

CHAPTER 41
HB 1558 - FINAL VERSION

2022 SESSION

22-2457
11/04

HOUSE BILL ***1558***

AN ACT relative to insurance holding companies.

SPONSORS: Rep. Hunt, Ches. 11

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill incorporates updates to an insurance model act regarding receiverships and group capital calculation for credit for reinsurance.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 41
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to insurance holding companies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 41:1 New Paragraphs; Insurance Holding Companies; Definitions. Amend RSA 401-B:1 by inserting
2 after paragraph IV the following new paragraphs:

3 IV-a. "Group-wide supervisor" means the regulatory official authorized to engage in conducting
4 and coordinating group-wide supervision activities who is determined or acknowledged by the
5 commissioner under RSA 401-B:7-a to have sufficient significant contacts with the internationally active
6 insurance group.

7 IV-b. "Group capital calculation instructions" means the group capital calculation instructions as
8 adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures
9 adopted by the NAIC.

10 41:2 New Paragraph; Insurance Holding Companies; Definitions; Internationally Active Insurance
11 Group. Amend RSA 401-B:1 by inserting after paragraph VI the following new paragraph:

12 VI-a. "Internationally active insurance group" means an insurance holding company system that:

13 (a) Includes an insurer registered under RSA 401-B:4; and

14 (b) Meets the following criteria:

15 (1) Premiums written in at least 3 countries;

16 (2) The percentage of gross premiums written outside the United States is at least 10
17 percent of the insurance holding company system's total gross written premiums; and

18 (3) Based on a 3-year rolling average, the total assets of the insurance holding company
19 system are at least \$50,000,000,000, or the total gross written premiums of the insurance holding
20 company system are at least \$10,000,000,000.

21 41:3 New Paragraph; Insurance Holding Companies; Definitions; NAIC Liquidity Stress Test
22 Framework. Amend RSA 401-B:1 by inserting after paragraph VIII the following new paragraph:

23 VIII-a. "NAIC liquidity stress test framework" means a separate NAIC publication which includes
24 a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a
25 specific data year, and the liquidity stress test instructions and reporting templates for a specific data year,
26 such scope criteria, instructions, and reporting template being as adopted by the NAIC and as amended
27 by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

28 41:4 New Paragraph; Insurance Holding Companies; Definitions; Scope Criteria. Amend RSA 401-
29 B:1 by inserting after paragraph IX the following new paragraph:

30 IX-a. "Scope criteria" means, as detailed in the NAIC liquidity stress test framework, the
31 designated exposure bases, along with minimum magnitudes thereof for the specified data year, used to

CHAPTER 41
HB 1558 - FINAL VERSION
- Page 2 -

1 establish a preliminary list of insurers considered scoped in the NAIC liquidity stress test framework for
2 that data year.

3 41:5 Registration of Insurers; Materiality. Amend RSA 401-B:4, IV to read as follows:

4 IV. Materiality. No information need be disclosed on the registration statement filed pursuant to
5 paragraph II, if the information is not material for the purposes of this section. Unless the commissioner
6 by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of
7 credit, investments, or guarantees involving 1/2 of one percent or less of an insurer's admitted assets as
8 of the 31st day of December next preceding shall not be deemed material for purposes of this section.

9 *The definition of materiality provided in this paragraph shall not apply for purposes of the group capital*
10 *calculation or the liquidity stress test framework.*

11 41:6 Receivership; Enterprise Risk Filing. Amend RSA 401-B:4, XII to read as follows:

12 XII. Enterprise Risk Filing.

13 (a) The ultimate controlling person of every insurer subject to registration shall also file an
14 annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge
15 and belief, identify the material risks within the insurance holding company system that could pose
16 enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance
17 holding company system as determined by the procedures within the Financial Analysis Handbook
18 adopted by the NAIC.

