

TITLE 41
INSURANCE

CHAPTER 38

ACQUISITIONS OF CONTROL AND INSURANCE HOLDING COMPANY SYSTEMS

41-3801. PURPOSE. The purpose of this chapter is to prevent acquisition or divestiture of control of an insurer or a holding company system of which an insurer is a part where such acquisition would be adverse to the public interest and the interests of policyholders and shareholders. A further purpose of this chapter is to promote the public interest and the interests of policyholders and shareholders by facilitating, consistent with those interests, better use of management skills and services, diversification through acquisitions, free access to capital markets, sound tax planning and open competition. An additional purpose is to monitor and regulate insurance holding company systems.

[41-3801, added 2013, ch. 266, sec. 2, p. 652.]

41-3802. DEFINITIONS. As used in this chapter, the following terms shall have the following meanings:

(1) "Affiliate" of, or a person "affiliated" with, a specific person, means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, the person specified.

(2) "Control," including "controlling," "controlled by" and "under common control with," 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 a 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 made in the manner provided in section [41-3809](#)(11), Idaho Code, that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Enterprise risk" means any activity, circumstance, event or series of events involving one (1) or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section [41-5403](#), Idaho Code, or would cause the insurer to be in hazardous financial condition as set forth by rule in IDAPA 18.01.66.

(4) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the director under section [41-3815A](#), Idaho Code, to have sufficient significant contacts with the internationally active insurance group.

(5) "Insurance holding company system" means two (2) or more affiliated persons, one (1) or more of whom is an insurer.

(6) "Insurer" has the same meaning as that set forth in section [41-103](#), Idaho Code, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(7) "Internationally active insurance group" means an insurance holding company system that:

(a) Includes an insurer registered under section [41-3809](#), Idaho Code; and

(b) Meets the following criteria:

(i) Premiums written in at least three (3) countries;

(ii) The percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums; and

(iii) Based on a three (3) year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).

(8) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

(9) "Security holder" means a person who owns any security of a specified person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(10) "Subsidiary" means a specified person who is an affiliate controlled by such person directly or indirectly through one (1) or more intermediaries.

(11) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

[41-3802, added 2013, ch. 266, sec. 2, p. 652; am. 2019, ch. 81, sec. 1, p. 188.]

41-3803. SUBSIDIARIES OF INSURERS. (1) A domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(2) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under [title 41](#), Idaho Code, a domestic insurer may also:

(a) Invest in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries in amounts that do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus regarding policyholders, provided that after making such investments, the insurer's surplus regarding policyholders will be reasonable in relation to the insurer's outstanding

liabilities and will be adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, but the following shall be included:

(i) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided that each subsidiary agrees to limit its investment in any asset so that the investment will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection or in [chapter 7, title 41](#), Idaho Code, applicable to the insurer. For the purpose of this section, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset; and

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary.

(c) With the approval of the director, invest any greater amount in common stock, preferred stock, debt obligations or other securities of one (1) or more subsidiaries, provided that after making the investment, the insurer's surplus regarding policyholders will be reasonable in relation to the insurer's outstanding liabilities and will be adequate to its financial needs.

(3) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (2) (a) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in [title 41](#), Idaho Code, applicable to such investments of insurers.

(4) Whether any investment made pursuant to subsection (2) of this section meets the applicable requirements thereof is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(5) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the director may prescribe, unless at any time after the investment shall have been made the investment shall have met the requirements for investment un-

der any other section of [title 41](#), Idaho Code, and the insurer has so notified the director.

[41-3803, added 2013, ch. 266, sec. 2, p. 653.]

41-3804. ACQUISITION OF CONTROL OF CONTROLLING INTEREST WITH DOMESTIC INSURER -- ACQUISITION OF MERGER OR DIVESTITURE OF CONTROLLING INTEREST WITH DOMESTIC INSURER. (1) The following filing requirements shall apply:

(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the director and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the director in the manner prescribed in this chapter.

(b) For purposes of this section, any controlling person of a domestic insurer seeking to divest his controlling interest of the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, confidential notice of his proposed divestiture at least thirty (30) days prior to the cessation of control. The director shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the director, in his discretion, determines that confidential treatment will interfere with or impede enforcement of this section. If the statement referred to in paragraph (a) of this subsection is otherwise filed, this section shall not apply.

(c) With respect to a transaction subject to this section, the acquiring or divesting person must also file a preacquisition notification with the director that contains the information set forth in section [41-3808](#) (3) (a), Idaho Code, at least thirty (30) days prior to the proposed effective date of the acquisition. A failure to timely file the notification may subject the acquiring or divesting person to penalties as specified in section [41-3808](#) (5) (e), Idaho Code.

(d) For purposes of this section, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the director, is either directly or through his affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person who controls an insurance company.

