

JAN 29 2015

A BILL FOR AN ACT

RELATING TO THE INSURANCE HOLDING COMPANY SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 431:11-102, Hawaii Revised Statutes, is
2 amended by amending the definition of "domestic insurance
3 holding company system" to read as follows:

4 "Domestic insurance holding company system" [~~means an~~
5 ~~insurance holding company system that consists of an ultimate~~
6 ~~controlling person formed in this State prior to January 1,~~
7 ~~2000, and its insurer affiliates, all of which are domestic~~
8 ~~insurers authorized to transact insurance business only in this~~
9 ~~State.~~] consists of two or more affiliated persons, one or more
10 of whom is an insurer, with an ultimate controlling person
11 formed in this State prior to January 1, 1995, and its insurer
12 affiliates, all of whom are domestic insurers authorized to
13 transact insurance business only in this State."

14 SECTION 2. Section 431:11-104, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:



1 "(b) The statement to be filed with the commissioner
2 hereunder shall be made under oath or affirmation and shall
3 contain the following information:

4 (1) The name and address of each person by whom or on
5 whose behalf the merger or other acquisition of
6 control referred to in subsection (a) is to be
7 effected (hereinafter called "acquiring party"), and:

8 (A) If the person is an individual, the principal
9 occupation and all offices and positions held by
10 the individual during the past five years, and
11 any conviction of crimes other than minor traffic
12 violations during the past ten years; or

13 (B) If the person is not an individual, a report of
14 the nature of its business operations during the
15 past five years or for such lesser period as the
16 person and any predecessors thereof shall have
17 been in existence; an informative description of
18 the business intended to be done by the person
19 and the person's subsidiaries; and a list of all
20 individuals who are or who have been selected to
21 become directors or executive officers of the



1 person, or who perform or will perform functions
2 appropriate to the positions. The list shall
3 include for each individual the information
4 required by subparagraph (A);

5 (2) The source, nature, and amount of the consideration
6 used or to be used in effecting the merger or other
7 acquisition of control, a description of any
8 transaction wherein funds were or are to be obtained
9 for any purpose (including any pledge of the insurer's
10 stock, or the stock of any of its subsidiaries or
11 controlling affiliates), and the identity of persons
12 furnishing the consideration; provided that where a
13 source of the consideration is a loan made in the
14 lender's ordinary course of business, the identity of
15 the lender shall remain confidential, if the person
16 filing the statement requests confidentiality;

17 (3) Fully audited financial information as to the earnings
18 and financial condition of each acquiring party for
19 the preceding five fiscal years (or for the lesser
20 period as the acquiring party and any predecessors
21 thereof shall have been in existence), and similar



1 unaudited information as of a date not earlier than
2 ninety days prior to the filing of the statement;

3 (4) Any plans or proposals that each acquiring party may
4 have to liquidate the insurer, to sell its assets or
5 merge or consolidate it with any person, or to make
6 any other material change in its business or corporate
7 structure or management;

8 (5) The number of shares of any security referred to in
9 subsection (a) that each acquiring party proposes to
10 acquire, and the terms of the offer, request,
11 invitation, agreement, or acquisition referred to in
12 subsection (a), and a statement as to the method by
13 which the fairness of the proposal was arrived at;

14 (6) The amount of each class of any security referred to
15 in subsection (a) that is beneficially owned or
16 concerning which there is a right to acquire
17 beneficial ownership by each acquiring party;

18 (7) A full description of any contracts, arrangements, or
19 understandings with respect to any security referred
20 to in subsection (a) in which any acquiring party is
21 involved including but not limited to transfer of any



1 of the securities, joint ventures, loan or option
2 arrangements, puts or calls, guarantees of loans,
3 guarantees against loss or guarantees of profits,
4 division of losses or profits, or the giving or
5 withholding of proxies. The description shall
6 identify the persons with whom the contracts,
7 arrangements, or understandings have been entered
8 into;

9 (8) A description of the purchase of any security referred
10 to in subsection (a) during the twelve calendar months
11 preceding the filing of the statement by any acquiring
12 party, including the dates of purchase, names of the
13 purchasers, and considerations paid or agreed to be
14 paid therefore;

15 (9) A description of any recommendations to purchase any
16 security referred to in subsection (a) made during the
17 twelve calendar months preceding the filing of the
18 statement by any acquiring party, or by anyone based
19 upon interviews or at the suggestion of the acquiring
20 party;



