

# Idaho Bail Bond Agent Examination Content Outline

(50 scored questions total. 75-minute time limit)

## GENERAL KNOWLEDGE

### I. INSURANCE CONTRACTS

- A. Filing and approval of policy forms
- B. Payment of claims
- C. Power to contract

### II. BAIL BOND AUTHORITY

- A. Criminal Court System
- B. Criminal Code
- C. Laws Relating to Bail Bond
- D. Early surety of defendant
- E. Recordkeeping,
- F. Fiduciary Responsibility
- G. Trust Accounting
- H. Premiums
- I. Collections permitted
- J. Charges permitted

### III. DEFINITIONS Ref: Black's Law Dictionary, Dictionary of Insurance Terms

- A. Bail bonds
- 1. Qualification bond
- 2. Surety bond
- 3. Appearance bond
- 4. Cash bond
- 5. Civil bond
- 6. Personal Recognizance Bond
- B. Bail
- C. Principal
- D. Indemnitor
- E. Surety
- F. Recognizance
- G. Exoneration
- H. Extradition
- I. Bail Agent
- J. Person
- K. Forfeitures
- L. Collateral
- M. Power of attorney

## IDAHO SPECIFIC KNOWLEDGE

Ref: All references are to Idaho Insurance Laws Title 41 unless otherwise noted

### I. IDAHO STATUTES, RULES, AND REGULATIONS COMMON TO ALL LICENSES

- A. Responsibilities of the Director of the Department of Insurance ... *Ref: 41-117, 41-117A, 41-202, 41-203, 41-210 to 41-213, 41-219, 41-220, 41-232, 41-235, 41-247, 41-1321*
  - 1. Appointment
  - 2. Examinations
  - 3. Hearings/notice of hearings/orders
  - 4. General duties and powers
  - 5. Penalties
- B. Definitions ... *Ref: 41-106, 41-110, 41-111, 41-112, 41-301, 41-302, 41-305, 41-306, 41-2902*
  - 1. Domestic, foreign, alien companies
  - 2. Authorized and unauthorized companies
  - 3. Stock and mutual companies and reciprocals
  - 4. Transacting insurance
  - 5. Certificate of authority
- C. Licensing ... *Ref: 41-1003, 41-1004, 41-1005, 41-1006 to 41-1013, 41-1016, 41-1018, 41-1019, 41-1026, 41-1036, 41-1103, 41-1223, IDAPA 18.01.53.012.01*
  - 1. Persons required to be licensed
    - a. Producer
    - b. Resident/nonresident
    - c. Surplus lines
  - 2. Producer appointment/termination of appointment
  - 3. Obtaining a license
    - a. Qualifications
    - b. License application
    - c. Written examinations
    - d. Exemptions/exceptions
  - 4. Maintaining a license
    - a. Continuing education
    - b. Fees/renewal
    - c. Record keeping
    - d. License expiration
    - e. Change of address/place of business
    - f. Suspension or revocation of licenses/Felony convictions
- D. Producer responsibilities ... *Ref: 41-1017, 41-1021, 41-1024, 41-1030; 41-1323, IDAPA 18.01.52*
  - 1. Fiduciary capacity
  - 2. Reporting of actions
  - 3. Commissions and compensation
  - 4. Charging of fees and disclosure requirements
- E. Insurance contracts ... *Ref: 41-1328, 41-1807, 41-1812, 41-1828*
  - 1. Filing and approval of policy forms
  - 2. Payment of claims
  - 3. Power to contract

F. Marketing practices ... *Ref: 41-117, 41-258, 41-290, 41-293, 41-1016, 41-1303 to 41-1306, 41-1308 to 41-1315, 41-1327 to 41-1329A, 41-1839, 41-3611, Bulletin 03-08*

- 1. Unfair claims practices
- 2. Penalties
- 3. Unfair methods of competition
  - a. Fraud
  - b. Twisting
  - c. Rebating
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  - e. False advertising
  - f. Misrepresentation
  - g. Coercion of borrower
  - h. Unfair discrimination
  - i. False financial statements
  - j. Boycott, coercion, intimidation

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**II. BAIL BOND AUTHORITY ... *Ref: 41-1037 through 41-1045; 19-2905; 19-2914;* ... *Ref: IDAPA 18.06.01, IDAPA 18.01.02;***

*Statewide Guidelines for the Uniform Administration of Bail and Bail Bonds in All Trial Courts in the State of Idaho*

- A. Criminal Court System and Criminal Code
- B. Laws Relating to Bail Bond
- C. Early surety of defendant
- D. Recordkeeping, Fiduciary Responsibility and Trust Accounting
- E. Premiums
- F. Collections and charges permitted
- G. Statewide Guidelines for the Uniform Administration of Bail and Bail Bonds in All Trial Courts in the State of Idaho

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**III. DEFINITIONS ... *Ref: 19-2905; 41-1038***

- A. Bail
- B. Bail bonds
- C. Surety
- D. Collateral
- E. Forfeitures
- F. Exoneration
- G. Extradition
- H. Bail Agent
- I. Person

## Statutes, Bulletins and IDAPAs for the Idaho Knowledge Portion of the Exam

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### 19-2905. DEFINITIONS.

As used in this chapter, unless the context requires otherwise:

- (1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.
- (2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.
- (3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.
- (4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.
- (5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.
- (6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.
- (7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.
- (8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.
- (9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.
- (10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.
- (11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.
- (12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.
- (13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.
- (14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.
- (15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.
- (16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.
- (17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to [title 41](#), Idaho Code.
- (18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

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### 19-2914. ARREST OF DEFENDANT FOR SURRENDER.

At any time before the exoneration of bail, the surety insurance company or its bail agent or the person posting a property bond or cash deposit may empower a bail enforcement agent to arrest the defendant at any place within the state by signing an affidavit extending such authority.

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### 41-106. "DOMESTIC," "FORGEIGN," "ALIEN" INSURANCE DEFINED.

- (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) A "foreign" insurer is one formed under the laws of a jurisdiction other than this state.
- (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) Except where distinguished by context, "foreign" insurers includes also "alien" insurers.

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### 41-110. "AUTHORIZED," "UNAUTHORIZED" INSURER DEFINED.

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

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

- (1) A "certificate of authority" is one issued by the director evidencing the authority of an insurer to transact insurance in this state.
- (2) 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.

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**41-112. "TRANSACTION 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.

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**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.

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**41-117A. PENALTY FOR TRANSACTION 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.

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**41-202. DIRECTOR -APPOINTMENT -TERM -QUALIFICATIONS.**

- (1) The director of the department of insurance shall be the chief executive officer of the department of insurance.
- (2) The director shall be appointed by the governor and shall hold office for a term of four (4) years, subject to earlier removal by the governor. A vacancy in the office of director shall be filled for the balance of the unexpired term only.
- (3) The governor shall not appoint as director any individual, and no individual shall hold the office of director, who is not qualified therefor as follows:
  - (a) Must be a qualified elector of the state of Idaho; and
  - (b) Must have had at least five (5) years' practical experience in one or more of the types of insurance business subject to regulation by the director, 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.

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**41-203. TERMS CONSTRUED.**

Wherever the words "commissioner of insurance" or "insurance commissioner" appear in title 41, Idaho Code, or elsewhere in the Idaho Code, they shall be understood and construed to mean the director of the department of insurance.

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**41-210. GENERAL POWERS, DUTIES.**

- (1) The director shall enforce the provisions of this code, and shall execute the duties imposed upon him by this code.
- (2) The director shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code. (3) 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.
- (4) For any document required to be filed with the director or the department of insurance under the laws of this state, the director may specify the place and manner of filing of the document, including whether an electronic or paper filing is required or acceptable.
- (5) The director shall have such additional powers and duties as may be provided by other laws of this state.

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**41-211. RULES.**

- (1) 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.
- (2) Any such rule affecting persons or matters other than the personnel or the internal affairs of the department shall be made or amended in accordance with the provisions of chapter 52, title 67, Idaho Code.
- (3) 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.

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**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.

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**41-213. ENFORCEMENT.**

- (1) The director may institute such suits or other lawful proceedings as he may deem necessary for the enforcement of any provision of title 41, Idaho Code. 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 title 41, Idaho Code, any other law the director has authority to enforce, or any rule or order of the director, the director may, in accordance with the procedures set forth in title 41, Idaho Code, and chapter 52, title 67, Idaho Code:
  - (a) Issue an order requiring the person to cease and desist from any prohibited act or practice;
  - (b) Issue an order affecting a person's license for such reasons as set forth in title 41, Idaho Code;
  - (c) Issue an order imposing an administrative penalty as provided in title 41, Idaho Code; and
  - (d) Initiate any action in district court for the same relief or any relief authorized by title 41, Idaho Code.
- (2) If the director believes that any person is violating or about to violate any provision of title 41, Idaho Code, or any order or requirement of the director issued or promulgated pursuant to authority expressly granted the director by any provision of title 41, Idaho Code, or by other law, the director may bring an action against such person in the name of the people of the state of Idaho in a district court of this state to enjoin such person from continuing such violation or doing any act in furtherance thereof. In the action the court may enter such order or judgment granting such preliminary or final injunction as the court determines to be proper.
- (3) If the director has reason to believe that any person has violated any provision of title 41, Idaho Code, or any provision of other law as applicable to insurance operations, 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.
- (4) 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.

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**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, including the attorney in fact of a reciprocal insurer in so far as insurer transactions are concerned, as often as he deems advisable. The director or any of the director's examiners may conduct an examination, in accordance with the provisions of this section, of any company as often as the director in his sole discretion deems appropriate but shall, at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five (5) years. In scheduling and determining the nature, scope and frequency of the examinations, the director shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the director exercises discretion under the provisions of this section.
- (2) Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the director.
- (3) The director shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(4) In lieu of an examination under the provisions of this section, of any foreign or alien insurer licensed in this state, the director may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port of entry until January 1, 1994.

Thereafter, such reports may only be accepted if the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program or, the examination is performed under the supervision of an accredited insurance department or with participation of one (1) or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(5) The term "company" as used in this section shall mean any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the director.

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#### **41-220. 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:

- (1) any insurance agent, broker, solicitor, consultant, surplus line broker, general agent, or adjuster.
- (2) Any person(s) having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.
- (3) Any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise.
- (4) Any person engaged in this state in, or proposing to be engaged in this state in, or holding himself out in this state as so engaging or proposing, or in this state assisting in, the promotion or formation of an insurer or insurance holding corporation, or corporation to finance an insurer or the production of its business.

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#### **41-232. HEARINGS IN GENERAL.**

- (1) The director may hold a hearing which he deems necessary for any purpose within the scope of this code.
- (2) 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).
- (3) Any such demand for a hearing shall summarize the information and grounds to be relied upon as a basis for the relief to be sought at the hearing.
- (4) 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 of the director where a hearing is otherwise authorized or required by law, if a party with respect to whom the hearing is to be held waives the hearing in writing, or fails to plead, or to defend or prosecute, as the case may be, and that fact is made known to the director by affidavit or otherwise, 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.

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#### **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. The published notice shall state the time and place of the hearing and shall specify the matters to be considered thereat. At the time of first publication the director shall

mail to every advisory organization which has filed with him pursuant to section 41-1425, Idaho Code, a copy of the published notice if the proposed hearing would affect any interest of the members of such advisory organization.

(3) All such notices, other than published notices, shall be given as provided in section 41-212, Idaho Code.

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**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.

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**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.

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**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, 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;
  - (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.

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**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.

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**41-302. "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.

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**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.

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**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 required of an insurer with respect to the following:

- (1) 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.
- (2) 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.
- (3) Transactions pursuant to surplus lines coverages lawfully written under chapter 12, title 41, Idaho Code.
- (4) Reinsurance, when transacted by an insurer duly authorized by its state of domicile to transact the kind of insurance involved.
- (5) The continuation and servicing of life insurance or disability insurance policies or annuity contracts remaining in force as to residents of this state if the insurer has withdrawn from the state and is not transacting new insurance therein.
- (6) A foreign insurer licensed and authorized to sell individual or group accident and sickness insurance in another state as defined pursuant to section 41-306A, Idaho Code, and the insurer obtains a certificate of authority pursuant to that section.

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**41-1003. DEFINITIONS.**

- (1) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- (2) "Home state" means the District of Columbia and any state or territory of the United States or any province of Canada in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.
- (3) "License" means a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.
- (4) "Limited lines insurance" is insurance which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 41-1008(1)(a) through (g), Idaho Code, and shall include, but not be limited to: credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP) insurance, transportation baggage insurance, transportation

ticket policies covering personal accident insurance, pet insurance, portable electronics insurance, travel insurance or any other line of insurance that the director deems necessary to recognize for the purposes of complying with section 41-1009(5), Idaho Code.

- (5) "Limited lines producer" means a producer authorized by the director to sell, solicit or negotiate limited lines insurance. "Limited lines producer" includes a "limited lines travel insurance producer" as used in sections 41-1090 through 41-1096, Idaho Code.
- (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.
- (7) "Person" means an individual or a business entity.
- (8) "Producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
- (9) "Resident" means a person whose home state is Idaho or any other particular state identified in conjunction with the use of the term.
- (10) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
- (11) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company or companies.
- (12) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance for or on behalf of an insurer.
- (13) "Uniform application" means the current version of the national association of insurance commissioners (NAIC) uniform application for resident and nonresident producer licensing.
- (14) "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

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#### **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].