(2) The statement to be filed with the director as referenced in this section shall be made under oath or affirmation and shall contain the following:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected, hereinafter called the "acquiring party"; and

(i) If the person is an individual, his principal occupation and all offices and positions held during the past five (5) years and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(ii) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; a detailed description of the business intended to be conducted by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include, for each individual, the information required by paragraph (a) (i) of this subsection; and

(iii) For individuals who are directors or executive officers of an entity, the information from time to time that is specified by the director on the biographical affidavit form prescribed by the department of insurance;

(b) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing consideration;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(d) Any plans or proposals that each acquiring party may have to liquidate the insurer, to sell the insurer's assets or merge or consolidate the insurer with any person, or to make any other material change in the insurer's business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section that each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was determined;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or

the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement required by this section by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and if distributed, of additional solicitation material relating thereto;

(k) The term of any agreement, contract or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(l) An agreement by the person required to file the statement referenced in subsection (1) of this section that it will provide the annual report specified in section [41-3809](#) (12), Idaho Code, for so long as its control exists;

(m) An acknowledgment by the person required to file the statement referenced in subsection (1) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the director upon request as necessary to evaluate enterprise risk to the insurer; and

(n) Such additional information as the director may prescribe by rule as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the director's determination is in the public interest.

(3) If the person required to file the statement referenced in subsection (1) of this section is a partnership, limited partnership, syndicate or other group, the director may require that the information required by subsection (2) (a) through (n) of this section shall be provided to the director with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation, or the person required to file the statement referenced in subsection (1) of this section is a corporation, the director may require that the information required by subsection (2) (a) through (n) of this section shall be provided to the director with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the director and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the di-

rector and sent to the insurer within two (2) business days after the person learns of the change.

(5) If any offer, request, invitation, agreement or acquisition referenced in subsection (1) of this section is proposed to be made by means of a registration statement under the securities act of 1933, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may use the documents in furnishing the information required by that statement.

[41-3804, added 2013, ch. 266, sec. 2, p. 654.]

41-3805. TENDER OFFER MATERIAL. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for control of a domestic insurer made by or on behalf of any person shall contain the information specified in section [41-3804](#), Idaho Code, as the director may prescribe and shall be filed with the director at least ten (10) days prior to the time such material is first published or sent or provided to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain information as the director may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and stockholders and shall be filed with the director at least ten (10) days prior to the time copies of the material are first published or sent or provided to security holders.

[41-3805, added 2013, ch. 266, sec. 2, p. 657.]

41-3806. APPROVAL BY DIRECTOR -- HEARINGS. (1) The director shall approve any purchase, exchange, merger or other acquisition of control referred to in section [41-3804](#) (1), Idaho Code, or in section [41-3824](#), Idaho Code, unless, after a public hearing, the director finds that:

(a) After the change of control, the domestic insurer referenced in section [41-3804](#) (1), Idaho Code, would be unable to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the purchase, exchange, merger or other acquisition of control would substantially lessen competition in the business of insurance in this state or tend to create a monopoly. In applying the competitive standard in this paragraph:

(i) The informational requirements of section [41-3808](#) (3) (a), Idaho Code, and the standards of section [41-3808](#) (4) (b), Idaho Code, shall apply;

(ii) The merger or other acquisition shall not be disapproved if the director finds that any of the situations meeting the criteria provided by section [41-3808](#) (4) (c), Idaho Code, exist; and

(iii) The director may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(c) The financial condition of any acquiring party may jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or, in the case of an acquisition of control, the interest of

any remaining stockholders who are unaffiliated with the acquiring person;

(d) The plans or proposals of the acquiring party to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest;

(e) The competence, experience and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of policyholders and stockholders of the insurer or of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referenced in subsection (1) of this section shall be held within thirty-five (35) days after the statement required by section [41-3804](#)(1), Idaho Code, is filed or as otherwise agreed to by the director and the person filing the statement, and at least twenty-one (21) days' notice of such hearing shall be given by the director to the person filing the statement. Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. All discovery proceedings to the extent agreed to by the parties or allowed by the director shall be concluded not later than three (3) business days prior to the commencement of the public hearing. The director shall make a determination within fifty-six (56) days after conclusion of such hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and shall be entitled to conduct discovery proceedings in the same manner as allowed under [chapter 2, title 41](#), Idaho Code, and applicable rules.

(3) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referenced in subsection (2) of this section may be held on a consolidated basis, upon written request to all affected commissioners by the person filing the statement referenced in section [41-3804](#)(1), Idaho Code. Such person shall file the statement referenced in section [41-3804](#)(1), Idaho Code, with the national association of insurance commissioners within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within fourteen (14) days of the receipt of the statement referenced in section [41-3804](#)(1), Idaho Code. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the affected insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to section [41-3804](#)(1) (a) of this chapter. Failure of the director to provide a determination within the prescribed time

shall not negate the application of capital requirements otherwise required by [title 41](#), Idaho Code, but may affect the time within which such requirements must be met.

(5) The director may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control. The director may require the acquiring party to post a bond in an amount not to exceed twenty-five thousand dollars (\$25,000) as security for payment of such expenses.

(6) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition that the director by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not anticipated by this section.

(7) The following shall be violations of this section:

(a) The failure to file any statement, amendment or other material required to be filed pursuant to the provisions of section [41-3804](#)(1) or (2), Idaho Code; or

(b) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with a domestic insurer unless the director has given prior approval.

(8) The district courts of the state of Idaho are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the director under the provisions of section [41-3804](#), Idaho Code, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the director to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the director and transmitted by registered or certified mail by the director to the person at his last known address.

[41-3806, added 2013, ch. 266, sec. 2, p. 657.]

