
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 definitions of "domestic insurance
3 holding company system" and "statement" 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 which are domestic insurers authorized to
13 transact insurance business only in this State.~~

14 "Statement" means information required to be filed with the
15 commissioner pursuant to sections 431:11-104 [~~7~~] through 431:11-
16 104.5, 431:11-105, and 431:11-106, and guidelines set forth on a
17 form or in a format approved by the commissioner."



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

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

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

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

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



1 individuals who are or who have been selected to
2 become directors or executive officers of the
3 person, or who perform or will perform functions
4 appropriate to the positions. The list shall
5 include for each individual the information
6 required by subparagraph (A);

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

19 (3) Fully audited financial information as to the earnings
20 and financial condition of each acquiring party for
21 the preceding five fiscal years (or for the lesser



- 1 period as the acquiring party and any predecessors
2 thereof shall have been in existence), and similar
3 unaudited information as of a date not earlier than
4 ninety days prior to the filing of the statement;
- 5 (4) Any plans or proposals that each acquiring party may
6 have to liquidate the insurer, to sell its assets or
7 merge or consolidate it with any person, or to make
8 any other material change in its business or corporate
9 structure or management;
- 10 (5) The number of shares of any security referred to in
11 subsection (a) that each acquiring party proposes to
12 acquire, and the terms of the offer, request,
13 invitation, agreement, or acquisition referred to in
14 subsection (a), and a statement as to the method by
15 which the fairness of the proposal was arrived at;
- 16 (6) The amount of each class of any security referred to
17 in subsection (a) that is beneficially owned or
18 concerning which there is a right to acquire
19 beneficial ownership by each acquiring party;
- 20 (7) A full description of any contracts, arrangements, or
21 understandings with respect to any security referred



1 to in subsection (a) in which any acquiring party is
2 involved including but not limited to transfer of any
3 of the securities, joint ventures, loan or option
4 arrangements, puts or calls, guarantees of loans,
5 guarantees against loss or guarantees of profits,
6 division of losses or profits, or the giving or
7 withholding of proxies. The description shall
8 identify the persons with whom the contracts,
9 arrangements, or understandings have been entered
10 into;

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

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



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



1 control in the insurance holding company system will
2 provide information to the commissioner upon request
3 as necessary to evaluate enterprise risk to the
4 insurer; and

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

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



1 indirectly the beneficial owner of more than ten per cent of the
2 outstanding voting securities of the corporation.

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

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

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

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

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



- 1 (G) Dividends and other distributions to
2 shareholders; and
- 3 (H) Consolidated tax allocation agreements;
- 4 (4) Any pledge of the insurer's stock, including stock of
5 any subsidiary or controlling affiliate, for a loan
6 made to any member of the insurance holding company
7 system;
- 8 (5) If requested by the commissioner, financial statements
9 of an insurance holding company system[-], including
10 all affiliates. Financial statements may include but
11 are not limited to annual audited financial statements
12 filed with the Securities and Exchange Commission
13 pursuant to the Securities Act of 1933, as amended, or
14 the Securities Exchange Act of 1934, as amended. An
15 insurer required to file financial statements pursuant
16 to this paragraph may satisfy the request by providing
17 the commissioner with the most recently filed
18 financial statements of the parent corporation that
19 have been filed with the Securities and Exchange
20 Commission;



- 1 (6) Other matters concerning transactions between
2 registered insurers and any affiliates as may be
3 included from time to time in any registration forms
4 adopted or approved by the commissioner; [~~and~~]
- 5 (7) Statements that the insurer's board of directors
6 oversees corporate governance and internal controls
7 and that the insurer's officers or senior management
8 have approved, implemented, and continue to maintain
9 and monitor corporate governance and internal control
10 procedures [~~-~~]; and
- 11 (8) Any other information required by the commissioner by
12 rule."

