

TITLE 41
INSURANCE

CHAPTER 36
INSURANCE GUARANTY ASSOCIATION

41-3601. SHORT TITLE. This act shall be known and may be cited as the "Idaho insurance guaranty association act."

[41-3601, added 1970, ch. 152, sec. 1, p. 462.]

41-3603. APPLICATION OF ACT. This act shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health or disability insurance;
- (2) Residual value, mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property, indemnification for repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;
- (9) Any insurance provided by or guaranteed by government including, but not limited to the state insurance fund, created pursuant to [chapter 9, title 72](#), Idaho Code, and the Idaho petroleum clean water trust fund, created pursuant to [chapter 49, title 41](#), Idaho Code;
- (10) Any insurance provided by or through any reciprocal insurer which exclusively insures members who are governmental entities;
- (11) Insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound; or
- (12) Domestic reciprocal insurers with fewer than seven (7) subscribers which insure only worker's compensation risks and which only issue fully assessable policies.

[41-3603, added 1970, ch. 152, sec. 3, p. 462; am. 1991, ch. 121, sec. 1, p. 264; am. 1991, ch. 252, sec. 2, p. 620; am. 1992, ch. 316, sec. 1, p. 942; am. 1993, ch. 279, sec. 4, p. 947; am. 1997, ch. 109, sec. 2, p. 256.]

41-3605. DEFINITIONS. As used in this act:

- (1) "Account" means the account created by section [41-3606](#), Idaho Code.
- (2) "Affiliate" means a person who directly, or indirectly, through one (1) or more intermediaries controls, is controlled by, or is under common

control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(3) "Association" means the Idaho insurance guaranty association created under section [41-3606](#), Idaho Code.

(4) "Claimant" means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

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

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(7) "Covered claim" means an unpaid claim, including one for unearned premiums submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and:

(a) The claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(b) The claim is a first party claim for damage to property with a permanent location in this state.

"Covered claim" shall not include any amount awarded as punitive or exemplary damages; any amount sought as a return of premium under any retrospective rating plan; any first party claims by an insured which is an affiliate of the insolvent insurer; or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No claim for any amount due any reinsurer, insurer, insurance pool or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the association obligation limitations set forth in section [41-3608](#), Idaho Code.

(8) "Insolvent insurer" means an insurer holding a certificate of authority issued by the director to transact insurance in this state either at the time the policy was issued or when the insured event occurred and against whom a final order of liquidation has been entered after the effective date of this act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

(9) "Member insurer" means any person who:

(a) Writes any kind of insurance to which this act applies under section [41-3603](#), Idaho Code, including the exchange of reciprocal or interinsurance contracts; and

(b) Is licensed to transact insurance in this state, except assessable mutual companies. An insurer shall cease to be a member insurer effec-

tive on the day following the termination or expiration of its license to transact the kinds of insurance to which this act applies, however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which becomes an insolvent insurer prior to the termination or expiration of the insurer's license.

(10) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Ocean marine insurance" includes any form of insurance, regardless of the name, label or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Such perils and risks insured against include, without limitation, loss, damage, expense or legal liability of the insured for loss, damage or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness or death or for loss or damage to the property of the insured or another person.

(12) "Person" means any individual, corporation, partnership, association or voluntary organization.

(13) "Warranty insurance" includes a contract under which one (1) other than a manufacturer, builder, seller or lessor of the subject property undertakes to perform or provide, for a fixed term and consideration, repair or replacement service or indemnification therefor for the operational or structural failure of specified real or personal property or property components. Warranty insurance includes, but is not limited to, automobile guaranty insurance.

[41-3605, added 1970, ch. 152, sec. 5, p. 462; am. 1981, ch. 54, sec. 1, p. 83; am. 1987, ch. 124, sec. 1, p. 254; am. 1991, ch. 121, sec. 2, p. 264; am. 1992, ch. 316, sec. 2, p. 943; am. 1997, ch. 109, sec. 4, p. 256; am. 2001, ch. 155, sec. 1, p. 558.]