41-3807. MAILING -- PAYMENT OF EXPENSES. (1) All notices of public hearings held pursuant to section [41-3806](#), Idaho Code, shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such notices. The expenses of such mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the director a bond or other deposit deemed acceptable and in an amount determined by the director.

(2) The provisions of this section shall not apply to any offers, requests, invitations, agreements or acquisitions by the person referred to in section [41-3804](#), Idaho Code, of any voting security referred to in section [41-3804](#), Idaho Code, which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

[41-3807, added 2013, ch. 266, sec. 2, p. 659.]

41-3808. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED. (1) The following definitions shall apply for the purposes of this section only:

(a) "Acquisition" means any agreement, arrangement or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers;

(b) "Involved insurer" means an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(2) This section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state. This section shall not apply to the following:

(a) An acquisition subject to approval or disapproval by the director pursuant to sections [41-3804](#) and [41-3806](#), Idaho Code;

(b) A purchase of securities solely for investment purposes, so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under the provisions of section [41-3802](#)(2), Idaho Code, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist, and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the director;

(c) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the director in accordance with subsection (3) (a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subsection of this section;

(d) The acquisition of already affiliated persons;

(e) An acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceeds five percent (5%) of the total market;

(ii) There would be no increase in any market share; or

(iii) In no market would:

1. The combined market share of the involved insurers exceeds twelve percent (12%) of the total market; and

2. The market share increases by more than two percent (2%) of the total market.

For the purpose of paragraph (e) of this subsection, a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(f) An acquisition for which a preacquisition notification would be required pursuant to the provisions of this section due solely to the resulting effect on the ocean marine insurance line of business; or

(g) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competi-

tion; and the findings are communicated by the domiciliary commissioner to the director.

(3) An acquisition covered by subsection (2) of this section may be subject to the issuance of an order pursuant to subsection (5) of this section, unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification with the director. The director shall give confidential treatment to information submitted under the provisions of this subsection in the same manner as provided in section [41-3816](#), Idaho Code.

(a) The preacquisition notification shall be in such form and contain such information as prescribed by the director relating to those markets which, under subsection (2) (e) of this section, cause the acquisition not to be exempted from the provisions of this section. The director may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his ability to render an informed opinion.

(b) The waiting period required shall begin on the date of receipt by the director of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of receipt or termination of the waiting period by the director. Prior to the end of the waiting period, the director may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the director or termination of the waiting period by the director.

(4) (a) The director may enter an order under subsection (5) (a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly, or if the insurer fails to file adequate information in compliance with subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a) of this subsection, the director shall consider the following:

(i) Any acquisition covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards.

1. If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

2. Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this determination, the insurer with the largest share of the market shall be deemed to be insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection if:

1. There is a significant trend toward increased concentration in the market;
2. One (1) of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
3. Another involved insurer's market is two percent (2%) or more.

(iii) For the purposes of paragraph (b) of this subsection:

1. "Insurer" means any company or group of companies under common management, ownership or control;
2. "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the director shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, which line is that used in the annual statement required to be filed by insurers doing business in this state and the relevant geographical market is assumed to be this state;
3. The burden of showing prima facie evidence of violation of the competitive standard rests upon the director.

- (iv) Even if an acquisition is not prima facie violative of the competitive standard under subsection (4) (b) (i) and (ii) of this section, the director may establish the requisite anticompetitive effect based upon other substantial evidence. Even if an acquisition is prima facie violative of the competitive standard under subsection (4) (b) (i) and (ii) of this section, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subsection include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry and ease of entry and exit into the market.
- (c) An order may not be entered under subsection (5) (a) of this section if:
- (i) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits that would arise from such economies exceed the public benefits that would arise from not lessening competition; or
 - (ii) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.
- (5) (a) If an acquisition violates the provisions of this section, the director may enter an order:
- (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
 - (ii) Denying the application of an acquired or acquiring insurer for a certificate of authority to do business in this state.
- (b) Such an order shall not be entered unless:
- (i) A hearing has been held in accordance with [chapter 2, title 41](#), Idaho Code;
 - (ii) Notice of the hearing was issued prior to the end of the waiting period and not less than fourteen (14) days prior to the hearing; and
 - (iii) The hearing was concluded and the order issued no later than fifty-six (56) days after the date of the filing of the preacquisition notification with the director.

Every order shall be accompanied by a written decision of the director setting forth findings of fact and conclusions of law.

(c) An order entered under the provisions of this subsection shall not become final earlier than twenty-eight (28) days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the director shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the provisions of this section would be remedied and the order vacated or modified.

(d) An order pursuant to this section shall not apply if the acquisition is not consummated.

(e) Any person who violates a cease and desist order of the director issued pursuant to subsection (5) (a) of this section and while the order

is in effect may, after notice and the opportunity for a hearing and upon order of the director, be subject at the discretion of the director to one (1) or more of the following:

- (i) A monetary penalty of not more than ten thousand dollars (\$10,000) for every day of violation; and/or
- (ii) Suspension or revocation of the person's certificate of authority in this state.

(f) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than fifty thousand dollars (\$50,000).

(6) Sections [41-3818](#) (2) and (3) and [41-3820](#), Idaho Code, do not apply to acquisitions covered under subsection (2) of this section.

[41-3808, added 2013, ch. 266, sec. 2, p. 659.]

