

TITLE 41
INSURANCE

CHAPTER 5
KINDS OF INSURANCE -- LIMITS OF RISK -- REINSURANCE

41-501. DEFINITIONS NOT MUTUALLY EXCLUSIVE. It is intended that certain insurance coverages may come within the definitions of two (2) or more kinds of insurance as defined in this chapter, and the inclusion of such coverage within one (1) definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable.

[41-501, added 1961, ch. 330, sec. 110, p. 645.]

41-502. "LIFE INSURANCE" DEFINED. "Life insurance" is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Life insurance does not include workmen's compensation coverages.

[41-502, added 1961, ch. 330, sec. 111, p. 645.]

41-503. "DISABILITY INSURANCE" DEFINED. (1) "Disability insurance" includes:

(a) Insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include worker's compensation coverages; and

(b) A managed care plan for which a certificate of authority is required pursuant to [chapter 39, title 41](#), Idaho Code.

[41-503, added 1961, ch. 330, sec. 112, p. 645; am. 1997, ch. 204, sec. 36, p. 606.]

41-504. "PROPERTY INSURANCE" DEFINED. "Property insurance" is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in section [41-508](#)[, Idaho Code].

[41-504, added 1961, ch. 330, sec. 113, p. 645.]

41-505. "MARINE AND TRANSPORTATION INSURANCE" DEFINED. "Marine and transportation insurance" includes:

(1) Insurance against any kind of loss or damage to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities,

choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

(c) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

[41-505, added 1961, ch. 330, sec. 114, p. 645.]

41-506. "CASUALTY INSURANCE" DEFINED. (1) "Casualty insurance" includes:

(a) Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to insurance on the vehicle, aircraft or animal.

- (b) Automobile guaranty. Insurance of the mechanical condition, or freedom from defective or worn parts or equipment, of motor vehicles.
- (c) Liability insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.
- (d) Workmen's compensation. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees.
- (e) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause.
- (f) Personal property floater. Insurance upon personal effects against loss or damage from any cause, under a personal property floater.
- (g) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings.
- (h) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured.
- (i) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus.
- (j) Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured.
- (k) Malpractice. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service.
- (l) Congenital defects. Insurance against congenital defects in human beings.
- (m) Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

(n) Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspections of and issue certificates of inspection upon, elevators.

(o) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancelation thereof due to death, accidental injury, or sickness of performers [performers], participants, directors, or other principals.

(p) Failure to file certain instruments. Insurance against loss resulting from failure to file or record written instruments affecting the title of or creating a lien upon personal property.

(q) Miscellaneous. Miscellaneous casualty insurance shall include, but not be limited to, credit unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while a debtor suffers a loss of income due to involuntary unemployment. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the director as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (a) (vehicle), (c) (liability), (e) (burglary), and (k) (malpractice) of subsection (1) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life or disability insurances.

[41-506, added 1961, ch. 330, sec. 115, p. 645; am. 1979, ch. 314, sec. 1, p. 846.]

41-507. "SURETY INSURANCE" DEFINED. "Surety insurance" includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(2) Insurance or guaranty of the obligations of employers under workmen's compensation laws.

(3) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(4) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furniture, furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

[41-507, added 1961, ch. 330, sec. 116, p. 645.]

41-508. "TITLE INSURANCE" DEFINED. (1) "Title insurance" is the certification or guarantee of title or ownership, or insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. This definition shall not be deemed to apply as to the business of preparing and issuing abstracts of, but not certifying, guaranteeing, or insuring, title to or ownership of property or certifying to the validity of documents relative to such title.

(2) A title insurer may also insure:

- (a) The identity, due execution, and validity of any note or bond secured by mortgage or deed of trust; and
- (b) The identity, due execution, validity and recording of any such mortgage or deed of trust.

[41-508, added 1961, ch. 330, sec. 117, p. 645.]

41-509. LIMIT OF RISK. (1) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.

(3) Reinsurance ceded as authorized by section [41-511](#), Idaho Code shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the director, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section shall not apply to life or disability insurance, annuities, title insurance, insurance of wet marine and transportation risks, worker's compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

[41-509, added 1961, ch. 330, sec. 118, p. 645; am. 2007, ch. 280, sec. 1, p. 811.]

