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II. Idaho Statutes, Rules, and Regulations

A. A. Responsibilities of the Director of the Department of Insurance

Ref: 41-203 A.K.A. Commissioner of Insurance or Insurance Commissioner

1. 41-202. DIRECTOR — APPOINTMENT — TERM — QUALIFICATIONS.

- The director of the department of insurance shall be the chief executive officer of the department of insurance.
- The director shall be appointed by the governor and shall hold office for a term of **four (4) years**
- Qualifications:
 - Must be a qualified elector of the state of Idaho; and
 - Must have had at least five (5) years' practical experience
 - or have had other professional or business experience reasonably adequate in character and scope to equip him to discharge the duties and fulfill the responsibilities of the office of director.

2. General duties and powers Ref: 41-211,

The director may make reasonable rules necessary for or as an aid to the effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.

In addition to any other penalty provided, wilful violation of any such rule shall subject the violator to such suspension or revocation of certificate of authority or license as may be applicable under this code as for violation of the provision as to which such rule relates.

41-213. ENFORCEMENT.

If the director believes that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Code, the director may:

- 1) Issue an order requiring the person to cease and desist from any prohibited act or practice;
- 2) Issue an order to **suspend or revoke** a license for not more than 1 year
- 3) Issue an order imposing an administrative penalty of up to **\$1000** per violation, to be deposited in the general fund
- 4) Initiate any action in district court for the same relief or any relief

If the director has reason to believe that any person has violated any provision of the Code, for which criminal prosecution is provided and would be in order, he shall give the information relative thereto to the attorney general or county attorney having jurisdiction of any such violation. The attorney general or county attorney shall promptly institute such action or proceedings against such person as the information may require or justify

Whenever the director may deem it necessary, he shall employ counsel, or call upon the attorney general of this state for legal counsel and such assistance as may be necessary.

41-247. INQUIRY POWERS OF DIRECTOR.

The director shall have power to direct an inquiry in writing to any person subject to his jurisdiction with respect to any insurance transaction or matter relative to a subject of insurance resident, located, or to be performed in this state. The person to whom such an inquiry is addressed shall upon receipt thereof promptly furnish to the director all requested information which is in his possession or subject to his control.

41-1016 Administrative Penalty – Suspension, Revocation, Refusal of License

- The director may impose an administrative penalty not to exceed **one thousand dollars (\$1,000)**,
- for deposit in the general fund of the state of Idaho, and
- may **suspend** for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under this chapter,
- if the director finds that as to the licensee or applicant any one (1) or more of the following causes or violations exist:
 - (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
 - (b) Violating any provision of [title 41](#), Idaho Code, department rule, subpoena or order of the director or of another state's insurance director;
 - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
 - (e) Misrepresenting the terms of an actual or proposed insurance contract or application for insurance or misrepresenting any fact material to any insurance transaction or proposed transaction;
 - (f) Being convicted of or pleading guilty to a crime that is deemed relevant in accordance with section [67-](#)

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[9411](#)(1), Idaho Code, or that evidences dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public;

(g) Admitting or being found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere;

(i) Having an insurance license denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name on an application for insurance or on any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation, provided however, that nothing in this provision shall be deemed to abrogate or modify [chapter 14, title 7](#), Idaho Code;

(n) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax; or

(o) In the case of a bail agent, compensating or agreeing to compensate any incarcerated person to influence or encourage another incarcerated person or other incarcerated persons to engage the bail agent's services or the services of the bail agent's company or of other bail agents employed by such bail company. For purposes of this subsection, compensating any incarcerated person shall include providing payment in any form to any person, organization or entity designated by the incarcerated person to receive such payment.

- The director shall, **without hearing, suspend** for not more than twelve (12) months, **or shall revoke** or refuse to continue any license issued under this chapter to a nonresident where:

(a) The director has received a final order of suspension, revocation or refusal to continue from the insurance regulatory official or court of jurisdiction of the licensee's home state; or

(b) A nonresident no longer has a license in the licensee's home state because the home state license was:

- (i) Voluntarily surrendered for any reason except relicensing as a resident in another state; or

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(ii) Otherwise nonrenewed by the nonresident and remains nonrenewed for a period greater than ninety (90) days beyond its expiration date, and without notice to the director of relicensing as a resident in another state.

- **If cause under this provision exists after the expiration of the twelve (12) months, successive suspensions may be imposed by the director without hearing.**
- The license of a business entity may be suspended, revoked or refused if the director finds that the violation of an individual licensee, who is registered to or acting on behalf of the business entity, was known or should have been known by one (1) or more of the owners, officers or managers acting on behalf of the business entity and that the violation was not reported to the director and no corrective action was taken.
- In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine or administrative penalty pursuant to subsection (1) of this section or any other applicable section.
- The director shall retain the authority to enforce the provisions of and impose any penalty or remedy Idaho Code, against any person who is under investigation for or charged with a violation of a department rule, even if the person's license or registration has been surrendered or has lapsed by operation of law, or if the **person has never been licensed**.

3. Examinations

Ref: 41-210 General Powers, Duties

The director shall enforce the provisions of this code, and shall execute the duties imposed upon him by this code.

The director may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, **as he may deem proper** to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

41-219. EXAMINATION OF INSURERS. (1) For the purpose of determining its financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with the law, the director shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer.

- The Director or any of his examiners **must** examine each **insurance company holding a certificate**

of authority at least every five years, but **may examine at **any time****

- *The Director also has the responsibility for examining insurers applying for a certificate of authority, licensing applicants and checking their qualifications.*

220 EXAMINATION OF AGENTS, BROKERS, CONSULTANTS, MANAGERS, ADJUSTERS, PROMOTERS.

For the purpose of ascertaining compliance with law, and in addition to any right of examination otherwise provided, the director may **as often as he deems advisable** examine the accounts, records, documents, and transactions, pertaining to or affecting its insurance affairs or proposed insurance affairs, of: any insurance agent, broker, solicitor, consultant, surplus line broker, general agent, or adjuster.

4. Hearings/notice of hearings/orders

41-212. ORDERS, NOTICES

- 1) Orders and notices of the director shall be effective only when in writing signed by him or by his authority.
- 2) Every such order shall state its effective date, and shall concisely state:
 - (a) Its intent or purpose.
 - (b) The grounds on which based.
 - (c) The provisions of this code pursuant to which action is taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the director of the right to rely thereon.
- 3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by:
 - (a) Personal service upon the person to be ordered or notified;
 - (b) Mailing it, postage prepaid, by regular United States mail, or by certified mail, return receipt requested, addressed to the person at his residence or principal place of business as last of record in the department; or
 - (c) Where a party has appeared in a contested case or has not yet appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, such orders or notices may be served by FAX or by e-mail in lieu of service

by mail or personal service.

- 4) Service of orders and notices is complete when a copy is personally served upon the person to be served, or when a copy properly addressed and postage prepaid is deposited in the United States mail or the statehouse mail, if the person is a state employee or state agency, or when there is an electronic verification that a FAX or an e-mail has been sent.

41-232. HEARINGS IN GENERAL.

The director may hold a hearing which he deems necessary for any purpose within the scope of this code.

The director shall hold a hearing:

- (a) If required by any provision of this code; or
- (b) **Upon written demand for a hearing by a person aggrieved by any act**, threatened act or failure of the director to act, or by any report, rule, regulation or order of the director (other than an order for the holding of a hearing, or an order on a hearing of which hearing such person had actual notice or pursuant to such order).

The director shall hold such demanded hearing within **thirty (30) days** after his receipt of the demand, unless postponed by mutual consent. Failure to hold the hearing shall constitute a denial of the relief sought, and shall be the equivalent of an order on hearing for the purpose of an appeal.

(5) In any administrative proceeding if a party with respect to whom the hearing is to be held waives the hearing in writing the right of hearing shall be deemed to have been waived, and, any other provision of this code to the contrary notwithstanding, without holding or concluding a hearing the director may, upon satisfactory proof of service of the petition or complaint upon such a party, enter an order which shall be as lawful as to such party as if all allegations in the petition or complaint relative to or concerning such party were proved or admitted at a hearing. For good cause shown, the director may, in his discretion, set aside any order so entered, and the proceedings may continue as if no waiver or default had existed.

41-235. NOTICE OF HEARING.