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#### **41-1005. EXCEPTIONS TO LICENSING.**

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

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#### **41-1006. APPLICATION FOR EXAMINATION.**

- (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 41-1008(4) or 41-1012, Idaho Code. 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 as promulgated by the director pursuant to section 41-401, Idaho Code.
- (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

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#### **41-1007. APPLICATION FOR PRODUCER LICENSE.**

- (1) A person applying for a resident insurance producer license shall make application to the director on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. Before approving the application, the director shall find that the applicant:
  - (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.
- (2) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the director shall find that:
  - (a) The business entity has paid the fees prescribed by the director pursuant to section 41-401, Idaho Code; and
  - (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.
- (3) The director may require any documents which are reasonably necessary to verify the information contained in an application.
- (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 as required in section 41-1006, Idaho Code. In addition, such course of instruction may be administered in place of any continuing education requirements pursuant to section 41-1013, Idaho Code.

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**41-1008. PRODUCER LICENSE.**

(1) Unless denied licensure pursuant to section 41-1016, Idaho Code, persons who have met the requirements of sections 41-1006 and 41-1007, Idaho Code, 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 promulgated by the director pursuant to section 41-401, Idaho Code, is paid and the continuing education requirements for resident insurance producers are met in accordance with section 41-1013, Idaho Code.

(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. 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.

(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 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 pursuant to section 41-1007(2)(b), Idaho Code.

(7) 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.

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**41-1009. NONRESIDENT PRODUCER LICENSE.**

(1) Unless denied licensure pursuant to section 41-1016, Idaho Code, 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 by rule pursuant to section 41-401, Idaho Code;
- (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 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.

(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.

(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.

(5) Notwithstanding any other provision of this chapter, a person licensed as a limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to subsection (1) of this section, granting the same scope of

authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited lines insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 41-1008(1)(a) through (g), Idaho Code.

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#### **41-1010. NONRESIDENT PRODUCERS-SERVICE OF PROCESS.**

(1) 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.

(2) The appointment shall be irrevocable for as long as there could be any cause of action against the licensee arising out of his insurance transactions in or with respect to this state.

Duplicate copies of such legal process against the licensee shall be served upon the director by a person competent to serve a summons. At the time of service the plaintiff shall pay the director an appropriate fee to be determined by rule and not exceeding thirty dollars (\$30.00).

(3) Upon receiving such service, the director shall send one (1) copy of the process by registered or certified mail with return receipt requested to the defendant licensee at his last address of record with the director.

(4) The director shall keep a record of the day and hour of such service upon him. No proceedings shall be brought against the producer, and the producer shall not be required to appear, plead or answer until the expiration of thirty (30) days after the date of service upon the director.

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#### **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.

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#### **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.

(2) 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.

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#### **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.

(2) The director may fix the dates of expiration for licenses in such manner as is deemed by him to be advisable for an efficient distribution of the workload of his office. If the expiration date for a particular license or appointment would shorten the period for which the license or appointment continuation fee has been paid, no refund of an unearned fee shall be made. If the expiration date for a particular license or appointment would lengthen the period for which a license or appointment continuation fee has been paid, the director shall charge no additional fee for such lengthened period.

(3) Any license referred to in subsection (1) of this section for which no request for continuation, fee and completed continuing education statement are timely received by the director shall be deemed to have expired at midnight on the applicable expiration date.

(4) All sums tendered as fees for continuations of licenses as producer, limited lines producer, adjuster or surplus line broker shall be deemed earned when paid and shall not be subject to refund, except that the director shall refund any duplicate payment of fees.

(5) For the protection of the people of this state the director shall establish, by rule, additional educational requirements designed to maintain and improve the insurance skills and knowledge of resident producers after licensure by the department of insurance.

The director shall also establish, by rule, an advisory committee comprised of representatives from each segment of the insurance industry to assist the director in prescribing additional educational requirements. Such rules promulgated by the director shall include limits on the terms of service for members of the committee.

(6) Subject to subsection (3) of this section, the director shall not permit to be continued the license of any producer who is licensed pursuant to section 41-1007, Idaho Code, who is a resident of this state, unless such person has demonstrated to the satisfaction of the director that in addition to meeting the standards contained in sections 41-1007, (qualifications for producer license), Idaho Code, as may be applicable, all the additional educational requirements as the director may prescribe by rule have been met.

(7) Failure of the licensee to comply with any applicable additional education requirements prescribed by the director by rule by the expiration date of the license shall be grounds for the director to refuse to continue any such license. The licensee may reinstate his or her license by submitting proof of all education requirements within ninety (90) days from the date of expiration of the license and by submitting an additional administrative penalty of one hundred dollars (sections 41-1007, (qualifications for producer license), Idaho Code, as may be applicable, all the additional educational requirements as the director may prescribe by rule have been met.

(8) Failure of the licensee to comply with any applicable additional education requirements prescribed by the director by rule by the expiration date of the license shall be grounds for the director to refuse to continue any such license. The licensee may reinstate his or her license by submitting proof of all education requirements within ninety (90) days from the date of expiration of the license and by submitting an additional administrative penalty of one hundred dollars (\$100) for a delinquency of one (1) day to thirty (30) days, two hundred dollars (\$200) for a delinquency of one (1) day to thirty (30) days, two hundred dollars (00) for a delinquency of thirty-one (31) days to sixty (60) days, and three hundred dollars (\$300) for a delinquency of sixty-one (61) days to ninety (90) days. 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.

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#### **41-1016. ADMINISTRATIVE PENALTY -SUSPENSION, REVOCATION, REFUSAL OF LICENSE.**

(1) 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, chapter 27, title 41, Idaho Code (title insurance), chapter 11, title 41, Idaho Code (adjusters), or chapter 12, title 41, Idaho Code (surplus lines brokers), 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 67-9411(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.

(2) 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
  - (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.

(3) 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.

(4) 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.

(5) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by title 41, Idaho Code, against any person who is under investigation for or charged with a violation of title 41, Idaho Code, or 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.

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#### **41-1017. COMMISSIONS.**

- (1) An insurance company or insurance producer shall not pay a commission, service fee or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is not duly licensed as required under this chapter.
- (2) A person shall not accept a commission, service fee or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is not duly licensed as required under this chapter.
- (3) Renewals or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if that person was duly licensed as required under this chapter at the time of the sale, solicitation or negotiation.
- (4) An insurer or insurance producer may pay or assign commissions, service fees or other valuable consideration to any person, regardless of whether that person is licensed as a producer, unless the payment or assignment would violate a specific section of title 41, Idaho Code, including, but not limited to, sections 41-1314 and 41-2708, Idaho Code, or department rule.

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#### **41-1018. APPOINTMENTS.**

- (1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.
- (2) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within

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#### **41-1019. NOTIFICATION TO DIRECTOR OF TERMINATION.**

- (1) 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, using a format prescribed by the director, if the reason for termination is one of the reasons set forth in section 41-1016, Idaho Code, or the insurer has knowledge that the producer was found by a court, governmental body or self-regulatory organization authorized by law to have engaged in any of the activities set forth in section 41-1016, Idaho Code. Upon the written request of the director, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.
- (2) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer for any reason not set forth in section 41-1016, Idaho Code, shall notify the director within thirty (30) days following the effective date of the termination, using a format prescribed by the director. Upon written request of the director, the insurer shall provide additional information, documents, records or other data pertaining to the termination.
- (3) The insurer or authorized representative of the insurer shall promptly notify the director in a format acceptable to the director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the director in accordance with subsection (1) of this section.
- (4) 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. If the producer is terminated for cause for any other reasons listed in section 41-1016, Idaho Code, the insurer shall provide a copy of the notification to the producer

at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(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.

(5) Immunities.

(a) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the director, or an organization of which the director is a member and that compiles information and makes it available to other insurance directors or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the director from an insurer or producer or as a result of any statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (1) of this section was reported to the director, provided that the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) In any action brought against a person that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the director, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

(6) Confidentiality.

(a) 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.

(b) In order to assist in the performance of the director's duties under this chapter, the director:

(i) May share documents, materials or other information, including confidential and privileged documents and materials or information subject to paragraph (a) of this subsection, with other state, federal and international regulatory agencies and law enforcement authorities, and with the national association of insurance commissioners, its affiliates or subsidiaries, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials or other information;

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

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

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

(d) 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.

(7) 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 in accordance with section 41-1016 or 41-327, Idaho Code.

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#### **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.

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**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.

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

(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.

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**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.

(2) Notwithstanding any other provision of title 41, Idaho Code, and as provided in this subsection, retail producers and wholesale producers may charge a fee or be compensated by a combination of fees and commissions.

- (a) Before charging a fee to a consumer, a retail producer shall provide to the consumer a written statement that describes the services the retail producer will perform and the fees the retail producer will receive. Acceptance by the consumer of a fee arrangement shall be evidenced by the consumer signing and dating the fee statement.
- (b) Before charging a fee to a retail producer, a wholesale producer shall provide to the retail producer a written statement that describes the services the wholesale producer will perform and the fees the wholesale producer will receive. Information regarding the amount of the fees charged by the wholesale producer shall be disclosed in writing on the face of the policy as a separately itemized charge.

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**41-1036. RECORDS.**

(1) 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.

(2) Records as provided in subsection (1) of this section 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.

(3) 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. The records may be maintained offsite 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.

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#### **41-1037. REQUIREMENTS FOR BAIL AGENTS -FINDINGS -PURPOSE.**

(1) Sections 41-1037 through 41-1045, Idaho Code, provide requirements for the regulation of bail agents in this state in addition to the requirements generally applicable to producers under this chapter.

(2) The legislature finds that:

- (a) Bail agents provide an important local retail service to the retail consumers of bail bonds;
- (b) Retail consumers of bail bonds and bail agents require a uniform and consistent regulatory framework that governs retail bail practices; and
- (c) There is a need to provide consumer protection from unscrupulous and unfair practices.

(3) The purpose of this chapter is to provide that the department shall uniformly and exclusively license bail agents throughout the state of Idaho and that the department shall regulate such agents and bail transactions, provided the supreme court shall retain its inherent authority to regulate the transaction of bail with the court, including promulgating rules and uniform guidelines.

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#### **41-1038. DEFINITIONS.**

As used in sections 41-1037 through 41-1045, Idaho Code:

- (1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.
- (2) "Bail agent" means a person who is a licensed producer in the line of surety insurance that is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial proceedings.
- (3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.
- (4) "Collateral" means property of any kind given as security to obtain a bail bond.
- (5) "Department" means the department of insurance.
- (6) "Director" means the director of the department of insurance.
- (7) "Person" means an individual or a business entity.
- (8) "Retail consumers of bail bonds" means a defendant and any person who provides collateral to obtain any portion of a bail bond.
- (9) "Surety" or "surety insurance company" means an admitted insurer authorized in the line of surety pursuant to title 41, Idaho Code.

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#### **41-1039. LICENSE REQUIRED.**

- (1) No person shall hold himself out to be a bail agent or sell, solicit, negotiate, advise or consult regarding the terms of bail bond contracts in this state unless that person is licensed as a producer in the line of surety insurance. The director is vested with the exclusive authority to license bail agents and the authority to regulate the solicitation, negotiation and transaction of bail with retail consumers of bail bonds, provided however, that a court retains the authority to refuse to accept bail bonds from a surety or a bail agent pursuant to its inherent authority, pursuant to Idaho Code, or as provided by supreme court rules, guidelines or appellate decisions.
- (2) A bail agent is authorized to execute and countersign undertakings of bail, including bail bonds, in connection with any judicial proceedings in each of the judicial districts of the state. Any sheriff or clerk of the district court shall accept bail bonds only from a bail agent, unless otherwise ordered by the court pursuant to subsection (1) of this section.
- (3) In addition to the authority to revoke, suspend or refuse to issue a bail agent's license pursuant to section 41-1016, Idaho Code, the director shall suspend a license for a period not to exceed six (6) months, after mailing notice to the last known address of the bail agent but prior to a hearing, if such bail agent:
  - (a) Has been convicted or has entered a guilty plea to any felony or to a misdemeanor evidencing theft, dishonesty, intimidation, threats, or violence; or
  - (b) Intentionally and fraudulently makes a false statement to a court in connection with a bail transaction.
- (4) In addition to the provisions of subsection (3) of this section, the director may also suspend a license for a period not to exceed six (6) months, after mailing notice to the last known address of the bail agent but prior to a hearing, for reasons set forth in the rules of the department.

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#### **41-1040. BOND REQUIRED.**

After January 1, 2004, a producer shall not act as a bail agent unless the producer first files with the department and thereafter maintains in force a surety performance bond, executed by an authorized surety insurer, in favor of the director in the amount of fifteen thousand dollars (\$15,000). Such bond shall be held in trust for the benefit and protection of the public against a judicial or administrative determination by the department of loss by acts of fraud or dishonesty by the bail agent.

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**41-1041. RECORDS.**

- (1) The bail agent shall provide copies of the bail contract, premium receipts, collateral receipts, and any related documents to the defendant and any cosigner at the time of the bail transaction.
- (2) In addition to the records set forth in section 41-1036, Idaho Code, a bail agent shall also maintain complete records pertaining to any collateral received and any charges collected for any bail bond transaction for at least five (5) years after the liability of the surety has been terminated.

