A BILL FOR AN ACT

RELATING TO THE INSURANCE HOLDING COMPANY SYSTEM.

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

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

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

"Statement" means information required to be filed with the commissioner pursuant to sections 431:11-104[-7] through 431:11-104.5, 431:11-105, and 431:11-106, and guidelines set forth on a form or in a format approved by the commissioner."
SECTION 2. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

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

(B) If the person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all
individuals who are or who have been selected to
become directors or executive officers of the
person, or who perform or will perform functions
appropriate to the positions. The list shall
include for each individual the information
required by subparagraph (A);

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

(3) Fully audited financial information as to the earnings
and financial condition of each acquiring party for
the preceding five fiscal years (or for the lesser
period as the acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

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

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

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

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred
to in subsection (a) in which any acquiring party is involved including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;

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

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

(10) Copies of all tender offers for, requests or invitation for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto;

(11) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(12) An agreement by the person required to file the statement referred to in subsection (a) that the person will provide the annual report, specified in section [431:11-105(1),] 431:11-105(b)(1), for so long as control exists;

(13) An acknowledgment by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within the person's
control in the insurance holding company system will
provide information to the commissioner upon request
as necessary to evaluate enterprise risk to the
insurer; and

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

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

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

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

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

(1) The capital structure, general financial condition,
ownership, and management of the insurer and any
person controlling the insurer;
(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

(A) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management agreements, all service contracts, and all cost-sharing arrangements;

(F) Reinsurance agreements;
(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, financial statements of an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed financial statements of the parent corporation that have been filed with the Securities and Exchange Commission;
(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner; [and]

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

(8) Any other information required by the commissioner by rule."

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

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

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

(1) Produce the records, books, or other information in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with this article; and

(2) Produce information not in the possession of the insurer if the insurer can obtain access to that information pursuant to contractual relationships, statutory obligations, or other methods to determine compliance with this article. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the
commissioner a detailed explanation of the reason that
the insurer cannot obtain the information and the
identity of the holder of the information. Whenever
it appears to the commissioner that the detailed
explanation is without merit, the commissioner may
require, after notice and hearing, the insurer to pay
a penalty of not less than $100 and not more than $500
for each day's delay, or may suspend or revoke the
insurer's license.

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

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

(e) In the event that[+}
(1) An insurer fails to comply with an order pursuant to subsection (b); or

(2) The commissioner, upon evaluating whether the operations of an ultimate controlling person, affiliate, or any combination of entities within the insurance holding company system pursuant to subsection (b), has reasonable cause to believe that:

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

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

An insurer fails to comply with an order, the commissioner may examine the insurer's affiliates to obtain the information. The commissioner may also issue subpoenas, administer oaths, and
examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the State. Every person shall be entitled to the same fees and mileage, if claimed, as a witness in a court of record, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

(f) [An examination of affiliates by the commissioner under subsection (e) shall specify the grounds for the examination and shall be confined to those specified grounds.] The non-insurance affiliates of a domestic insurance holding company system shall be exempt from this article."

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

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

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 431:11-107.5; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding paragraph (1) to the contrary, may only share confidential and privileged documents, material, or information reported pursuant to section
[431:11-105(1)] 431:11-105(b)(1) with the commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information;

(3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article and consistent with this subsection that shall:
(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with [and for use by] the commissioner, and specify that the National Association of Insurance Commissioners' use of the information is subject to the direction of the commissioner;

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

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

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

SECTION 7. This Act shall take effect upon its approval.
Report Title:
Insurance Holding Company System; Insurance Holding Company System Regulatory Model Act

Description:
Adopts revisions to the National Association of Insurance Commissioners' model law on the Insurance Holding Company System Regulatory Act. (SD1)

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