41-3809. REGISTRATION OF HOLDING COMPANY SYSTEM INSURERS. (1) Every insurer authorized to do business in this state and that is a member of an insurance holding company system shall register with the director, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile, which are substantially similar to those contained in this section and in:

- (a) Sections [41-3810](#) (1), [41-3811](#) and [41-3812](#), Idaho Code; and
- (b) The provisions of section [41-3810](#) (2), Idaho Code, or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer that is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter for the year ending December 31 immediately preceding, on the due date provided for filing of audited financial reports, or, if the insurer is not subject to filing of audited financial reports, on June 1, unless the director, for good cause shown, extends the time for registration, and then within the extended time. The director may require any insurer authorized to do business in the state that is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the director at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the director pursuant to this chapter.

(2) Every insurer subject to registration under this chapter shall file the registration statement with the director on a form and in a manner prescribed by the director. The registration statement shall contain the following current information:

- (a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

- (i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
- (ii) Purchases, sales or exchange of assets;
- (iii) Transactions not in the ordinary course of business;
- (iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
- (v) All management agreements, service contracts and all cost-sharing arrangements;
- (vi) Reinsurance agreements;
- (vii) Dividends and other distributions to shareholders; and
- (viii) Consolidated tax allocation agreements.

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall provide to the director financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. securities and exchange commission (SEC) pursuant to the securities act of 1933, as amended, or the securities exchange act of 1934, as amended. An insurer required to file financial statements pursuant to this section may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the SEC;

(f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director;

(g) Certification that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented and continue to maintain and monitor corporate governance and internal control procedures; and

(h) Any other information required by the director by statute or rule.

(3) All registration statements shall contain a summary outlining all items constituting changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the director by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the December 31 of the year immediately preceding shall not be deemed material for purposes of this chapter.

(5) Subject to section [41-3810](#), Idaho Code, each registered insurer shall report to the director all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(7) The director shall terminate the registration of any insurer that demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.

(9) The director may allow any insurer that is authorized to do business in this state and that is part of an insurance holding company system, to register on behalf of any affiliated insurer that is required to register under subsection (1) of this section and to comply with all filing requirements under this chapter.

(10) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the director by rule or order shall exempt the same from the provisions of this section. In considering whether to issue an exemption, the director may consider the following:

- (a) The size of the insurer and all affiliates;
- (b) The structure of ownership within the insurance holding company system;
- (c) The nature and amounts of transactions within the insurance holding company system;
- (d) The nature and complexity of the business of the insurer and affiliates; and
- (e) Any other factors the director deems appropriate.

Prior to issuing an exemption, the director shall notify all other insurance regulators where the insurer or its affiliates hold a certificate of authority.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing pursuant to [chapter 2, title 41](#), Idaho Code, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the director, or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state director of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

(13) The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required in this section

within the time specified for filing shall be a violation of the provisions of this section.

[41-3809, added 2013, ch. 266, sec. 2, p. 663.]

41-3810. STANDARDS AND MANAGEMENT OF AN INSURER WITHIN AN INSURANCE HOLDING COMPANY SYSTEM. (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

- (a) The terms shall be fair and reasonable;
- (b) Agreements for cost-sharing services and management shall include such provisions as required by rule promulgated by the director;
- (c) Charges or fees for services performed shall be reasonable;
- (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (f) The insurer's surplus regarding policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, that are subject to any materiality standards contained in paragraphs (a) through (g) of this subsection, may not be entered into unless the insurer has notified the director in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the director may permit, and the director has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported to the director within thirty (30) days after the termination of a previously filed agreement, for determination of the type of filing required, if any.

- (a) Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments, provided the transactions are equal to or exceed:
 - (i) With respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus regarding policyholders as of December 31 of the year immediately preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of December 31 of the year immediately preceding;
- (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided the transactions are equal to or exceed:

- (i) With respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus regarding policyholders as of December 31 of the year immediately preceding;
- (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of December 31 of the year immediately preceding;
- (c) Reinsurance agreements or modifications thereto, including:
 - (i) All reinsurance pooling agreements;
 - (ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities, in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus regarding policyholders, as of December 31 of the year immediately preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
- (e) Guarantees when made by a domestic insurer, provided however, that a guarantee that is quantifiable as to amount is not subject to the notice requirement of this section, unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus regarding policyholders as of December 31 of the year immediately preceding. Further, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this section;
- (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with the insurer's present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section [41-3803](#), Idaho Code, or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement; and
- (g) Any material transactions, specified by statute or rule, that the director determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that separate transactions were entered into over any twelve (12) month period for that purpose, the director may exercise his authority pursuant to section [41-3819](#), Idaho Code.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the

standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation, if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

[41-3810, added 2013, ch. 266, sec. 2, p. 666.]

41-3811. ADEQUACY OF SURPLUS. For purposes of this chapter, in determining whether an insurer's surplus regarding policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) The surplus regarding policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves;
- (10) The quality and liquidity of investments in affiliates; the director may treat any investment in an affiliate as a disallowed asset for purposes of determining the adequacy of surplus regarding policyholders whenever in the judgment of the director the investment so warrants; and
- (11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

[41-3811, added 2013, ch. 266, sec. 2, p. 668.]