(1) Except where a longer period of notice is provided by other provisions of this code relative to particular matters, **not less than fourteen (14) days in advance** the director shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which hearing is held, the director shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

(2) If any such hearing would otherwise require separate notices to more than **one hundred (100) persons**, in lieu of the notice required under such subsection the director may give notice of the hearing by publishing the notice in at least three (3), but not to exceed five (5), daily newspapers, at least once each week during

the four (4) weeks immediately preceding the week in which the hearing is to be held. The director shall select such newspapers, as to location and circulation, as he deems necessary to give adequate opportunity of notice to such persons as should receive notice of the hearing.

41-1321. PROCEDURES AS TO UNDEFINED PRACTICES. [(1)]

Whenever the director has reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not expressly prohibited or defined in this chapter, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon as provided for in [chapter 2, title 41](#), Idaho Code, or seek any other relief authorized by [title 41](#), Idaho Code.

5. Penalties

Ref: 41-117 GENERAL PENALTY.

Each violation of this code for which a greater penalty is not provided by another provision of this code or by other applicable laws of this state, shall in addition to any applicable prescribed denial, suspension, or revocation of certificate of authority or license be punishable by an administrative penalty of **not more than one thousand dollars (\$1,000) for any individual or natural person and not more than five thousand dollars (\$5,000) for any other person**, imposed by the director, and upon conviction by a fine of **not more than one thousand dollars (\$1,000)** or by imprisonment in the county jail for a period not to exceed **six (6) months**, or by both such fine and imprisonment in the discretion of the court. Each instance of violation may be considered a separate offense.

B. Definitions

1. Domestic company *Ref: 41-106(1)*.

A "domestic" insurer is one formed under the laws of this state or an insurer which has transferred its domicile pursuant to section 41-342, Idaho Code, to this state.

2. Foreign company Ref: 41-106(2)

A "foreign" insurer is one formed under the laws of a jurisdiction other than this state.

3. Alien company Ref: 41-106(3)

An "alien" insurer is one formed under the laws of any country other than the United States of America, its states, districts, territories, and commonwealths.

4. Fraternal ref 41-3201, 3210

Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of section 41-3237(1)(b), Idaho Code, whether incorporated or not, conducted solely for the **benefit of its members** and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

41-3210. ORGANIZATION.

A domestic society organized on or after the effective date of this act shall be formed as follows:

- (1) Seven (7) or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:
 - (a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;
 - (b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted in this chapter;
 - (c) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one (1) year from the date of issuance of the permanent certificate of authority.

5 . **Authorized and unauthorized companies/admitted and nonadmitted companies**
Ref: 41-110

An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the director to transact insurance in this state. An "unauthorized" insurer is one not so authorized.

An insurance company may not transact insurance in this state unless the Director grants it a certificate of authority. A certificate of authority is issued by the Director and authorizes a company to sell insurance in our state.

A certificate must specify:

- The name of the insurer
- The location of its principal office
- The kind(s) of insurance it is authorized to transact in this state

Once the company has received a Certificate of Authority, they are known as an **authorized** company or an **admitted** company, both meaning they are **licensed** in the state.

- a) **Admitted** Companies have been approved by the Department of Insurance and have a Certificate of Authority. The certificate of authority is the insurance company's license to sell insurance in our state. **An admitted (a.k.a. authorized) company must comply with all state regulations regarding companies** and are covered by the state's guarantee associations.
- b) A **Non-Admitted** (unauthorized) company does not have a certificate of authority, does not have to comply with state laws, and is not covered by a guarantee association.

6. Stock and mutual companies and reciprocals Ref: 41-301,

"STOCK" INSURER DEFINED.

For the purposes of this code a "stock" insurer is an **incorporated** insurer with its capital divided into shares and owned by its stockholders.

302 "MUTUAL" INSURER DEFINED.

A "mutual" insurer is an **incorporated** insurer without capital stock and the governing body of which is elected by its policy holders. This definition shall not be deemed to exclude as "mutual" insurers certain foreign insurers found by the director to be organized on the mutual plan under the laws of their states of domicile, but having temporary share capital or providing for election of the insurer's governing body on a reasonable basis by policy holders and others.

2902 "RECIPROCAL INSURER" DEFINED.

A "reciprocal insurer" means an **unincorporated** aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, such interexchange may be accomplished by a joint exercise of powers agreement

7. 41-111. "CERTIFICATE OF AUTHORITY," "LICENSE" DEFINED.

A "**certificate of authority**" is one issued by the director evidencing the authority of an insurer to transact insurance in this state.

A "**license**" is authority granted by the director pursuant to this code authorizing the licensee to engage in a business or operation of insurance in this state other than as an insurer, and the certificate by which such authority is evidenced.

41-305. CERTIFICATE OF AUTHORITY REQUIRED

(1) No person shall act as an insurer and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall from offices or by personnel or facilities located in this state solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority issued to it by the director authorizing it to transact the same kind or kinds of insurance in this state.

41-306. EXCEPTIONS TO CERTIFICATE OF AUTHORITY REQUIREMENT.

A certificate of authority and application therefor pursuant to section [41-319](#), Idaho Code, shall not be

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required of an insurer with respect to the following:

- a) Investigation, settlement, or litigation of claims under its policies lawfully written in this state, or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in this state.
- b) Transactions thereunder subsequent to issuance of a policy covering only subjects of insurance not resident, located or expressly to be performed in this state at time of issuance, and lawfully solicited, written and delivered outside this state.
- c) Transactions pursuant to surplus lines coverages
- d) Reinsurance

8. Transacting insurance Ref: 41-112 "TRANSACTIONING INSURANCE" DEFINED.

"Transacting insurance" includes any of the following:

- (1) Solicitation and inducement.
- (2) Preliminary negotiations.
- (3) Effectuation of a contract of insurance.
- (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.
- (5) Mailing or otherwise delivering any written solicitation to any person in this state by an insurer or any person acting on behalf of the insurer for fee or compensation.

41-117A. PENALTY FOR TRANSACTIONING INSURANCE WITHOUT PROPER LICENSING.

The director may impose an administrative penalty not to exceed **fifteen thousand dollars (\$15,000)**, for deposit in the general account of the state of Idaho, upon any person who transacts insurance of any kind or character or transmits for a person, other than himself, an application for a policy of insurance without proper licensing, or after such licensing shall have been suspended or revoked.

9. Negotiate Ref: 41-1003(6)

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in the act either sells insurance or obtains insurance from insurers for purchasers.

C. Licensing

1. Persons required to be licensed

Producer Ref: 41-1003(8),

"Producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

"Person" means an individual or a business entity.

1004,41-1004. LICENSE REQUIRED.

(1) A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as a producer for that line of authority in accordance with this chapter.

(2) A person shall not, for a fee, engage in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any policy of insurance that could be issued in Idaho unless that person is:

- (a) A licensed insurance producer offering advice concerning a class of insurance as to which the producer is licensed to transact business in this state;
- (b) An attorney rendering services in the performance of the duties of an attorney;
- (c) A certified public accountant rendering services in the performance of the duties of a certified public accountant, as authorized by law;
- (d) An actuary rendering actuarial services if such actuary is a member of an organization determined by the director as establishing standards for the actuarial profession;
- (e) A person providing services to producers or authorized insurers only;
- (f) A person rendering services as an expert pursuant to the Idaho rules of evidence;
- (g) An investment adviser, investment adviser representative or federally covered investment adviser as defined in section [30-14-102](#), Idaho Code; or
- (h) A person rendering such services pursuant to a license issued in accordance with sections [41-1081](#) through [41-1089](#) of this chapter [, Idaho Code].

41-1008. PRODUCER LICENSE.

