

TITLE 41
INSURANCE

CHAPTER 8
ADMINISTRATION OF DEPOSITS

41-801. AUTHORIZED DEPOSITS OF INSURERS. The following deposits of insurers when made through the director shall be accepted and held, and shall be subject to the applicable provisions of this chapter:

(1) Deposits required under this code for authority to transact insurance in this state.

(2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces and countries as requirement for authority to transact insurance in such state, province or country.

(3) Deposits in such additional amounts as are permitted to be made under section [41-808](#)[, Idaho Code,] (excess deposits).

[41-801, added 1961, ch. 330, sec. 170, p. 645.]

41-802. PURPOSE OF DEPOSIT. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under sections [41-316](#), Idaho Code, (foreign and alien insurance deposit requirements), and [41-316A](#), Idaho Code, (domestic insurance deposit requirements), shall be held for the purposes stated in the respective sections.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such state, province or country, shall be held for the purpose or purposes specified pursuant to such laws.

(3) Deposits of foreign insurers required pursuant to the retaliatory provision, section [41-340](#), Idaho Code, shall be held for such purposes as are required by such law, and as specified by the director's order by which the deposit is required.

[41-802, added 1961, ch. 330, sec. 171, p. 645; am. 1994, ch. 240, sec. 8, p. 756; am. 2004, ch. 90, sec. 4, p. 328.]

41-803. SECURITIES ELIGIBLE FOR DEPOSIT. (1) All such deposits required under sections [41-316](#) and [41-316A](#), Idaho Code, for authority to transact insurance in this state shall consist of certificates of deposit issued by solvent banks, or any combination of securities the market value of which is readily ascertainable and, if negotiable by delivery or assignment, of the kinds described in the following sections:

- (a) Section [41-707](#) (public obligations);
- (b) Section [41-708](#) (securities of certain federal agencies);
- (c) Section [41-709](#) (irrigation district obligations);
- (d) Section [41-710](#) (international bank);
- (e) Section [41-711](#) (corporate obligations);
- (f) Section [41-717](#) (equipment trust obligations); and
- (g) Section [41-720](#) (savings and share accounts).

(2) Except that the director shall accept as a security eligible for deposit and recognize as part of the deposit any particular valid and enforceable real estate mortgage already lawfully so on deposit at the effective date of this code, so long as the mortgage continues to qualify for invest-

ment of the insurer's funds therein as under chapter 7 of this code and is not in default in any particular.

(3) All such deposits required of a domestic insurer pursuant to the laws of another state, province or country shall be comprised of securities, if negotiable by delivery or assignment, of the kind or kinds required or permitted by the laws of such state, province or country, except stocks, mortgages of any kind and real estate.

(4) Deposits of foreign insurers made in this state under the retaliatory provision, section [41-340](#), Idaho Code, shall consist of such securities or assets as are required by the director pursuant to such provision.

[41-803, added 1961, ch. 330, sec. 172, p. 645; am. 1994, ch. 240, sec. 9, p. 756; am. 2004, ch. 90, sec. 5, p. 328.]

41-804. CUSTODIAL ARRANGEMENTS FOR DEPOSITS. (1) All deposits of insurers made in this state under this code shall be made through the director.

(2) The deposits shall be made with and held by the trust department of an established bank located in Idaho, approved by the director for the purpose, and under custodial arrangements likewise approved by him. All such custodial arrangements shall comply in substance with the requirements of this code as to the amount, purposes, maintenance, initial amounts, release and withdrawal of such a deposit, and as to the rights of the insurer therein.

(3) The securities qualified for deposit under this chapter may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this chapter shall be under the control of the director of the department of insurance and shall not be withdrawn by the insurer without the approval of the director. Any insurer holding securities in such manner shall provide evidence satisfactory to the director, issued by its custodian or member bank through which such insurer has deposited such securities in a clearing corporation or through which such securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the director. Definitions contained in section [41-2870](#), Idaho Code, shall apply to this subsection (3).

(4) The cost of any such custodial arrangements shall be borne by the insurer. The state of Idaho shall have no responsibility for the safekeeping of the deposit.

[41-804, added 1961, ch. 330, sec. 173, p. 645; am. 1969, ch. 214, sec. 28, p. 625; am. 1981, ch. 174, sec. 3, p. 308; am. 2004, ch. 90, sec. 6, p. 329.]

41-805. RECORDS -- CERTIFICATE OF DEPOSIT. (1) The director shall maintain complete record of all securities deposited through him under this chapter, and of all transactions involving any such deposit.

(2) Upon request of the insurer and payment of the fee therefor required under section [41-401](#) (fee schedule), the director shall furnish to the insurer his certificate under his official seal certifying as to any deposit of the insurer held by him under this code, and as to the amount, composition, and purposes of the deposit.