41-3812. DIVIDENDS AND OTHER DISTRIBUTIONS. (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the director has received notice of the declaration thereof and has not within that period disapproved the payment, or until the director has approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of:

- (a) Ten percent (10%) of the insurer's surplus regarding policyholders as of December 31 of the year immediately preceding; or
- (b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including net realized capital gains or losses, for the twelve (12) month

period ending December 31 of the year immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the director's approval, and the declaration shall confer no rights upon shareholders until the director has approved the payment of the dividend or distribution or until the director has not disapproved payment within the thirty (30) day period referred to in this subsection.

(2) Except as provided in this subsection, a domestic insurer shall not make any dividends except from earned surplus. A domestic insurer may declare and distribute a dividend from other than earned surplus if:

(a) The director has given approval for the dividend prior to payment; and

(b) Following payment of the dividend, the insurer's surplus regarding policyholders is:

- (i) Reasonable in relation to its outstanding liabilities; and
- (ii) Adequate to meet its financial needs.

(3) For purposes of subsection (2) of this section, "earned surplus" means unassigned funds as required to be reported on the insurer's annual statement.

(4) A domestic insurer that is a member of a holding company system shall notify the director in writing of any nonextraordinary dividends to be paid or other distributions to be made to shareholders within five (5) business days following the declaration of the dividend or distribution, and shall notify the director in writing at least ten (10) days, commencing from the date of receipt by the director, prior to the payment of any dividends or the making of any other distribution.

[41-3812, added 2013, ch. 266, sec. 2, p. 668; am. 2017, ch. 95, sec. 1, p. 244; am. 2018, ch. 89, sec. 1, p. 194.]

41-3813. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO REGISTRATION. (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one (1) or more other persons under arrangements meeting the standards of section [41-3810](#) (1), Idaho Code.

(3) Not less than one-third (1/3) of the directors of a domestic insurer, and not less than one-third (1/3) of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one (1) person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one (1) or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by or under

common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of subsections (3) and (4) of this section shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subsections (3) and (4) of this section with respect to such controlling entity.

(6) An insurer may make application to the director for a waiver from the requirements of this section, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and national flood insurance program, is less than three hundred million dollars (\$300,000,000). An insurer may also make application to the director for a waiver from the requirements of this section based upon unique circumstances. The director may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members or the ownership or organizational structure of the entity.

[41-3813, added 2013, ch. 266, sec. 2, p. 669; am. 2014, ch. 97, sec. 27, p. 288.]

41-3814. EXAMINATION. (1) Power of director. Subject to the limitation contained in this section and in addition to the authority the director has under [chapter 2, title 41](#), Idaho Code, relating to the examination of insurers, the director shall have the power to examine any insurer registered under section [41-3809](#), Idaho Code, and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(2) The director may order any insurer registered under section [41-3809](#), Idaho Code, to produce such records, books or other information in the possession or control of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter. For such purpose, the director may order any insurer registered under section [41-3809](#), Idaho Code, to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or other method. In the event the insurer cannot obtain the information requested by the director, the insurer shall provide the director with a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the director that the detailed explanation is without merit, the director may require, after notice and the opportunity for a hearing, that the insurer pay a penalty in the amount and in the manner provided in section [41-3819](#) (1), Idaho Code, and may suspend or revoke the insurer's license.

(3) The director may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of

the director's staff as shall be reasonably necessary to assist in the conduct of the examination referenced in subsection (1) of this section. Persons so retained shall be under the direction and control of the director for the purposes stated herein and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section shall be liable for and shall pay the expense of examination in accordance with the provisions of section [41-228](#), Idaho Code, and applicable rules promulgated by the director.

(5) In the event the insurer fails to comply with an order issued by the director, the director shall have the power to examine the insurer's affiliates to obtain the information. The director shall also have the power to issue subpoenas, to administer oaths and to examine under oath any person for purposes of determining compliance with the provisions of this section. Upon the failure or refusal of any person to obey a subpoena issued by the director, the director may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obligated to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, which fees, mileage and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against and be paid by the company being examined.

[41-3814, added 2013, ch. 266, sec. 2, p. 670.]

41-3815. SUPERVISORY COLLEGES. (1) With respect to any insurer registered under section [41-3809](#), Idaho Code, and in accordance with subsection (3) of this section, the director is authorized to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the director with respect to supervisory colleges include, but are not limited to, the following:

- (a) Initiating the establishment of a supervisory college;
- (b) Clarifying the membership and participation of other supervisors in the supervisory college;
- (c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing; and
- (e) Establishing a crisis management plan.

(2) Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates and the director may establish a regular assessment to the insurer for the payment of these expenses.

(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with section [41-3813](#), Idaho Code, the director may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The director may enter into agreements in accordance with section [41-3816](#)(3), Idaho Code, providing the basis for cooperation among the director and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the director to regulate or supervise the insurer or its affiliates within its jurisdiction.

[41-3815, added 2013, ch. 266, sec. 2, p. 670.]

