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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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**PART I**

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**"ARTICLE**

**RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT**

§431: -101 **Scope and purpose.** (a) This article shall apply to all insurers domiciled in this State unless exempt pursuant to section 431: -106.

(b) The purposes of this article shall be to:

(1) Provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment; and

(2) Provide guidance and instructions for filing an own risk and solvency assessment summary report with the commissioner.

§431: -102 **Definitions.** As used in this article:



1 "Insurance group" means those insurers and affiliates  
2 included within an insurance holding company system as defined  
3 in article 11.

4 "Insurer" shall have the same meaning as set forth in  
5 article 1, except that it shall not include:

6 (1) Agencies, authorities, or instrumentalities of the  
7 United States, its possessions and territories, the  
8 Commonwealth of Puerto Rico, the District of Columbia,  
9 or a state or political subdivision of a state;

10 (2) Fraternal benefit societies;

11 (3) Nonprofit medical and hospital service associations  
12 that are exempt from state and federal income taxes;  
13 or

14 (4) Unauthorized insurers.

15 "Own risk and solvency assessment" means a confidential  
16 internal assessment, appropriate to the nature, scale, and  
17 complexity of an insurer or insurance group and conducted by  
18 that insurer or insurance group, of the material and relevant  
19 risks associated with the insurer or insurance group's current  
20 business plan and the sufficiency of capital resources to  
21 support those risks.



1 "Own Risk and Solvency Assessment Guidance Manual" means  
2 the Own Risk and Solvency Assessment Guidance Manual as  
3 developed and adopted by the National Association of Insurance  
4 Commissioners and as amended from time to time. A change in the  
5 Own Risk and Solvency Assessment Guidance Manual shall take  
6 effect on the January 1 following the calendar year in which the  
7 changes have been adopted by the National Association of  
8 Insurance Commissioners.

9 "Own risk and solvency assessment summary report" means a  
10 confidential, high-level summary of an insurer or insurance  
11 group's own risk and solvency assessment.

12 **§431: -103 Risk management framework.** An insurer shall  
13 maintain a risk management framework to assist the insurer with  
14 identifying, assessing, monitoring, managing, and reporting its  
15 material and relevant risks. This requirement may be satisfied  
16 if the insurance group of which the insurer is a member  
17 maintains a risk management framework applicable to the  
18 operations of the insurer.

19 **§431: -104 Own risk and solvency assessment requirement.**  
20 Subject to section 431: -106, an insurer or the insurance group  
21 of which the insurer is a member shall regularly conduct an own



1 risk and solvency assessment consistent with a process  
2 comparable to the Own Risk and Solvency Assessment Guidance  
3 Manual. The own risk and solvency assessment shall be conducted  
4 no less than annually but also at any time when there are  
5 significant changes to the risk profile of the insurer or the  
6 insurance group of which the insurer is a member.

7       **§431: -105 Own risk and solvency assessment summary**  
8 **report.** (a) Upon the commissioner's request, and no more than  
9 once each year beginning in 2018, an insurer shall submit to the  
10 commissioner an own risk and solvency assessment summary report  
11 or any combination of reports that together contain the  
12 information described in the Own Risk and Solvency Assessment  
13 Guidance Manual, which is applicable to the insurer, the  
14 insurance group of which it is a member, or both.

15       (b) Notwithstanding any request from the commissioner, if  
16 the insurer is a member of an insurance group, the insurer shall  
17 submit any reports required by this section if the commissioner  
18 is the lead state commissioner of the insurance group as  
19 determined by the procedures in the Financial Analysis Handbook  
20 adopted by the National Association of Insurance Commissioners.



1 (c) Any reports filed pursuant to this section shall  
2 include a signature of the insurance group's chief risk officer  
3 or another executive responsible for the oversight of the  
4 insurer's enterprise risk management process attesting, to the  
5 best of the person's belief and knowledge, that:

6 (1) The insurer applies the enterprise risk management  
7 process described in the own risk and solvency  
8 assessment summary report; and

9 (2) A copy of the report has been provided to the  
10 insurer's board of directors or the appropriate  
11 committee thereof.