41-3606. INSURANCE GUARANTY ASSOCIATION -- INSURERS REQUIRED TO BE MEMBERS -- PURPOSES. There is created a nonprofit unincorporated legal entity to be known as the Idaho insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section [41-3609](#), Idaho Code, and shall exercise its powers through a board of directors established under section [41-3607](#), Idaho Code. For purposes of administration and assessment, the association shall maintain one (1) account. Any accounts in existence on June 30, 2001, shall be consolidated into one (1) account.

[41-3606, added 1970, ch. 152, sec. 6, p. 462; am. 2001, ch. 155, sec. 2, p. 560.]

41-3607. BOARD OF DIRECTORS -- NUMBER -- ELECTION OR APPOINTMENT -- REIMBURSEMENT FOR EXPENSES. (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members subject to the approval of the director. If no members are selected within sixty (60) days after May 6, 1970, the director may appoint the initial members of the board of directors.

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

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

[41-3607, added 1970, ch. 152, sec. 7, p. 462; am. 1997, ch. 109, sec. 5, p. 258.]

41-3608. OBLIGATIONS AND POWERS OF ASSOCIATION. (1) The association shall:

(a) Be obligated to pay covered claims existing prior to the order of liquidation arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a worker's compensation insurance coverage;

(ii) An amount not exceeding ten thousand dollars (\$10,000) per policy for covered claim for the return of unearned premium;

(iii) An amount not exceeding three hundred thousand dollars (\$300,000) per claim for all other covered claims.

(b) In no event shall the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the earlier of: (i) eighteen (18) months after the date of the order of liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured policy for incurred-but-not-reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment by settlement releasing the insured or on a judgment of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit.

(c) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations.

(d) Assess member insurers separately for amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered

claims subsequent to an insolvency and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance covered by the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance covered by the account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any one (1) year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association in the account, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it deems reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account.

(e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. The association shall have the right to appoint or substitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(c) Sue or be sued, and such power to sue includes the power and right to intervene as a party before any court that has jurisdiction over the insolvent insurer as defined by this chapter.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(f) Refund to the member insurers in proportion to the contribution of each member insurer that amount which, in the opinion of the board of directors, will not be needed for the purposes of this chapter within two (2) years from the date the association receives the refund from the receivership.

(g) Subject to approval by the director, provide claims handling services to any run-off insurer, provided the association expenses related to such services are fully reimbursed. Normal defenses applicable to guaranty fund handling of covered claims shall not apply to run-off claim handling and no guaranty fund assets shall be used for run-off claim or expense payment. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association or its agents or employees, the board of directors or any person serving as a representative of any director for any action taken or any failure to act by them in the performance of their activities under the provisions of this paragraph. For purposes of this paragraph, "run-off insurer" means a property and casualty insurer that has:

(i) Total adjusted capital under risk-based capital requirements in an amount less than the authorized control level risk-based capital as defined in section [41-5401](#)(11)(a), Idaho Code, and has indicated that it will cease writing new insurance policies, either as part of its corrective action plan or pursuant to being placed under regulatory control; or

(ii) Total adjusted capital under risk-based capital requirements in an amount less than the mandatory control level risk-based capital as defined in section [41-5401](#)(11)(c), Idaho Code, and that has not been placed into liquidation pursuant to sections [41-3317](#) and [41-3318](#), Idaho Code.

[41-3608, added 1970, ch. 152, sec. 8, p. 462; am. 1980, ch. 275, sec. 1, p. 718; am. 1984, ch. 66, sec. 1, p. 115; am. 1992, ch. 316, sec. 3, p. 944; am. 1993, ch. 279, sec. 1, p. 944; am. 1997, ch. 109, sec. 6, p. 259; am. 2001, ch. 155, sec. 3, p. 561; am. 2005, ch. 268, sec. 1, p. 829; am. 2014, ch. 89, sec. 1, p. 239.]

41-3609. PLAN OF OPERATION -- APPROVAL -- ADOPTION OF INTERIM RULES BY DIRECTOR -- CONTENTS OF PLAN -- DELEGATION OF POWERS AND DUTIES -- REIMBURSEMENT OF DELEGATE CORPORATION OR ORGANIZATION.