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**41-1042. COLLECTIONS AND CHARGES PERMITTED.**

- (1) Notwithstanding any other provision of this chapter, a bail agent in any bail transaction shall not, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following:
  - (a) To pay premiums at the rates established by the insurer;
  - (b) To provide collateral;
  - (c) To reimburse the bail agent for actual expenses incurred in connection with the bail transaction, limited to the following:
    - (i) Expenditures actually and reasonably incurred to verify underwriting information or to pay for notary public fees, recording fees, or necessary long distance telephone or telegram fees; provided however, that the total of all such expenditures reimbursed shall not exceed fifty dollars (\$50.00); and
    - (ii) Travel expenses incurred more than twenty-five (25) miles from a bail agent's place of business, which includes any city or locality in which the bail agent advertises or engages in bail business, up to the amount allowed by the internal revenue service for business travel for the year in which the travel occurs.
- (2) Except as permitted under this section, a bail agent shall not make any charge for his service in a bail transaction and the bail agent shall fully document all expenses for which the bail agent seeks reimbursement.

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**41-1043. COLLATERAL.**

- (1) A bail agent may accept collateral in connection with the bail bond transaction if the collateral is not excessive in relation to the face amount of the bond.
- (2) All collateral received by a bail agent is received in a fiduciary capacity.
  - (a) Collateral received in the form of cash must be deposited and maintained in a trust account that is separate and apart from any other funds or assets of the bail agent.
  - (b) Collateral other than cash must be maintained in a separate and secure location apart from the assets of the bail agent.
- (3) Collateral received must be returned to the person who deposited the collateral with the bail agent within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by collateral, is discharged.
- (4) A copy of the order of the court wherein the bail or undertaking was ordered exonerated shall be deemed *prima facie* evidence of exoneration or termination of the liability.
- (5) If a bail agent accepts collateral, the bail agent shall give a written receipt for the collateral to the person from whom the collateral was received. The receipt shall include a full and detailed accounting of the collateral received.

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**41-1044. EARLY SURRENDER OF DEFENDANT TO CUSTODY -RETURN OF PREMIUM.**

- (1) A bail agent shall immediately return in full all premium and collateral associated with a bail transaction if the bail agent without good cause or in violation of the bail contract surrenders the defendant to custody before the time specified in the undertaking of bail or the bail bond for the appearance of the defendant or, if no time is specified in the undertaking or bond, before the time the defendant is lawfully required to appear in court.
- (2) A bail agent has good cause for the early surrender of a defendant if the defendant has changed addresses without notifying the bail agent, engaged in self-concealment, left the jurisdiction of the court without permission of the bail agent or the court, materially breached the terms of the bail contract, or has otherwise acted in a manner that materially increases the risk of loss assumed by the bail agent or surety. A failure to pay the premium when due shall constitute good cause for early surrender only if at the time of the bail transaction the bail agent obtains the payor's signature on a written statement clearly stating the amount of premium due, the date by which the premium must be paid and that the failure to pay the premium by the due date will result in the early surrender of the defendant and forfeiture of any premium paid.
- (3) Before surrendering a defendant early for good cause, a bail agent shall prepare a signed and dated written statement fully describing the facts upon which the agent relied in determining that good cause exists for the early surrender of the defendant. The statement shall be maintained as a record of the bail transaction and shall be made available to the department upon request. A bail agent who surrenders a defendant early for good cause shall not be entitled to seek recovery of any unpaid premium.

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**41-1045. RESPONSIBILITY FOR ACTIONS OF OTHERS.**

For purposes of licensing and regulation under title 41, Idaho Code, a bail agent is responsible for the actions of the bail agent's employees, contractors and agents acting on the bail agent's behalf in relation to bail transactions and matters arising out of bail transactions.

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**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.

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**41-1223. LICENSING OF SURPLUS LINES BROKERS**

- (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.
- (3) The license and continuation fee shall be as set forth by rule pursuant to section [41-401](#), Idaho Code.
- (4) The license and licensee shall be subject to the applicable provisions of [chapter 10, title 41](#), Idaho Code (producer licensing).
- (5) When a national insurance producer database of the national association of insurance commissioners, or other equivalent uniform national database, for the licensure of surplus line brokers is created, the director may participate in such database.

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

- (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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**41-1311. SELLER OF PROPERTY NOT TO FAVOR INSURER OR AGENT.**

No seller of real or personal property, and no person engaged in the business of selling real or personal property, and no trustee, director, officer, agent or other employee of any such seller or such other person shall require, as a condition to the selling of such property, or for the performance of any other act in connection therewith, that the person to whom such property is to be sold, purchase or place any fire, property damage, theft, collision or personal injury insurance covering such property, from any particular insurance agent or agents, broker or brokers, or insurer or insurers.

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**41-1312. RIGHTS WITH RESPECT TO INSURANCE ON PROPERTY SOLD OR PURCHASED.**

Sections 41-1310 or 41-1311 shall not prevent:

- (1) The reasonable exercise by any person engaged in any such business of his right to approve or disapprove the insurance or the insurer selected to write the insurance, on reasonable grounds related to the risk selection or underwriting practices of the insurer, the adequacy and terms of the coverage with respect to the interest of such person to be insured thereunder, the quality of service rendered by the insurer or its representative in connection with the insurance, and the financial standards to be met by the insurer; nor of his right to furnish such insurance or to renew any insurance required by the contract of sale or mortgage, trust deed or other loan agreement if the borrower or purchaser has failed to furnish the insurance or renewal thereof within such reasonable time or form as may be specified in the sale or loan agreement. The lender or vendor shall not refuse to accept insurance provided by an acceptable insurer on the ground that such insurance provides more coverage than is required in the sale or loan agreement, unless the additional coverage consists of life or disability insurance.
- (2) The free choice of insurance agent or broker by any borrower or purchaser at any time, and he may revoke any designation of insurance agent or broker at any time irrespective of the provisions of any loan or purchase agreement, mortgage, or trust deed.
- (3) The exercise by any person engaged in such business of his right to furnish such insurance or to renew such insurance, and to charge the account of the borrower or purchaser with the costs thereof, if the borrower or purchaser fails to deliver to the lender or vendor such insurance at least thirty (30) days prior to expiration of the existing policy. If an insurance policy procured by the borrower or purchaser is subsequently substituted for that then in force, the lender or vendor may impose a reasonable service charge as determined by the director for the transaction, and payment of such charge by the agent or broker shall not be a violation of any other provision of this code. No service charge shall be imposed for normal insurance changes made during the term of the policy.
- (4) The director may adopt a uniform statewide schedule of permissive maximum charges for the substitution of policies authorized in subdivision (3) above.

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**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 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.

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#### **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.

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#### **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.

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#### **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.

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#### **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 under section 41-117 (general penalty).

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#### **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).

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#### **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.

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#### **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;
- (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.

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#### **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.

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#### **41-1807. POWER TO CONTRACT -PURCHASE OF INSURANCE BY MINORS.**

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

(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. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under (a) any contract for annuity or for insurance upon his own life, body or health, or (b) any contract such minor effected upon his own property, liabilities or other interests, or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.

(3) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above, shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor.

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**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. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the director. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(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 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.

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**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.

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**41-1839. ALLOWANCE OF ATTORNEY'S FEES IN SUITS AGAINST OR IN ARBITRATION WITH INSURERS.**

(1) Any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature whatsoever that fails to pay a person entitled thereto within thirty (30) days after proof of loss has been furnished as provided in such policy, certificate or contract, or to pay to the person entitled thereto within sixty (60) days if the proof of loss pertains to uninsured motorist or underinsured motorist coverage benefits, the amount that person is justly due under such policy, certificate or contract shall in any action thereafter commenced against the insurer in any court in this state, or in any arbitration for recovery under the terms of the policy, certificate or contract, pay such further amount as the court shall adjudge reasonable as attorney's fees in such action or arbitration.

(2) In any such action or arbitration, if it is alleged that before the commencement thereof, a tender of the full amount justly due was made to the person entitled thereto, and such amount is thereupon deposited in the court, and if the allegation is found to be true, or if it is determined in such action or arbitration that no amount is justly due, then no such attorney's fees may be recovered.

(3) This section shall not apply as to actions under the worker's compensation law, title 72, Idaho Code. This section shall not apply to actions or arbitrations against surety insurers by creditors or claimants against a principal and arising out of a surety or guaranty contract issued by the insurer as to such principal, unless such creditors or claimants shall have notified the surety of their claim, in writing, at least sixty (60) days prior to such action or arbitration against the surety. The surety shall be authorized to determine what portion or amount of such claim is justly due the creditor or claimant and payment or tender of the amount so determined by the surety shall not be deemed a volunteer payment and shall not prejudice any right of the surety to indemnification and/or subrogation so long as such determination and payment by the surety be made in good faith. Nor shall this section apply to actions or arbitrations against fidelity insurers by claimants against a principal and arising out of a fidelity contract or policy issued by the insurer as to such principal unless the liability of the principal has been acknowledged by him in writing or otherwise established by judgment of a court of competent jurisdiction.

(4) Notwithstanding any other provision of statute to the contrary, this section and section 12-123, Idaho Code, shall provide the exclusive remedy for the award of statutory attorney's fees in all actions or arbitrations between insureds and insurers involving disputes arising under policies of insurance. Provided, attorney's fees may be awarded by the court when it finds, from the facts presented to it that a case was brought, pursued or defended frivolously, unreasonably or without foundation. Section 12-120, Idaho Code, shall not apply to any actions or arbitrations between insureds and insurers involving disputes arising under any policy of insurance.

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**41-2902. "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 pursuant to [chapter 23, title 67](#), Idaho Code.

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**41-2903. SCOPE OF CHAPTER - Existing insurers.**

(1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals. Political subdivisions of the state of Idaho participating in a reciprocal insurance program shall retain all rights, obligations, and immunities which inure to their respective benefit or duty, without compromise or modification, as otherwise provided by law.

(2) Every reciprocal insurer in its own name as in the case of an individual may purchase, receive, own, hold, lease, mortgage, pledge or encumber, and may by deed of trust or otherwise, manage and sell real estate for the purposes and objects of the reciprocal including, but not limited to, investment for the production of income, or for its accommodation in the convenient transaction of its business. Any contract including, but not limited to, deeds, leases, mortgages, deeds of trust, purchase of sale agreements or any other contract to be executed in the name of the reciprocal insurer, may be executed by the attorney designated by the subscribers of the reciprocal insurer.

(3) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

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**41-3611. SUBROGATION OF ASSOCIATION TO RIGHTS OF CLAIMANTS -RECEIVER, LIQUIDATOR, OR SUCCESSOR BOUND BY ASSOCIATION CLAIM SETTLEMENTS-PERIODIC FILING OF STATEMENTS OF PAID CLAIMS WITH RECEIVER OR LIQUIDATOR.**

(1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

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

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

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#### **Bulletin, 18.01.04 (Bail Rule)**

The purpose of this bulletin is to remind bail agents and surety carriers that the 2011 Legislature approved a new rule issued by the Department relating to permitted bail practices in the State of Idaho. became effective April 7, 2011. All persons involved in the business of bail in Idaho should carefully review this rule. The full text of the rule is available through the Department's website at [www.doi.idaho.gov](http://www.doi.idaho.gov), by clicking on the link to rules.

Following is a brief summary of the pertinent sections of Rule 18.01.04: A bail agent must notify the Department of changes of name address, appointment and affiliation. Criminal background checks are required for bail agent license renewal. Stacking of bail bonds is prohibited.

A bail agent is required to notify the surety within ten days from the date a Notice of Forfeiture is received by the agent from the court.

If a bail agent extends credit for the payment of bail premium, the arrangement must be documented by a written agreement that includes, at a minimum, the names of the parties, the premium amount financed, the per annum rate of interest, the schedule of payments and signatures of all parties.

Section 018: Explains that for purposes of Idaho Code Section 41-1329(6) liability for payment of a forfeiture is "reasonably clear" if a defendant has not appeared or has not been brought before the court within one hundred eighty days after the entry of the Order of Forfeiture or a motion to set aside has not been filed within five business days after expiration of the one hundred eighty days. The above descriptions are provided only as summaries of the new requirements. Agents and sureties involved in the business of bail in Idaho are expected to be familiar with all the requirements of IDAPA 18.01.04, as well as the applicable statutory requirements of Title 41, Idaho Code. Persons with questions regarding this bulletin should contact the Department of Insurance at (208) 334-4250.

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#### **BULLETIN NO. 18-06**

**SUBJECT:** Certificates of Insurance

##### **Background and Introduction**

In 2012, Idaho Code § 41-1850, concerning the filing and use of certificates of insurance was added by SB 1390, which also amended Idaho Code § 41-1823, applicable to binders. In 2018, HB 522 amended Idaho Code § 41-1850 to allow certificates of insurance to include a reference to a contract or project number or description. This bulletin modifies and updates Bulletin 12-08 by highlighting certain provisions of Idaho Code § 41-1850 and supersedes Bulletin Nos. 12-03, 08-03 and 68-1 on the same subject.

##### **Certificates of Insurance**

Idaho Code § 41-1850(2) prohibits any person from preparing, issuing or knowingly requesting the issuance of a certificate of insurance unless the form of the certificate has been filed with the Director of the Department of Insurance (Director) by or on behalf of an insurer. The Director has received and accepted filings of certificate of insurance forms filed by ISO and certain carriers. Consistent with Idaho Code § 41-1850(5), if a carrier uses a filed ISO or ACORD form, that form need not be refiled by each carrier. Additionally, where other law provides for a particular certificate of insurance form to be used, once that form has been filed by or on behalf of an insurer with the Director, then individual carriers will not need to refile the form.