- 1) Unless denied licensure persons who have met the requirements shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one (1) or more of the following lines of authority:
 - (a) **Life** insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income;
 - (b) **Disability**, including accident and health or sickness insurance coverage for sickness, bodily injury or accidental death and benefits for disability income;
 - (c) **Property** insurance coverage for the direct or consequential loss or damage to property of every kind;
 - (d) **Casualty** insurance coverage against legal liability, including liability for death, injury or disability or damage to real or personal property;
 - (e) **Variable life and variable annuity** products, meaning insurance coverage provided under variable life insurance contracts and variable annuities;
 - (f) **Personal lines**, meaning property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
 - (g) Any other line of insurance permitted under state laws or rules.
- 2) An insurance producer license shall remain in effect unless revoked or suspended as long as the renewal fee is paid and the continuing education requirements for resident insurance producers are met .
- 3) An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without passing a written examination unless the licensee would otherwise be required to retest under section [41-1013\(7\)](#), Idaho Code. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.
- 4) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as a long-term medical disability, may request that the director waive those procedures.
- 5) The license shall contain the licensee's name, address, personal identification number, the date of issuance, the lines of authority, the expiration date and any other information the director deems necessary.
- 6) Licensees shall inform the director by any means acceptable to the director of a change of address within

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thirty (30) days of the change. A business entity licensed as a producer shall inform the director by any means acceptable to the director of any change in ownership, officers, directors or the designated licensed producer responsible for compliance

In order to assist in the performance of the director's duties, the director may contract with nongovernmental entities, including the national association of insurance commissioners or its affiliates or subsidiaries, to perform any ministerial functions related to producer licensing, including the collection of fees, that the director and the nongovernmental entity may deem appropriate.

41-1018. APPOINTMENTS.

- An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.
- To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted.
- Upon receipt of the notice of appointment, the director shall verify, within a reasonable time not to exceed thirty (30) days, that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the director shall notify the insurer within five (5) days of his determination.
- An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

2. Resident/nonresident Ref: 41-1003(9),

"Resident" means a person whose home state is Idaho or any other particular state identified in conjunction with the use of the term.

41-1009. NONRESIDENT PRODUCER LICENSE.

- 1) Unless denied licensure, a nonresident applicant shall receive a nonresident producer license if:
 - (a) The applicant is currently licensed as a resident and in good standing in his or her home state;
 - (b) The applicant has submitted the proper request for licensure and has paid the fees set forth;
 - (c) The applicant has submitted or transmitted to the director the application for licensure that the applicant submitted to his or her home state or, in lieu of such application, a completed uniform application;
 - (d) The applicant has submitted the applicant's fingerprints, if required by the director, on a form

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as prescribed by the director; and

(e) The applicant's home state awards nonresident producer licenses to residents of this state on the same basis. (reciprocity)

- 2) The director may verify the producer's licensing status through the producer database maintained by the national association of insurance commissioners, its affiliates or subsidiaries, or by any other acceptable means.
- 3) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a **change of address** and provide certification from the new resident state **within thirty (30) days of the change of legal residence**. No fee or license application shall be required for filing the change of address.

NONRESIDENT PRODUCERS — SERVICE OF PROCESS.

Each person applying to be a nonresident producer shall, on a form prescribed by the director, appoint the director as his agent for purposes of receiving service of legal process issued against the producer in this state upon causes of action arising within this state out of transactions under the license. Service upon the director as an agent shall constitute effective legal service upon the producer.

Surplus lines Ref: 41-1009(4),

Notwithstanding any other provision of this chapter, a person licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license pursuant to subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of section [41-1223](#), Idaho Code.

3. 41-1223. LICENSING OF SURPLUS LINE BROKERS.

**** P & C, PL Only**

1. Any individual while licensed as a producer licensed for property or casualty insurance who has had at least **two (2) years' experience** as a producer for the lines of insurance for which he is seeking to be licensed as a surplus line broker, and who is deemed by the director to be competent and trustworthy with respect to the handling of surplus lines, may be licensed as a surplus line broker.
2. Application for the license shall be made to the director on forms as designated and furnished by the director.

4. Public adjusters Ref: 41-5801

**** P & C, PL ONLY**

41-5801. PURPOSE AND SCOPE. This chapter governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

"Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

- (a) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
- (b) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
- (c) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

5. Producer appointment/termination of appointment

41-1011. ISSUANCE — REFUSAL OF LICENSE.

If after completion of application for a license, the taking and passing of any examination required under this chapter and, if required by the director, receipt of a report from the federal bureau of investigation based on the fingerprints of the applicant, the director finds that the applicant has fully met the requirements for a license, the director shall issue the license to the applicant; otherwise, the director shall refuse to issue the license and shall promptly notify the applicant and any appointing insurer or insurers of such refusal and state the grounds for the refusal. Pending the receipt of the report from the federal bureau of investigation, the director may, in his discretion, issue a temporary license if all other qualifications have been met.

41-1019. NOTIFICATION TO DIRECTOR OF TERMINATION.

An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall **notify the director within thirty (30) days following the effective date of the termination**, for any reason

A copy of any notification shall be provided to the producer as follows:

(a) Within fifteen (15) days after making the notification required by subsections (1), (2) and (3) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address.

(b) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the director. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the director's file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (6) of this section.

Confidentiality: Any documents, materials or other information obtained by the director in an investigation pursuant to this section shall be exempt from public disclosure under [chapter 1, title 74](#), Idaho Code.

Nothing in this chapter shall prohibit the director from releasing final adjudicated actions, including for cause terminations that are open to public inspection pursuant to [chapter 1, title 74](#) and [title 41](#), Idaho Code, to a database or other clearinghouse service maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

Penalties for failing to report. An insurer, the authorized representative of the insurer, or a producer who fails to report as required under the provisions of this section or who is found by a court of competent jurisdiction to have reported with actual malice may, after notice and hearing, have his license or certificate of authority suspended or revoked and may be fined.

41-1103. LICENSE REQUIRED.

No person shall in this state be, act as, or advertise or hold himself out to be, **an adjuster** unless then licensed as an adjuster under this chapter. No resident of Canada may be licensed as a resident adjuster or may designate Idaho as his home state, unless such person has successfully passed the adjuster examination and has complied with the other applicable provisions of this chapter. No resident of Canada may be licensed as a nonresident adjuster unless such person has obtained a resident or home state adjuster license in another state.

(Administrative Penalty of up to \$15,000)

6. Obtaining a license

Qualifications Ref: 41-1007. APPLICATION FOR PRODUCER LICENSE.

A person applying for a resident insurance producer license:

- (a) Is at least eighteen (18) years of age;
- (b) Has submitted the applicant's fingerprints as may be required by the director;
- (c) Has not committed any act that is a ground for denial, suspension or revocation of the license as set forth in [title 41](#), Idaho Code;
- (d) Has paid the fees prescribed by the director pursuant to section [41-401](#), Idaho Code; and
- (e) Has successfully passed the examinations for the lines of authority for which the applicant has applied.

A business entity acting as an insurance producer is required to obtain an insurance producer license.

- (a) The business entity has paid the fees
- (b) The business entity has designated a licensed producer, who is an individual responsible for the business entity's compliance with the insurance laws and rules of this state.**

Limited lines may take an approved course by the insurer instead of an exam

ADJUSTERS 41-1104. QUALIFICATIONS FOR ADJUSTER'S LICENSE.

(1) Except as provided in subsection (2) of this section, the director shall not issue, continue, or permit to exist any license as an adjuster as to any person not qualified therefor as follows:

- (a) Must be a natural person (i.e. not less than twenty-one (21) years of age.
- (b) Must be trustworthy, and be of good character and reputation as to morals, integrity, and financial responsibility, and must not have been convicted of any crime
- (c) Must be a salaried employee of a licensed adjuster, or must have had experience or special education or training as to the investigation and settlement of loss of claims under insurance contracts of sufficient duration and extent reasonably to satisfy the director as to his competence to fulfill the responsibilities of an adjuster.
- (d) If required by the director, must pass a written examination to test his knowledge of the duties

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and responsibilities of an adjuster and of matters involved in transactions under an adjuster's license.

(2) A firm or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers in this state is separately licensed, or is named in the firm or corporation license, and is qualified as for an individual license as adjuster under subsection (1) of this section. An additional full license fee shall be paid as to each individual in excess of one (1) so named in the firm or corporation license to exercise its powers.

41-1006. APPLICATION FOR EXAMINATION.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under rules prescribed by the director of the department of insurance.

(2) Each individual applying for an examination shall remit a nonrefundable fee.

(3) An individual who fails to appear for the examination as scheduled or who fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(4) Applications for licensure not received by the department within **one hundred eighty (180) days** of the successful completion of the examination shall be denied.

41-1107. EMERGENCY ADJUSTERS.

No adjuster's license or qualifications shall be required as to any adjuster who is sent into this state by and on behalf of an authorized insurer or adjusting firm or corporation for the purpose of investigating or making adjustment of a particular loss under an insurance policy issued by an authorized insurer or as a lawful surplus line contract, or for the purpose of temporarily assisting or substituting for a licensed adjuster who is incapacitated due to illness, injury, or any unforeseeable or uncontrollable incident, or for the adjustment of a series of losses resulting from a catastrophe common to all such losses.