(1) (a) The association shall submit to the director a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the director.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following May 6, 1970 or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

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

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under section [41-3608](#), Idaho Code, will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish procedures for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer.

(d) Establish the amount and method of reimbursing members of the board of directors under section [41-3607](#), Idaho Code.

(e) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(f) Establish regular places and times for meetings of the board of directors.

(g) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(h) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the director within thirty (30) days after the action or decision.

(i) Establish the procedures whereby selections for the board of directors will be submitted to the director.

(j) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under sections [41-3608](#)(1)(d) and [41-3608](#)(2)(b), Idaho Code, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

[41-3609, added 1970, ch. 152, sec. 9, p. 462; am. 1997, ch. 109, sec. 7, p. 261.]

41-3610. DUTIES AND POWERS OF DIRECTOR -- JUDICIAL REVIEW. (1) The director shall:

(a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination

of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that such complaint is filed with a court of competent jurisdiction.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

(a) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the director may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(b) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the director under this act shall be subject to judicial review in a court of competent jurisdiction.

[41-3610, added 1970, ch. 152, sec. 10, p. 462; am. 1997, ch. 109, sec. 8, p. 262.]

41-3611. SUBROGATION OF ASSOCIATION TO RIGHTS OF CLAIMANTS -- RECEIVER, LIQUIDATOR, OR SUCCESSOR BOUND BY ASSOCIATION CLAIM SETTLEMENTS -- PERIODIC FILING OF STATEMENTS OF PAID CLAIMS WITH RECEIVER OR LIQUIDATOR. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of claims made by the association or a similar organization in another state to the extent such determinations or settlements satisfy obligations of the association. The receiver shall not be bound in any way by such determinations or settlements to the extent there remains a claim against the insolvent insurer. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

[41-3611, added 1970, ch. 152, sec. 11, p. 462; am. 1997, ch. 109, sec. 9, p. 263.]

41-3612. EXHAUSTION OF OTHER COVERAGE. (1) Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a worker's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

[41-3612, added 1970, ch. 152, sec. 12, p. 462; am. 1997, ch. 109, sec. 10, p. 264.]

41-3613. PREVENTION OF INSOLVENCIES. To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors, upon majority vote, may make recommendations to the director for the detection and prevention of insurer insolvencies. Such recommendations shall not be considered public documents.

(2) The board of directors may, upon majority vote, make recommendations on matters generally relating to improving or enhancing regulation for solvency.

(3) The board of directors may, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association and submit such report to the director.

(4) All domestic insurance companies subject to the coverage of this chapter must maintain the paid-up capital stock or basic surplus and the additional surplus set forth in section [41-313](#), Idaho Code.

(5) Domestic reciprocal insurance companies issuing only fully assessable worker's compensation policies are not subject to coverage of this chapter but must meet the requirements of section [41-313A](#), Idaho Code.

[41-3613, added 1970, ch. 152, sec. 13, p. 462; am. 1992, ch. 316, sec. 4, p. 946; am. 1993, ch. 279, sec. 2, p. 946; am. 1997, ch. 109, sec. 11, p. 264.]

41-3614. REGULATION BY DIRECTOR -- ANNUAL REPORTS TO DIRECTOR. The association shall be subject to examination and regulation by the director. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the director.

[41-3614, added 1970, ch. 152, sec. 14, p. 462.]

41-3615. EXEMPTION FROM TAXES -- EXCEPTION. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

[41-3615, added 1970, ch. 152, sec. 15, p. 462.]