19 (b) *Group Capital Calculation. Except as provided in this subparagraph, the ultimate*
20 *controlling person of every insurer subject to registration shall concurrently file with the registration an*
21 *annual group capital calculation as directed by the lead state commissioner. The report shall be*
22 *completed in accordance with the NAIC group capital calculation instructions, which may permit the lead*
23 *state commissioner to allow a controlling person that is not the ultimate controlling person to file the group*
24 *capital calculation. The report shall be filed with the lead state commissioner of the insurance holding*
25 *company system as determined by the commissioner in accordance with the procedures within the*
26 *financial analysis handbook adopted by the NAIC. Insurance holding company systems described below*
27 *are exempt from filing the group capital calculation:*

28 (1) *An insurance holding company system that has only one insurer within its holding*
29 *company structure, that only writes business and is only licensed in its domestic state, and assumes no*
30 *business from any other insurer;*

31 (2) *An insurance holding company system that is required to perform a group capital*
32 *calculation specified by the United States Federal Reserve Board. The lead state commissioner shall*
33 *request the calculation from the Federal Reserve Board under the terms of information sharing*
34 *agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state*
35 *commissioner, the insurance holding company system is not exempt from the group capital calculation*
36 *filing;*

37 (3) *An insurance holding company system whose non-U.S. group-wide supervisor is*
38 *located within a reciprocal jurisdiction as described in RSA 405:47, IV-b(a) that recognizes the U.S. state*
39 *regulatory approach to group supervision and group capital;*

1 (4) *An insurance holding company system:*

2 (A) *That provides information to the lead state that meets the requirements for*
3 *accreditation under the NAIC financial standards and accreditation program, either directly or indirectly*
4 *through the group-wide supervisor, who has determined such information is satisfactory to allow the lead*
5 *state to comply with the NAIC group supervision approach, as detailed in the NAIC financial analysis*
6 *handbook; and*

7 (B) *Whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction*
8 *recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as*
9 *the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.*

10 (5) *Notwithstanding the provisions of subparagraphs (3) and (4) above, a lead state*
11 *commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based*
12 *insurance holding company system where, after any necessary consultation with other supervisors or*
13 *officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency*
14 *monitoring purposes or for ensuring the competitiveness of the insurance marketplace.*

15 (6) *Notwithstanding the exemptions from filing the group capital calculation stated in*
16 *subparagraphs (1)-(4), the lead state commissioner has the discretion to exempt the ultimate controlling*
17 *person from filing the annual group capital calculation or to accept a limited group capital filing or report in*
18 *accordance with criteria as specified by the commissioner in regulation.*

19 (7) *If the lead state commissioner determines that an insurance holding company system*
20 *no longer meets one or more of the requirements for an exemption from filing the group capital calculation*
21 *under this section, the insurance holding company system shall file the group capital calculation at the*
22 *next annual filing date unless given an extension by the lead state commissioner based on reasonable*
23 *grounds shown.*

24 (c) *Liquidity Stress Test. The ultimate controlling person of every insurer subject to*
25 *registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific*
26 *year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the*
27 *insurance holding company system as determined by the procedures within the financial analysis*
28 *handbook adopted by the National Association of Insurance Commissioners.*

29 (1) *The NAIC liquidity stress test framework includes scope criteria applicable to a*
30 *specific data year. These scope criteria are reviewed at least annually by the financial stability task force*
31 *or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the*
32 *scope criteria are to be measured shall be effective on January 1 of the year following the calendar year*
33 *when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are*
34 *considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead*
35 *state insurance commissioner, in consultation with the NAIC financial stability task force or its successor,*
36 *determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that*
37 *do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity*
38 *stress test framework for the specified data year, unless the lead state insurance commissioner, in*

1 *consultation with the NAIC financial stability task force or its successor, determines the insurer should be*
2 *scoped into the framework for that data year.*

3 (2) *Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity*
4 *stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with*
5 *the financial stability task force or its successor, will assess this concern as part of the determination for*
6 *an insurer.*

7 (3) *The performance of, and filing of the results from, a specific year's liquidity stress test*
8 *shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that*
9 *year and any lead state insurance commissioner determinations, in conjunction with the financial stability*
10 *task force or its successor, provided within the framework.*

11 41:7 New Subparagraphs; Standards and Management of an Insurer within a Holding Company
12 System; Transactions within a Holding Company System. Amend RSA 401-B:5, I by inserting after
13 subparagraph (a)(6) the following new subparagraphs:

14 (7) If an insurer subject to RSA 401-B is deemed by the commissioner to be in a
15 hazardous financial condition as defined by insurance department rules or a condition that would be
16 grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require
17 the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined
18 by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract or
19 agreement, or the existence of the condition for which the commissioner required the deposit or the bond.
20 In determining whether a deposit or a bond is required, the commissioner should consider whether
21 concerns exist with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer
22 were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a
23 condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit
24 or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond,
25 not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond
26 should be required for a single contract, multiple contracts or a contract only with a specific person(s).