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

15 "**§431:11-107 Examination.** (a) Subject to the limitation
16 contained in this section and in addition to the powers that the
17 commissioner has under article 2 relating to the examination of
18 insurers, the commissioner may examine any insurer registered
19 under section 431:11-105 and its affiliates as is reasonably
20 necessary to ascertain the financial condition of the insurer,
21 including the enterprise risk to the insurer by the ultimate



1 controlling party, or by any entity or combination of entities
2 within the insurance holding company system, or by the insurance
3 holding company system on a consolidated basis.

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

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



1 commissioner a detailed explanation of the reason that
2 the insurer cannot obtain the information and the
3 identity of the holder of the information. Whenever
4 it appears to the commissioner that the detailed
5 explanation is without merit, the commissioner may
6 require, after notice and hearing, the insurer to pay
7 a penalty of not less than \$100 and not more than \$500
8 for each day's delay, or may suspend or revoke the
9 insurer's license.

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

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

21 (e) In the event that [+



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

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

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

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

19 an insurer fails to comply with an order, the commissioner may
20 examine the insurer's affiliates to obtain the information. The
21 commissioner may also issue subpoenas, administer oaths, and



1 examine under oath any person for purposes of determining
2 compliance with this section. Upon the failure or refusal of
3 any person to obey a subpoena, the commissioner may petition a
4 court of competent jurisdiction, and upon proper showing, the
5 court may enter an order compelling the witness to appear and
6 testify or produce documentary evidence. Failure to obey the
7 court order shall be punishable as contempt of court. Every
8 person shall be obliged to attend as a witness at the place
9 specified in the subpoena, when subpoenaed, anywhere within the
10 State. Every person shall be entitled to the same fees and
11 mileage, if claimed, as a witness in a court of record, which
12 fees, mileage, and actual expense, if any, necessarily incurred
13 in securing the attendance of witnesses, and their testimony,
14 shall be itemized and charged against, and be paid by, the
15 company being examined.

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



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

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

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

19 (2) Notwithstanding paragraph (1) to the contrary, may
20 only share confidential and privileged documents,
21 material, or information reported pursuant to section



1 [~~431:11-105(1)~~] 431:11-105(b)(1) with the
2 commissioners of states having statutes or regulations
3 substantially similar to subsection (a) and who have
4 agreed in writing not to disclose such information;
5 (3) May receive documents, materials, or information,
6 including otherwise confidential and privileged
7 documents, materials, or information from the National
8 Association of Insurance Commissioners and its
9 affiliates and subsidiaries and from regulatory and
10 law enforcement officials of other foreign or domestic
11 jurisdictions, and shall maintain as confidential or
12 privileged any document, material, or information
13 received with notice or the understanding that it is
14 confidential or privileged under the laws of the
15 jurisdiction that is the source of the document,
16 material, or information; and
17 (4) Shall enter into written agreements with the National
18 Association of Insurance Commissioners governing
19 sharing and use of information provided pursuant to
20 this article and consistent with this subsection that
21 shall:



- 1 (A) Specify procedures and protocols regarding the
2 confidentiality and security of information
3 shared with the National Association of Insurance
4 Commissioners and its affiliates and subsidiaries
5 pursuant to this article, including procedures
6 and protocols for sharing by the National
7 Association of Insurance Commissioners with other
8 state, federal, or international regulators;
- 9 (B) Specify that ownership of information shared with
10 the National Association of Insurance
11 Commissioners and its affiliates and subsidiaries
12 pursuant to this article remains with ~~[and for~~
13 ~~use by]~~ the commissioner, and specify that the
14 National Association of Insurance ~~[Commissioners~~
15 ~~and]~~ Commissioners' use of the information is
16 subject to the direction of the commissioner;
- 17 (C) Require that prompt notice be given to an insurer
18 whose confidential information is in the
19 possession of the National Association of
20 Insurance Commissioners pursuant to this article
21 and require that the insurer is subject to a



1 request or subpoena from the National Association
2 of Insurance Commissioners for disclosure or
3 production; and

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

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

15 SECTION 7. This Act shall take effect upon its approval.
16



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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