Pursuant to Idaho Code § 41-1850(3) the Director may disapprove any form filed with the Director if the Director finds that it (i) is unfair, misleading or deceptive or violates public policy; (ii) fails to comply with the requirements of Idaho Code § 41-1850; or (iii) violates any other provisions of title 41, Idaho Code, or any rule promulgated by the Director. Furthermore, although Idaho Code § 41-1850(3) references the Director's authority to withdraw approval of a form, Idaho is generally a certify, file and use state other than for specific provisions, where the Director does not expressly approve filed

forms. Carriers filing certificate of insurance forms will be required to certify that the form complies with Idaho law. The Director has the authority, however, to disapprove at any time any filed form that does not comply with the requirements of Idaho Code § 41-1850(3).

Idaho Code § 41-1850(4) codifies elements of Bulletin Nos. 68-1 and 08-31 1 Bulletins 68-1 and 08-3, which are superseded by this bulletin, required the following language in each certificate: "This Certificate of Insurance neither affirmatively nor negatively amends, extends, nor alters the coverage afforded by the policy or policies numbered in this certificate." The Department considers this language sufficiently similar to the new statutory language to be permissible by requiring that each certificate of insurance include the following or a similar statement:

This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not alter, amend or extend coverage, terms, exclusions and conditions afforded by the policies referenced herein Idaho Code § 41-1850(6) and (7) prohibit any person from knowingly demanding or requesting or knowingly preparing or issuing a certificate of insurance or other document, record or correspondence that contains false or misleading information or purports to affirmatively or negatively alter, amend or extend coverage provided by the policy of insurance to which a certificate of insurance makes reference. Idaho Code § 41-1850(10), amended in 2018, still confirms that the insurance referenced in a certificate is subject to all terms, exclusions and conditions of the policy itself. However, the amendment allows a certificate of insurance to include

reference to a contract number or description or a project number or description, but by doing so the certificate may not and does not warrant that the referenced policy complies with the insurance or indemnification requirements of a contract or project.

The Director is authorized to impose an administrative penalty up to \$1,000 per individual and up to \$5,000 per entity, pursuant to Idaho Code § 41-117 for any violation of Idaho Code § 41-1850. The new legislation does not alter the authority of the Director to investigate and seek redress for violations of other provisions of the Idaho Code where such violations are associated with the issuance of a certificate of insurance, including without limitation, Idaho Code § 41-1016(1)(e) (illegal for a producer to misrepresent the terms of an insurance contract), § 41-1303 (illegal for any person to make a statement misrepresenting the terms of an insurance policy); and § 41-293(1)(c) (insurance fraud, a felony, includes presenting to a person, with intent to defraud or deceive, a false statement material to an insurance contract).

Any questions concerning certificates of insurance or filing procedures should be directed to the Rates and Forms Section of the Department.

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## IDAFA 18 – IDAHO DEPARTMENT OF INSURANCE

### Consumer Services

#### 18.06.01 – Rules Pertaining to Bail Agents

##### 000. LEGAL AUTHORITY.

Title 41, Sections 41-211 and 41-1037 through 41-1045, Idaho Code.

01. TITLE AND SCOPE. 01. Title. IDAPA 18.06.01, “Rules Pertaining to Bail Agents.”

02. Scope. The provisions of this rule apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the Department and provisions of Title 41, Idaho Code, applicable to insurance producers apply to bail agents.

##### 002. -- 011. (RESERVED).

##### 012. NOTIFICATION REQUIREMENTS.

01. Notice of Changes. A bail agent licensed pursuant to Section 41-1039, Idaho Code, will immediately notify the Department in writing of any the following:

- a. Change of bail agent’s name, current business address, or current business phone number or business e-mail address, if any;
- b. Change of name or address of any surety insurance company for which the bail agent has an active appointment;
- c. Cancellation by a surety insurance company of a bail agent’s authority to write bonds for that company;
- d. Any new affiliation with a bail bond agency;
- e. Cancellation of a bail agent’s affiliation with a bail agency;

02. Notice of Legal Proceedings. A bail agent will provide immediate written notice to the Department of the filing of any criminal charges against the bail agent. A bail agent will also provide immediate written notice to the Department of any material change in circumstances that would require a different answer than previously provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration.

##### 013. CRIMINAL HISTORY CHECKS.

01. Criminal History Check Requisite. All licensed bail agents will obtain a criminal history records check in connection with the renewal of a bail agent’s license and will bear all costs associated with the records check.

02. Grounds for Immediate Suspension. For the purpose of determining whether grounds for immediate suspension of a bail agent’s license exist under Section 41-1039(4), Idaho Code, a withheld judgment or a plea of nolo contendere is considered the same as a conviction or guilty plea.

##### 014. STACKING OF BONDS.

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power is equal to or greater than the amount of the bail or bond set by the court in the case for which the bond and power are being submitted.

##### 015. NOTIFICATION TO SURETY OF FORFEITURE.

A bail agent will notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court.

##### 016. (RESERVED)

##### 017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.

01. Written Agreement. No credit may be extended by any bail agent or surety insurance company the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium need to contain at a minimum the following:

- a. The name, signatures, and dates of signatures of all parties to the credit agreement;
- b. The amount of premium financed;
- c. The per annum rate of interest; and
- d. The scheduled premium payment dates.

02. Early Surrender for Failure to Pay. If failure to pay premiums due under a credit arrangement may result in the early surrender of the defendant, that fact needs to be clearly set forth in the written credit agreement. Early surrender for failure

to make premium or interest payments when due is to be handled in accordance with Section 41-1044, Idaho Code, and neither the bail agent nor the surety is entitled to seek recovery of any amounts unpaid as of the date of surrender.

03. Collateral for Credit Agreement. If the credit agreement is to be collateralized, the collateral will not be excessive in relation to the amount of premium financed, will be separate and apart from any collateral used in the bail bond transaction, will be described in the credit agreement or in an attachment to the agreement, and will be handled in accordance with Section 41-1043, Idaho Code.

018. PAYMENT OF FORFEITURE.

It is a violation of Section 41-1329(6), Idaho Code, for a bail surety to fail to pay a claim for forfeiture after liability for payment has become reasonably clear. Liability for payment upon forfeiture is reasonably clear when a defendant has not appeared or has not been brought before the court within one hundred eighty 180 days after the entry of the order of forfeiture, or a motion to set aside the forfeiture, in whole or in part, has not been filed with the court within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture pursuant to the Idaho Bail Act.

019. -- 999. (RESERVED)

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#### **18.01.02 – Schedule of Fees, Licenses, and Miscellaneous Charges**

##### **18.01.02 – SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES**

00. **LEGAL AUTHORITY.**

Title 41, Chapters 2 and 4, Idaho Code, Idaho Code.

01. **SCOPE.**

The purpose of this rule is to provide for the amounts to be collected for fees, licenses and miscellaneous charges.

02. -- 010. (RESERVED)

11. **FEES PAYABLE IN ADVANCE.**

The director will collect in advance fees, licenses, and miscellaneous charges as outlined in this rule.

12. -- 019. (RESERVED)

20. **INSURER FEES.**

01. **Annual Continuation Fee.** All insurers and other entities (set forth in Section 020) licensed, listed, or approved to do business in the state of Idaho will pay an annual continuation fee.

a. The annual continuation fee is due on March 1st each year and is payment of the insurer's fees due through the following February.

b. The annual continuation fee is charged at the time the insurer applies for admission to do business in the state of Idaho. If the application is approved, the fee paid will cover the insurer's fees through the following February.

02. **Fee for Insurers.** For all insurance companies receiving a certificate of authority pursuant to Title 41, Chapter 3, Idaho Code, the annual continuation fee is as follows:

a. If insurer's policy holders' surplus at the preceding December 31 is less than ten million dollars (\$10,000,000) - One thousand dollars (\$1,000).

b. If insurer's policy holders' surplus at the preceding December 31 is ten million (\$10,000,000) or more, but less than one hundred million (\$100,000,000) -- Two thousand five hundred dollars (\$2,500).

c. If insurer's policy holders' surplus at the preceding December 31 is one hundred million (\$100,000,000) or greater - Four thousand five hundred dollars (\$4,500).

03. **Fees of Other Entities.** The following entities will be assessed an annual continuation fee:

a. Five hundred dollars (\$500):

i. All reinsurers, listed pursuant to Section 41-515, Idaho Code.

ii. Authorized surplus line insurers.

iii. County mutual insurers.

iv. Fraternal benefit societies.

v. Hospital and/or professional service corporations.

vi. Self-funded health care plans.

vii. Domestic Risk retention groups.

viii. Petroleum clean water trusts.

ix. Rating organizations.

x. Advisory organizations.

b. One hundred dollars (\$100): Purchasing groups.

04. **Fees Provide.** The annual continuation fee includes, but is not limited to, the following:

a. Certificate of authority renewal, license renewal, and annual registration.

b. Arson, fire and fraud investigation costs.

c. Annual statement filing.

d. Agent appointment and renewal of appointment.

e. Filings under Title 41, Chapter 38, Idaho Code, Acquisitions of Control and Insurance Holding Company Systems.

f. Filing of amendments to Articles of Incorporation.

g. Filing of amendments to Bylaws.

h. Amendments to Certificate of Authority.

i. Filing of notice of significant transactions pursuant to Section 41-345, Idaho Code.

j. Quarterly statement filing.

k. Examination expenses.

05. Not Provided in Fees. Payment of the annual continuation fee will not exempt the insurer or entity from the following:

a. Fees for application for producer license.

b. Costs incurred by the Department for investigation of an applicant for producer license.

c. Attorney's fees and costs incurred by the Department when allowed pursuant to Idaho Code.

d. Costs incurred for experts and consultants when allowed by Idaho Code.

e. Penalties or fines levied by or payable to the Department of Insurance.

f. All fees set forth under Section 040.

06. Failure to Pay Fee. Failure to pay the annual continuation fee on or before March 1st each year will result in the expiration of the insurer's or entity's authority to do business in the state of Idaho pursuant to Section 41-324, Idaho Code.

07. Reinstatement Fee. The reinstatement fee referenced in Section 41-324(3), Idaho Code, is the amount referenced above for the insurer or entity continuation fee.

21. -- 029. (RESERVED)

### 30. PRODUCER AND MISCELLANEOUS LICENSING FEES.

01. Original License Application. The following fees are due and need to be paid with the filing application for original license:

a. Administrators -- three hundred dollars (\$300).

b. Producers -- eighty dollars (\$80).

c. Designation as a managing general agent -- eighty dollars (\$80).

d. Adjusters and public adjusters -- eighty dollars (\$80).

e. Reinsurance intermediary -- eighty dollars (\$80).

f. Surplus line brokers -- eighty dollars (\$80).

g. Life settlement providers -- five hundred dollars (\$500).

h. Life settlement brokers -- three hundred dollars (\$300).

i. Independent review organization -- five hundred dollars (\$500).

j. Vendor of portable electronics insurance, a type of limited lines producer:

i. A vendor of portable electronic insurance who is engaged in portable electronic transactions at more than ten (10) locations in the state of Idaho -- one thousand dollars (\$1,000).

ii. A vendor of portable electronic insurance who is engaged in portable electronic transactions at ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100).

02. Examination Fees. Each time a producer or adjuster's examination is taken for licensing under Title 41, Chapters 10 and 11, Idaho Code, the applicant may pay a fee to a third-party testing vendor in the amount established by contract between the department and the vendor.

03. Fingerprint Processing. Processing fingerprints (as applicable) -- not to exceed eighty dollars (\$80).

04. License Renewal. The following fees are due and need to be paid for each license to renew or continue:

a. Adjusters, public adjusters, and producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically.

i. A vendor of portable electronic insurance who is engaged in portable electronic transactions at more than ten (10) locations in the state of Idaho -- five hundred dollars (\$500).

ii. A vendor of portable electronic insurance who is engaged in portable electronic transactions at ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100).

b. Redesignation as managing general agent (annual) -- eighty dollars (\$80).

c. Administrators (biennial) -- eighty dollars (\$80).

i. Renewal form is filed on or before December 31.

ii. Any renewal form postmarked after December 31 includes a penalty in an amount equal to the renewal fee.

iii. A renewal form postmarked after January 31 needs to be submitted as a new application with supporting documents and the full application fee.

d. Surplus line brokers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically.

e. Life settlement providers (biennial) -- three hundred dollars (\$300).

f. Life settlement brokers (biennial) -- eighty dollars (\$80).

g. Independent review organization (biennial) -- three hundred dollars (\$300).

31. -- 039. (RESERVED)

### 40. MISCELLANEOUS FEES.

01. Certified Copy. Certified copy of certificate of authority, license or registration - Fifty dollars (\$50).

02. Certificate Under Seal. Director's certificate under seal (except for those under Subsection 040.01 of this rule) - Twenty dollars (\$20).
03. Documents Filed. For each copy of a document filed in the DOI, a reasonable cost as fixed by the director. For rate and form filings not submitted electronically through the national System for Electronic Rate and Form Filing (SERFF) -- Twenty dollars (\$20) for each rate or form filed in excess of ten (10) per calendar year.
04. Insurer Service of Process. For receiving and forwarding copy of summons or other process served upon the director as process agent of an insurer -- Thirty dollars (\$30).
05. Agent Service of Process. For receiving and forwarding copy of summons or other process served upon the director as process agent of a nonresident producer or other person for which the director is authorized to serve as statutory agent for service of process -- Thirty dollars (\$30).
06. Continuing Education. Filing continuing education applications for approval and certification of subjects of courses (each application) -- Twenty-five dollars (\$25).