Exemptions/exceptions Ref: 41-1005, 1007(4), 1012

41-1005. EXCEPTIONS TO LICENSING.

(NO COMMISSION = NO LICENSE NEEDED)

(NO TRANSACTIONS = NO LICENSE NEEDED)

(1) Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license.

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In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(2) A license as an insurance producer shall not be required of the following:

(a) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(i) The activities of the officer, director or employee are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(ii) The function of the officer, director or employee relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(iii) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(b) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans, or performs administrative services relating to mass-marketed property and casualty insurance, and who does not receive a commission;

(c) An employer or association or its officers, directors, employees or the trustees of an employee trust plan, to the extent that the employer, association, officer, employee, director or trustee is engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which involves the use of insurance issued by an insurer, as long as the employer, association, officer, director, employee or trustee is not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers, and who are not individually engaged in the sale, solicitation or negotiation of insurance, and who do not receive a commission;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic

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mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one (1) state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission; or

(h) A person who, concurrent with the rental of a motor vehicle, provides contract options to the standard rental agreement which provides auto and travel related coverages through authorized insurers during a rental period not to exceed ninety (90) days.

41-1012. EXEMPTION FROM EXAMINATION. (1) An individual who applies for an insurance producer license in this state and who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing examination if:

(a) The person is currently licensed in another state; or

(b) The application is received within ninety (90) days of the cancellation of the applicant's previous license and the prior state issues a certification that:

(i) At the time of cancellation, the applicant was in good standing in that state; or

(ii) The state's producer database records, as maintained by the national association of insurance commissioners or its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the lines of authority requested.

A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to section 41-1006, Idaho Code.

No examination shall be required of that person to obtain any line of authority previously held in the prior state unless the director provides otherwise by rule.

1007(4) Each insurer that sells, solicits or negotiates any form of limited line insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited lines insurance a program of

instruction that may be required to be approved by the director. If acceptable to the director, and as stated by rule, *the program of instruction may be administered in place of the examination*

7. Maintaining a license

Continuing education Ref: 41-1013, IDAPA 18.06.04

41-1013. CONTINUATION — EXPIRATION OF LICENSES — CONTINUING EDUCATION STATEMENT. (1) All producer, adjuster, and surplus line broker licenses issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, subject to payment of the applicable continuation fee on or before the expiration date referred to in subsection (2) of this section, accompanied by a written request for such continuation and a continuing education statement verifying that the licensee has completed any continuing education requirements imposed by the director. An application for renewal is not complete unless it is submitted with both the applicable fee and the completed continuing education statement. Requests for continuation shall be made in writing on forms to be prescribed by the director.

- Licenses will expire at midnight of the last day of the producers birth month every 2 years.
- As a condition for the continuation of a license, a licensee must complete a total of 24 hours of continuing education credits, including a minimum of 3 ethics credits on or before the licensing renewal date every two (2) years.
- Certificates of completion must be kept for 2 years.
- Proof of satisfactory completion of approved subjects or courses will be downloaded to licensing records by the system vendor in a format acceptable to the Director.
- No more than four (4) hours of continuing education credit from courses approved for adjusters or public adjusters can apply toward the continuation of a producer license.
 - Reinstatement is allowed if proof of the Continuing Education requirement is submitted within 90 days from the expiration date and
 - With a \$100 administrative penalty if paid days 1-30
 - With a \$200 administrative penalty if paid days 31-60
 - With a \$300 administrative penalty in paid days 61-90

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Following the ninetieth day from the date of nonrenewal of the license and up to one (1) year from the nonrenewal date, the licensee must complete all requirements for licensure including retesting, submission of a new application and payment of all new licensing fees. In addition, the individual must submit proof of completion of the required education requirements for the licensing period in which the license was terminated.

After the license has been expired for one (1) year or more, the individual must reapply and retest as a new applicant.

01. Exceptions and Extensions. The following exceptions and extensions may be made to the continuing education rules:

- a. Licensees on extended active duty with the Armed Forces of the United States for the period of such duty and all other exceptions allowed under Section 41-1008(4), Idaho Code.
- b. Persons which hold a temporary license.
- c. The Continuing Education Advisory Committee or the Director may approve an exception or extension for an extra ordinary situation that is requested by a licensee, in writing, setting forth the basis for the exception or extension. and received prior to the renewal date by the Director or Committee.
- 7) months from the due date of the renewal fee, reinstate the same license without passing a written examination unless the licensee would otherwise be required to retest under section [41-1013](#)(7), Idaho Code. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.
- 8) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as a long-term medical disability, may request that the director waive those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Fees/renewal Ref: 41-1008, IDAPA 18.01.02

A producers license must be renewed by the last day of the birth month every 2 years. 24 hours of Continuing Education, 3 of those in ethics, must be presented as a prerequisite to the renewal.

The renewal fees are: Adjusters, public adjusters, and producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically.

Suspension or revocation of licenses/felony convictions Ref: 41-1016, 1026

41-1026. PROCEDURE FOLLOWING SUSPENSION, REVOCATION, DENIAL — REINSTATEMENT.

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(1) Upon suspension, revocation, or refusal to continue any license, the director shall notify the licensee as provided in section 41-212(3), Idaho Code, and, in the case of a producer who holds appointments from insurers, shall give like notice to the insurers represented.

(2) Suspension, revocation, or refusal of any one (1) license held by the licensee under title 41, Idaho Code, shall automatically suspend, revoke or refuse continuation of all other licenses held by the licensee under title 41, Idaho Code.

(3) The director shall not issue a license under title 41, Idaho Code, to or as to any person whose license has been revoked or continuance refused until after the expiration of not less than one (1) year, to a maximum of five (5) years, from the date of such revocation or refusal, which time period shall be set forth in the final order, or, if judicial review of such revocation or refusal is sought, not less than one (1) year, to a maximum of five (5) years, from the date of a final court order or decree affirming the revocation or refusal. If no time period is specified in the final order or final court order or decree, the time period shall be one (1) year. In the event the former licensee again files an application for a license under title 41, Idaho Code, the director may require the applicant to show good cause why the prior revocation or refusal to continue his license shall not be deemed a bar to the issuance of a new license.

(4) The director shall not issue a license under title 41, Idaho Code, to any person whose application for a license was previously denied until after the expiration of one (1) year from the date of such license denial or, if judicial review of such license denial is sought, one (1) year from the date of a final court order or decree affirming the license denial.

Record keeping Ref: 41-1036

A producer holding a license under this chapter shall make available through his principal place of business complete records of transactions placed through or countersigned by the producer.

Records shall include, but not be limited to:

- (a) The names and addresses of insurer and insured;
- (b) The number and expiration date of the policy or contract;
- (c) The premium payable as to the policy or contract;
- (d) The date, time, insurer, insured and coverage of every binder made by the producer;
- (e) All disclosures made by a producer to an insured or to a prospective insured; and
- (f) Such other information as the director may reasonably require.

The records shall be kept available for inspection by the director for at least **five (5) years** after the creation or the completion, whichever is later, of the respective transactions.

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The records may be maintained off-site and in electronic form if the records can be made available for inspection through the producer's principal place of business upon reasonable notice by the director.

Change of address/place of business Ref: 41-1008(6), 1009(3)

- Licensees shall inform the director by any means acceptable to the director of a change of address **within thirty (30) days of the change.**
- A business entity licensed as a producer shall inform the director by any means acceptable to the director of any change in ownership, officers, directors or the designated licensed producer responsible .
- A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application shall be required for filing the change of address.

D. Producer responsibilities

Fiduciary refers to a person holding the funds of another in a position of trust.

- a) All funds representing premiums or return premiums received by an insurance producer and must be promptly accounted for and paid to the person or company who is entitled to the funds.
- b) Any person licensed who receives funds which belong to or should be paid to another person as a result of an insurance transaction is deemed to have received the funds in a **fiduciary capacity**. The licensee must promptly account for and pay the funds to the person entitled to the funds.
- c) Any insurance producer or other licensed representative who **diverts or appropriates** any funds received in a fiduciary capacity is **guilty of theft** by embezzlement (a.k.a. larceny) and is subject to criminal penalty.

NOTE: You may have a question on the exam about an agent, a broker, a producer, or a fiduciary. The answer would be the same. You are a producer acting as an agent or a broker, as soon as you receive payment, you are a fiduciary.