41-3815A. GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS. (1) The director is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the director may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

- (a) Does not have substantial insurance operations in the United States;
- (b) Has substantial insurance operations in the United States, but not in this state; or
- (c) Has substantial insurance operations in the United States and in this state, but the director has determined pursuant to the factors set forth in subsections (2) and (6) of this section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the director make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(2) In cooperation with other state, federal, and international regulatory agencies, the director will identify a single group-wide supervisor for an internationally active insurance group. The director may determine that the director is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the director may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The director shall consider the following factors when making a determination or acknowledgment under this subsection:

- (a) The place of domicile of the insurers within the internationally active insurance group who hold the largest share of the group's written premiums, assets, or liabilities;
- (b) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
- (c) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (d) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the director determines to be:

(i) Substantially similar to the system of regulation provided under the laws of this state; or

(ii) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(e) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the director with reasonably reciprocal recognition and cooperation. However, a director or regulatory official from another jurisdiction identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in this subsection, shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and shall be made in consultation with the internationally active insurance group.

(3) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the director shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(a) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(b) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the director shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (2) of this section.

(4) Pursuant to section [41-3814](#), Idaho Code, the director is authorized to collect from any insurer registered pursuant to section [41-3809](#), Idaho Code, all information necessary to determine whether the director may act as the group-wide supervisor of an internationally active insurance group or if the director may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the director, the director shall notify the insurer registered pursuant to section [41-3809](#), Idaho Code, and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have no fewer than thirty (30) days to provide the director with additional information pertinent to the pending determination. The director shall publish on the department of insurance website the identity of internationally active insurance groups that the director has determined are subject to group-wide supervision by the director.

(5) If the director is the group-wide supervisor for an internationally active insurance group, the director is authorized to engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the internationally active insurance group to ensure that:

- (i) The material financial condition and liquidity risks to the members of the internationally active insurance group engaged in the business of insurance are identified by management; and
 - (ii) Reasonable and effective mitigation measures are in place;
- (b) Request, from any member of an internationally active insurance group subject to the director's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:
- (i) Governance, risk assessment, and management;
 - (ii) Capital adequacy; and
 - (iii) Material intercompany transactions;
- (c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group engaged in the business of insurance;
- (d) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section [41-3816](#), Idaho Code, through supervisory colleges as set forth in section [41-3815](#), Idaho Code, or otherwise;
- (e) Enter into agreements with or obtain documentation from any insurer registered under section [41-3809](#), Idaho Code, any member of the internationally active insurance group and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and
- (f) Other group-wide supervision activities, consistent with the authorities and purposes enumerated in this subsection, as considered necessary by the director.
- (6) If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the national association of insurance commissioners is the group-wide supervisor, the director is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:
- (a) The director's cooperation is in compliance with the laws of this state; and
 - (b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the director is authorized to refuse recognition and cooperation.

(7) The director is authorized to enter into agreements with or obtain documentation from any insurer registered under section [41-3809](#), Idaho Code, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(8) The director may promulgate rules necessary for the administration of this section.

(9) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

[41-3815A, added 2019, ch. 81, sec. 2, p. 189.]

41-3816. CONFIDENTIAL TREATMENT. (1) Documents, materials or other information in the possession or control of the department that are obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section [41-3814](#), Idaho Code, and all information reported or provided to the department pursuant to sections [41-3804](#)(2), [41-3809](#), [41-3810](#), and [41-3815A](#), Idaho Code, shall be confidential by law and privileged, shall be exempt from public disclosure, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains, unless the director, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication, in which event the director may publish all or any part in such manner as may be deemed appropriate.

(2) Neither the director nor any person who receives documents, materials or other information while acting under the authority of the director or with whom such documents, materials or other information is shared pursuant to this chapter, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's duties under [title 41](#), Idaho Code, the director:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, including members of any supervisory college described in section [41-3815](#), Idaho Code, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information and has verified in writing the legal authority to maintain confidentiality;

(b) Notwithstanding the provisions of subsection (3)(a) of this section, the director may only share confidential and privileged

documents, materials or information reported pursuant to section [41-3809](#)(12), Idaho Code, with commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information;

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(d) Shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to the provisions of this chapter consistent with this subsection, which agreements shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal or international regulators;

(ii) Specify that ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the director, and the national association of insurance commissioners' use of the information is subject to the direction of the director;

(iii) Require prompt notice to be given to an insurer whose confidential information is in the possession of the national association of insurance commissioners pursuant to this chapter that disclosure of such confidential information has been requested or subpoenaed or otherwise sought; and

(iv) Require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial, administrative or similar action in which the national association of insurance commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners and the insurer's affiliates and subsidiaries pursuant to this chapter.

(4) The sharing of information by the director pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the director under the provisions of this section or as a result of sharing as authorized in subsection (3) of this section.

(6) Documents, materials or other information in the possession or control of the national association of insurance commissioners pursuant to this chapter shall be confidential and privileged, shall not be a public record,

shall not be subject to public disclosure, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

[41-3816, added 2013, ch. 266, sec. 2, p. 671; am. 2019, ch. 81, sec. 3, p. 192.]

41-3817. RULES. The director may promulgate rules and issue orders as shall be necessary to carry out the provisions of this chapter.

[41-3817, added 2013, ch. 266, sec. 2, p. 673.]

