

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 71

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING SECTION 41-3802, IDAHO CODE, TO REVISE DEF-
2 INITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 38, TITLE
3 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3815A, IDAHO CODE, TO
4 ESTABLISH PROVISIONS REGARDING GROUP-WIDE SUPERVISION OF INTERNATION-
5 ALLY ACTIVE INSURANCE GROUPS; AMENDING SECTION 41-3816, IDAHO CODE, TO
6 REVISE PROVISIONS REGARDING CONFIDENTIAL TREATMENT OF CERTAIN DOCU-
7 MENTS, MATERIALS, AND INFORMATION AND TO MAKE TECHNICAL CORRECTIONS;
8 AND PROVIDING SEVERABILITY.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 41-3802, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 41-3802. DEFINITIONS. As used in this chapter, the following terms
14 shall have the following meanings:

15 (1) "Affiliate" of, or a person "affiliated" with, a specific person,
16 means a person who directly or indirectly through one (1) or more intermedi-
17 aries controls or is controlled by, or is under common control with, the per-
18 son specified.

19 (2) "Control," including "controlling," "controlled by" and "under
20 common control with," means the possession, direct or indirect, of the power
21 to direct or cause the direction of the management and policies of a person,
22 whether through the ownership of voting securities, by contract other than
23 a commercial contract for goods or nonmanagement services, or otherwise,
24 unless the power is the result of an official position with or a corporate
25 office held by the person. Control shall be presumed to exist if any person,
26 directly or indirectly, owns, controls, holds with the power to vote or holds
27 proxies representing ten percent (10%) or more of the voting securities of
28 any other person. This presumption may be rebutted by a showing made in the
29 manner provided in section 41-3809(11), Idaho Code, that control does not
30 exist in fact. The director may determine, after furnishing all persons in
31 interest notice and opportunity to be heard and making specific findings of
32 fact to support the determination, that control exists in fact, notwith-
33 standing the absence of a presumption to that effect.

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

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

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

8 (56) "Insurer" has the same meaning as that set forth in section 41-103,
 9 Idaho Code, except that it shall not include agencies, authorities or in-
 10 strumentalities of the United States, its possessions and territories, the
 11 Commonwealth of Puerto Rico, the District of Columbia or a state or political
 12 subdivision of a state.

13 (7) "Internationally active insurance group" means an insurance hold-
 14 ing company system that:

15 (a) Includes an insurer registered under section 41-3809, Idaho Code;
 16 and

17 (b) Meets the following criteria:

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

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

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

27 (68) "Person" means an individual, a corporation, a limited liability
 28 company, a partnership, an association, a joint stock company, a business
 29 trust, an unincorporated organization, or any similar entity or any combi-
 30 nation of the foregoing acting in concert, but shall not include any joint
 31 venture partnership exclusively engaged in owning, managing, leasing or de-
 32 veloping real or tangible personal property.

33 (79) "Security holder" means a person who owns any security of a speci-
 34 fied person, including common stock, preferred stock, debt obligations and
 35 any other security convertible into or evidencing the right to acquire any of
 36 the foregoing.

37 (810) "Subsidiary" means a specified person who is an affiliate con-
 38 trolled by such person directly or indirectly through one (1) or more
 39 intermediaries.

40 (911) "Voting security" means any security convertible into or evidenc-
 41 ing a right to acquire a voting security.

42 SECTION 2. That Chapter 38, Title 41, Idaho Code, be, and the same is
 43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 44 ignated as Section 41-3815A, Idaho Code, and to read as follows:

45 41-3815A. GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE
 46 GROUPS. (1) The director is authorized to act as the group-wide supervisor
 47 for any internationally active insurance group in accordance with the pro-
 48 visions of this section. However, the director may otherwise acknowledge

1 another regulatory official as the group-wide supervisor where the interna-
2 tionally active insurance group:

3 (a) Does not have substantial insurance operations in the United
4 States;

5 (b) Has substantial insurance operations in the United States, but not
6 in this state; or

7 (c) Has substantial insurance operations in the United States and in
8 this state, but the director has determined pursuant to the factors set
9 forth in subsections (2) and (6) of this section that the other regula-
10 tory official is the appropriate group-wide supervisor.