E. Fiduciary capacity

1. Ref: 41-1024, 1323, 1325, IDAPA 1803,

41-1323. ILLEGAL DEALING IN PREMIUMS — EXCESS CHARGES FOR INSURANCE.

(1) No person shall **wilfully** collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall **wilfully** collect as premium or charge for insurance any sum in excess of the premium or charge applicable to such insurance, and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the director; or, in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus line brokers licensed under chapter 12 of this code, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. Nor shall it be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section shall be punishable as a general penalty.

41-1325. BORROWING MONEY FROM CLIENTS.

(1) An insurance producer who borrows money, securities or anything of value from a client or customer, unless the client or customer is a person engaged in the business of loaning funds or is an immediate family member of the insurance producer, shall complete a written loan agreement that sets forth the parties to the loan, the purpose of the loan, the amount of the loan and the terms of the loan. All parties to the loan must sign the loan agreement acknowledging the transaction and must receive a copy of the loan agreement. The insurance producer shall keep a record of the loan transaction until the loan is paid back in full. Any release of the debt shall be in writing and signed by all parties to the release.

(2) As used in this section, the term "immediate family member" means a parent, mother-in-law, father-in-law, husband, wife, sister, brother, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or a son or daughter.

2. Charging of fees and disclosure requirements *Ref: 41-1030*

41-1030. PRODUCER COMPENSATION. (1) For purposes of this section:

- (a) "Consumer" means an insured, a prospective insured or an employer group.
- (b) "Retail producer" means a producer who solicits, negotiates with or sells an insurance contract directly to a consumer.
- (c) "Wholesale producer" means a producer who solicits, negotiates or sells an insurance contract directly with a retail producer, but not with a consumer.

Producers may charge a fee or be compensated by a combination of fees and commissions.

1. Before Charging a Fee.

Before charging a fee to a consumer, a retail producer will furnish to each consumer a written disclosure statement containing at least the following information:

- a. A description of the nature of the work to be performed by the insurance producer.
- b. The fee schedule and any other expenses that the insurance producer charges, and whether fees may be negotiated.

02. Prior Information Disclosure.

A retail producer will disclose information prescribed under this chapter to each consumer to whom a fee will be charged prior to engaging in any act for or on behalf of the consumer.

03. Fee for Intended Services.

A retail producer may charge a fee for those services intended to be provided and that are not contingent upon a future event occurring outside of the terms of the insurance contract.

04. Non-Chargeable Fee.

A retail producer will not charge a fee for services in connection with statutorily mandated insurance coverage.

41-1024. REPORTING AND ACCOUNTING FOR PREMIUMS.

(1) All fiduciary funds received or collected by a producer shall be trust funds received by the producer in a fiduciary capacity, and the producer shall, in the applicable regular course of business, account for and pay the same to the person entitled to the funds.

The producer shall establish a separate account for funds belonging to others in order to avoid a commingling of such fiduciary funds with his own funds.

The producer may deposit and commingle in such separate account all fiduciary funds so long as the amount of such deposit so held for all other persons is reasonably ascertainable from the records and accounts of the producer.

A producer who duly collects and deposits funds into a sweep account maintained by or for the benefit of an applicable insurer shall not be deemed to be in violation of the fiduciary fund account requirement. The director may promulgate rules relating to accounting for and handling of fiduciary funds and the fiduciary fund account.

(2) Fiduciary funds shall include all funds collected by an insurance producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or the producer's employer, and all funds collected by an insurance producer from an insurance company or its agents that are to be paid to a policyholder or claimant under any contract of insurance.

(3) Any producer who, not being lawfully entitled thereto, diverts or appropriates to his own use such trust or fiduciary funds or any portion thereof, whether or not such funds have been separately deposited, shall upon conviction be guilty of a felony.

3. IDAPA 18.06.02 PRODUCERS HANDLING OF FIDUCIARY FUNDS 000. LEGAL AUTHORITY.

This rule will affect "producers," including bail agents who handle funds held in a fiduciary capacity.

010. DEFINITIONS.

01. **Cash Collateral.** All funds received as collateral by a producer in connection with a bail bond transaction in the form of cash, check, money order, other negotiable instrument, debit or credit card payment, or other electronic funds transfer, given as security to obtain a bail bond, as referenced in Section 41-1043, Idaho Code.

02. **Fiduciary Fund Account.** A financial account established to hold fiduciary funds as provided in Section 016.

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03. Fiduciary Funds. All premiums, return premiums, premium taxes, funds as collateral, and fees received by a producer. Fiduciary funds include:

- a. All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company,
- b. All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer's employer.
- c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance.
- d. All checks or other negotiable instruments collected by the producer and made payable to the insurer.
- e. Cash collateral.

04. Receive. To collect or take actual or constructive possession of fiduciary funds. Receiving, includes but is not limited to, taking possession of money, checks, or other negotiable instruments. If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt is presumed to have occurred on the due date to the insurer.

011. -- 013. (RESERVED) 014. FIDUCIARY FUND ACCOUNT.

01. Payable to an Insurer. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to an insurer as described in Subsection 010.03 are to be remitted to the insurer within **the time period set forth in the insurer's terms and conditions, or if not specified, then within twenty-one (21) days of receipt.**

02. Payable to a Policyholder. Fiduciary funds that are in the form of a check or another negotiable instrument made payable to a policyholder or claimant as described in Subsection 010.02.c. are to be remitted to the policyholder or claimant within **fourteen (14) days of receipt** or as specified by the terms of the policy of insurance, the insurer, or applicable law.

03. All Other Fiduciary Funds. are to be deposited into a fiduciary fund account according to the following schedule:

- a. If in the form of cash, within **seven (7) days** of receipt, except that, when a producer holds fiduciary funds in the form of cash that exceed **two thousand dollars (\$2,000), such funds will be deposited within three (3) business days.**

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b. If in the form of checks, money orders, other negotiable instruments, debit or credit card payments, or other electronic funds transfer, received or collected by the producer, within **seven (7) days** of receipt, except that the producer may remit such funds to the following:

- i. Another licensed producer or licensed business entity, subject to Subsection 014.03.b.; or
- ii. A person designated by the insurer who has the obligation to remit the fiduciary funds to the insurer.

04. Document the Receipt of Fiduciary Funds. A producer who receives fiduciary funds will document the receipt of those funds in sufficient detail to determine, at a minimum,

- 💰 the date received,
- 💰 the name of the payee,
- 💰 and the amount received.
- 💰 If the producer receives cash, including cash collateral, the producer will give the payer a detailed receipt at the time of payment. The receipt needs to indicate that cash was received, the date received, the amount received,
- 💰 the payer's name,
- 💰 the payee's name,
- 💰 the purpose of payment,
- 💰 and any other information important to the transaction.
- 💰 The producer will maintain the receipt for a period of at least **five (5) years**.

The Start date of the policy does NOT have to be on a premium receipt.

(These are the basics of any receipt: Where did you go? (Name and address.) When did you go? (Date.) What did you buy? (Policy #.) What did you spend? (\$\$) Plus client name, producer name, and producer signature.)

015. DEPOSIT OF OTHER FUNDS IN ACCOUNT. A producer may deposit other additional funds for the sole purpose of:

- ❖ Reserves for Return Premiums. Establishing reserves for payment of return premiums
- ❖ Funds to Pay Bank Charges. Advancing funds sufficient to pay bank charges.
- ❖ Contingencies. For any contingencies that may arise in the business of receiving and transmitting premium or return premium funds or cash collateral (any such deposit is hereinafter referred to as "voluntary deposit").

016. TYPES OF ACCOUNTS PERMITTED. 01. Accounts in Federally Insured Financial Institutions. A producer will maintain the fiduciary funds only in checking accounts, demand accounts, savings accounts or other accounts in a federally insured financial institution.

02. Exceed the Federally Insured Limits. If such funds held exceed the federally insured limits, then in

addition to Subsection 016.01, those funds that exceed the federally insured limits may be deposited into the following:

- a. An investment account that invests monies in United States government bonds, United States Treasury certificates or in federally guaranteed obligations;
- b. Money market mutual funds registered with the SEC which are rated AAA by Moody's or AAA by S&P.

03. Separate Fiduciary Funds Account. Nothing in this rule obligates a producer to maintain and hold fiduciary funds in his, her, or its, own separate fiduciary funds account. Each producer is responsible for compliance with the provisions of this rule even if fiduciary funds are maintained in a fiduciary funds account established by another affiliated producer.