41. -- 049. (RESERVED)

50. REFUNDS.

All fees, licenses, and miscellaneous charges are non-refundable except as noted.

51. OVERPAYMENTS.

Overpayments of published fees will be returned only when such overpayments exceed twenty dollars (\$20), or upon request of the payor.

52. -- 999. (RESERVED)

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**STATEWIDE GUIDELINES FOR THE UNIFORM ADMINISTRATION OF BAIL AND BAIL BONDS  
IN ALL TRIAL COURTS OF THE STATE OF IDAHO**

**SECTION 1.**

**GENERAL BAIL INFORMATION**

These guidelines are intended to provide information and guidance on the procedures to be followed with regard to bail. The guidelines are based upon best practices and upon the law as set forth in the Idaho Constitution, statutes, court rules, applicable rules or regulations, and case law. These guidelines are not intended to, nor do they, create, nullify, limit, or enlarge any legal rights or obligations of public officers or employees, defendants in criminal cases, persons posting bail, bail agents, bail bonds companies, surety insurance companies, or any other persons or entities.

**A. Sources of law.**

Article I, section 6 of the Idaho Constitution establishes the right to bail.

Idaho Criminal Rule 46 relates to bail for a defendant (hereinafter Idaho Criminal Rule = I.C.R.).

I.C.R. 46.1 relates to bail for a witness. See also I.C. §19-820, §19-821 and §19-3011.

With the exception of bail for specific misdemeanor offenses scheduled in M.C.R. 13 pending arraignment or trial, I.C.R. 4(d) and 5(c) relate to the requirement that there must be a finding of probable cause by a judge before a defendant can be required to post bail. I.C.R. 5(e) deals with setting bail.

I.C.R. 4(f) provides that if the judge finds no probable cause, the judge shall exonerate any bond posted.

I.C.R. 5(e) requires the clerk to transmit the warrant and posted bail to the court in which the defendant is required to appear.

Idaho Misdemeanor Criminal Rule 13 relates to a bail schedule in specific enumerated misdemeanor crimes. This can be varied up or down if the defendant appears before a judge or the defendant's case is reviewed by a judge. M.C.R. 13(a). M.C.R. 2(c) defines bail (hereinafter Misdemeanor Criminal Rule = M.C.R.).

Idaho Infraction Rule 7(c) provides bail shall never be required in an infraction.

Idaho Code §19-2901 through §19-2923, and §19-1507 through §19-1510, relate to many topics on bail.

I.C.R. 54.5 and I.C. §19-3941 deal with bail on appeal to the district court from a conviction in magistrate court on a misdemeanor.

I.A.R. 13(c)(7) and (8) deal with the powers of the District Court to stay execution of a judgment pending appeal to the Supreme Court (bail pending appeal) as well as the power to set bail, modify the amount forfeited, or issue arrest warrants (I.A.R. = Idaho Appellate Rule).

I.C.A.R. 11 relates to disposition of bail bond forfeitures in misdemeanor charges. Note that if forfeiture is under M.C.R. 14, the bond can be used to pay court costs, but if the forfeiture is for failure to appear or any other reason, the bond cannot be used to pay court costs (I.C.A.R. = Idaho Court Administrative Rule).

Note: The Idaho Rules of Evidence **do not** apply to proceedings with respect to release on bail or otherwise. I.R.E. 101(e)(3) (I.R.E.= Idaho Rules of Evidence).

**Conflicts between rules and statutes.**

If a conflict exists on a procedural matter between the criminal rules of procedure adopted by the Idaho Supreme Court and the statutes adopted by the Legislature, then the rules of procedure prevail. *State v. Currington*, 108 Idaho 539, 700

P.2d 942 (1985). However, not all matters relating to bail are procedural; some are substantive. *Two Jinn, Inc. v. District Court of the Fourth Judicial District*, 150 Idaho 647, 249 P.3d 840 (2011).

## **B. Definitions.**

### **Definitions provided by Idaho Code §19-2905:**

19-2905.DEFINITIONS. As used in this chapter, unless the context requires otherwise:

- (1) "Bail" means a monetary amount required by the court to release the defendant from custody and to ensure his appearance in court as ordered.
- (2) "Bail agent" means a producer licensed by the state of Idaho in the line of surety insurance who is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial criminal proceedings.
- (3) "Bail bond" means a financial guarantee, posted by a bail agent and underwritten by a surety insurance company, that the defendant will appear as ordered.
- (4) "Bench warrant" means a warrant issued by the court because the defendant failed to appear as ordered, failed to comply with a condition of release or the sureties are no longer sufficient.
- (5) "Cash deposit" means payment in the form of United States currency, money order, certified check, cashier's check or such other form of payment as provided by the rules of the supreme court.
- (6) "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature.<sup>3</sup>
- (7) "Conditions of release" means any reasonable restrictions, conditions or prohibitions placed upon the defendant's activities, movements, associations or residences by the court, excluding the court order requiring the defendant to appear in court.
- (8) "Exoneration" means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond.
- (9) "Forfeiture" means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited.
- (10) "Order of recommitment" means an order of the court committing the defendant back to the custody of the sheriff.
- (11) "Person" means a natural person, legal corporation, limited liability corporation, partnership, sole proprietorship or any other business entity recognized by the state of Idaho.
- (12) "Property bond" means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered.
- (13) "Readmittance to bail" means an order of the court allowing the defendant to post new bail following an order of revocation.
- (14) "Recommitment" means the return of the defendant to the custody of the sheriff following revocation or forfeiture of bail.
- (15) "Reinstatement of bail" means an order of the court allowing the defendant to be released on the same bail previously posted that has been ordered forfeited.
- (16) "Revocation of bail" means an order by the court revoking the defendant's release on bail.
- (17) "Surety insurance company" means an admitted insurer authorized in the line of surety pursuant to Title 41, Idaho Code.
- (18) "Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending.

### **Additional Definitions not provided by I.C. § 19-2905:**

#### **Admission to bail.**

Admission to bail is the order of a competent court that the defendant be discharged from actual custody of the Sheriff upon posting bail. I.C. §19-2906.

#### **O. R. release.**

O. R. release means the defendant is released from custody on his or her own recognizance and no bail is required for this release from custody, although the court can impose conditions of release. See I.C.R. 46(a).

#### **Posting of bail.**

The posting of bail consists of filing sufficient sureties with the Court, as required by the Court, to ensure the defendant's appearance. I.C. §19-2907.

## **C. Sufficient sureties for posting bail shall consist of any one of the following:**

Under I.C. §19-2907, I.C.R. 46(f) and M.C.R. 13(c), if bail is required in a criminal case (meaning in the event probable cause is found to exist and the defendant is not released upon the defendant's own recognizance), or the charge is one of the scheduled misdemeanors under M.C.R. 13, bail can only be posted in one of three ways:

- 1) A bail bond.
- 2) Property bail bond
- 3) A cash deposit, which may include a check or money order. See I.C.R. 46(f)4

**D. Cash deposit only cannot be required.**

Although bail may be posted in the form of a cash deposit, a defendant shall not be required to post bail only in the form of a cash deposit. I.C. §19-2907(c), I.C.R. 46(f).

**E. Differing amounts of bail depending on form is prohibited.**

The court shall not require that bail be deposited only in cash nor shall the court specify differing amounts for bail depending upon whether it is posted in the form of cash deposit, property bond or bail bond. I.C.R. 46(f).

**F. Posting bail on separate charges within the same case.**

In cases where the defendant's case has not been reviewed by a judge, a separate bail bond, property bond or cash deposit shall be posted on each charge. The presiding judge or judge who reviews a case involving multiple charges has discretion to set one bail amount for all the charges in the case or separate bail amounts on each charge.

**G. Probable cause--judicial finding required.**

1. Finding of probable cause required. I.C.R. 4(d). See also I.C.R. 5(c).

"If a defendant is arrested without a warrant or appears before the court pursuant to a summons, the magistrate before whom the defendant first appears shall not order the defendant retained or ordered into custody nor require the defendant to post bond unless the magistrate shall determine there is such probable cause as defined in subsection (a) of this Rule at or before the time of the first appearance of the defendant. The defendant must be released upon the defendant's own recognizance unless and until such determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint shall not be dismissed pending such determination or disposition. If a defendant fails to appear in response to a summons, a warrant shall issue if probable cause has been shown."

2. Disposition on finding of no probable cause. I.C.R. 4(f).

"If the magistrate finds there is no such probable cause, the magistrate shall refuse to issue a warrant, and shall exonerate any bond posted, and shall order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause shall not require the dismissal of the complaint."

3. The exception to the probable cause finding before bail being posted are those misdemeanor crimes scheduled in M.C.R. 13(b).

**H. Who sets bail – An Idaho Judge, or pre-set under M.C.R. 13**

**If defendant is brought before a judge in the county where charge is pending.**

If the defendant first appears in the county where the charge is pending, bail may be set by any judge in that jurisdiction after a finding of probable cause. I.C. §19-2904, I.C.R. 46 (d) and I.C.R. 4(d) and 5(e). Typically, the bail amount is set by the judge who is assigned to hear the case. If a bail amount has already been endorsed on a warrant of arrest, this amount should be honored unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e). Bail amounts on some misdemeanor charges are set by M.C.R. 13 before arraignment.

**If defendant is brought before a judge in a county other than where the charge is pending.**

If the defendant is brought before a magistrate (or other judge) in another county for the purpose of giving bail, the judge must proceed on the bail issue as if the defendant had been brought before that judge on a warrant of arrest. I.C. §19-1509.

Typically, however, the original warrant issued by the judge in the county where the charge is pending has already set the bail which is stated or endorsed on the warrant. The judge should honor the bail as set on the warrant unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e).

Before the defendant is released on bail, the sheriff shall give written notice to the defendant of when and where to appear before the court. A copy of such notice and records relating to the posting of bail shall be forwarded to the court where the charge or charges are pending.

**Bail on probation violation warrants.**

For the procedure on probation violation warrants, see Section 22 of these guidelines.

**M.C.R. 13 Bail Schedule**

Bail amounts for certain enumerated ordinances are preset by court rule. Additionally, bail for violation of municipal or county ordinances is governed by M.C.R. 13(d).

**I. Amount of Bail**

Factors to be considered in setting a bail amount are set forth in I.C.R. 46(c).

**SECTION 2.**  
**OUT-OF-STATE BAIL AMOUNTS AND WARRANTS**

A person may be arrested on a warrant originating from a state other than Idaho (an out-of-state warrant) which warrant may or may not provide a bail amount. However, neither the sheriff nor the clerk may accept any cash deposit or bond of any kind on the out-of-state warrant. An Idaho judge may set bail to secure the defendant's appearance for the fugitive proceedings in Idaho. I.C. § 19-4516. If bail is set by the Idaho judge, a cash deposit or other bond may be posted in Idaho only based upon the bail set by an Idaho Judge.

After bail has been posted, any forfeiture or exoneration shall be processed as with any other bail.

**SECTION 3.**  
**POSTING BAIL BY A CASH DEPOSIT**

**A. Cash deposit** means payment in the form of United States currency, money order, certified checks, cashier's check or such other form of payment (e.g., credit card) as provided by rules of the Supreme Court equal to the bail as set by the court, or bail schedule in M.C.R. 13. A cash deposit can be deposited by the defendant or posted by someone else on the defendant's behalf. M.C.R. 13(c)(1) and (2).

Before the defendant is released from custody following the posting of bail, written notice of the time and place to appear before the court shall be given to the defendant by the sheriff. A copy of such notice shall be forwarded to the court where the charge or charges are pending. I.C.R. 5(e). M.C.R. 13(c).

**B. Entry of bail information on ISTARS.**

Promptly upon receipt of the cash deposit for bail, the clerk or deputy clerk receiving the bail shall make the appropriate entries into ISTARS for the case file at issue.

**C. Recommended notice to person posting cash bail deposit.**

It is recommended that prior to the time of the deposit the person receiving the cash deposit inform the person posting the cash deposit, that if the cash remains on deposit at the time the defendant is sentenced, then the clerk must, under the direction of the court, apply the money on deposit to fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution that have been imposed against the defendant in any other criminal action. After satisfying the fine, fees, costs and restitution the court will refund the surplus, if any, to the person who posted the cash deposit. If no fines, fees, costs or restitution are levied, the entire cash deposit is refunded to the posting party, I.C. §19-2908. This notice is not a legal requirement; it is only recommended so the party posting the cash understands the risks.

**D. Denominations of currency for cash deposit.**

The cash bail must be in reasonable denominations of currency. Unreasonable amounts of coin will be refused. Examples are bail paid with pennies, or coins which are not in rolls, etc.

**E. Cash deposit receipt must be in the name of the person who deposits the money.**

It is absolutely imperative that the name of the person posting the cash is placed on the receipt and in the ISTARS system.

**F. Caution to clerks refunding cash deposits.**

The surplus, if any, must be refunded to the person whose name appears on the receipt as the posting party. The surplus must not be refunded to some other person or party who claims it was their money which was deposited. Such cases are a dispute which must be decided by and between those claiming an interest in the money, not by the Clerk's office.