27 (8) All records and data of the insurer held by an affiliate are and remain the property of
28 the insurer, are subject to control of the insurer, are identifiable, and are segregated, or readily capable of
29 segregation at no additional cost to the insurer, from all other persons' records and data. This includes all
30 records and data that are otherwise the property of the insurer, in whatever form maintained, including,
31 but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium
32 records, rate books, underwriting manuals, personnel records, financial records, or similar records within
33 the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide
34 that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business;
35 obtain access to the operating systems on which the data is maintained; obtain the software that runs
36 those systems either through assumption of licensing agreements or otherwise; and restrict the use of the
37 data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any
38 landlord lien or other encumbrance to give the insurer access to all records and data in the event of the
39 affiliate's default under a lease or other agreement.

CHAPTER 41
HB 1558 - FINAL VERSION
- Page 5 -

(9) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to RSA 402-C.

41:8 New Subparagraph; Standards and Management of an Insurer within a Holding Company System. Amend RSA 401-B:5, I by inserting after subparagraph (e) the following new subparagraph:

(f) Supervision, seizure, conservatorship, or receivership proceedings.

(1) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to RSA 401-B:5, I(b)(4) shall be subject to the jurisdiction of any supervision, seizure, conservatorship or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator or liquidator for the insurer appointed pursuant to RSA 401-B:7-a or RSA 402-C:5 for the purpose of interpreting, enforcing and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(A) Are an integral part of the insurer's operations, including, but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment or any other similar functions; or

(B) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

(2) The commissioner may require that an agreement or contract pursuant to RSA 401-B:5, I(b)(4) for the provision of services described in (1)(A) and (B) above specify that the affiliate consents to the jurisdiction as set forth in this subparagraph.

41:9 Insurance Holding Companies; Confidential Treatment. Amend RSA 401-B:8 to read as follows:
401-B:8 Confidential Treatment.

I. Documents, materials, or other information in the possession or control of the insurance department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RSA 401-B:6 and all information reported pursuant to RSA 401-B:3, II(l) and (m), RSA 401-B:4, RSA 401-B:5, RSA 401-B:7, and RSA 401-B:7-a ***are recognized as being proprietary and to contain trade secrets and*** shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(a) For purposes of the information reported and provided to the insurance department pursuant to RSA 401-B:4, XII(b), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information

1 *received from an insurance holding company supervised by the Federal Reserve Board or any U.S.*
2 *group-wide supervisor.*

3 *(b) For purposes of the information reported and provided to the insurance department*
4 *pursuant to RSA 401-B:4, XII(c), the commissioner shall maintain the confidentiality of the liquidity stress*
5 *test results and supporting disclosures and any liquidity stress test information received from an insurance*
6 *holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.*

7 II. Neither the commissioner or any person who received documents, materials, or other
8 information while acting under the authority of the commissioner or with whom such documents,
9 materials, or other information are shared pursuant to this chapter shall be permitted or required to testify
10 in any private civil action concerning any confidential documents, materials, or information subject to RSA
11 401-B:8, I.

12 III. In order to assist in the performance of the commissioner's duties, the commissioner:

13 (a) May share documents, materials, or other information, including the confidential and
14 privileged documents, materials, or information subject to paragraph I, *including proprietary and trade*
15 *secret documents and materials*, with other state, federal and international regulatory agencies, with the
16 NAIC [~~and its affiliates and subsidiaries~~], *with any third party consultants designated by the commissioner*,
17 and with state, federal, and international law enforcement authorities, including members of any
18 supervisory college described in RSA 401-B:7, provided that the recipient agrees in writing to maintain the
19 confidentiality and privileged status of the document, material or other information, and has verified in
20 writing the legal authority to maintain confidentiality.