017. ACCOUNT DESIGNATION. A fiduciary fund account is so designated on the records of the financial institution. The account has a separate account number, a separate check register and its own checks.

02. Trust Fund Account. The phrase, "Trust Fund Account" is displayed on the face of each check drawn on a fiduciary fund account or other similar designation as permitted by the financial institution to identify the checks as being from a fiduciary fund account.

018. INTEREST EARNINGS. A fiduciary fund account may be interest-bearing or an investment account in accordance with Section 016. The producer will maintain records establishing the existence and amount of interest accrued.

019. PERMISSIBLE DISTRIBUTION OF FIDUCIARY FUNDS. Distributions from a fiduciary fund account are to only be made for the following purposes, and in the manner stated: 01. Remit Premiums. To remit premiums to an insurer or an insurer's designee pursuant to a contract of insurance;

02. Return Premiums. To return premiums to an insured or other person or entity entitled to the premiums;

03. Remit Surplus Lines Taxes and Stamping Fees. To remit surplus lines taxes and stamping fees collected to the appropriate state;

04. Reimburse Voluntary Deposits. To reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous voluntary deposit

05. Transfer or Withdraw Accrued Interest. To transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous interest deposit by the financial institution.

06. Transfer or Withdraw Actual Commissions. To transfer or withdraw actual commissions and those

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earned fees recognized as earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched and identified with funds previously deposited in the fiduciary account.

07. Pay Charges Imposed. To pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account.

08. Transfer Funds. To transfer funds from one (1) fiduciary fund account to another fiduciary fund account.

09. Return Cash Collateral. To return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, has been discharged.

10. Convert Cash Collateral. To convert cash collateral where the defendant or other responsible party fails to satisfy the obligation of the bail bond and the bail or obligation was not exonerated by the court but instead executed by the court, provided such conversion is compliant with the contract between the producer and the person who deposited the cash collateral.

020. -- 021. (RESERVED) 022. **TIMELY DISBURSEMENT OF FIDUCIARY FUNDS. IDAHO ADMINISTRATIVE CODE IDAPA 18.06.02** Department of Insurance Producers Handling of Fiduciary Funds Section 022 Page 6 In addition to the requirements of Section 014, after receiving fiduciary funds, a producer:

01. Remits Premiums. Remits premiums directly to an insurer or an insurer's designee within the time period set forth in the insurer's terms and conditions, or if not specified, within **fourteen (14) days** of receipt;

02. Returns Money Received. Returns to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of:

- a. Fourteen (14) days from the date the premium is received by the producer from the insurer, or
- b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit.

03. Refund Received from the Insurer. Issues a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto by notifying the insured that the refund is being applied to an outstanding amount owed or to be owed by the insured. If the producer is applying the refund to an outstanding amount owed by the insured, the producer obtains the insured's permission and provide the insured a detailed description of the amount owed to which the refund is being applied.

04. Dispute of Entitlement of Funds. If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, a producer notifies the parties of the dispute, seeks to resolve it, and documents the steps taken to resolve it.

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05. Funds Held for More Than Ninety Days. If fiduciary funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, the producer investigates to determine the entitlement to fiduciary funds and pays those fiduciary funds when due to the appropriate person in accordance with this section.

06. Return Cash Collateral. Returns cash collateral to the person who deposited the cash collateral with the producer within **fourteen (14) days** of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, is discharged. 023. - 999. (RESERVED)

4. Charging of fees and disclosure requirements *IDAPA 18.06.03*

01. Open Lines for Export. "Open Lines for Export" is defined as the class or classes of business which the Director has declared eligible for export in accordance with Section 41-1216, Idaho Code.

02. Lines Other Than Open Lines for Export. "Lines Other Than Open Lines for Export" is defined as the class or classes of business not on the list of open lines for export which are to be offered to eligible surplus lines insurers in accordance with Title 41, Chapter 12, Idaho Code.

03. **Diligent Search.** A Broker has exercised their obligations under Section 41-1214(2), Idaho Code, if the Broker or the referring insurance producer submits a risk to at least one (1) authorized company engaged in writing in Idaho the type of coverage sought, or if there are no companies engaged in writing such coverage, the risk is submitted to at least one (1) company that, in the Broker's or producer's professional judgment, is the most likely to accept the risk.

04. Delegated Contractor. Any contractor to whom activities have been delegated by the Director under Section 41-1232, Idaho Code.

011. BIENNIAL LICENSE. The Idaho license of a resident or non-resident Broker is to be renewed every two (2) years. The original license fee and the renewal fee are prescribed in IDAPA 18.01.02. A broker will not solicit surplus line business before being licensed as a Broker. A broker will notify the Licensing Division of the Department if not renewing the license prior to the license renewal date. The Director may allow the continuation of a non-renewed license if, within one (1) year after the renewal date, the licensee submits a renewal request and a continuation fee twice the amount prescribed by Section 41-1008(3), Idaho Code.

012. ANNUAL REPORT. Each Broker will file an annual report with the Director by March 1st of each year, of Surplus Line business transacted during the previous calendar year on an approved form.

013. PAYMENT OF STATE TAX. 01. Tax Due March 1. On or before March 1st of each year, each licensed Broker will pay premium tax to the Department on business written during the preceding calendar year, which tax will be collected from the insured, in addition to the stamping fee.

02. Tax Summary. By February 1st of each year the delegated contractor will provide to each Broker a

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summary of records showing the state tax due the Department for the preceding year and this amount will be paid to the Department by the Broker. A flat percentage of the gross premium written during the year is not acceptable since tax was collected on each individual policy and that full amount will be paid to the Department.

014. PAYMENT OF STAMPING FEES. 01. Application. A stamping fee is charged on all premiums and policy fees written on Idaho business at a rate established by the delegated contractor and approved by the Department. This rate may be adjusted to obtain the objectives of the delegated contractor. The stamping fee cannot be refunded except in the case of extenuating circumstances approved by the delegated contractor.

IDAHO ADMINISTRATIVE CODE 18.06.06 Department of Insurance Surplus Line Rules Section 015 Page 4
02. Summary. Within ten (10) days following the month during which the surplus line insurance was handled through the delegated contractor, the delegated contractor will submit an invoice summarizing the premium, Idaho tax, and Stamping Fee for each submission processed to each Broker.

03. Payable on Receipt. The Stamping Fee is payable upon receipt of billing. It is delinquent if not paid within thirty (30) days after the last day of the month in which the business was reported.

015. COLLECTION OF TAXES. 01. Idaho Premium Taxes. Idaho Premium Tax will be collected from the insured. Policy fees, service fees, and other like fees are considered part of the premium and subject to premium tax. State premium taxes will be refunded to the taxpayer upon cancellation of the policy or return of premium for any reason.

02. Purchasing Groups. Purchasing groups that obtain insurance from an unauthorized or authorized surplus lines insurer will use an Idaho-licensed Broker. The Broker is responsible to collect and submit all taxes and fees as prescribed by this chapter.

016. REPORTING TAXES AND STAMPING FEES. Brokers are to report premium taxes and stamping fees in increments of not less than one year. A Broker who collects quarterly or monthly payments of premiums from the insured will provide reports of the premium tax and stamping fee in the initial submission or renewal for a full year. (

017. PLACEMENT AND COMMISSIONS. 01. Basic Requirement. All surplus line business is to be placed through a licensed Broker. Each producer of surplus line business will hold an Idaho resident or non-resident producer license.

02. Idaho Producer. When a producer requests placement by a licensed Broker, the commission received and paid will be based on the mutual written agreement of the parties.

018. SUBMISSION TIME PERIODS. All affidavits, submissions, certificates, endorsements and other documents for insurance written for Open Lines for Export and Other Than Open Lines for Export are to be received by the delegated contractor within thirty (30) days of receipt by the broker of the certificate,

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endorsement or other policy document. If the complete submission cannot be made within this time period, the information with submission form and affidavit, if applicable, will be forwarded. The Broker is responsible for meeting this requirement.

019. OPEN LINES FOR EXPORT. Pursuant to Section 41-1216, the Director will publish a list of approved classes of insurance coverage or risks. If a risk does not appear on this list, then the Broker will file the normal submission forms and documents and execute the broker's affidavit.