**G(1). Posting a cash deposit for bail by personal check payable to the Clerk of the Court.**

A cash deposit for bail may also be made by personal check payable to the Clerk of the Court only in those cases where the acceptance of the particular personal check has been approved by a Magistrate or District Judge. **I.C.R. 46(f).**

**G(2) . Personal checks.**

In considering whether to approve the acceptance of a personal check as a cash deposit, the magistrate or district judge should consider all relevant factors, including:

1. whether the check is drawn on a commercial bank which is licensed to do business in Idaho, and which has one or more branches located within the state of Idaho.
2. whether the maker of the check is a resident of the state of Idaho.
3. whether the check is a two-party check.

The named payee on the check must be the Clerk of the District Court of the county where the bail is to be deposited. The check must be for the face amount of the cash deposit for bail set by the Judge or M.C.R. 13.

**G(3). Procedures for processing check.**

1. The receipt for the bail and the ISTARS entry for the person who posted the bail must be in the name of the maker of the check.
2. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the check and deposit it for collection in the bank used by the clerk's office.
3. No refunds on the cash deposit will be made for at least fifteen (15) business days from the date of the deposit of the check in the bank for collection.
4. Once deposited for collection in the bank and the fifteen day waiting period has expired, the bail is treated the same as a cash bail unless the check is returned dishonored.

**G(4). Procedures if check is dishonored.**

1. Any check which is returned, or dishonored for any reason, shall be immediately turned over to the prosecuting attorney of the county, and the court may order a hearing on the insufficient surety pursuant to I.C. § 19-2520(1).
2. If the check is dishonored, no refund of the posted bail will be made until payment for the check is made, plus any costs of collection, and a judge orders the refund.

**H. Money orders and cashier's checks for cash deposit.**

1. The money order or cashier's check must be for the face amount of the bail required.

2. The named payee on the money order or cashier's check must be the Clerk of the District Court of the county where the bail is to be posted.
3. The receipt for the bail and the ISTARS entry must be in the name of the owner of the money order or cashier's check.
4. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the money order or cashier's check and deposit it for collection in the bank used by the clerk's office.
5. No refunds on the bail will be made for at least fifteen (15) business days from the date of the deposit of the money order or cashier's check in the bank for collection.
6. Once the bail has been deposited in the bank and the fifteen day waiting period has expired, the bail will be treated the same as a cash bail.
7. Any money order or cashier's check which is returned dishonored for any reason shall be immediately turned over to the prosecuting attorney of the county, and the court may order a hearing on the insufficient surety pursuant to I.C. § 19-2520(1).
8. If the money order or cashier's check is dishonored, no refund of the posted bail will be made until the money order or cashier's check is paid, plus costs of collection, and a judge orders the refund.
9. The clerk and/or the appropriate law enforcement agency may refuse to take a money order or cashier's check if they have a reasonable and legitimate belief that the money order or cashier's check may be dishonored.

**I. Posting cash deposit for bail by credit card or debit card.**

A cash deposit for bail may also be made by credit card or debit card in those counties where procedures for the acceptance of such payment by these means is operational in the County Clerk's office where the bond is to be posted. Once the cash deposit is made by means of such a card, the amount so deposited becomes a cash deposit and is treated as such under these guidelines.

**J. Cash deposits of more than \$10,000.**

Federal statutes require state courts to report cash deposits of bail of more than \$10,000 for any person charged with racketeering, money laundering, any offense involving a controlled substance. 26 U.S.C. § 6050I. The offenses to which this applies under Idaho law are violations of I.C. § 18-7804 (racketeering), I.C. § 18-8201 (money laundering), and any violation of the provisions of title 37, chapter 27 (controlled substances). Multiple cash deposits for the same defendant in the same case over a 12 month period totaling more than \$10,000 also trigger this reporting requirement.

Reports of these cash deposits must be filed using IRS Form 8300. The original is sent to the Internal Revenue Service, and a copy must be sent to the U.S. Attorney for the District of Idaho. Refer to the Clerk's Manual for more detailed information on how to file these reports.

**SECTION 4.**  
**POSTING BAIL BY A PROPERTY BOND**

**A. Property bond defined.**

A property bond means a financial guarantee approved by the court, secured by property, real or personal, that the defendant will appear in court as ordered. I.C. §19-2905(12). Acceptance of a property bond is in the discretion of the court. I.C. §19-2909.

**B. Posting a property bond.**

Posting bail by a property bail bond is accomplished by depositing a property bond by the owners of the property as provided in I.C.R.19-2909 and I.C.R. 46(g). The qualifications for this type of bail are set forth in I.C. §19-2909 and I.C.R. 46(g). Before the defendant is released from custody following the posting of bail, written notice of the time and place to appear before the court shall be given to the defendant by the sheriff. A copy of such notice shall be forwarded to the court where the charge or charges are pending.

**C. Judge must approve any property bail bond.**

Posting bail by a property bail bond may only be accomplished if a judge approves and accepts the property bond. I.C. §19-2909; I.C.R. 46(g)(3) and (5).

**D. THE SERVICES OF A LAWYER MAY BE REQUIRED TO ASSIST IN MEETING COURT REQUIREMENTS RELATING TO A PROPERTY BOND.**

**E. Forms:**

The property bond and required promissory note shall be on forms approved by the Supreme Court. I.C.R 46(g)(6). Forms are included in the forms section of these Guidelines.

**F. Recording of property bail bond:**

If the court accepts real property as security, the property bond shall be promptly recorded in the county in which the property is situated prior to the release of the defendant. Evidence of such recording shall be provided to the court. All recording fees and costs shall be paid by the person posting the bond. I.C.R. 46(g)(5).

**G. Other considerations on property bail bonds.**

1. The defendant's property may or may not be a sufficient surety, which decision is in the discretion of the judge. I.C. §19-2909.
2. The property must be located in the State of Idaho.
3. All fees associated with a property bail bond must be paid by the person posting the property bond. I.C.R. 46(g)(5). I.C. §19-2909.

4. A property bond posted and accepted by the court pursuant to I.C. §19-2909, and recorded, shall constitute a consensual lien on the property pursuant to I.C. §55-1005(3).
5. Before approving and accepting a property bail bond, the designated judge may hold an evidentiary hearing to determine the true "bail" worth of the property; specifically to determine the surety's actual ownership of the property (title), the current market value of the property, the encumbrances of record against the property, if any. An illustration is a home with a fair market value of \$100,000 and a mortgage of \$99,000 is useless as bail.
6. With real property, the court must also be certain that if the property is community property or jointly owned property, all owners shall sign the property bond and the promissory note.
7. See the attached forms or the Idaho Supreme Court website for the approved forms of promissory notes and property bonds.

**SECTION 5.**  
**POSTING BAIL BY A BAIL BOND--**  
**STACKING BAIL BONDS PROHIBITED**  
**BAIL BOND AND POWER OF ATTORNEY FORMS**

**A. Name and address of person designated to receive all notices.**

The face sheet of all bail bonds submitted to the court or to the custodian of an arrested person must clearly state the name and mailing address of the person designated by the surety insurance company to receive all notices. I.C.R. 46(f).

1. This name and address must be typewritten, stamped in ink in typewritten form, or in pre-printed typed form. It shall not be considered compliance with this section to have the name and address included in handwritten form, an attached label or any other form.
2. This name and address shall be considered the last known address of the person posting the bail or the designated agent of that person for purposes of mailing and receiving notices of forfeiture and any other documents from the court. Any change in such address must be filed with the Department of Insurance.
3. The sheriff or any person within the State of Idaho having legal custody of any person shall have no authority to accept any bail bonds which do not comply with this section, and no bail agent shall attempt to submit a bail bond which does not comply with this section.

**B. Accept only bail bonds from licensed agents.**

The clerk and law enforcement may only accept bail bonds from agents of surety insurance companies who are currently licensed to write bail bonds by the Idaho Department of Insurance. I.C. § 41-1039. The clerk or deputy clerk or appropriate law enforcement agency shall accept no bail bond unless that agent's name appears as an agent licensed to write bonds on the Department of Insurance's website. The bail agent shall provide a driver's license or other form of photographic identification for proof of identity prior to posting the bail bond.

**C. Posting bail on separate counts in the same case.**

In those circumstances where the defendant's case has not been reviewed by a judge, a separate bail bond, property bond or cash deposit shall be posted on each separate charge. The presiding judge or judge who reviews a case involving multiple charges may set one bail amount for all the charges in the case or separate bail amounts on each charge.

**D. Power of Attorney; Stacking bail bonds--prohibited.**

Only one Power of Attorney shall be submitted for each bail bond and the face value of the power shall be equal to or greater than the amount of bail set by the judge in the case for which the bail bond and power are being submitted. A bail agent shall not attempt to "stack" bail bonds or powers by submitting more than one Power of Attorney for any single bail bond admission or requirement.

**E. Bail Bond and power of attorney forms.**

- (1) Powers of attorney must be on forms provided by the surety insurance company.
- (2) Powers of attorney cannot be altered in any way.
- (3) The bail bond and the power of attorney must bear the original signature of the person posting the bail bond, but the signature of the attorney in fact may be an electronic signature.
- (4) The bail bond must bear the typed or pre-printed current name, address, and telephone number of the person designated to receive all notices. This information must match the information that is on record with the Department of Insurance.
- (5) The bail bond must bear the current name, address, and telephone number of the person posting the bail bond.
- (6) The power of attorney and the bail bond must be accurately and completely filled out.
- (7) The power of attorney and the bail bond may not be submitted after the expiration date, if any, on the face of the power of attorney.
- (8) No power of attorney shall be used more than once.
- (9) No photocopies of the power of attorney or bail bond may be submitted as the original.

The sheriff or any person within the Judicial District having legal custody of any person shall have no authority to accept any bail bond that does not comply with this Section, and no bail agent shall attempt to submit a bail bond which does not comply with this Section.

**SECTION 6.  
CONDITIONS OF RELEASE**

**A. Terms, conditions and prohibitions.**

If a defendant is admitted to bail or released upon the defendant's own recognizance, the court making such determination may impose such reasonable terms, conditions and prohibitions as the court finds necessary in the exercise of its discretion.

**B. No contact orders.**

Whenever no contact is ordered pursuant to Idaho Code § 18-920, a no contact order shall be issued in accord with the standards set out in Criminal Rule 46.2.

**C. Electronic monitoring.**

If one of the conditions of bail or release upon the defendant's own recognizance is an area of restriction monitored by electronic or global positioning system tracking, then the court shall notify the defendant in writing at the time of the setting of bail or release that intentionally leaving the area of restriction, except for the purpose of obtaining emergency medical care, may be prosecuted as the crime of escape and subject the defendant to the penalties set forth in I.C. § 18-2505 or I.C. § 18-2506.

**D. Agreement to conditions.**

The court may, as a condition of release, require an agreement to comply with other terms and conditions of release. I.C.R. 46(e).

**SECTION 7.  
RIGHTS OF VICTIMS**

Each victim of a criminal offense has the right to be:

- (1) permitted to be present at all criminal justice proceedings including probation proceedings;
- (2) given prior notification of trial court, appellate and probation proceedings and, upon request to information about the sentence, incarceration, placing on probation or release of the defendant;
- (3) heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result; and
- (4) notified whenever the defendant is released from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. Idaho Constitution, article I, section 22; Idaho Code §19-5306(b), (d), (e) and (j).

**SECTION 8.  
MILITARY SERVICE**

**Forfeiture of bail cannot be enforced when military service prevents the defendant's attendance.** 50 App. U.S.C. § 513(c) states: **"Bail bond not to be enforced during period of military service.** A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal."

"Court" is defined in 50 App. U.S.C. § 511(5) as including state courts.

"Military service" is defined in 50 App. U.S.C. § 511(2) as:

- (A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--
  - (i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and
  - (ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;
- (B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and
- (C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. The surety must show that it was the defendant's military service that prevented the surety from obtaining the defendant's attendance. If this showing is made, the court cannot forfeit the bail or enforce a forfeiture. The court would have discretion in these cases to exonerate the bail.

**SECTION 9.  
SUBSTITUTION OF TYPE OF POSTED BAIL BEFORE FORFEITURE**

**A. Substitution of type of posted bail before forfeiture.** At any time before an order of forfeiture, the Court may allow the defendant to substitute the type of bail previously posted. I.C. §19-2910.

Once the new bail is posted, the previously posted bail shall be exonerated.

**B. Steps to follow in ISTARS**

To enter a substitution of one type of bail for another, the procedure described in the Clerk's Manual should be followed.

**SECTION 10.**  
**INCREASING OR REDUCING BAIL**

**A. Sources of law.**

The sources of law regarding increasing or reducing bail are M.C.R. 13(a), I.C.R. 46(I), I.C. §19-1510, I.C. §19-2912.

**B. Required court action.** After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. I.C. §19-2912; I.C.R. 46(I).

**C. Increasing or reducing the amounts stated in M.C.R. 13 bail schedule.**

For the bail amounts set in M.C.R. 13(b), if the defendant appears before a judge, the scheduled amounts are advisory only. The judge may follow, raise, lower, or eliminate the amount stated. M.C.R. 13(a).

**D. Increasing bail.**

**1. When bail may be increased.**

After admission to bail, the court before which a case is pending may increase the amount of bail. I.C. §19-2912 and I.C.R. 46(I). The court can increase the bail on its own motion or upon a verified petition seeking an increase.