41-510. "REINSURANCE" DEFINED. "Reinsurance" is a contract under which an originating insurer (called the "ceding" insurer) procures insurance for itself in another insurer (called the "assuming" insurer or the "reinsurer") with respect to part or all of an insurance risk of the originating insurer.

[41-510, added 1961, ch. 330, sec. 119, p. 645.]

41-511. AUTHORIZED REINSURANCE. (1) An insurer may accept reinsurance only of such risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) Except as provided in sections [41-512](#), [41-2856](#) (mergers and consolidations of stock insurers) and [41-2858](#), Idaho Code (bulk reinsurance, mutual insurers), an insurer may reinsure all or any part of any particular Idaho risk with an insurer authorized to transact such insurance in this state, or in any other solvent insurer approved or accepted by the director for the purpose of such reinsurance. The director shall not so approve or accept any such reinsurance by a ceding domestic insurer in an unauthorized insurer which he finds for good cause would be contrary to the interests of the policy holders or stockholders of such domestic insurer. The director shall not so approve any foreign reinsurer that possesses surplus as to policy holders in an amount less than that required under section [41-313](#), Idaho Code, of a foreign stock insurer authorized to transact in this state the same kind or kinds of insurance as that ceded.

(3) Upon request of the director, a ceding insurer shall promptly inform the director in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(4) This section does not apply to marine and transportation insurance.

[41-511, added 1961, ch. 330, sec. 120, p. 645; 1974, ch. 210, sec. 1, p. 1547; am. 1991, ch. 276, sec. 2, p. 716.]

41-512. REINSURANCE BY IMPAIRED OR WITHDRAWING INSURERS -- PENALTY FOR VIOLATION. (1) No authorized insurer whose capital stock (if a stock insurer) or required minimum surplus (if a mutual or reciprocal insurer) is impaired, or which is insolvent, or which is withdrawing from business in this state, shall reinsure its insurance in force on Idaho risks with any insurer not authorized to transact such insurance in this state, until the plan of such reinsurance has been submitted to the director and has been approved by him in writing.

(2) The director shall approve such plan of reinsurance unless he finds that one or more of the following grounds for disapproval exist:

- (a) The proposed reinsurer is in unsound financial condition; or
- (b) The proposed reinsurance would not provide the Idaho policy holders involved, with reasonably adequate service; or
- (c) The proposed reinsurer could not qualify for a certificate of authority to transact such insurance in this state; or
- (d) The proposed reinsurance would be contrary to the interests of such Idaho policy holders.

(3) No domestic insurer shall accept reinsurance of all or substantially all of the risks of another insurer unless the plan for such reinsurance has been submitted to and approved by the director, as provided in sections [41-2856](#)[, Idaho Code,] (mergers and consolidations of stock insurers) and [41-2858](#)[, Idaho Code,] (bulk reinsurance, mutual insurers).

(4) Upon effectuation of any such reinsurance the reinsurer shall become liable to the insured under the policy for any loss occurring under the policy so reinsured, and shall, within a reasonable time after such effectuation, replace such policies with its own policies, or by endorsement on the original policies acknowledge liability thereunder. In the case of cancellation of such a policy after effectuation of the reinsurance, the reinsurer shall be liable to the insured thereunder for the return premium due.

(5) Any person who acts for, or purports to act for, any insurer or reinsurer in violating any of the provisions of this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not exceeding ten thousand dollars (\$10,000) or by imprisonment in the penitentiary for not exceeding ten (10) years, or by both such fine and imprisonment.

[41-512, added 1961, ch. 330, sec. 121, p. 645.]

41-513. "SHARE AND DEPOSIT INSURANCE" DEFINED. Share and deposit insurance is that form of contract which guarantees the redemption of shares and deposits in a bank or a savings and loan association to its account holders and/or which guarantees to members of credit unions the redemption of shares, share accounts and deposits in a credit union.

[41-513, added 1983, ch. 177, sec. 3, p. 485.]

41-514. PURPOSE. The purpose of sections [41-514](#) and [41-515](#), Idaho Code, is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. The legislature hereby declares its intent to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the legislature hereby provides a mandate that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with this chapter, the assets representing the security shall be maintained in the United States, and claims shall be filed with and valued by the state insurance director with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The legislature declares that the matters contained in this chapter are fundamental to the business of insurance in accordance with 15 U.S.C. 1011 and 1012.