21 (b) Notwithstanding subparagraph (a), the commissioner shall only share confidential and
22 privileged documents, material or information reported pursuant to RSA 401-B:4, XII, with commissioner
23 of states having statutes or regulations substantially similar to RSA 401-B:8, I and who have agreed in
24 writing not to disclose such information.

25 (c) May receive documents, materials, or information, including otherwise confidential and
26 privileged documents, materials or information, *including proprietary and trade secret information*, from
27 the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other
28 foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material
29 or information received with notice or the understanding that it is confidential or privileged under the laws
30 of the jurisdiction that is the source of the document, material or information; and

31 (d) Shall enter into written agreements with the NAIC *and any third party consultant*
32 *designated by the commissioner* governing sharing and use of information provided pursuant to this
33 chapter consistent with this paragraph and shall:

34 (1) Specify procedures and protocols regarding the confidentiality and security of
35 information shared with the NAIC [~~and its affiliates and subsidiaries~~] *or a third party consultant designated*
36 *by the commissioner* pursuant to this chapter, including procedures and protocols for sharing by the NAIC
37 with other state, federal, or international regulators. *The agreement shall provide that the recipient agrees*
38 *in writing to maintain the confidentiality and privileged status of the documents, materials, or other*
39 *information and has verified in writing the legal authority to maintain such confidentiality;*

CHAPTER 41
HB 1558 - FINAL VERSION
- Page 7 -

(2) Specify that ownership of information shared with the NAIC ~~[and its affiliates and subsidiaries]~~ ***or a third party consultant*** pursuant to this chapter remains with the commissioner and the NAIC's ***or a third party consultant's, as designated by the commissioner,*** use of the information is subject to the direction of the commissioner[-];

(3) ***Excluding documents, material, or information reported pursuant to RSA 401-B:4, XII(c), prohibit the NAIC or third party consultant designated by the commissioner from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;***

(4) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC ***or a third party consultant designated by the commissioner*** pursuant to this chapter is subject to a request or subpoena to the NAIC ***or a third party consultant designated by the commissioner*** for disclosure or production; ~~[and]~~

~~[(4)]~~ (5) Require the NAIC ~~[and its affiliates and subsidiaries]~~ ***or a third party consultant designated by the commissioner*** to consent to intervention by an insurer in any judicial or administrative action in which the NAIC ~~[and its affiliates and subsidiaries]~~ ***or a third party consultant designated by the commissioner*** may be required to disclose confidential information about the insurer and shared with the NAIC ~~[and its affiliates and subsidiaries]~~ ***or a third party consultant designated by the commissioner*** pursuant to this chapter[-]; ***and***

(6) ***For documents, material, or information reporting pursuant to RSA 401-B:4, XII(c), in the case of an agreement involving a third party consultant, provide for notification of the identity of the consultant to the applicable insurers.***

IV. The sharing of information by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

V. 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 commissioner under this section or as a result of sharing as authorized in RSA 401-B:8, III.

VI. Documents, materials or other information in the possession or control of the NAIC ***or a third party consultant designated by the commissioner*** pursuant to this chapter shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

VII. ***The group capital calculation and resulting group capital ratio required under RSA 401-B:4, XII(b) and the liquidity stress test along with its results and supporting disclosures required under RSA 402-B:4, XII(c) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing 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***

CHAPTER 41
HB 1558 - FINAL VERSION
- Page 8 -

1 *radio or television station or any electronic means of communication available to the public, or in any other*
2 *way as an advertisement, announcement or statement containing a representation or statement with*
3 *regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting*
4 *disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in*
5 *the calculation by any insurer, broker, or other person engaged in any manner in the insurance business*
6 *would be misleading and is therefore prohibited; provided, however, that if any materially false statement*
7 *with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of*
8 *any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio,*
9 *liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate*
10 *comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting*
11 *disclosures is published in any written publication and the insurer is able to demonstrate to the*
12 *commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case*
13 *may be, then the insurer may publish announcements in a written publication if the sole purpose of the*
14 *announcement is to rebut the materially false statement.*

41:10 Effective Date. This act shall take effect upon its passage.

Approved: May 03, 2022
Effective Date: May 03, 2022