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

15 (2) In cooperation with other state, federal, and international regu-
16 latory agencies, the director will identify a single group-wide supervisor
17 for an internationally active insurance group. The director may determine
18 that the director is the appropriate group-wide supervisor for an inter-
19 nationally active insurance group that conducts substantial insurance
20 operations concentrated in this state. However, the director may acknowl-
21 edge that a regulatory official from another jurisdiction is the appropriate
22 group-wide supervisor for the internationally active insurance group. The
23 director shall consider the following factors when making a determination or
24 acknowledgment under this subsection:

25 (a) The place of domicile of the insurers within the internationally
26 active insurance group who hold the largest share of the group's written
27 premiums, assets, or liabilities;

28 (b) The place of domicile of the top-tiered insurer(s) in the insurance
29 holding company system of the internationally active insurance group;

30 (c) The location of the executive offices or largest operational of-
31 fices of the internationally active insurance group;

32 (d) Whether another regulatory official is acting or is seeking to act
33 as the group-wide supervisor under a regulatory system that the direc-
34 tor determines to be:

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

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

40 (e) Whether another regulatory official acting or seeking to act as the
41 group-wide supervisor provides the director with reasonably recipro-
42 cal recognition and cooperation. However, a director or regulatory of-
43 ficial from another jurisdiction identified under this section as the
44 group-wide supervisor may determine that it is appropriate to acknowl-
45 edge another supervisor to serve as the group-wide supervisor. The ac-
46 knowledgment of the group-wide supervisor shall be made after consider-
47 ation of the factors listed in this subsection, shall be made in coop-
48 eration with and subject to the acknowledgment of other regulatory of-
49 ficials involved with supervision of members of the internationally ac-

1 tive insurance group, and shall be made in consultation with the inter-
2 nationally active insurance group.

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

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

11 (b) This state being the place of domicile of the top-tiered insurer(s)
12 in the insurance holding company system of the internationally active
13 insurance group,

14 the director shall make a determination or acknowledgment as to the appro-
15 priate group-wide supervisor for such an internationally active insurance
16 group pursuant to subsection (2) of this section.

17 (4) Pursuant to section 41-3814, Idaho Code, the director is authorized
18 to collect from any insurer registered pursuant to section 41-3809, Idaho
19 Code, all information necessary to determine whether the director may act
20 as the group-wide supervisor of an internationally active insurance group
21 or if the director may acknowledge another regulatory official to act as the
22 group-wide supervisor. Prior to issuing a determination that an interna-
23 tionally active insurance group is subject to group-wide supervision by the
24 director, the director shall notify the insurer registered pursuant to sec-
25 tion 41-3809, Idaho Code, and the ultimate controlling person within the in-
26 ternationally active insurance group. The internationally active insurance
27 group shall have no fewer than thirty (30) days to provide the director with
28 additional information pertinent to the pending determination. The direc-
29 tor shall publish on the department of insurance website the identity of in-
30 ternationally active insurance groups that the director has determined are
31 subject to group-wide supervision by the director.

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

35 (a) Assess the enterprise risks within the internationally active in-
36 surance group to ensure that:

37 (i) The material financial condition and liquidity risks to the
38 members of the internationally active insurance group engaged in
39 the business of insurance are identified by management; and

40 (ii) Reasonable and effective mitigation measures are in place;

41 (b) Request, from any member of an internationally active insurance
42 group subject to the director's supervision, information necessary and
43 appropriate to assess enterprise risk, including, but not limited to,
44 information about the members of the internationally active insurance
45 group regarding:

46 (i) Governance, risk assessment, and management;

47 (ii) Capital adequacy; and

48 (iii) Material intercompany transactions;

49 (c) Coordinate and, through the authority of the regulatory officials
50 of the jurisdictions where members of the internationally active in-

1 insurance group are domiciled, compel development and implementation of
2 reasonable measures designed to ensure that the internationally active
3 insurance group is able to timely recognize and mitigate enterprise
4 risks to members of such internationally active insurance group engaged
5 in the business of insurance;

6 (d) Communicate with other state, federal, and international regula-
7 tory agencies for members within the internationally active insurance
8 group and share relevant information subject to the confidentiality
9 provisions of section 41-3816, Idaho Code, through supervisory col-
10 leges as set forth in section 41-3815, Idaho Code, or otherwise;

11 (e) Enter into agreements with or obtain documentation from any insurer
12 registered under section 41-3809, Idaho Code, any member of the inter-
13 nationally active insurance group and any other state, federal, and in-
14 ternational regulatory agencies for members of the internationally ac-
15 tive insurance group, providing the basis for or otherwise clarifying
16 the director's role as group-wide supervisor, including provisions for
17 resolving disputes with other regulatory officials. Such agreements
18 or documentation shall not serve as evidence in any proceeding that any
19 insurer or person within an insurance holding company system not domi-
20 ciled or incorporated in this state is doing business in this state or is
21 otherwise subject to jurisdiction in this state; and

22 (f) Other group-wide supervision activities, consistent with the au-
23 thorities and purposes enumerated in this subsection, as considered
24 necessary by the director.

25 (6) If the director acknowledges that another regulatory official from
26 a jurisdiction that is not accredited by the national association of insur-
27 ance commissioners is the group-wide supervisor, the director is authorized
28 to reasonably cooperate, through supervisory colleges or otherwise, with
29 group-wide supervision undertaken by the group-wide supervisor, provided
30 that:

31 (a) The director's cooperation is in compliance with the laws of this
32 state; and

33 (b) The regulatory official acknowledged as the group-wide supervi-
34 sor also recognizes and cooperates with the director's activities as
35 a group-wide supervisor for other internationally active insurance
36 groups where applicable. Where such recognition and cooperation is not
37 reasonably reciprocal, the director is authorized to refuse recogni-
38 tion and cooperation.