[41-805, added 1961, ch. 330, sec. 174, p. 645.]

41-806. ASSIGNMENT OF SECURITIES. (1) The insurer shall duly assign to the director and his successors in office in trust all securities being deposited through him under this code which are not negotiable by delivery; or, in lieu of such assignment, the insurer may give the director an irrevocable power of attorney authorizing him to transfer the securities or any part thereof for any purpose within the scope of this chapter.

(2) Upon release to the insurer, or other person entitled thereto, of any such security the director shall reassign the same to such insurer or person; or, in the case of power of attorney given pursuant to subsection (1) above, he shall deliver the power of attorney, together with the securities covered thereby, to the insurer or person entitled thereto.

[41-806, added 1961, ch. 330, sec. 175, p. 645.]

41-807. APPRAISAL. The director may, in his discretion, prior to acceptance for deposit of any particular asset or security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

[41-807, added 1961, ch. 330, sec. 176, p. 645.]

41-808. EXCESS DEPOSITS. (1) If securities or assets deposited by an insurer under this chapter are subject to material fluctuations in market value, the director may, in his discretion, require the insurer to deposit and maintain on deposit additional securities or assets in such amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under or pursuant to the law by which the deposit is required.

(2) If not so required by the director, an insurer may at its option so deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than twenty per cent (20%) of such required or permitted deposit, or twenty thousand dollars (\$20,000), whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities and assets deposited, and to facilitate the exchange and substitution of such securities and assets. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer, such excess deposit shall be released only as provided in section [41-812](#) (2) (e) [, Idaho Code].

[41-808, added 1961, ch. 330, sec. 177, p. 645.]

41-809. RIGHTS OF INSURER DURING SOLVENCY. So long as the insurer remains solvent and is in compliance with this code it may:

(1) Demand, receive, sue for and recover the income from the securities or assets deposited;

(2) Exchange and substitute for the deposited securities or assets, or any part thereof, other eligible securities and assets of equivalent or greater value; and

(3) At any reasonable time inspect any such deposit.

[41-809, added 1961, ch. 330, sec. 178, p. 645.]

41-810. LEVY UPON DEPOSIT. (1) No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities of the insurer held on deposit in this state pursuant to section [41-316](#) or [41-316A](#), Idaho Code.

(2) As to deposits made in this state pursuant to the retaliatory provision, section [41-340](#), Idaho Code, levy thereupon shall be permitted only if expressly so provided in the director's order under which the deposit is required.

(3) As to the special deposit of a title insurer, if upon expiration of thirty (30) days after the judgment became final the insurer has failed to satisfy in full any final judgment rendered against it by a court of this state and arising out of any contract of insurance or guaranty issued by it, the judgment may be enforced against the insurer's deposit. For the purposes of this provision a judgment shall be deemed to have become final upon expiration of the period permitted by law for an appeal, or, if an appeal is taken, upon dismissal of the appeal or affirmance of the judgment.

(4) To obtain the enforcement referred to in subsection (3) of this section, the judgment creditor shall petition the court in the same cause in which the judgment was obtained, setting forth the facts referred to in subsection (3) of this section, and the court shall direct issuance of a special execution directed to the sheriff of Ada county of this state requiring the sheriff to sell the assets and securities of the insurer on deposit or so much thereof as may be necessary to satisfy the judgment. The court's order authorizing the special execution shall direct that a copy of the judgment, petition, and writ of execution shall be served upon the director within five (5) days thereafter. Upon receipt of such service the director shall forthwith notify the insurer of the levy and require the insurer within such period as may be specified in the notice, which period shall be not less than ten (10) nor more than thirty (30) days after the date of the notice, to have its president or other duly authorized representative to attend with the insurer's key and the director to the opening of the box in which the insurer's deposit is kept. Upon the box being so opened the director shall extract therefrom and deliver to the sheriff for sale on execution deposited assets or securities of the insurer in amount, up to the full amount so on deposit, not less than as required for the satisfaction of the judgment. All proceedings for the enforcement of the writ of execution against the deposit shall conform as nearly as may be to the practice in ordinary cases except as in this subsection specially provided.

(5) If the insurer, after notice by the director as required under subsection (4) of this section, willfully fails to attend to the opening of the box in which its deposit is kept, or willfully fails to permit the director to extract therefrom assets or securities as in subsection (4) of this section provided, the director shall after hearing held thereon forthwith revoke the insurer's certificate of authority and institute proceedings for the rehabilitation or liquidation of the insurer under chapter 33 of this code. In any such proceedings the judgment with respect to which execution was issued and leading to the insurer's failure as herein referred to, shall have a first and prior right and claim as to the assets and securities of the insurer constituting its deposit as levied against, as of the date of service upon the director of the copy of the judgment, petition, and writ of execution as provided for in subsection (4) of this section.