- 1 (10) Copies of all tender offers for, requests or
2 invitation for tenders of, exchange offers for, and
3 agreements to acquire or exchange any securities
4 referred to in subsection (a), and (if distributed) of
5 additional soliciting material relating thereto;
- 6 (11) The term of any agreement, contract, or understanding
7 made with or proposed to be made with any broker-
8 dealer as to solicitation of securities referred to in
9 subsection (a) for tender, and the amount of any fees,
10 commissions, or other compensation to be paid to
11 broker-dealers with regard thereto;
- 12 (12) An agreement by the person required to file the
13 statement referred to in subsection (a) that the
14 person will provide the annual report, specified in
15 section [~~431:11-105(1)~~], 431:11-105(b)(1), for so long
16 as control exists;
- 17 (13) An acknowledgment by the person required to file the
18 statement referred to in subsection (a) that the
19 person and all subsidiaries within the person's
20 control in the insurance holding company system will
21 provide information to the commissioner upon request



1 as necessary to evaluate enterprise risk to the
2 insurer; and

3 (14) Any additional information as the commissioner may by
4 rule prescribe as necessary or appropriate for the
5 protection of policyholders of the insurer or in the
6 public interest.

7 If the person required to file the statement referred to in
8 subsection (a) is a partnership, limited partnership, or other
9 group, the commissioner may require that the information called
10 for by paragraphs (1) through (14) shall be given with respect
11 to each partner of the partnership or limited partnership, each
12 member of the group, and each person who controls such partner
13 or member. If any partner, member, or person is a corporation
14 or the person required to file the statement referred to in
15 subsection (a) is a corporation, the commissioner may require
16 that the information called for by paragraphs (1) through (14)
17 shall be given with respect to the corporation, each officer and
18 director of the corporation, and each person who is directly or
19 indirectly the beneficial owner of more than ten per cent of the
20 outstanding voting securities of the corporation.



1 If any material change occurs in the facts set forth in the
2 statement filed with the commissioner and sent to the insurer
3 pursuant to this section, an amendment setting forth the change,
4 together with copies of all documents and other material
5 relevant to the change, shall be filed with the commissioner and
6 sent to the insurer within two business days after the person
7 learns of the change. The insurer shall send the amendment to
8 its shareholders."

9 SECTION 3. Section 431:11-105, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Every insurer subject to registration shall file the
12 registration statement with the commissioner on a form and in a
13 format prescribed by the National Association of Insurance
14 Commissioners, which shall contain the following current
15 information:

16 (1) The capital structure, general financial condition,
17 ownership, and management of the insurer and any
18 person controlling the insurer;

19 (2) The identity and relationship of every member of the
20 insurance holding company system;



- 1 (3) The following agreements in force, and transactions
- 2 currently outstanding or that have occurred during the
- 3 last calendar year between the insurer and its
- 4 affiliates:
- 5 (A) Loans, other investments, or purchases, sales, or
- 6 exchanges of securities of the affiliates by the
- 7 insurer or of the insurer by its affiliates;
- 8 (B) Purchases, sales, or exchange of assets;
- 9 (C) Transactions not in the ordinary course of
- 10 business;
- 11 (D) Guarantees or undertakings for the benefit of an
- 12 affiliate that result in an actual contingent
- 13 exposure of the insurer's assets to liability,
- 14 other than insurance contracts entered into in
- 15 the ordinary course of the insurer's business;
- 16 (E) All management agreements, all service contracts,
- 17 and all cost-sharing arrangements;
- 18 (F) Reinsurance agreements;
- 19 (G) Dividends and other distributions to
- 20 shareholders; and
- 21 (H) Consolidated tax allocation agreements;

- 1 (4) Any pledge of the insurer's stock, including stock of
2 any subsidiary or controlling affiliate, for a loan
3 made to any member of the insurance holding company
4 system;
- 5 (5) If requested by the commissioner, financial statements
6 of an insurance holding company system[-], including
7 all affiliates. Financial statements may include but
8 are not limited to annual audited financial statements
9 filed with the Securities and Exchange Commission
10 pursuant to the Securities Act of 1933, as amended, or
11 the Securities Exchange Act of 1934, as amended. An
12 insurer required to file financial statements pursuant
13 to this paragraph may satisfy the request by providing
14 the commissioner with the most recently filed
15 financial statements of the parent corporation that
16 have been filed with the Securities and Exchange
17 Commission;
- 18 (6) Other matters concerning transactions between
19 registered insurers and any affiliates as may be
20 included from time to time in any registration forms
21 adopted or approved by the commissioner; [~~and~~]



1 (7) Statements that the insurer's board of directors
2 oversees corporate governance and internal controls
3 and that the insurer's officers or senior management
4 have approved, implemented, and continue to maintain
5 and monitor corporate governance and internal control
6 procedures [-] ; and

7 (8) Any other information required by the commissioner by
8 rule not inconsistent with this section."