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

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

47 (9) A registered insurer subject to this section shall be liable for and
48 shall pay the reasonable expenses of the director's participation in the ad-
49 ministration of this section, including the engagement of attorneys, actu-
50 aries, and any other professionals and all reasonable travel expenses.

1 SECTION 3. That Section 41-3816, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 41-3816. CONFIDENTIAL TREATMENT. (1) Documents, materials or other
4 information in the possession or control of the department that are obtained
5 by or disclosed to the director or any other person in the course of an ex-
6 amination or investigation made pursuant to section 41-3814, Idaho Code,
7 and all information reported or provided to the department pursuant to sec-
8 tions 41-3804(2), 41-3809, and 41-3810, and 41-3815A, Idaho Code, shall be
9 confidential by law and privileged, shall be exempt from public disclosure,
10 shall not be subject to subpoena and shall not be subject to discovery or
11 admissible in evidence in any private civil action. However, the director
12 is authorized to use such documents, materials or other information in the
13 furtherance of any regulatory or legal action brought as a part of the direc-
14 tor's official duties. The director shall not otherwise make the documents,
15 materials or other information public without the prior written consent
16 of the insurer to which it pertains, unless the director, after giving the
17 insurer and its affiliates who would be affected notice and opportunity to
18 be heard, determines that the interest of policyholders, shareholders or the
19 public will be served by the publication, in which event the director may
20 publish all or any part in such manner as may be deemed appropriate.

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

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

29 (a) May share documents, materials or other information, including the
30 confidential and privileged documents, materials or information sub-
31 ject to subsection (1) of this section, with other state, federal and
32 international regulatory agencies, with the national association of
33 insurance commissioners and its affiliates and subsidiaries, and with
34 state, federal and international law enforcement authorities, includ-
35 ing members of any supervisory college described in section 41-3815,
36 Idaho Code, provided that the recipient agrees in writing to maintain
37 the confidentiality and privileged status of the document, material or
38 other information and has verified in writing the legal authority to
39 maintain confidentiality-;

40 (b) Notwithstanding the provisions of subsection (3)(a) of this
41 section, the director may only share confidential and privileged
42 documents, materials or information reported pursuant to section
43 41-3809(12), Idaho Code, with commissioners of states having statutes
44 or regulations substantially similar to subsection (1) of this section
45 and who have agreed in writing not to disclose such information-;

46 (c) May receive documents, materials or information, including other-
47 wise confidential and privileged documents, materials or information,
48 from the national association of insurance commissioners and its
49 affiliates and subsidiaries and from regulatory and law enforcement of-

1 officials of other foreign or domestic jurisdictions, and shall maintain
2 as confidential or privileged any document, material or information
3 received with notice or the understanding that it is confidential or
4 privileged under the laws of the jurisdiction that is the source of the
5 document, material or information; and

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

10 (i) Specify procedures and protocols regarding the confiden-
11 tiality and security of information shared with the national
12 association of insurance commissioners and its affiliates and
13 subsidiaries pursuant to this chapter, including procedures and
14 protocols for sharing by the national association of insurance
15 commissioners with other state, federal or international regula-
16 tors;

17 (ii) Specify that ownership of information shared with the na-
18 tional association of insurance commissioners and its affiliates
19 and subsidiaries pursuant to this chapter remains with the direc-
20 tor, and the national association of insurance commissioners' use
21 of the information is subject to the direction of the director;

22 (iii) Require prompt notice to be given to an insurer whose con-
23 fidential information is in the possession of the national asso-
24 ciation of insurance commissioners pursuant to this chapter that
25 disclosure of such confidential information has been requested or
26 subpoenaed or otherwise sought; and

27 (iv) Require the national association of insurance commission-
28 ers and its affiliates and subsidiaries to consent to intervention
29 by an insurer in any judicial, administrative or similar action in
30 which the national association of insurance commissioners and its
31 affiliates and subsidiaries may be required to disclose confiden-
32 tial information about the insurer shared with the national asso-
33 ciation of insurance commissioners and the insurer's affiliates
34 and subsidiaries pursuant to this chapter.

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

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

43 (6) Documents, materials or other information in the possession or con-
44 trol of the national association of insurance commissioners pursuant to this
45 chapter shall be confidential and privileged, shall not be a public record,
46 shall not be subject to public disclosure, shall not be subject to subpoena
47 and shall not be subject to discovery or admissible in evidence in any pri-
48 vate civil action.

49 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
50 to be severable and if any provision of this act or the application of such

1 provision to any person or circumstance is declared invalid for any reason,
2 such declaration shall not affect the validity of the remaining portions of
3 this act.