020. BROKER RECORDS. A full and true record of each surplus line coverage procured by each Broker is to be maintained by the Broker. Reports of all documents processed by the delegated contractor will be provided on a monthly basis to the Broker. These reports, in addition to the broker's copy of policies and endorsements, are to be kept for a period of five (5) years and are subject to examination by the Director.

021. APPROVED LIST OF INSURERS. Pursuant to Section 41-1217, Idaho Code, the Director compiles or approves a list of unauthorized insurers, whether foreign or alien, eligible to write surplus line business in Idaho. Brokers may only place surplus line business with companies on the current list. The delegated contractor will inform Brokers of additions and changes to the list

5. 41-1021. REPORTING OF ACTIONS.

(1) A producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency **within thirty (30) days** of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

(2) Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

F. Insurance contracts

1. 41-1812. FILING, USE AND DISAPPROVAL OF FORMS.

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, **unless the form has been filed with the director**

(2) Every such filing shall be submitted with a certification, in such form as may be determined by the director, by an officer of the insurer that each policy, form, endorsement, or rider in use complies with

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Idaho law. The director shall have the power to examine such filings to determine whether the policies, forms, endorsements, and riders, as filed, comply with the certification of the insurer and with Idaho law relating to the content of such documents. ***Upon a determination that any document filed in accordance with this section does not comply with Idaho law, the director shall, in accordance with the Idaho administrative procedure act, prohibit the use of such policy, form, endorsement, rider or other document.***

(3) The director may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

2. 41-1328. PAYMENT OF CLAIMS BY INSURERS.

Every insurer issuing a motor vehicle insurance policy, as defined in [chapter 5, title 41](#), Idaho Code, shall, in the event of damage to a covered motor vehicle by collision and the election by the insurer to have such motor vehicle repaired, make payment by check or draft, payable to the repairer or to the named insured and the repairer, jointly, no later than **twenty (20)** days subsequent to receipt of an itemized bill or invoice covering repairs authorized by the insurer which have been satisfactorily completed.

THE INSURANCE CONTRACT

41-1828. PAYMENT DISCHARGES INSURER — PAYMENT TO MARITAL COMMUNITY.

(1) Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

(2) Where the person designated in the policy or contract or by assignment as being entitled thereto is a member of a marital community, whether husband or wife, and the policy or contract is upon the life or disability of either, he or she may receive payment, and shall be and is constituted agent of the marital community with authority to give full acquittance therefor; and such payment to the marital community agent so designated shall fully discharge the insurer from all claims under the policy or contract, but no rights of either member of the marital community, as between themselves, to accounting or division shall

be impaired or affected by such payment.

3. 41-1807. POWER TO CONTRACT — PURCHASE OF INSURANCE BY MINORS.

(1) Any person of competent legal capacity may contract for insurance. (Age 18)

(2) Any minor not less than fifteen **(15) years** of age, notwithstanding his minority, may contract for annuities or for insurance upon his own life, body, health, property, liabilities or other interests, or on the person of another in whom the minor has an insurable interest

G. Marketing practices

1. Unfair claims practices Ref: 41-258, 1328, 1329, 1839, 3611

41-258. REPORT OF LOSSES BY FIRE INSURANCE COMPANIES TO STATE FIRE MARSHAL.

Every fire insurance company authorized to transact business in this state is hereby required to report to the office of the state fire marshal, within **seven (7) days** after settlement of all fire losses of one thousand dollars (\$1,000) or more, on property within the state of Idaho and all fire losses resulting in death or personal injury, including those personal injury losses covered by workmen's compensation insurance. The report shall state the date of fire, the amount of probable property loss or personal injury, the character of property destroyed or damaged, and supposed cause of the fire. The report shall be in addition to and not in lieu of any report or reports such companies may be required by any law of this state to make to any other state officer.

41-1328. PAYMENT OF CLAIMS BY INSURERS.

Every insurer issuing a motor vehicle insurance policy, as defined in [chapter 5, title 41](#), Idaho Code, shall, in the event of damage to a covered motor vehicle by collision and the election by the insurer to have such motor vehicle repaired, make payment by check or draft, payable to the repairer or to the named insured and the repairer, jointly, no later than **twenty (20) days** subsequent to receipt of an itemized bill or invoice covering repairs authorized by the insurer which have been satisfactorily completed.

41-1329. UNFAIR CLAIM SETTLEMENT PRACTICES.

Pursuant to section [41-1302](#), Idaho Code, committing or performing any of the following acts or omissions intentionally, or with such frequency as to indicate a general business practice shall be deemed to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance:

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- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
- (10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

2. Unfair methods of competition

Cash in any way, shape or form as a reward or inducement to purchase insurance is REBATING.

Gifts that are not cash (dinner, thank you bouquet, etc.) are allowed up to \$200 per person per year. Above that amount it is ILLEGAL INDUCEMENT.

3. 41-1314. REBATES — ILLEGAL INDUCEMENTS.

(1) Except as otherwise expressly provided by law, no person shall knowingly make, permit to be made, or offer to make any contract of insurance, or of annuity, or agreement as to such contract, other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity or in connection therewith, any rebate of premiums payable on the contract, or of any producer's commission related thereto, or any special favor or advantage in the dividends or other benefits thereon, or any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever not specified in the contract; or directly or indirectly give, or sell, or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith, and whether or not specified or to be specified in the policy or contract, any agreement of any form or nature promising returns and profits, or any stocks, bonds, or other securities, or interest present or contingent therein or as measured thereby, of any insurer or other person, or any dividends or profits accrued or to accrue thereon; or offer, promise or give anything of value whatsoever not specified in the contract. Nor shall any insured, annuitant, or policyholder or employee thereof, or prospective insured, annuitant or policyholder, or employee thereof, knowingly accept or receive, directly or indirectly, any such prohibited contract, agreement, rebate, advantage, employment, or other inducement.

(2) Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed producers, or as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, the usual and ordinary dividends, savings, or unabsorbed premium deposits.

(3) Nothing in this section shall be construed as prohibiting a life insurer, disability insurer, property insurer or casualty insurer, or producers who are marketing life insurance, disability insurance, property insurance or casualty insurance, from providing to a policyholder or prospective policyholder of life, disability, property or casualty insurance, any prizes, goods, wares, merchandise, articles or property of an aggregate value not to exceed **two hundred dollars (\$200)** in a calendar year.

(4) Extension of credit for the payment of premium beyond the customary premium payment period without charging and collecting interest at a reasonable rate per annum on the amount of credit so extended and for the duration of such credit is prohibited under this section.

4. 41-1303. MISREPRESENTATION OR FALSE ADVERTISING OF POLICIES.

(a misrepresentation is a lie)

(1) No person shall make, issue, circulate, or cause to be made, issued, or circulated, any estimate, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

(2) No person shall misrepresent a policy for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.

(3) No person shall misrepresent any insurance policy as being shares of stock.

(4) For reasonable cause the director may in his discretion require any insurer or agent using or proposing to use in this state a prospectus, offering sheet, or other sales literature or printed sales aids in the solicitation of life or disability insurance to file the same with him for review. The director shall forthwith by order disapprove any such prospectus, sheet, literature, or aid found by him to be in violation of this section. The order shall become effective on the effective date specified therein, which date shall not be less than ten (10) days after the date the order was issued and mailed to the insurer or agent affected thereby; except, that if the insurer or agent prior to such effective date makes written request to the director for a hearing relative to the matter the director's order shall thereby be stayed pending the hearing and the director's further order on hearing. No insurer, agent, or other representative shall use in this state any prospectus, offering sheet, literature or sales aid after the date an order of disapproval thereof has become effective and has been communicated to the insurer. This provision shall not relieve any person of liability for penalties provided for violation of subsection (1) above.

5. 41-1304. FALSE INFORMATION AND ADVERTISING WITH RESPECT TO INSURANCE BUSINESS.

No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

6. 41-1308. DEFAMATION.

No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, or of an organization proposing to become an insurer, and which is circulated to injure any person engaged or proposing to engage in the business of insurance.

7. 41-1306. FALSE FINANCIAL STATEMENTS.

(1) No person shall file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

8. 41-1309. BOYCOTT, COERCION AND INTIMIDATION.

No person or persons shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

9. Unfair discrimination Ref: 41-1313, 1315

41-1313. UNFAIR DISCRIMINATION — LIFE INSURANCE, ANNUITIES, AND DISABILITY INSURANCE.

