

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 454

BY BUSINESS COMMITTEE

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-3812, IDAHO CODE, TO REVISE PROVISIONS REGARDING DIVIDENDS AND OTHER DISTRIBUTIONS.

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

SECTION 1. That Section 41-3812, Idaho Code, be, and the same is hereby amended to read as follows:

41-3812. DIVIDENDS AND OTHER DISTRIBUTIONS. (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the director has received notice of the declaration thereof and has not within that period disapproved the payment, or until the director has approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the ~~lesser~~ greater of:

(a) Ten percent (10%) of the insurer's surplus regarding policyholders as of December 31 of the year immediately preceding; or

(b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including net realized capital gains or losses, for the twelve (12) month period ending December 31 of the year immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

~~In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carryforward shall be computed by taking the net income from the second and third preceding calendar years, not including net realized capital gains or losses, less dividends paid in the second and immediate preceding calendar years. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the director's approval, and the declaration shall confer no rights upon shareholders until the director has approved the payment of the dividend or distribution or until the director has not disapproved payment within the thirty (30) day period referred to in this subsection.~~

(2) Except as provided in this subsection, a domestic insurer shall not make any dividends except from earned surplus. A domestic insurer may declare and distribute a dividend from other than earned surplus if:

(a) The director has given approval for the dividend prior to payment; and

1        (b) Following payment of the dividend, the insurer's surplus regarding  
2        policyholders is:

3            (i) Reasonable in relation to its outstanding liabilities; and

4            (ii) Adequate to meet its financial needs.

5        (3) For purposes of subsection (2) of this section, "earned surplus"  
6        means unassigned funds as required to be reported on the insurer's annual  
7        statement.

8        (24) A domestic insurer that is a member of a holding company system  
9 shall notify the director in writing of any nonextraordinary dividends to  
10 be paid or other distributions to be made to shareholders within five (5)  
11 business days following the declaration of the dividend or distribution, and  
12 shall notify the director in writing at least ten (10) days, commencing from  
13 the date of receipt by the director, prior to the payment of any dividends or  
14 the making of any other distribution.