41-3818. INJUNCTIONS, PROHIBITIONS AGAINST VOTING SECURITIES, SEQUESTRATION OF VOTING SECURITIES. (1) Whenever it appears to the director that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of the provisions of this chapter or of any rule or order issued by the director hereunder, the director may apply to the district court, fourth judicial district for Ada county, for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate the provisions of this chapter or any rule or order thereunder, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(2) No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule or order issued by the director hereunder, may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; however, no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state so order. If an insurer or the director has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule or order issued by the director hereunder, the insurer or the director may apply to the fourth judicial district court for Ada county to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section [41-3804](#), Idaho Code, or any rule or order issued by the director to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of the provisions of this chapter or any rule or order issued by the director hereunder, the fourth judicial district court for Ada county, on such notice as the court deems appropriate, upon the application of the insurer or the director, shall seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this chapter.

(4) Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

[41-3818, added 2013, ch. 266, sec. 2, p. 673.]

41-3819. SANCTIONS. (1) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and the opportunity for a hearing, to pay a penalty of two hundred dollars (\$200) for each day of delay, to be recovered by the director, and the penalty so received shall be distributed to the general fund of the state of Idaho. The maximum penalty under this section is ten thousand dollars (\$10,000). The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, participates in or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to section [41-3809](#) (1), [41-3810](#) (2) or [41-3812](#), Idaho Code, or who violates the provisions of this chapter shall pay, in their individual capacity, an administrative penalty of not more than five thousand dollars (\$5,000) per violation, after notice and the opportunity for a hearing before the director. In determining the amount of the administrative penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of any previous violations and such other matters as the interests of justice may require.

(3) Whenever it appears to the director that any insurer subject to this chapter or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract that is subject to section [41-3810](#) or [41-3812](#), Idaho Code, and that would not have been approved had approval been requested, the director may order the insurer to cease and desist immediately from any further activity under that transaction or contract. After notice and the opportunity for a hearing, the director may also order the insurer to void any contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(4) Whenever it appears to the director that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the director may seek criminal proceedings to be instituted by referring the matter to the attorney general or the county prosecutor in the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in Ada county, Idaho, against the insurer or the responsible director, officer, employee or agent thereof. Any insurer who willfully violates the provisions of this chapter may be fined not more than five thousand dollars (\$5,000). Any individual who willfully violates the provisions of this chapter shall be guilty of a felony and may be imprisoned for not more than two (2) years or fined in his individual capacity not more than five thousand dollars (\$5,000), or both.

(5) Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the director in the performance of his duties under the provisions of this chapter, upon conviction shall be imprisoned for not more than three (3) years or fined five thousand dollars (\$5,000), or both. Any fines imposed shall be paid by the officer, director or employee in his individual capacity.

(6) Whenever it appears to the director that any person has committed a violation of the provisions of section [41-3804](#), Idaho Code, and which prevents the director from fully understanding the enterprise risk to the insurer by affiliates or by the insurance holding company system, such violation may serve as an independent basis for the director's disapproval of dividends or distributions and for placing the insurer under an order of supervision in accordance with [chapter 33, title 41](#), Idaho Code.

[41-3819, added 2013, ch. 266, sec. 2, p. 673.]

41-3820. RECEIVERSHIP. Whenever it appears to the director that any person has committed a violation of the provisions of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make its further transaction of business hazardous to its policyholders, creditors, shareholders or the public, the director may proceed as provided in [chapter 33, title 41](#), Idaho Code, to take possession of the property of the domestic insurer and to conduct its business in the capacity of a receiver.

[41-3820, added 2013, ch. 266, sec. 2, p. 674.]

41-3821. RECOVERY. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall be authorized to recover on behalf of the insurer:

(a) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) Any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to this subsection is made at any time during the one (1) year period preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3) and (4) of this section.

(2) No distribution shall be recoverable if the parent or affiliate of such domestic insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under subsection (1) of this section, that the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable pursuant to this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due pursuant to subsection (3) of this section, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

[41-3821, added 2013, ch. 266, sec. 2, p. 675.]

41-3822. REVOCATION, SUSPENSION OR NONRENEWAL OF INSURER'S LICENSE. Whenever it appears to the director that any person has committed a violation of the provisions of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and the opportunity for a hearing, suspend, revoke or refuse to renew the insurer's license or certificate of authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

[41-3822, added 2013, ch. 266, sec. 2, p. 675.]

41-3823. JUDICIAL REVIEW -- MANDAMUS. (1) Any person aggrieved by any act, determination, rule or order or any other action of the director pursuant to this chapter may appeal to the fourth judicial district court for Ada county, Idaho. The court shall conduct its review in accordance with the provisions of [chapter 52, title 67](#), Idaho Code, or other applicable provisions of law.

(2) The filing of an appeal pursuant to this section shall stay the application of any rule, order or other action of the director to the party pursuing such appeal, unless the court, after providing the party with notice and the opportunity for a hearing, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

(3) Any person aggrieved by any failure of the director to act or make a determination required by this chapter may petition the fourth judicial district court for Ada county for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make a determination.

[41-3823, added 2013, ch. 266, sec. 2, p. 675.]

41-3824. MUTUAL INSURANCE HOLDING COMPANIES.

(1) (a) A domestic mutual insurer, upon approval of the director, may reorganize by forming an insurance holding company system, which shall be designated as "a mutual insurance holding company," based upon a mutual insurance company plan and continuing the corporate existence of the reorganizing insurer as a stock insurer. The director, after a public hearing as provided in section [41-3806](#), Idaho Code, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the director finds necessary for the protection of the policyholders' interests. The director may retain consultants for

this purpose as provided in section [41-3806](#)(5), Idaho Code. A reorganization pursuant to this section is subject to the requirements of sections [41-3804](#) and [41-3805](#), Idaho Code. The director shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer.