41-3616. CREDITS FOR ASSESSMENTS PAID. (1) A member insurer may offset against its premium tax liability to this state under section [41-402](#), Idaho Code, an assessment described in subsection (1) (d) of section [41-3608](#), Idaho Code. An offset is allowable to the extent of twenty percent (20%) of the amount of such assessment for each of five (5) calendar years beginning with the premium tax due under section [41-402](#) (4), Idaho Code, with respect to the year of payment of the assessment and thereafter with the premium tax due under section [41-402](#) (4), Idaho Code, during each of the four (4) succeeding years. An allowable offset, or portion thereof, not used in any calendar year cannot be carried over or back to any other year. An insurer that is exempt from the premium tax imposed by section [41-402](#), Idaho Code, may offset against its premium tax liability to the industrial administration fund in the same manner as an offset to the premium tax imposed by section [41-402](#) (4).

(2) Notwithstanding any provision to the contrary in section [41-3608](#) (2) (f), Idaho Code, any sums acquired by refund from insurance company receiverships by the association which have heretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (1) of this section, and which, in the opinion of the board of directors, will not be needed for the purposes of this chapter within two (2) years from the date the association receives the refund from the receivership, shall be paid by the association to the director and by him deposited with the state treasurer for credit to the state general fund.

[41-3616, added 1970, ch. 152, sec. 16, p. 462; am. 2004, ch. 241, sec. 1, p. 704; am. 2005, ch. 268, sec. 2, p. 831; am. 2013, ch. 265, sec. 1, p. 650.]

41-3617. NO LIABILITY FOR ACTIONS TAKEN PURSUANT TO ACT. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or any person serving as a representative of any board director, or the director or his representatives for any action taken or any failure to act by them in the performance of their powers and duties under this act.

[41-3617, added 1970, ch. 152, sec. 17, p. 462; am. 1997, ch. 109, sec. 12, p. 265.]

41-3618. STAY OF COURT PROCEEDINGS FOR INSOLVENCY -- SETTING ASIDE JUDGMENT AGAINST INSOLVENT INSURER. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to written waiver by the association in specific cases involving covered claims, be stayed until the last day fixed by the court for the filing of claims and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict

or findings based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this act shall permit access by the board or its authorized representative to such of the insolvent insurer's records which are necessary for the board in carrying out its functions under this act with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.

[41-3618, added 1970, ch. 152, sec. 18, p. 462; am. 1981, ch. 54, sec. 2, p. 84; am. 1997, ch. 109, sec. 13, p. 265.]

41-3619. PROTECTION OF ACT NOT USED TO SELL INSURANCE. It is an unfair trade practice for any insurer or agent to in any manner make use of the protection given policyholders by this chapter as a reason for buying insurance from him.

[41-3619, added 1970, ch. 152, sec. 19, p. 462.]

41-3620. TERMINATION OF OPERATION OF ASSOCIATION AS TO INSURANCE COVERED BY OTHER PLAN -- DISSOLUTION OF ASSOCIATION AND DISTRIBUTION OF ASSETS -- EXPIRATION OF ACT. (1) The director shall by order terminate the operation of the Idaho insurance guaranty association as to any kind of insurance covered by this act with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided.

(b) Extends, or will extend to the Idaho policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kinds of insurance under this act.

(2) The director shall by the same such order authorize discontinuance of future payments by insurers to the Idaho insurance guaranty association with respect to the same kinds of insurance; provided, the assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of the Idaho insurance guaranty association shall be so terminated as to all kinds of insurance otherwise within its scope, the association as soon as possible thereafter shall distribute the balance of moneys and assets remaining (after discharge of the functions of the association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by this act and which had made payments to the association, pro rata upon the basis of the aggregate of such payments made by the respective insurers during the period of five (5) years next preceding the date of such order. Upon completion

of such distribution with respect to all of the kinds of insurance covered by this act, this act shall be deemed to have expired.

[41-3620, added 1970, ch. 152, sec. 20, p. 462.]

41-3621. COOPERATION OF LIQUIDATOR, RECEIVER, OR STATUTORY SUCCESSOR OF AN INSOLVENT INSURER. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this act shall permit access by the board of directors or its authorized representative to such of the insolvent insurer's records which are necessary for the board in carrying out its functions under this act with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board of directors or its authorized representative with copies of such records upon the request by the board of directors and at the expense of the board of directors.

[41-3621, added 1981, ch. 54, sec. 3, p. 84.]