9 SECTION 4. Section 431:11-107, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§431:11-107 **Examination** (a) Subject to the limitation
12 contained in this section and in addition to the powers that the
13 commissioner has under article 2 relating to the examination of
14 insurers, the commissioner may examine any insurer registered
15 under section 431:11-105 and its affiliates as reasonably
16 necessary to ascertain the financial condition of the insurer,
17 including the enterprise risk to the insurer by the ultimate
18 controlling party, or by any entity or combination of entities
19 within the insurance holding company system, or by the insurance
20 holding company system on a consolidated basis.



1 (b) ~~[To evaluate whether the operations of an ultimate~~
2 ~~controlling person, affiliate, or any combination of entities~~
3 ~~within the insurance holding company system may adversely and~~
4 ~~materially affect the operations, management, or financial~~
5 ~~condition of an insurer, the] The commissioner may order any~~
6 insurer registered under section 431:11-105 to:

- 7 (1) Produce the records, books, or other information in
8 the possession of the insurer or its affiliates that
9 are reasonably necessary to determine compliance with
10 this article; and
- 11 (2) Determine compliance with this article, produce
12 information not in the possession of the insurer if
13 the insurer can obtain access to that information
14 pursuant to contractual relationships, statutory
15 obligations, or other methods. In the event the
16 insurer cannot obtain the information requested by the
17 commissioner, the insurer shall provide the
18 commissioner a detailed explanation of the reason that
19 the insurer cannot obtain the information and the
20 identity of the holder of information. Whenever it
21 appears to the commissioner that the detailed



1 explanation is without merit, the commissioner may
2 require, after notice and hearing, the insurer to pay
3 a penalty of not less than \$100 and not more than \$500
4 for each day's delay, or may suspend or revoke the
5 insurer's license.

6 (c) The commissioner may retain at the registered
7 insurer's expense attorneys, actuaries, accountants, and other
8 experts not otherwise a part of the commissioner's staff as
9 shall be reasonably necessary to assist in the conduct of the
10 examination under [~~subsections (a) and (e).~~] this section. Any
11 persons so retained shall be under the direction and control of
12 the commissioner and shall act in a purely advisory capacity.

13 (d) Each registered insurer producing for examination
14 records, books, and papers pursuant to [~~subsections (a) and (e).~~]
15 this section shall be liable for and shall pay the expense of
16 the examination in accordance with article 2.

17 (e) In the event that [+

18 ~~(1) An insurer fails to comply with an order pursuant to~~
19 ~~subsection (b); or~~

20 ~~(2) The commissioner, upon evaluating whether the~~
21 ~~operations of an ultimate controlling person,~~



1 ~~affiliate, or any combination of entities within the~~
2 ~~insurance holding company system pursuant to~~
3 ~~subsection (b), has reasonable cause to believe that:~~

4 ~~(A) The operations of the ultimate controlling~~
5 ~~person, affiliate, or any combination of entities~~
6 ~~within the insurance holding company system may~~
7 ~~adversely and materially affect the operations,~~
8 ~~management, or financial condition of an insurer;~~
9 ~~or~~

10 ~~(B) The commissioner is unable to obtain relevant~~
11 ~~information from the controlled insurer,~~
12 ~~the commissioner may examine the ultimate controlling~~
13 ~~person, affiliate, or any combination of entities~~
14 ~~within the insurance holding company system.]~~

15 an insurer fails to comply with an order, the commissioner may
16 examine the affiliates to obtain the information. The
17 commissioner may also issue subpoenas, administer oaths, and
18 examine under oath any person for purposes of determining
19 compliance with this section. Upon the failure or refusal of
20 any person to obey a subpoena, the commissioner may petition a
21 court of competent jurisdiction, and upon proper showing, the



1 court may enter an order compelling the witness to appear and
 2 testify or produce documentary evidence. Failure to obey the
 3 court order shall be punishable as contempt of court. Every
 4 person shall be obliged to attend as a witness at the place
 5 specified in the subpoena, when subpoenaed, anywhere within the
 6 State. Every person shall be entitled to the same fees and
 7 mileage, if claimed, as a witness in a court of record, which
 8 fees, mileage, and actual expense, if any, necessarily incurred
 9 in securing the attendance of witnesses, and their testimony,
 10 shall be itemized and charged against, and be paid by, the
 11 company being examined.