12 (d) An insurer may comply with subsection (a) by providing  
13 the most recent and substantially similar report, which is  
14 provided by the insurer or another member of an insurance group  
15 of which the insurer is a member, or any combination of reports  
16 that together contain the information described in the Own Risk  
17 and Solvency Assessment Guidance Manual, to the commissioner of  
18 another state or a supervisor or regulator of a foreign  
19 jurisdiction if that report provides information comparable to  
20 that described in the Own Risk and Solvency Assessment Guidance  
21 Manual. Any such report in a language other than English must



1 be accompanied by a translation of that report into the English  
2 language.

3       **§431: -106 Exemption.** (a) An insurer shall be exempt  
4 from the requirements of this article if:

- 5       (1) The insurer's annual direct written and assumed  
6 premium, excluding premiums reinsured with the Federal  
7 Crop Insurance Corporation and National Flood  
8 Insurance Program, is less than \$500,000,000; and  
9       (2) The insurance group of which the insurer is a member  
10 has an annual direct written and assumed premium,  
11 excluding premiums reinsured with the Federal Crop  
12 Insurance Corporation and National Flood Insurance  
13 Program, less than \$1,000,000,000.

14       (b) If an insurer qualifies for exemption pursuant to  
15 subsection (a)(1), but the insurance group of which the insurer  
16 is a member does not qualify for exemption pursuant to  
17 subsection (a)(2), then the own risk and solvency assessment  
18 summary report required pursuant to section 431: -105 shall  
19 include every insurer within the insurance group. This  
20 requirement may be satisfied by the submission of more than one  
21 own risk and solvency assessment summary report for any



1 combination of insurers; provided that any combination of  
2 reports includes every insurer within the insurance group.

3 (c) If an insurer does not qualify for exemption pursuant  
4 to subsection (a)(1), but the insurance group of which it is a  
5 member qualifies for exemption pursuant to subsection (a)(2),  
6 then the only own risk and solvency assessment summary report  
7 required pursuant to section 431: -105 shall be the report  
8 applicable to that insurer.

9 (d) An insurer that does not qualify for exemption  
10 pursuant to subsection (a) may apply to the commissioner for a  
11 waiver from the requirements of this article based upon unique  
12 circumstances.

13 (1) In deciding whether to grant the insurer's request for  
14 waiver, the commissioner may consider:

- 15 (A) The type and volume of business written;
- 16 (B) The ownership and organizational structure; and
- 17 (C) Any other factor the commissioner considers  
18 relevant to the insurer or insurance group of  
19 which the insurer is a member.

20 (2) If the insurer is part of an insurance group with  
21 insurers domiciled in more than one state, the



1 commissioner shall coordinate with the lead state  
2 commissioner and other domiciliary commissioners in  
3 considering whether to grant the insurer's request for  
4 a waiver.

5 (e) Notwithstanding the exemptions stated in this section:

6 (1) The commissioner may require that an insurer maintain  
7 a risk management framework, conduct an own risk and  
8 solvency assessment, and file an own risk and solvency  
9 assessment summary report based upon unique  
10 circumstances including but not limited to the type  
11 and volume of business written, the ownership and  
12 organizational structure, federal agency requests, and  
13 international supervisor requests.

14 (2) The commissioner may require that an insurer maintain  
15 a risk management framework, conduct an own risk and  
16 solvency assessment, and file an own risk and solvency  
17 assessment summary report if the insurer:

18 (A) Has risk-based capital for company action level  
19 event as set forth in section 431:3-403;





1 (B) Meets one or more of the standards of an insurer  
2 deemed to be in hazardous financial condition as  
3 defined in section 431:15-103.5; or

4 (C) Otherwise exhibits qualities of a troubled  
5 insurer as determined by the commissioner.