[41-514, added 2017, ch. 76, sec. 1, p. 197.]

41-515. CREDIT FOR REINSURANCE. (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (a), (b), (c), (d), (e) or (f) of subsection (2) of this section; provided further, that the director may adopt by rule pursuant to subsection (5) (a) of this section specific additional requirements relating to or setting forth:

- (a) The valuation of assets or reserve credits;
- (b) The amount and forms of security supporting reinsurance arrangements described in subsection (5) (a) of this section; and
- (c) The circumstances pursuant to which credit will be reduced or eliminated.

(2) Credit shall be allowed under paragraph (a), (b), or (c) of this subsection only, as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under para-

graph (c) or (d) of this subsection only if the applicable requirements of paragraph (g) of this subsection have been satisfied.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the director as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(i) File with the director evidence of its submission to this state's jurisdiction;

(ii) Submit to this state's authority to examine its books and records;

(iii) Be licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one (1) state;

(iv) File annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(v) Demonstrate to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000) and its accreditation has not been denied by the director within ninety (90) days after submission of its application.

(c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000); and

(ii) Submits to the authority of this state to examine its books and records.

The requirement of subparagraph (i) of this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) (i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subsection (4) (b) of this section for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director information substantially the same as that required to be reported on the national association of insurance commissioners (NAIC) annual statement form by licensed insurers to enable the director to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination

of its books and records by the director and bear the expense of examination.

(ii) Credit for reinsurance shall not be granted under this paragraph, unless the form of the trust and any amendments to the trust have been approved by:

1. The director of the state where the trust is domiciled; or
2. The director of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

The form of the trust and any trust amendments also shall be filed with the director of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustees of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(iii) The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000), except as provided in subparagraph (iii)2. of this paragraph.
2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the director with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors including, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent

(30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. In the case of a group that includes incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group for all years of the account.

The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

(iv) In the case of a group of incorporated underwriters under common administration, the group shall:

1. Have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation;

2. Maintain aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000);

3. Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

4. Maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

5. Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the director an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director as a reinsurer in this state and has secured its obligations in accordance with the following requirements:

(i) In order to be eligible for certification, the assuming insurer must:

1. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subparagraph (iii) of this paragraph;
2. Maintain minimum capital and surplus, or the equivalent, in an amount to be determined by the director pursuant to rule;
3. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the director pursuant to rule;
4. Agree to submit to the jurisdiction of this state, appoint the director as its agent for service of process in this state and agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;
5. Agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis; and
6. Satisfy any other requirements for certification deemed relevant by the director.

(ii) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subparagraph (i) of this paragraph:

1. The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;
2. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
3. Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regu-

lator, the association shall provide to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(iii) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director as a certified reinsurer.

1. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the director.

2. A list of qualified jurisdictions shall be published through the NAIC committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification in accordance with criteria to be developed under rulemaking.

3. United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

4. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(iv) The director shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director pursuant to rulemaking. The director shall publish a list of all certified reinsurers and their ratings.

(v) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rulemaking promulgated by the director.

1. In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certi-

fied reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director and consistent with the provisions of subsection (3) of this section, or in a multibeneficiary trust in accordance with paragraph (d) of this subsection, except as otherwise provided in this paragraph.

2. If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (d) of this subsection and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to paragraph (d) of this subsection. It shall be a condition to the grant of certification under this paragraph that the certified reinsurer shall have bound itself by the language of the trust and agreement with the director with principal regulatory oversight of each such trust account to fund, upon termination of any such trust account, out of the remaining surplus of such trust, any deficiency of any other such trust account.

3. The minimum trustee surplus requirements provided in paragraph (d) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that such trust shall maintain a minimum trustee surplus of ten million dollars (\$10,000,000).