[41-810, added 1961, ch. 330, sec. 179, p. 645; am. 1994, ch. 240, sec. 10, p. 757; am. 2004, ch. 90, sec. 7, p. 330.]

41-811. DEFICIENCY OF DEPOSIT. (1) For the purpose of determining the sufficiency of its deposit in this state the assets and securities of the insurer on deposit shall be valued at current market value.

(2) If for any reason the current market value of such assets and securities falls below the amount of deposit required of the insurer under this code, the insurer shall promptly deposit other or additional assets or securities eligible for deposit and in amount sufficient to cure the deficiency. If the insurer has failed to cure the deficiency within thirty (30) days after receipt of notice thereof by registered or certified mail from the director, the director shall forthwith without further notice revoke the insurer's certificate of authority.

[41-811, added 1961, ch. 330, sec. 180, p. 645.]

41-812. DURATION AND RELEASE OF DEPOSIT. (1) Every deposit made in this state by an insurer pursuant to this code shall be so held as long as there is outstanding any liability of the insurer as to which the deposit was required; or, if the deposit was required under the retaliatory provision, section [41-340](#), Idaho Code, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Except for good cause found by the director after a hearing thereon, any such deposit shall be released and returned:

(a) To the insurer upon extinguishment by reinsurance or otherwise of all liability of the insurer for the security of which the deposit is held. If by reinsurance, the assuming insurer shall be one authorized to transact such insurance in this state.

(b) To the insurer, during solvency, to the extent such deposit is in excess of the amount required.

(c) To a depositing foreign or alien insurer, during its solvency, which has made a similar deposit in another state and has filed with the director the certificate or evidence thereof, under the conditions provided for in section [41-316](#)(2)(b) or [41-316](#)(2)(c), Idaho Code.

(d) To the resulting or surviving corporation or to such person as it may designate for the purpose, upon effectuation of a merger or consolidation of the depositing insurer, and upon the resulting or surviving corporation being or becoming authorized to transact insurance in this state.

(e) Upon order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets pursuant to delinquency proceedings brought against the insurer under chapter 33 of this code.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the director, in his discretion, may release a deposit made in this state by an insurer pursuant to this code if the insurance regulatory body in the insurer's state has been appointed the liquidator of the insurer by a court in that state and either of the following applies:

(a) The director has no information or belief that there are any outstanding claims against the insurer by policyholders or creditors of the insurer in Idaho; or

(b) The director believes that any claims by Idaho policyholders or creditors will be adequately protected pursuant to the liquidation proceedings in the insurer's domestic state.

[41-812, added 1961, ch. 330, sec. 181, p. 645; am. 1995, ch. 289, sec. 4, p. 973.]

41-813. PROOFS FOR RELEASE OF DEPOSIT TO INSURER -- DIRECTOR'S RESPONSIBILITY. (1) Before authorizing or permitting the release of any deposit or excess portion thereof to the insurer, as provided in section [41-812](#), Idaho Code, the director shall require the insurer, the applicable insurance regulatory official in the insurer's domestic state, or other appropriate entity to file with him a written statement in such form and with such verification as he deems advisable setting forth the facts upon which it bases its entitlement to such release.

(2) If release of the deposit is claimed by the insurer upon the ground that all its liabilities, as to which the deposit was held, have been assumed by another insurer authorized to transact insurance in this state, the insurer shall file with the director a copy of the contract or agreement of such reinsurance duly attested under the oath of an officer of each of the insurers parties thereto.

(3) If release of the deposit is claimed by a domestic insurer upon the ground that all its liabilities, as to which the deposit was held, have been terminated other than by reinsurance, the director shall make an examination of the affairs of the insurer for determination of the actuality of such termination.

(4) Upon being satisfied by such statement and reinsurance contract, or examination of the insurer if required under subsection (3) above, and by such other examination if any, of the affairs of the insurer as he deems advisable to make, that the insurer is entitled to the release of its deposit or excess portion thereof as provided in section [41-812](#), Idaho Code, the director shall release the deposit or excess portion thereof to the insurer or its authorized representative.

(5) If the director wilfully fails faithfully to keep, deposit, account for or surrender any such assets or securities deposited through him, in the manner as authorized or required under this chapter, he shall be liable therefor upon his official bond, and suit may be brought upon the bond by any person injured by such failure. The director shall not, however, have any liability as to any assets or securities of an insurer released by him in good faith pursuant to the authority vested in him under this chapter.

[41-813, added 1961, ch. 330, sec. 182, p. 645; am. 1995, ch. 289, sec. 5, p. 974.]