6 (f) If an insurer that qualifies for an exemption pursuant  
7 to subsection (a) subsequently no longer qualifies for that  
8 exemption due to changes in premium, as reflected in the  
9 insurer's most recent annual statement or in the most recent  
10 annual statements of the insurers within the insurance group of  
11 which the insurer is a member, the insurer shall have one year  
12 following the year the threshold is exceeded to comply with the  
13 requirements of this article.

14 **§431: -107 Contents of own risk and solvency assessment**  
15 **summary report.** (a) The own risk and solvency assessment  
16 summary report shall be prepared consistent with the Own Risk  
17 and Solvency Assessment Guidance Manual and subject to the  
18 requirements of subsection (b). Documentation and supporting  
19 information shall be maintained and made available upon  
20 examination or upon request of the commissioner.



1 (b) The review of the own risk and solvency assessment  
2 summary report and any additional requests for information shall  
3 be made using similar procedures currently used in the analysis  
4 and examination of multi-state or global insurers and insurance  
5 groups.

6 §431: -108 Confidentiality. (a) Documents, materials,  
7 or other information, including the own risk and solvency  
8 assessment summary report, in the possession or control of the  
9 commissioner that are obtained by, created by, or disclosed to  
10 the commissioner or any other person under this article are  
11 recognized as proprietary and containing trade secrets.

12 All such documents, materials, or other information shall  
13 be confidential by law and privileged, shall not be disclosable  
14 under chapter 92F, shall not be subject to subpoena, and shall  
15 not be subject to discovery or admissible in evidence in any  
16 private civil action.

17 The commissioner is authorized to use the documents,  
18 materials, or other information to further any regulatory or  
19 legal action brought as a part of the commissioner's official  
20 duties. The commissioner shall not otherwise make the



1 documents, materials, or other information public without prior  
2 written consent of the insurer.

3 (b) Neither the commissioner nor any person who received  
4 documents, materials, or other own risk and solvency assessment  
5 information through examination or otherwise, while acting under  
6 the authority of the commissioner or with whom such documents,  
7 materials, or other information are shared pursuant to this  
8 article, shall be permitted or required to testify in any  
9 private civil action concerning any confidential documents,  
10 materials, or information subject to subsection (a).

11 (c) To assist in performing the commissioner's regulatory  
12 duties, the commissioner:

13 (1) May, upon request, share information subject to  
14 subsection (a) and proprietary and trade secret  
15 documents with:

16 (A) Other state, federal, and international financial  
17 regulatory agencies; and

18 (B) Members of any supervisory college as defined in  
19 section 431:11-107.5, the National Association of  
20 Insurance Commissioners, and any third-party  
21 consultants designated by the commissioner;



1 provided that the recipient agrees in writing to  
2 maintain the confidentiality and privileged status of  
3 the own risk and solvency assessment documents,  
4 materials, or other information and has verified in  
5 writing the legal authority to maintain  
6 confidentiality;

7 (2) May receive information subject to subsection (a) and  
8 proprietary and trade secret documents from regulatory  
9 officials of other foreign or domestic jurisdictions,  
10 including members of any supervisory college as  
11 defined in section 431:11-107.5, and the National  
12 Association of Insurance Commissioners. The  
13 commissioner shall maintain as confidential or  
14 privileged any documents, materials, or information  
15 received with notice or the understanding that it is  
16 confidential or privileged under the laws of the  
17 jurisdiction that is the source of the document,  
18 material, or information; and

19 (3) Shall enter into a written agreement with the National  
20 Association of Insurance Commissioners or a third-  
21 party consultant governing sharing and use of



1 information provided pursuant to this article and  
2 consistent with this subsection, which shall:

3 (A) Specify procedures and protocols regarding the  
4 confidentiality and security of information  
5 shared with the National Association of Insurance  
6 Commissioners or a third-party consultant  
7 pursuant to this article, including procedures  
8 and protocols for sharing by the National  
9 Association of Insurance Commissioners with other  
10 state regulators from states in which the  
11 insurance group has domiciled insurers. The  
12 agreement shall provide that the recipient agrees  
13 to maintain the confidentiality and privileged  
14 status of the own risk and solvency assessment  
15 documents, materials, or other information and  
16 has verified in writing the legal authority to  
17 maintain confidentiality;

18 (B) Specify that ownership of information shared with  
19 the National Association of Insurance  
20 Commissioners or a third-party consultant  
21 pursuant to this article remains with the



1 commissioner and that use of the information by  
2 the National Association of Insurance  
3 Commissioners or a third-party consultant is  
4 subject to the direction of the commissioner;  
5 (C) Prohibit the National Association of Insurance  
6 Commissioners or third-party consultant from  
7 storing the information shared pursuant to this  
8 article in a permanent database after the  
9 underlying analysis is completed;  
10 (D) Require prompt notice to be given to an insurer  
11 whose confidential information in the possession  
12 of the National Association of Insurance  
13 Commissioners or a third-party consultant  
14 pursuant to this article is subject to a request  
15 or subpoena to the National Association of  
16 Insurance Commissioners or a third-party  
17 consultant for disclosure or production;  
18 (E) Require the National Association of Insurance  
19 Commissioners or a third-party consultant to  
20 consent to intervention by an insurer in any  
21 judicial or administrative action in which the



1 National Association of Insurance Commissioners  
2 or a third-party consultant may be required to  
3 disclose confidential information about the  
4 insurer shared with the National Association of  
5 Insurance Commissioners or a third-party  
6 consultant pursuant to this article; and

7 (F) In the case of an agreement involving a third-  
8 party consultant, provide for the insurer's  
9 written consent.

10 (d) The sharing of information and documents by the  
11 commissioner pursuant to this article shall not constitute a  
12 delegation of regulatory authority or rulemaking, and the  
13 commissioner is solely responsible for the administration,  
14 execution, and enforcement of the provisions of this article.

15 (e) No waiver of any applicable privilege or claim of  
16 confidentiality in the documents, proprietary, and trade secret  
17 materials or other own risk and solvency assessment information  
18 shall occur as a result of disclosing any own risk and solvency  
19 assessment information or documents to the commissioner pursuant  
20 to this section or as a result of sharing as authorized in this  
21 article.



1 (f) Documents, materials, or other information in the  
2 possession or control of the National Association of Insurance  
3 Commissioners or a third-party consultant pursuant to this  
4 article shall be confidential by law and privileged, shall not  
5 be subject to chapter 92F, shall not be subject to subpoena, and  
6 shall not be subject to discovery or admissible in evidence in  
7 any private civil action.

8 **§431: -109 Sanctions.** (a) Any insurer failing without  
9 just cause to timely file the own risk and solvency assessment  
10 summary report as required in this article shall be required  
11 after notice and hearing to pay a penalty of not less than \$100  
12 and not more than \$500 for each day's delay, which shall be  
13 recovered by the commissioner. Any penalty recovered pursuant  
14 to this section shall be paid into the compliance resolution  
15 fund.

16 (b) The maximum penalty under this section is \$50,000.  
17 The commissioner may reduce the penalty if the insurer  
18 demonstrates to the commissioner that imposing the penalty would  
19 constitute a financial hardship to the insurer.

20 **§431: -110 Severability.** If any provision of this  
21 article or its application to any person or circumstance is held





1 invalid, that determination shall not affect the provisions or  
2 applications of this article that can be given effect without  
3 the invalid provision or application, and to that end, the  
4 provisions of this article are severable."

5 **PART II**

6 SECTION 2. Section 431:19-115, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8 "(b) Sections 431:3-302 to 431:3-304.5, 431:3-307, 431:3-  
9 401 to [~~431:3-408,~~] 431:3-409, 431:3-411, 431:3-412, and 431:3-  
10 414; articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and  
11 chapter 431K shall apply to risk retention captive insurance  
12 companies."

