation of the claim; and

(g) The name and address of the claimant and the attorney who represents him, if any.

(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) of this section, which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(3) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) of this section and may take testimony under oath, require production of affi-

davits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within four (4) months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

[41-3336, added 1981, ch. 249, sec. 2, p. 530.]

41-3337. SPECIAL CLAIMS. (1) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed even if contingent, if it is filed in accordance with section [41-3335](#), Idaho Code. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under sections [41-3313](#) or [41-3318](#), Idaho Code.

[41-3337, added 1981, ch. 249, sec. 2, p. 530.]

41-3338. SPECIAL PROVISIONS FOR THIRD PARTY CLAIMS. (1) Whenever any third party asserts a cause of action against an insured of an insured in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty (60) days after mailing of the notice required by section [41-3322](#), Idaho Code, whichever is later, he is an unexcused late filer.

(3) The liquidator shall make his recommendations to the court under section [41-3342](#), Idaho Code, for the allowance of an insured's claim under subsection (2) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the basis of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured

shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

(a) The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense; or

(b) The amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one (1) policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3) of this section. If any insured's claim is subsequently reduced under subsection (3) of this section, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

[41-3338, added 1981, ch. 249, sec. 2, p. 531.]

41-3339. DISPUTED CLAIMS. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty (60) days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten (10) nor more than thirty (30) days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

[41-3339, added 1981, ch. 249, sec. 2, p. 532.]

41-3340. CLAIMS OF SURETY. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person" as used in this section is not intended to apply to a guaranty association or foreign guaranty association.

[41-3340, added 1981, ch. 249, sec. 2, p. 532.]

41-3341. SECURED CREDITOR'S CLAIMS. (1) The value of any security held by a secured creditor shall be determined in one (1) of the following ways, as the court may direct:

(a) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(b) By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant shall surrender his security to the liquidator, the entire claim shall be allowed as if unsecured.

[41-3341, added 1981, ch. 249, sec. 2, p. 532.]

41-3342. PRIORITY OF DISTRIBUTION. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration, including, but not limited to, the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all services rendered in the liquidation;

(c) Any necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Reasonable attorney's fees; and

(f) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2. All claims under policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. All claims under life policies, annuity policies, or disability or health insurance policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

(3) Class 3. Claims under nonassessable policies for unearned premium or other premium refunds.

(4) Class 4. Claims of the federal government not included in class 2 or class 3 above.

(5) Class 5. Debts due to employees for services performed and benefits accrued to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one (1) year before the commencing of delinquency proceedings. Officers and directors shall not be

entitled to the benefit of this priority. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(6) Class 6. Claims of general creditors and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under the policies.

(7) Class 7. Claims of any state or local government not included in class 2 or class 3 above. Claims, including those of any state or local governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (10) of this section.

(8) Class 8. Claims filed late or any other claims other than claims under subsections (9) and (10) of this section.

(9) Class 9. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(10) Class 10. The claims of shareholders or other owners arising out of their capacity as shareholders or owners, or any other capacity except as they may be qualified in class 2 or class 6 above.

[41-3342, added 1981, ch. 249, sec. 2, p. 532; am. 1999, ch. 321, sec. 1, p. 820.]

41-3343. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT. (1) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he shall deem necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section [41-3339](#), Idaho Code. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify, the report on claims by the liquidator. Such reports as are not modified by the court within a period of sixty (60) days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section [41-3339](#), Idaho Code. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

[41-3343, added 1981, ch. 249, sec. 2, p. 534.]

41-3344. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and unde-

terminated claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

[41-3344, added 1981, ch. 249, sec. 2, p. 534.]

41-3345. UNCLAIMED AND WITHHELD FUNDS. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest except in accordance with section [41-3342](#), Idaho Code, to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six (6) years from discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the state treasurer pursuant to [chapter 5, title 14](#), Idaho Code.

(2) All funds withheld under section [41-3337](#), Idaho Code, and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with section [41-3342](#), Idaho Code. Any sums remaining which under section [41-3342](#), Idaho Code, would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) hereof, unless the director in his discretion petitions the court to reopen the liquidation under section [41-3347](#), Idaho Code.

[41-3345, added 1981, ch. 249, sec. 2, p. 534; am. 2011, ch. 151, sec. 23, p. 430.]

41-3346. TERMINATION OF PROCEEDINGS. (1) When all assets justifying the expense of collection and distribution have been collected and distributed under this act, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are not economical to distribute, as may be deemed appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1) hereof. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

[41-3346, added 1981, ch. 249, sec. 2, p. 535.]

41-3347. REOPENING LIQUIDATION. After the liquidation proceeding has been terminated and the liquidator discharged, the director or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

[41-3347, added 1981, ch. 249, sec. 2, p. 535.]