**2. Notice and hearing required.**

Prior to increasing bail, the court shall order the defendant to appear for the hearing and shall notify the person posting the bail of the date and time of the hearing. Notice must also be given to defense counsel if the defendant is represented by counsel.

**3. Reasons for increasing.**

Bail may be increased upon good cause shown, and is a question of discretion. I.C. §19-2912, I.C.R. 46(I).

**4. If the defendant fails to appear for the hearing on increase.**

If the defendant fails to appear at the hearing after being properly notified of the date and time of said hearing seeking to increase the bail, the Court shall, absent evidence of a sufficient excuse for the absence, immediately forfeit the posted bail and shall issue a warrant for the arrest of the defendant. I.C.R. 46(I)(1).

**5. If the Court increases the amount of bail.**

If the Court orders the increase in bail, the Court shall order the defendant to be committed to the actual custody of the Sheriff until bail is posted in the increased amount, AND any previous bail posted in the case shall be exonerated by the Court. I.C. §19-2912.

**E. Reducing bail.**

**1. When bail may be reduced.**

After admission to bail, and upon application of the defendant, the court before which a case is pending may reduce the amount of bail previously set. I.C. §19-2912 and I.C.R. 46(I)(2).

**2. Notice of reduction hearing required.**

Prior to taking action on the defendant's application, notice must be given to the prosecuting attorney and to the person who has posted any bail. I.C. §19-2912, I.C.R. 46(I)(2).

**3. Reasons for reducing.**

Bail may be reduced upon good cause shown, and is a question of discretion. I.C. §19-2912, I.C.R. 46(I)(2).

**4. Notice of reduction required.**

If the Court finds good cause to reduce the bail of the defendant, the Court may enter such an order and may continue the defendant on the original bail, with the court record properly reflecting the reduced amount of the bail obligation. The court shall give 5 business days' notice of such order reducing bail to the person posting the bail. I.C.R. 46(I)(2).

**5. Objection to reduced amount of bail.**

Presumably, if the person posting will not consent, the court can only reduce bail by requiring the defendant to surrender to the custody of the sheriff and the court exonerates the original bail. The defendant will then have to acquire new bail in the reduced amount.

**SECTION 11.**  
**SURRENDER OF DEFENDANT PRIOR TO BAIL BEING  
FORFEITED BY COURT ORDER**

**A. Definition of Surrender.**

"Surrender" means the voluntary surrender or delivery of the defendant into the custody of the sheriff of the county where the action is pending. I.C. § 19-2905(18).

**B. Surrender of defendant anytime prior to a court order of forfeiture of bail.**

At any time prior to a court order of forfeiture of bail, a surety insurance company or its bail agent, or the person posting a property bond or a cash deposit, has the legal right to surrender the defendant to the sheriff of the county where the action is pending. I.C. § 19-2913. The defendant may even turn himself in. Once the defendant is turned in and placed in custody, and the statutory procedures hereafter stated are followed, then the posted bail is exonerated and returned to the person who posted it. I.C. §19-2913(3).

**C. Sheriff is required to accept the defendant.**

Upon the surrender of the defendant, the Sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the Court. I.C. §19-2913(1), (4).

**D. Statutory procedure for surrender of defendant by the person posting bail prior to forfeiture and exoneration of bail. I.C. §19-2913. [I.C.R. 46 does not cover this topic].**

1. The defendant must be physically turned over to the county sheriff of the county where the action is pending.
2. Upon the surrender of the defendant, the Sheriff shall accept and incarcerate the defendant in lieu of the bail originally set by the court.
3. A certificate of surrender form must be delivered by the surety insurance company or its bail agent or person posting a property bond or cash deposit, to the sheriff who must also attach thereto his signature, the month, day, year and time of day as evidence of surrender and detain the defendant in his custody thereon as upon a commitment. 4. The person posting bail shall, within five (5) business days of the surrender of the defendant, file with the court in which the action or appeal is pending the certificate of surrender, and shall deliver a copy of the same to the county prosecuting attorney. I.C. §19-2913(3). The court shall thereupon order that the bail be exonerated.

**E. Certificate of surrender.**

Before a defendant will be considered by the court to be "surrendered", there shall be filed with the court a properly executed "Certificate of Surrender". I.C. §19-2913(2). For the Certificate of Surrender form, see Appendix B of the Idaho Criminal Rules or the Idaho Supreme Court website at [www.isc.idaho.gov/rulesfrm.htm](http://www.isc.idaho.gov/rulesfrm.htm).

1. Definition of Certificate of Surrender: "Certificate of surrender" means a certificate in a form approved by the supreme court that is completed by a surety insurance company or its bail agent, or a person who has posted a property bond or cash deposit, and provided to the sheriff of the county where the action is pending for signature. I.C. §19-2905(6).
2. All "Certificates of Surrender" submitted by a party posting bail pursuant to a bail bond revocation shall indicate that the purpose of surrendering custody of the defendant is to revoke the bail bond prior to a notice of forfeiture.
3. In addition to the "Certificate of Surrender", the party posting bail shall file with the court, a "Motion" and "Order" for "Exoneration of Bail Prior to Forfeiture" The bail bond is not exonerated until the "Order for Exoneration of Bail Prior to Forfeiture" is signed by the court. Therefore, no refunds of bail will be made until each of the above is accomplished.

**F. Photocopy of Register of Actions from State Repository.**

A photocopy of the ROA (register of actions) from the Idaho State ISTARS Repository, showing that the defendant is in custody in the case in which the bail is posted, does not meet the statutory requirement of a Certificate of Surrender.

**SECTION 12.**  
**FORFEITURE OF BAIL**  
**I.C. §19-2915**

**A. Forfeiture defined.**

Forfeiture means an order of the Court reciting that the defendant failed to appear as ordered and stating that bail is forfeited. I.C. §19-2905(9). Forfeiture is available only for a failure to appear. Forfeiture is not available for a violation of conditions of release.

**B. Forfeiture of bail pursuant to I.C. §19-2915.**

- (1) If without sufficient excuse the defendant fails to appear before the court as ordered, the court shall immediately:
  - (a) Enter the defendant's failure to appear in the minutes;
  - (b) Order forfeiture of the bail; and
  - (c) Issue a bench warrant for the arrest of the defendant.
- (2) The clerk shall provide the person posting bail written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the person posting bail or that person's designated agent.
- (3) If the court quashes the bench warrant within one hundred eighty (180) days after the order of forfeiture, the forfeiture of bail shall be set aside and the court shall notify the person posting bail of the setting aside of the forfeiture within five (5) business days of the date of the order quashing the bench warrant and reinstating the bail. I.C. §19-2915.

**C. Steps to be followed to effectuate a forfeiture for defendant's failure to appear.**

Best practices for creating an enforceable forfeiture include the following:

1. Judge determines that the defendant is not present as required.
2. Make sure the defendant had been ordered or given a notice to appear on the date and time in question.
3. Make sure the defendant had received the notice or order to be present. This can be by notice to the lawyer for the defendant.
4. Determine that no sufficient excuse is stated. I.C. §19-2915.
5. The judge orders forfeiture of the bail.
6. The judge orders the issuance of a bench warrant for the arrest of the defendant.
7. The court clerk shall enter the defendant's failure to appear in the minutes.

8. The court clerk shall mail written notice of the forfeiture within five (5) business days of the forfeiture order for failure to appear to the last known address of the person posting the bail or that person's designated agent. This is five (5) business days from the date the judge orders the forfeiture. I.C. §19-2915 and I.C.R. 46.

**D. One notice only.**

The Notice of Forfeiture will be the only notice sent to the surety or the surety's designated agent or to the person posting cash bail or a property bond. No subsequent billings or notices will be sent out.

**E. CAUTION: FAILURE OF THE CLERK OF THE COURT TO GIVE NOTICE OF THE FORFEITURE WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR THAT PERSON'S DESIGNATED AGENT SHALL EXONERATE THE BAIL, I.E., THE COURT LOSES THE POSTED BAIL. I.C. §19-2915(2) and I.C. §19-2922(2).**

**SECTION 13.**

**SETTING ASIDE ORDER OF FORFEITURE AND REINSTATING BAIL**

**I.C. §19-2916**

**Upon Defendant's appearance with a satisfactory excuse.**

- (1) If the defendant appears in Court after the entry of the defendant's failure to appear and satisfactorily explains his failure to appear, the Court may set aside the order of forfeiture and reinstate the bail previously posted. I.C. §19-2916.
- (2) Before reinstatement of the bail previously posted, the Court shall quash any bench warrant and shall set aside any order of forfeiture of the bail. See also I.C. §19-2915(3).
- (3) The Court shall provide written notice of the reinstatement of bail to the person posting the bail or to the person's designated agent within five (5) business days of the order reinstating bail. I.C. §19-2916. See also I.C. §19-2915(3).

**(4) CAUTION: PURSUANT TO I.C. §19-2922(3), FAILURE OF THE CLERK OF THE COURT TO GIVE WRITTEN NOTICE OF THE COURT'S ORDER TO SET ASIDE THE ORDER OF FORFEITURE AND REINSTATING BAIL WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR ITS DESIGNATED AGENT SHALL EXONERATE THE BAIL, I.E., THE COURT LOSES THE POSTED BAIL.**

**SECTION 14.**

**MOTION TO SET ASIDE FORFEITURE PURSUANT TO IDAHO CODE § 19-2917**

**A. Motion to set aside forfeiture filed within 180 days of order of forfeiture.**

Within one hundred-eighty (180) days after an order of forfeiture for the defendant's failure to appear, a motion may be filed seeking a court order that the prior order of forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, if it appears that justice does not require enforcement of forfeiture. I.C. §19-2917, I.C.R. 46(h).

- (1) Consult I.C.R. 46(h) for the factors to be considered in deciding whether to set aside a forfeiture in whole or in part.
- (2) If the Court does set aside the order of forfeiture, in whole or in part, then the court may:
  - (a) Reinstate the bail.
  - (b) Exonerate the bail
  - (c) Recommit the defendant to the custody of the Sheriff and set new bail.
  - (d) Release the defendant on his own recognizance. I.C.R. 46(h)(2), I.C. §19-2917.

**B. Notice Required.**

The Court shall, within five (5) business days, give written notice to the person posting the bail, or if the bail consists of a bail bond, to the surety or its designated agent, of the action taken. I.C.R. 46(h)(2).

**C. CAUTION: PURSUANT TO I.C. § 19-2922(3) FAILURE OF THE CLERK OF THE COURT TO GIVE WRITTEN NOTICE OF THE COURT'S ORDER TO SET ASIDE THE FORFEITURE WITHIN FIVE (5) BUSINESS DAYS TO THE PERSON POSTING THE BAIL OR ITS DESIGNATED AGENT SHALL EXONERATE THE BAIL, I.E., THE COURT LOSES THE POSTED BAIL.**

**D. Extensions of time on forfeiture.**

The one hundred eighty day forfeiture period may not be extended. The only relief provided may be a timely filed motion under I.C. § 19-2917 and I.C.R. 46(h) to set aside the forfeiture in whole or in part.

**SECTION 15.**

**REMITTANCE OF FORFEITURE-PAYMENT OF BAIL**

**I.C. §19-2918 and I.C.R. 46(h)(3)**

**A. REMITTANCE OF FORFEITURE -- PAYMENT OF BAIL.**

- (1) The person posting bail shall pay to the Clerk of Court the amount of bail ordered within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture of bail unless:
  - (a) The order of forfeiture has been set aside by the court;
  - (b) The bail has been exonerated by the court; or
  - (c) A motion to set aside the order of forfeiture or a motion to exonerate bail has been timely filed, together with a request for hearing, and has not been decided by the court. If the motion is decided and denied by the court more than one hundred eighty (180) days after the order of forfeiture, then the person posting bail shall pay the amount of bail to the clerk of the court within five (5) business days after the entry of the court's order denying the motion.

- (2) A timely filed notice of appeal and motion to stay the forfeiture stays the obligation to remit payment until five (5) business days after the entry of the court's order denying the motion to stay or, in the event such motion is granted, five (5) business days following the final determination of the appeal.
- (3) If cash is deposited in lieu of bail, the clerk of the court shall pay the cash deposit to the county treasurer.
- (4) Payments made on the remittance of a forfeiture of a bail bond or property bond shall be forwarded to the county treasurer. If the person posting a bail bond or property bond that has been forfeited does not pay the amount of bail within the time provided in this section, then the order of forfeiture shall become a judgment against the person posting the bail bond or property bond and any lien on property created by the property bond remains in effect until paid in full.

## SECTION 16. FAILURE TO REMIT FORFEITURE

### **1. Bail Bonds.**

- A. If notice of the order of forfeiture was properly given under I.C. §19-2915, and a surety insurance company fails to pay the amount of any bail forfeited within the time required under I.C. §19-2918(1), the Administrative District Judge may order the sheriffs and clerks of all counties in the judicial district not to accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. I.C. §19-2918(3).
- B. An Administrative District Judge in another district may also order the sheriffs and clerks of all courts in his district to not accept the posting of any new bail bonds from such company until the amount of bail forfeited has been paid. I.C. §19-2918(3).
- C. The order of forfeiture shall become a judgment against the person posting the bail bond. I.C. §19-2918(2). The clerk shall forward the order of forfeiture and notice of the failure to make payment within the time required under I.C. § 19-2918(1) to the prosecuting attorney and the trial court administrator.