12 (f) ~~[An examination of affiliates by the commissioner~~
 13 ~~under subsection (c) shall specify the grounds for the~~
 14 ~~examination and shall be confined to those specified grounds.]~~

15 A domestic insurance holding company system shall be exempt from
 16 this section."

17 SECTION 5. Section 431:11-108, Hawaii Revised Statutes, is
 18 amended by amending subsection (c) to read as follows:

19 "(c) To assist in the performance of the commissioner's
 20 duties, the commissioner:



- 1 (1) May share documents, materials, or other information,
2 including the confidential and privileged documents,
3 materials, or information subject to subsection (a),
4 with other state, federal, and international
5 regulatory agencies, with the National Association of
6 Insurance Commissioners and its affiliates and
7 subsidiaries, and with state, federal, and
8 international law enforcement authorities, including
9 members of any supervisory college described in
10 section 431:11-107.5; provided that the recipient
11 agrees in writing to maintain the confidentiality and
12 privileged status of the document, material, or other
13 information, and has verified in writing the legal
14 authority to maintain confidentiality;
- 15 (2) Notwithstanding paragraph (1) to the contrary, may
16 only share confidential and privileged documents,
17 material, or information reported pursuant to section
18 ~~[431:11-105(1)]~~ 431:11-105(b)(1) with commissioners of
19 states having statutes or regulations substantially
20 similar to subsection (a) and who have agreed in
21 writing not to disclose such information;



- 1 (3) May receive documents, materials, or information,
2 including otherwise confidential and privileged
3 documents, materials, or information from the National
4 Association of Insurance Commissioners and its
5 affiliates and subsidiaries and from regulatory and
6 law enforcement officials of other foreign or domestic
7 jurisdictions, and shall maintain as confidential or
8 privileged any document, material, or information
9 received with notice or the understanding that it is
10 confidential or privileged under the laws of the
11 jurisdiction that is the source of the document,
12 material, or information; and
- 13 (4) Shall enter into written agreements with the National
14 Association of Insurance Commissioners governing
15 sharing and use of information provided pursuant to
16 this article and consistent with this subsection that
17 shall:
- 18 (A) Specify procedures and protocols regarding the
19 confidentiality and security of information
20 shared with the National Association of Insurance
21 Commissioners and its affiliates and subsidiaries



1 pursuant to this article, including procedures
2 and protocols for sharing by the National
3 Association of Insurance Commissioners with other
4 state, federal, or international regulators;

5 (B) Specify that ownership of information shared with
6 the National Association of Insurance
7 Commissioners and its affiliates and subsidiaries
8 pursuant to this article remains with ~~[and for~~
9 ~~use by]~~ the commissioner and specify that the
10 National Association of Insurance ~~[Commissioners~~
11 ~~and]~~ Commissioners' use of the information is
12 subject to the direction of the commissioner;

13 (C) Require that prompt notice be given to an insurer
14 whose confidential information is in the
15 possession of the National Association of
16 Insurance Commissioners pursuant to this article
17 and require that the insurer is subject to a
18 request or subpoena from the National Association
19 of Insurance Commissioners for disclosure or
20 production; and



S.B. NO. 1265

1 (D) Require the National Association of Insurance
 2 Commissioners and its affiliates and subsidiaries
 3 to consent to intervention by an insurer in any
 4 judicial or administrative action in which the
 5 National Association of Insurance Commissioners
 6 and its affiliates and subsidiaries may be
 7 required to disclose confidential information
 8 about the insurer shared pursuant to this
 9 article."

10 SECTION 6. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on January 1, 2016.
 13

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S.B. NO. 1265

Report Title:

Insurance; Insurance Holding Company System; Domestic Insurance Holding Company System; Insurance Division

Description:

Makes certain clarifying amendments to article 11 of the State insurance code, relating to the insurance holding company system. Takes effect on 1/1/2016.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