41-3348. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. Whenever it shall appear to the director that the records of any in-

surer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

[41-3348, added 1981, ch. 249, sec. 2, p. 535.]

41-3349. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. The district court may, as it deems desirable, cause audits to be made of the books of the director relating to any receivership established under this act, and a report of each audit shall be filed with the director and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

[41-3349, added 1981, ch. 249, sec. 2, p. 535.]

41-3350. CONSERVATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE. (1) If a domiciliary liquidator has not been appointed, the director may apply to the district court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

- (a) Any of the grounds in section [41-3312](#), Idaho Code;
- (b) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
- (c) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
- (d) (i) That its certificate of authority to do business in this state has been revoked or that none was ever issued; and
(ii) That there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it shall deem appropriate. The filing or recording of the order with the clerk of the district court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under section [41-3351](#), Idaho Code, to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, for an order under section [41-3353](#), Idaho Code, to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied all costs shall be assessed against such party.

[41-3350, added 1981, ch. 249, sec. 2, p. 535.]

41-3351. LIQUIDATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE. (1) If no domiciliary receiver has been appointed, the director may apply to the district court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

- (a) Any of the grounds in sections [41-3312](#) or [41-3317](#), Idaho Code; or
- (b) Any of the grounds specified in sections [41-3350](#) (1) (b) through (d), Idaho Code.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) If it shall appear to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it shall deem appropriate. The filing or recording of the order with the clerk of the district court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under the provisions of this section, the liquidator, under the provisions of this section, shall thereafter act as ancillary receiver under section [41-3353](#), Idaho Code. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under the provisions of this section, the liquidator, under the provisions of this section, may petition the court for permission to act as ancillary receiver under section [41-3353](#), Idaho Code.

(5) On the same grounds as are specified in subsection (1) of this section, the director may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the director deems desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the director, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under this act as are otherwise compatible with the provisions of this section.

[41-3351, added 1981, ch. 249, sec. 2, p. 536.]

41-3352. DOMICILIARY LIQUIDATORS IN OTHER STATES. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under section [41-3353](#) (3), Idaho Code, be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to ob-

tain possession of the books, accounts and other records of the insurer located in this state. He also shall have the right to recover all other assets of the insurer located in this state, subject to section [41-3353](#), Idaho Code.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the director of this state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The director of this state may petition for a conservation or liquidation order under sections [41-3350](#) and [41-3351](#), Idaho Code, or for an ancillary receivership under section [41-3353](#), Idaho Code, or after approval by the district court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

[41-3352, added 1981, ch. 249, sec. 2, p. 537.]

41-3353. ANCILLARY FORMAL PROCEEDINGS. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the director may file a petition with the district court requesting appointment as ancillary receiver in this state:

- (a) If he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; and
- (b) If the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder of deeds in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties and powers to those provided in subsection (3) of this section for ancillary receivers appointed in this state.

[41-3353, added 1981, ch. 249, sec. 2, p. 537.]

41-3354. ANCILLARY SUMMARY PROCEEDINGS. The director in his sole discretion may institute proceedings under sections [41-3309](#) through [41-3311](#), Idaho Code, at the request of the director or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

[41-3354, added 1981, ch. 249, sec. 2, p. 538; am. 2021, ch. 321, sec. 29, p. 970.]

41-3355. CLAIMS OF NONRESIDENTS AGAINST INSURERS DOMICILED IN THIS STATE. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal, states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this act, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section [41-3356](#)(2), Idaho Code, with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section [41-3342](#), Idaho Code.

[41-3355, added 1981, ch. 249, sec. 2, p. 538.]

41-3356. CLAIMS OF RESIDENTS AGAINST INSURERS DOMICILED IN RECIPROCAL STATES. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in sections [41-3335](#) and [41-3336](#), Idaho Code. The ancillary receiver shall make his recommendation to the court as under section [41-3343](#), Idaho Code. He shall also arrange a date for hearing if necessary under section [41-3339](#), Idaho Code, and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty (40) days prior to the date set for hearing. If the domiciliary liquidator, within thirty (30) days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

[41-3356, added 1981, ch. 249, sec. 2, p. 539.]

41-3357. ATTACHMENT, GARNISHMENT, AND LEVY OF EXECUTION. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution shall be commenced or maintained in this state against the delinquent insurer or its assets.

[41-3357, added 1981, ch. 249, sec. 2, p. 539.]

41-3358. INTERSTATE PRIORITIES. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section [41-3341](#), Idaho Code, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

[41-3358, added 1981, ch. 249, sec. 2, p. 539.]

41-3359. SUBORDINATION OF CLAIMS FOR NONCOOPERATION. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section [41-3342](#) (7), Idaho Code.

[41-3359, added 1981, ch. 249, sec. 2, p. 540.]

41-3360. SEVERABILITY. If any provision of this act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

[41-3360, added 1981, ch. 249, sec. 2, p. 540.]