### **2. Property Bonds.**

- A. If notice of the order of forfeiture was properly given under I.C. §19-2915, and the person posting the property bond fails to pay the amount of bail forfeited within the time required under I.C. §19-2918(1), then the order of forfeiture shall become a judgment against the person posting the property bond. I.C. §19-2918(2). The order of forfeiture should be recorded with the county recorder.
- B. The clerk shall forward the order of forfeiture and notice of the failure to make payment within the time required under I.C. § 19-2918(1) to the prosecuting attorney and the trial court administrator.

## SECTION 17. REVOCATION OF BAIL, RECOMMITMENT, AND RE-ADMITTANCE TO BAIL

### **A. Revocation of bail defined.**

Revocation of bail means an order by the Court revoking the defendant's release on bail. I.C. §19-2905(16). This is different from forfeiture for failure to appear.

### **B. Recommitment defined.**

Recommitment means the return of the defendant to the custody of the Sheriff following revocation or forfeiture of bail. I.C. § 19-2905(14).

### **C. Re-admittance to bail defined.**

Re-admittance to bail means an order of the court allowing the defendant to post new bail following an order of revocation of bail which recommitted the defendant to the custody of the sheriff where the action is pending to be detained until legally released. I.C.R. 46(j).

### **D. Revocation on bail for a violation of condition of release.**

1. The Court may revoke the bail of a defendant if the Court finds the defendant willfully violated a condition of release. I.C. §19-2919(1). I.C.R. 46(i).
2. The Court may issue a bench warrant to require the defendant to appear for a hearing.
3. If the defendant fails to appear for the revocation hearing, the Court shall issue a bench warrant for the arrest of the defendant.
4. The Court may set a new bail amount and/or terms and conditions. I.C. §19-2919.
5. The court shall exonerate any bail that has been posted.

### **E. Revocation of bail-insufficient surety.**

1. The bail posted on behalf of a defendant may be revoked because the surety has become insufficient. I.C. §19-2920.
2. The Court may order a hearing to determine if the surety is insufficient
3. If the Court finds the surety to be insufficient, it may revoke the bail and recommit the defendant.
4. In such cases, the Court shall set bail in the same or a new amount and impose any appropriate conditions of release. I.C. § 19-2920(3).

**F. Denial of re-admittance to bail.**

The Court may deny re-admittance to bail if the Court finds that the defendant has intimidated or harassed a victim, potential witness, juror or judicial officer or has committed one or more violations of the condition of release and such violation or violations constituted a threat to the integrity of the judicial system. I.C. §19-2919(3).

If the offense is bailable, the court shall fix bail in a new amount and impose appropriate conditions of release. I.C. §19-2921.

**SECTION 18.**  
**EXONERATION OF BAIL**  
**I.C. §19-2922**

**A. Definition of Exoneration.**

Exoneration means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond. I.C. §19-2905(8).

**B. Grounds for Exoneration.**

I.C. § 19-2922 and I.C.R. 46(k), provide the grounds for exoneration of bail. Summarily stated, they are as follows:

- a. The defendant has made all required court appearances and all charges have been resolved.
- b. Written notice of the Court's order of forfeiture was not provided to the person posting bail by mailing the notice to the last known address of the person posting bail or that person's designated agent within five (5) business days of the order of forfeiture.
- c. Written notice of the Court's order setting aside forfeiture and reinstating bail was not mailed to the person posting the bail within five (5) business days of the order.
- d. Before any order of forfeiture, the defendant has surrendered or been surrendered to the sheriff where the action is pending and a certificate of surrender has been filed with the Court as required by I.C. §19-2913.
- e. The defendant has appeared before the court where the action is pending within 180 days of the Court's order of forfeiture, unless the Court has set aside the order of forfeiture and has reinstated bail pursuant to I.C. §19-2916.
- f. The Court has revoked bail and has ordered the defendant be recommitted.

**C. Exoneration may be conditioned on payment of costs.**

Pursuant to I.C. §19-2922(5), in those cases where the defendant was not returned by the person posting bail to the Sheriff of the county where the action is pending, the Court may condition exoneration of bail and the setting aside of the forfeiture upon payment by the person posting bail of any costs incurred to transport the defendant to the jail where the action is pending. Such costs shall not exceed the amount of bail posted.

**D. Cash deposit applied to payment of fines, fees, costs and restitution.**

When bail has been posted by cash deposit and remains on deposit at the time of the judgment, the clerk of the court shall, under the direction of the court, apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs **and** restitution that have been imposed against the defendant **in any other criminal action**, and after satisfying the fines, fees, costs and restitution, shall refund the surplus, if any, to the person posting the cash deposit. I.C. §19-2908.

**Cash deposits cannot be applied to fines, fees, or costs in infraction cases. I.I.R. 7(c).**

**SECTION 19.**  
**DEATH OF A DEFENDANT**

If a defendant for whom bail has been posted dies prior to forfeiture or within the 180-day period following forfeiture, the person posting the bail may file with the court a motion to exonerate bail because of the death of the defendant. The motion shall be accompanied by substantial evidence of the defendant's death, which may include a certified copy of the death certificate or a motion to dismiss filed by the state. The motion for exoneration on the basis of the defendant's death shall be processed in the same manner as other motions for exoneration.

**SECTION 20.**  
**RIGHT TO BAIL AFTER PLEA OF GUILTY OR VERDICT OF  
GUILTY PENDING (BEFORE) SENTENCING**

**A. Sources of law.**

Bail between the time the defendant pleads guilty or there is a verdict of guilty, and the time the defendant is sentenced, is governed by I.C.R. 46(a), I.C. §19-2903(1).

**B. Judge's discretion to revoke bail and incarcerate the defendant after a finding of guilt.**

I.C.R. 46(a) and I.C. §19-2903(1) clearly provide that the determination to revoke a defendant's bail and incarcerate the defendant after a plea of guilty or a verdict of guilty is one of discretion resting with the judge, taking into account all factors in Rule 46(c), including the risk of flight and whether the seriousness of the crime will require some incarceration.

**SECTION 21.**  
**RIGHT TO BAIL PENDING APPEAL AFTER SENTENCING**

**A. Sources of law.**

For felony cases on appeal, bail is governed by I.A.R. 13(c)(7) & (8), I.C.R. 46, I.C. §19-2903(a). For misdemeanors, bail on appeal is governed by I.C.R. 46(d), 54.5, I.C. §19-3941, and I.C. §19-3944.

**B. Felony cases.**

- 1. Bail on appeal.** The court has discretion to decide whether a defendant will be admitted to bail on appeal. If not released on his or her own recognizance, a defendant may be admitted to bail by the court in which the defendant was convicted (sentencing court) pending an appeal unless it appears that the appeal is frivolous or taken for delay. I.C.R. 46(a) and (c).
- 2. Jurisdiction.** The District Court retains certain jurisdiction regarding bail issues while a case is on appeal. See I.A.R. 13(c)(7) and (8). These include whether to allow bail, the amount of bail, modify the amount of bail, forfeiture and arrest.
- 3. Factors in allowing and/or setting the amount of bail on appeal.** I.C.R. 46(d) states that the judge is to take into account the factors set forth in I.C.R. 46(c) in deciding whether to admit the defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.
- 4. Appellate Court setting bail.** An appellate court may set bail pending an appeal if the sentencing court has refused to allow bail. I.C.R. 46(d). Presumably, the appellate court can review and alter any bail ordered or posted.
- 5. Caution.** Make sure the bail bond covers an appellate bail bond situation. See *State v. Rupp*, 123 Idaho 1, 843 P.2d 151 (1992).

**C. Misdemeanor cases.**

**1. The right.**

I.C. §19-3941 provides that the defendant is entitled to be released from custody or obtain a stay in the proceedings if a cash or property bail bond is posted in an amount not exceeding \$1,000, to be set by the judge. I.C.R. 54.5(a) provides the I.C. §19-3941 method can be followed, or bail may be ordered by the magistrate or the district court in accordance with I.C.R. 46(d) and 54.5(b)(7).

- 2. Factors in allowing and/or setting the amount of bail on appeal.** Subject to the statutory language quoted immediately above, I.C.R. 46(d) states that the sentencing judge is to take into account the factors set forth in I.C.R. 46(c) in deciding whether to admit a defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.

- 3. Person posting bail bond loses bail if defendant loses appeal.** I.C. §19-3944 provides that if the defendant loses the appeal and costs and fines remain unpaid, the bail goes to pay those costs and fines.

- 4. Do not accept an appellate surety bail bond if the defendant was only ordered to pay a fine and/or costs. I.C. §19-3944.33**

- a. Fine Only.** Do not accept surety bail bonds on an appeal from a criminal conviction when only a fine is imposed. I.C. §19-3944. This is because the surety (whoever is posting the bail and in whatever form) must agree to pay the fine, or such portions thereof, as the appellate court directs. Obviously, a regular surety bail bond will not cover this.

- b. Imprisonment.** It is proper to accept an appellate surety bail bond if there is an appeal from a sentence imposing imprisonment. I.C. §19-2907(1)(a) and §19-2903(2). This is because the surety bail bond is liable if the defendant doesn't appear as requested. The form of the appellate surety bail bond is apparently different from the regular surety bail bond form. The judge needs to make sure the bond is an appellate surety bail bond.

**SECTION 22.**  
**BAIL ON PROBATION VIOLATION AND AGENTS' WARRANTS**

**A. Bail on an arrest warrant for a probation violation.**

The court must first find probable cause to issue the arrest warrant. I.C.R. Rule 5.3(a). The defendant has no absolute right to bail on a probation violation. Bail may be allowed on a probation violation in the discretion of the judge. *See also*, I.C. §19-2903(3); I.C.R. 33(e); I.C.R. 5.3(d). Any direction of the sentencing court endorsed upon the warrant shall be followed as to the denial of bail or the setting of bail in a certain amount. If no amount of bail is endorsed on the warrant issued by the sentencing court, then the court before which the defendant appears following arrest may set bail and, if set, bail only altered upon motion pursuant to I.C.R. 46(l). I.C.R. 5(d).

**B. Bail on an agent's warrant.**

In the event the defendant is arrested pursuant to an agent's warrant, the court conducting the initial appearance shall not hold the probationer in custody nor require bail without first making a finding of probable cause. I.C.R. 5.3(b). Bail may be set in accordance with I.C.R. 5.3(d). The court, in its discretion, may set bail, which may only be altered upon motion pursuant to I.C.R. 46(l).

**SECTION 23.**  
**TAKING CUSTODY OF INDIVIDUALS IN THE COURTHOUSE**

**Taking custody of individuals in the courthouse.**

Any bail agent or any person acting on behalf of a bail agent must obtain the approval and assistance of the court marshal or security officer or deputy sheriff before attempting to take custody of any individual and/or attempting to remove any individual from within any state court facility in Idaho.

#### **SECTION 24. SOLICITING BAIL BUSINESS IN COURTHOUSES**

##### **Soliciting bail business in courthouses.**

It is not appropriate for bail agents to solicit clients within any courthouse or court facility, including offices, courtrooms, lobbies, hallways or corridors in any courthouse. Unless otherwise prohibited by ordinance, each administrative judge should ensure that appropriate administrative orders are entered to prohibit such practices. Placement of literature in designated areas shall be left to the rules of local county commissioners and/or the district court.

#### **SECTION 25. BAIL AGENTS**

##### **A. License required to be a bail agent.**

Every bail agent must be licensed by the Idaho Department of Insurance. I.C. §41-1037(3), I.C. §41-1039. Any sheriff or clerk of the district court shall accept bail bonds only from a licensed bail agent. I.C. §41-1039(2).

##### **B. Authority of bail agent.**

A licensed bail agent is authorized to execute bail bonds in each of the judicial districts of the state. I.C. § 41-1039(2).

##### **C. Suspension of license of bail agent.**

The Director of the Department of Insurance may suspend the license of a bail agent. I.C. §41-1039(4) and (5).

##### **D. Notice of license suspension of bail agent.**

In the event the Director of the Department of Insurance revokes or suspends a bail agent's license, or lifts such revocation or suspension, the Director shall immediately notify all judicial trial court administrators of the effective date of such action. I.C. §41-1039A.

##### **E. Administrative District Judge may order no bail bonds accepted by a bail agent.**

If the administrative district judge has reasonable cause to believe that a bail agent has committed any of the actions that could form the basis for a suspension of the bail agent's license pursuant to section 41-1039(4)(a) and (b), Idaho Code, the administrative district judge shall immediately refer the matter to the director of the department of insurance for appropriate disciplinary action pursuant to sections 41-1016 and 41-1039, Idaho Code, and, if the basis for a suspension occurred after the issuance or renewal of the bail agent's current license, may enter an order that the sheriffs and clerks of all counties in the judicial district shall not accept bail bonds submitted by that bail agent until the director has rendered a decision as to whether to suspend the bail agent's license pursuant to section 41-1039(4), Idaho Code. The director shall immediately notify all judicial district trial court administrators of such decision. I.C. §19-2918(4).

#### **SECTION 26. REPORT OF VIOLATIONS**

##### **Violation of these guidelines—Clerk's duty to report violations.**

The clerks of the district court or their appointed deputies, or court clerks designated under Idaho Misdemeanor Criminal Rule 12, shall be responsible for promptly reporting any and all violations of these Guidelines, or the statutes and rules pertaining to bail, to the Trial Court Administrator or his/her delegate. The Trial Court Administrator or his/her delegate shall report these allegations to the Administrative District Judge.