(1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and

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of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(3) No person shall discriminate on the basis of a genetic test or private genetic information, as those terms are defined in section 39-8302, Idaho Code, in the issuance of coverage, or the fixing of rates, terms or conditions, for any policy or contract of disability insurance or any health benefit plan .

This section of the insurance code does not prohibit fair discrimination when bona fide statistical differences in risk or exposure have been substantiated. *E.g., women live longer than men, so women pay less for life insurance.*

41-1315. EXCEPTIONS TO DISCRIMINATION OR REBATE PROVISION — LIFE OR DISABILITY POLICIES, AND ANNUITY CONTRACTS.

Nothing in sections [41-1313](#) and [41-1314](#)[, Idaho Code,] shall be construed as including within the definition of discrimination or rebates or illegal inducements any of the following practices:

- (1) In the case of any contract of life insurance or life annuity, paying bonuses to policy holders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policy holders.
- (2) In the case of life insurance policies issued on the debit plan, making allowance to policy holders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.
- (3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.
- (4) Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check or payroll deduction plan or other similar plan at a reduced rate reasonably related to the savings made by use of such plan.
- (5) Issuance of life or disability insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, or modification of premium or rate based on amount of insurance; but any such issuance or modification shall not result in reduction in premium or rate in excess of savings in administration and issuance expenses reasonably attributable to such policies or contracts.

10.Coercion of borrower ref 41-1310, 1315

41-1310. PERSON FINANCING PURCHASE OF PROPERTY NOT TO FAVOR INSURER OR AGENT

No person engaged in the business of financing the purchase of real or personal property and no trustee, director, officer, agent or other employee of any such person **shall require, as a condition to financing the purchase of such property or to loaning money** upon the security of a mortgage thereon, or, as a condition for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, **purchase or place fire, property damage, theft, collision or personal injury insurance which is required to be maintained by him on the mortgaged property, from or through any particular insurance agent or agents, broker or brokers, or insurer or insurers.**

41-290. FRAUDULENT CLAIMS.

Any insurer which has facts to support a belief that a fraudulent claim is being or has been made shall, within **sixty (60) days** of the receipt of such notice, send to the director of insurance, on a form prescribed by the director, the information requested and such additional information relative to the claim and the parties claiming loss or damages as the director may require. The director of the department of insurance shall review such reports and select such claims as, in his judgment, may require further investigation. He shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The director of the department of insurance shall report any alleged violations of law which his investigations disclose to the appropriate licensing agency and prosecuting authority having jurisdiction with respect to any such violation.

If, upon examination, the director of the department of insurance determines that an insurer has intentionally not reported a claim when the insurer had facts to support a belief that the claim was fraudulent in accordance with the provisions of this chapter, the director may impose fines and penalties pursuant to section 41-327, Idaho Code, for each unreported suspected fraudulent claim.

41-293. INSURANCE FRAUD.

Insurance fraud includes:

- (1) (a) Any person who, with the intent to defraud or deceive an insurer for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, producer, practitioner or other person, any statement as part of, or in support of, a claim for payment or other benefit, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim; or
- (b) Any person who, with intent to defraud or deceive an insurer assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to any insurer,

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producer, practitioner or other person, in connection with, or in support of, any claim for payment or other benefit, knowing that such statement contains false, incomplete, or misleading information concerning any fact or thing material to such claim;

(c) Any person who, with intent to defraud or deceive, presents or causes to be presented to or by an insurer, a producer, practitioner or other person, a false or altered statement material to an insurance transaction;

(d) Any insurance producer or other person who, with intent to defraud or deceive, willfully takes premium money knowing that insurance coverage will not be effected;

(e) Any practitioner or other person who willfully submits a false or altered statement, with the intent of deceiving an insurer or other person in connection with an insurance transaction or claim;

(f) Anyone willfully making a false statement or material misrepresentation to an insurer, employer, practitioner or other person, with the intent to defraud or deceive an insurer or other person, to obtain or extend worker's compensation benefits;

(g) Anyone who offers or accepts a direct or indirect inducement to file or solicits another person to file a false statement, with intent to defraud or deceive an insurer;

(h) Any person who, with intent to defraud or deceive, transacts insurance of any kind or character, or transmits for a person other than himself an application for a policy of insurance, without proper licensing or after such license has been suspended or revoked;

(i) Any practitioner or any other person who, with intent to defraud or deceive, employs, uses or acts as a runner for the purpose of submitting a claim containing false, incomplete, or misleading information concerning any fact or thing material to such claim;

(j) Any employer or other person who, with intent to defraud or deceive, presents or causes to be presented to an insurer, producer or any other person or governmental agency any statement containing the number of employees, amount of payroll, job description or job title or any other statement material to worker's compensation insurance which contains false, misleading or incomplete information; or

(k) Any person who, with intent to defraud or deceive, obstructs the director in the conduct of any authorized examination.

(2) A fact, statement or representation is "material" if it includes any of the following:

(a) Any fact which, if communicated to the producer, insurer, adjuster or representative thereof, would induce him to either decline insurance altogether or not accept it unless a higher premium is paid by the insured;

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- (b) Any fact relating to a claim for insurance benefits which, if disclosed, would be a fair reason for rejecting a claim for insurance benefits;
- (c) Any fact, the knowledge or ignorance of which would naturally influence the insurer in making or refusing the contract, in estimating the degree or character of the risk, or in fixing the rate of premium;
- (d) Any fact, the knowledge or ignorance of which would naturally influence the insurer in accepting or rejecting a claim for insurance benefits or compensation, or in determining the amount of compensation or insurance benefits to be paid to the insured; or
- (e) Any fact that necessarily has some bearing on the subject matter of the insurance coverage or claim for benefits under an insurance contract.

(3) Any offense committed by use of a telephone, any means of electronic communication or mail as provided by this chapter may be deemed to have been committed at the place from which the telephone call or electronic communication was made, or mail was sent, or the offense may be deemed to have been committed at the place at which the telephone call, electronic communication or mail was received.

(4) **Any violator of this section is guilty of a felony and shall be subject to a term of imprisonment not to exceed fifteen (15) years, or a fine not to exceed fifteen thousand dollars (\$15,000), or both and shall be ordered to make restitution to the insurer or any other person for any financial loss sustained as a result of a violation of this section.** Each instance of violation may be considered a separate offense.

11. 41-1305. "TWISTING" PROHIBITED.

No person shall make or issue, or cause to be made or issued, any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the **policyholder** to **lapse, forfeit, surrender, lease, retain, exchange, or convert, or otherwise use or dispose of any insurance policy**, or any right or option thereunder, or in connection with any such statement and for like purpose fail to disclose all reasonably material facts, or a material fact necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

H. Penalties

41-117. GENERAL PENALTY. Each violation of this code for which a greater penalty is not provided by another provision of this code or by other applicable laws of this state, shall in addition to any applicable prescribed denial, suspension, or revocation of certificate of authority or license be punishable by an administrative penalty of not more than **one thousand dollars (\$1,000) for any individual** or natural person

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and not more than **five thousand dollars (\$5,000) for any other person**, imposed by the director, and upon conviction by a fine of not more than one thousand dollars (\$1,000) or **by imprisonment** in the **county jail** for a period not to exceed **six (6) months**, **or by both** such fine and imprisonment in the discretion of the court. Each instance of violation may be considered a separate offense.

41-1327. VIOLATIONS — PENALTY.

Any person who violates any provision of this chapter as to which a penalty is not expressly provided, or who violates a cease and desist order issued by the director under section [41-213](#), Idaho Code, after such order has become final, shall be subject to penalties as prescribed by or referred to in section [41-117](#), Idaho Code (general penalty).

41-1329A. UNFAIR CLAIMS SETTLEMENT PRACTICES — PENALTY.

The director, if he finds after a hearing, that an insurer has violated the provisions of section [41-1329](#), Idaho Code, may, in his discretion, impose an administrative penalty not to exceed **ten thousand dollars (\$10,000)** to be deposited by the director as provided in section [41-406](#), Idaho Code, and may, in addition to the fine, or in the alternative to the fine, refuse to continue or suspend or revoke an insurer's certificate of authority.

41-1329. UNFAIR CLAIM SETTLEMENT PRACTICES. Pursuant to section [41-1302](#), Idaho Code, committing or performing any of the following acts or omissions intentionally, or with such frequency as to indicate a general business practice shall be deemed to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

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- (8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
- (10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.