13 **PART III**

14 SECTION 3. Section 431K-1, Hawaii Revised Statutes, is  
15 amended by adding two new definitions to be appropriately  
16 inserted and to read as follows:

17 "Board of directors" or "board" means the governing body  
18 of the risk retention group elected by the shareholders or  
19 members to establish policy, elect or appoint officers and  
20 committees, and make other governing decisions.



1        "Director" means a natural person designated in the  
2 articles of the risk retention group or designated, elected, or  
3 appointed by any other manner, name, or title to act as a  
4 director."

5        SECTION 4. Section 431K-2, Hawaii Revised Statutes, is  
6 amended to read as follows:

7        "[~~4~~]431K-2[~~4~~] **Risk retention groups chartered in this**  
8 **State.** (a) A risk retention group seeking to be chartered in  
9 this State shall be chartered and licensed as a liability  
10 insurance company authorized by the insurance laws of this State  
11 and, except as provided elsewhere in this chapter, shall comply  
12 with all of the laws, rules, and requirements applicable to  
13 these insurers chartered and licensed in this State and with  
14 section 431K-3, to the extent these requirements are not a  
15 limitation on the laws, rules, or requirements of this State.  
16 Prior to offering insurance in any state, each risk retention  
17 group shall also submit for approval to the commissioner [~~of~~  
18 ~~this State~~] a plan of operation or [a] feasibility study and  
19 revisions of such plan or study if the group intends to offer  
20 any additional lines of liability insurance. Immediately upon  
21 receipt of an application for charter, the commissioner shall



1 provide summary information concerning the filing to the  
2 National Association of Insurance Commissioners, including:

- 3 (1) The name of the risk retention group;
- 4 (2) The identity of the initial members of the group;
- 5 (3) The identity of those individuals who organized the  
6 group or who will provide administrative services or  
7 otherwise influence or control the activities of the  
8 group;
- 9 (4) The amount and nature of initial capitalization;
- 10 (5) The coverages to be afforded; and
- 11 (6) The states in which the group intends to operate.

12 Providing notification to the National Association of Insurance  
13 Commissioners is in addition to and shall not be sufficient to  
14 satisfy the requirements of section 431K-3 or any other sections  
15 of this chapter.

16 (b) New risk retention groups established on or after  
17 July 1, 2016, shall be in compliance with the governance  
18 standards set forth in subsection (c).

19 (c) By July 1, 2017, existing risk retention groups shall  
20 be in compliance with the following:



1       (1) The board shall have a majority of independent  
2       directors. The board of directors shall: determine  
3       whether a director is independent and has no material  
4       relationship with the risk retention group; review  
5       such determination annually; and maintain a record of  
6       the determinations, which shall be provided to the  
7       commissioner annually. If the risk retention group is  
8       reciprocal, then the attorney-in-fact shall be  
9       required to adhere to the same standards regarding  
10       independence of operation and governance as imposed on  
11       the risk retention group's board of directors and  
12       subscribers advisory committee.

13       (2) The term of any material service provider contract  
14       entered into with a risk retention group shall not  
15       exceed five years. The contract or its renewal  
16       requires approval of a majority of the risk retention  
17       group's independent directors. The board of directors  
18       has the right to terminate a contract at any time for  
19       cause after providing adequate notice as defined in  
20       the terms of the contract. Service providers of a



1           reciprocal risk retention group shall contract with  
2           the risk retention group.

3           (3) A risk retention group shall not enter into a material  
4           service provider contract without the prior written  
5           approval of the commissioner.