(2) (a) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing insurer as a stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section [41-3806](#), Idaho Code, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the director finds necessary for the protection of the policyholders' interests. For this purpose, the director may retain consultants as provided in section [41-3806](#)(5), Idaho Code. A merger pursuant to this subsection is subject to sections [41-3804](#) and [41-3805](#), Idaho Code. The director shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer. A merger of policyholders' membership interests in a mutual insurer into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to section [41-2857](#), Idaho Code, and is subject to the requirements of section [41-2857](#), Idaho Code.

(c) A foreign mutual insurer that is a domestic insurer organized under [chapter 3, title 41](#), Idaho Code, may reorganize upon the approval of the director and in compliance with the requirements of any law or rule applicable to the foreign mutual insurer by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing foreign mutual insurer as a foreign stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section [41-3806](#),

Idaho Code, may approve the proposed merger. The director may retain consultants as provided in section [41-3806](#)(5), Idaho Code. A merger pursuant to this paragraph is subject to the requirements of sections [41-3804](#) and [41-3805](#), Idaho Code. The reorganizing foreign mutual insurer may remain a foreign company or foreign corporation after the merger and may be admitted to do business in this state, upon approval by the director. A foreign mutual insurer that is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of paragraph (b) of this subsection shall apply to a merger authorized under this paragraph.

(3) A mutual insurance holding company resulting from the reorganization of a domestic mutual insurer organized under [chapter 21, title 30](#), Idaho Code, shall be incorporated pursuant to [chapter 21, title 30](#), Idaho Code. This requirement shall supersede any conflicting provisions of [chapter 21, title 30](#), Idaho Code. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the director in the same manner as those of an insurance company.

(4) A mutual insurance holding company is deemed to be an insurer subject to [chapter 33, title 41](#), Idaho Code, and shall automatically be a party to any proceeding under [chapter 33, title 41](#), Idaho Code, involving an insurer that, as a result of a reorganization pursuant to subsection (1) or (2) of this section, is a subsidiary of the mutual insurance holding company. In any proceeding under [chapter 33, title 41](#), Idaho Code, involving the reorganized insurer, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurer for purposes of satisfying the claims of the reorganized insurer's policyholders. A mutual insurance holding company shall not be dissolved or liquidated without the prior approval of the director or as ordered by the district court pursuant to [chapter 33, title 41](#), Idaho Code.

(5) (a) Section [41-2855](#), Idaho Code, is not applicable to a reorganization or merger pursuant to this section.

(b) Section [41-2855](#), Idaho Code, is applicable to demutualization of a mutual insurance holding company that resulted from the reorganization of a domestic mutual insurer organized pursuant to [chapter 3, title 41](#), Idaho Code, as if the domestic mutual insurer were a mutual life insurer.

(6) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section [30-14-102](#)(28), Idaho Code.

(7) The majority of the voting shares of the capital stock of the reorganized insurer, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subject to a security interest or lien, encumbered or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, hypothecation or alienation of, in or on the majority of the voting shares of the reorganized insurer that is required by this section to be at all times owned by a mutual insurance holding company, is in violation of the provisions of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance or hypothecation or alienation, as to the shares necessary to constitute a

majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurer that is required by this section to be at all times owned by a mutual insurance holding company shall not be subject to execution and levy as provided in [title 11](#), Idaho Code. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two (2) or more reorganized insurers or two (2) or more intermediate holding companies that were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurers or intermediate holding companies were subject as provided in this section prior to the merger or consolidation.

(a) As used in this section, "majority of the voting shares of the capital stock of the reorganized insurer" means shares of the capital stock of the reorganized insurer that carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurer for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurer. The ownership of a majority of the voting shares of the capital stock of the reorganized insurer that is required pursuant to this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the director. However, indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurer. The director shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.

(b) As used in this section, "intermediate holding company" means a holding company that is a subsidiary of a mutual insurance holding company and that either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary-reorganized insurers of which a majority of the voting shares of the capital stock would otherwise have been required pursuant to this section to be at all times owned by the mutual insurance holding company.

(8) It is the intent of the legislature that the formation of a mutual insurance holding company shall not increase the Idaho tax burden of the mutual insurance holding company system and that a stock insurance subsidiary shall continue to be subject to Idaho insurance premium taxation in lieu of all other taxes except real property taxes as provided in section [41-405](#), Idaho Code. Subject to approval by the director as required under Idaho law, a stock insurance subsidiary may issue dividends or distributions to the mutual insurance holding company or any intermediate holding company and such dividends or distributions shall be excluded from the Idaho taxable income of the recipients; provided however, that such exclusion shall not apply if, in the year preceding the year in which the dividends or distributions were made, the subsidiary insurer's liability for Idaho premium tax was less than the amount of Idaho income tax, computed after allowance for income tax credits, for which the insurer would have been liable in such year had the insurer been subject to Idaho income taxation rather than premium taxation.

[41-3824, added 2013, ch. 266, sec. 2, p. 676; am. 2017, ch. 58, sec. 26, p. 119.]

41-3825. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

[41-3825, added 2013, ch. 266, sec. 2, p. 679.]