4. With respect to obligations incurred by a certified reinsurer under this subparagraph, if the security is insufficient, the director shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

5. For purposes of this subparagraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations. As used here, the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status. If the director continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(vi) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(vii) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of subparagraph (v) of this paragraph, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), (b), (c), (d) or (e) of this subsection, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(g) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this state, the credit permitted in paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(h) If the assuming insurer does not meet the requirements of paragraph (a), (b) or (c) of this subsection, the credit permitted by paragraph (d) or (e) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(i) If the trust fund is inadequate because it contains an amount less than the amount required by paragraph (d) (iii) of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the director with regulatory oversight all of the assets of the trust fund.

(ii) The assets shall be distributed by, and claims shall be filed with and valued by, the director with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(iii) If the director with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the

grantor of the trust, the assets or part thereof shall be returned by the director with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(i) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.

(i) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing, unless:

1. The reinsurer waives its right to hearing;
2. The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under paragraph (e) (vi) of this subsection; or
3. The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's order.

(ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit, except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (3) of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation, except to the extent that the reinsurer's obligations under the contract are secured in accordance with paragraph (e) (v) of this subsection or with subsection (3) of this section.

(j) The following provisions apply regarding the concentration of risk:

(i) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the director within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty (30) days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notifica-

tion shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(3) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements in subsection (2) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer; provided further, that the director may adopt by rule pursuant to subsection (5) (a) of this section specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in subsection (5) (a) of this section, and the circumstances pursuant to which credit will be reduced or eliminated. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution as defined in subsection (4) (b) of this section. This security may be in the form of:

(a) Cash;

(b) Securities listed by the securities valuation office of the NAIC, including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in subsection (4) (a) of this section no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the director.

(4) (a) For purposes of subsection (3) (c) of this section a "qualified United States financial institution" means an institution that:

(i) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(ii) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(iii) Has been determined by either the director or the securities valuation office of the NAIC, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(b) A "qualified United States financial institution" means, for purposes of the provisions of this statute specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(i) Is an organization, or (in the case of a United States branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(ii) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(5) The director may adopt rules implementing the provisions of this chapter.

(a) The director is further authorized to adopt rules applicable to reinsurance arrangements described in subparagraph (i) of this paragraph.

(i) A rule adopted pursuant to this subparagraph may apply only to reinsurance relating to: life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits; universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period; variable annuities with guaranteed death or living benefits; long-term care insurance policies; or such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(ii) A rule adopted pursuant to subparagraph (i) of this paragraph concerning life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits or universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period may apply to any treaty containing policies issued on or after January 1, 2015, and policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(iii) A rule adopted pursuant to this paragraph may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules promulgated under this authority, to use the valuation manual referenced in section [41-612](#), Idaho Code.

(iv) A rule adopted pursuant to this paragraph shall not apply to cessions to an assuming insurer that:

1. Is certified in this state or, if this state has not adopted provisions substantially equivalent to subsection (2)(e) of this section, certified in a minimum of five (5) other states; or

2. Maintains at least two hundred fifty million dollars (\$250,000,000) in capital and surplus when determined in accordance with the NAIC accounting practices and procedures manual, referenced in section [41-335](#), Idaho Code, and is:

(A) Licensed in at least twenty-six (26) states; or

(B) Licensed in at least ten (10) states, and licensed or accredited in a total of at least thirty-five (35) states.

(b) The authority to adopt rules pursuant to paragraph (a) of this subsection does not limit the director's general authority to adopt rules pursuant to this subsection.

(6) The provisions of this section shall apply to all cessions after the effective date of this act under reinsurance agreements that have had an inception, anniversary, or renewal date not less than six (6) months after the effective date of this act.

[(41-515) 41-514, added 1991, ch. 276, sec. 1, p. 713; am. 1994, ch. 93, sec. 1, p. 209; am. 1995, ch. 289, sec. 3, p. 969; am. and redesign. 2017, ch. 76, sec. 2, p. 198.]

41-516. INDIVIDUAL OR GROUP ACCIDENT AND SICKNESS INSURANCE DEFINED. "Individual or group accident and sickness insurance" means any policy insuring against loss resulting from sickness or from bodily injury or death by accident, or both. "Individual or group accident and sickness insurance" shall also include comprehensive major medical coverage for medical and surgical benefits and high deductible health plans sold or maintained under the applicable provisions of section 223 of the Internal Revenue Code.

[41-516, added 2018, ch. 166, sec. 3, p. 341.]