6           (4) A risk retention group's plan of operation shall  
7           include written policies approved by its board of  
8           directors requiring the board to:

9           (A) Provide evidence of ownership interest to each  
10           risk retention group member;

11           (B) Develop governance standards applicable to the  
12           risk retention group;

13           (C) Oversee the evaluation of the risk retention  
14           group's management, including the performance of  
15           its captive manager, managing general  
16           underwriter, or any other person responsible for  
17           underwriting, rate determination, premium  
18           collection, claims adjustment and settlement, or  
19           preparation of financial statements;

20           (D) Review and approve the amount to be paid under a  
21           material service provider contract; and



- 1           (E) Review and approve at least annually:
- 2               (i) The risk retention group's goals and
- 3               objectives relevant to the compensation of
- 4               officers and service providers;
- 5               (ii) The performance of officers and service
- 6               providers as measured against the risk
- 7               retention group's goals and objectives; and
- 8               (iii) The continued engagement of officers and
- 9               material service providers.
- 10          (5) A risk retention group shall have an audit committee
- 11          composed of at least three independent board members.
- 12          A nonindependent board member may participate in the
- 13          committee's activities if invited to do so by the
- 14          audit committee, but a nonindependent board member
- 15          shall not serve as a committee member. The
- 16          commissioner may waive the requirement of an audit
- 17          committee if the risk retention group demonstrates to
- 18          the commissioner's satisfaction that having such
- 19          committee is impracticable and that the board of
- 20          directors itself is able to sufficiently perform the
- 21          committee's responsibilities. The audit committee



- 1           shall have a written charter defining its  
2           responsibilities, which shall include:
- 3           (A) Assisting board oversight of the integrity of  
4           financial statements, compliance with legal and  
5           regulatory requirements, and qualifications,  
6           independence, and performance of the independent  
7           auditor or actuary;
- 8           (B) Reviewing annual audited financial statements and  
9           quarterly financial statements with management;
- 10          (C) Reviewing annual audited financial statements  
11          with its independent auditor and, if deemed  
12          advisable, the risk retention group's quarterly  
13          financial statements;
- 14          (D) Reviewing risk assessment and risk management  
15          policies;
- 16          (E) Meeting with management, either directly or  
17          through a designated representative of the  
18          committee;
- 19          (F) Meeting with independent auditors, either  
20          directly or through a designated representative  
21          of the committee;



- 1           (G) Reviewing with the independent auditor any audit
- 2                   problems and management's response;
- 3           (H) Establishing clear hiring policies applicable to
- 4                   the hiring of employees or former employees of
- 5                   the independent auditor by the risk retention
- 6                   group;
- 7           (I) Requiring the independent auditor to rotate the
- 8                   lead audit partner having primary responsibility
- 9                   for the risk retention group's audit, as well as
- 10                  the audit partner responsible for reviewing that
- 11                  audit, so that neither individual performs audit
- 12                  services for the risk retention group for more
- 13                  than five consecutive fiscal years; and
- 14           (J) Reporting regularly to the board of directors.
- 15    (6) The board of directors shall adopt governance
- 16                  standards, which shall be available to risk retention
- 17                  group members through electronic or other means and,
- 18                  upon request, provided to risk retention group
- 19                  members. The governance standards shall include:
- 20           (A) A process by which risk retention group members
- 21                   elect directors;





- 1           (B) Director qualifications, responsibilities, and
- 2           compensation;
- 3           (C) Director orientation and continuing education
- 4           requirements;
- 5           (D) A process allowing the board access to management
- 6           and, as necessary and appropriate, independent
- 7           advisors;
- 8           (E) Policies and procedures for management
- 9           succession; and
- 10          (F) Policies and procedures providing for an annual
- 11          performance evaluation of the board.
  
- 12          (7) The board of directors shall adopt a code of business
- 13          conduct and ethics applicable to directors, officers,
- 14          and employees of the risk retention group and disclose
- 15          criteria for waivers of code provisions to the board
- 16          of directors, which shall be available to risk
- 17          retention group members through electronic or other
- 18          means and, upon request, provided to risk retention
- 19          group members. Provisions of the code shall address:
- 20          (A) Conflicts of interest;



- 1           (B) Matters covered under the Hawaii corporate
- 2           opportunities doctrine;
- 3           (C) Confidentiality;
- 4           (D) Fair dealing;
- 5           (E) Protection and proper use of risk retention group
- 6           assets;
- 7           (F) Standards for complying with applicable laws,
- 8           rules, and regulations; and
- 9           (G) Mandatory reporting of illegal or unethical
- 10           behavior affecting the operation of the risk
- 11           retention group.
  
- 12       (8) The captive manager, president, or chief executive
- 13       officer of a risk retention group shall promptly
- 14       notify the commissioner in writing of any known
- 15       noncompliance with the governance standards
- 16       established in this subsection.
  
- 17       (d) For the purposes of this section:
- 18       "Independent director" means a director who does not have a
- 19       material relationship with the risk retention group. A person
- 20       who is a direct or an indirect owner of or subscriber in the
- 21       risk retention group, as referenced in the definition of "risk



1 retention group" in section 431K-1, or who is an officer, a  
2 director, or an employee of the owner and insured unless some  
3 other position of the officer, director, or employee constitutes  
4 a "material relationship", is considered independent. The  
5 commissioner shall have the authority to determine whether or  
6 not a director is independent.

7 A director has a "material relationship" with a risk  
8 retention group if the director or a member of the director's  
9 immediate family:

10 (1) Receives in any twelve-month period from the risk  
11 retention group or a consultant or service provider to  
12 the risk retention group compensation or other item of  
13 value in an amount equal to or greater than five per  
14 cent of the risk retention group's gross written  
15 premium or two per cent of the risk retention group's  
16 surplus as measured at the end of any fiscal quarter  
17 falling in the twelve-month period, whichever is  
18 greater. This provision also applies to compensation  
19 or items of value received by any business with which  
20 the director or a member of the director's immediate  
21 family is affiliated. The material relationship shall



1 be deemed to exist for one year after the item of  
2 value is received or the compensation ceases or falls  
3 below the threshold established in this paragraph, as  
4 applicable;

5 (2) Is affiliated with or employed in a professional  
6 capacity by a current or former internal or external  
7 auditor of the risk retention group. The material  
8 relationship shall be deemed to exist for one year  
9 after the affiliation, employment, or audit ends; or

10 (3) Is employed as an executive officer of another company  
11 whose board of directors includes executive officers  
12 of the risk retention group unless a majority of the  
13 membership of the other company's board of directors  
14 is the same as the membership of the board of  
15 directors of the risk retention group. The material  
16 relationship shall be deemed to exist for one year  
17 after the employment or service ends.

18 "Material service provider" includes a captive manager,  
19 auditor, accountant, actuary, investment advisor, attorney,  
20 managing general underwriter, or other person responsible for  
21 underwriting, determination of rates, premium collection, claims



1 adjustment or settlement, or preparation of financial  
2 statements, whose aggregate annual contract fees are equal to or  
3 greater than five per cent of the risk retention group's annual  
4 gross written premium or two per cent of its surplus, whichever  
5 is greater. "Material service provider" does not mean defense  
6 counsel retained by a risk retention group unless the counsel's  
7 annual fees are equal to or greater than five per cent of a risk  
8 retention group's annual gross premium or two per cent of its  
9 surplus, whichever is greater."

10 **PART IV**

11 SECTION 5. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon its approval.  
14



**Report Title:**

Insurance; Risk Management and Own Risk and Solvency Assessment Act; Captive Insurance Companies; Model Risk Retention Act

**Description:**

Adopts the National Association of Insurance Commissioners' Risk Management and Own Risk and Solvency Assessment Model Act. Applies certain requirements for risk-based capital and severability and notice provisions to risk retention captive insurance companies. Adopts the National Association of Insurance Commissioners Model Risk Retention Act. (SD1)

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

