

1 sensitive information related to an insurer's or
2 insurance group's internal operations and proprietary
3 and trade secret information that, if made public,
4 could potentially cause the insurer or insurance group
5 competitive harm or disadvantage.

6 (b) Nothing in this article shall be construed to
7 prescribe or impose corporate governance standards and internal
8 procedures beyond those required under applicable state
9 corporate law. Notwithstanding the foregoing, nothing in this
10 article shall be construed to limit the commissioner's
11 authority, or the rights or obligations of third parties, under
12 sections 431:2-303 and 431:11-107.

13 (c) The requirements of this article shall apply to all
14 insurers domiciled in this State.

15 **§431: -B Definitions.** For the purposes of this article:

16 "Corporate governance annual disclosure" means a
17 confidential report filed by the insurer or insurance group made
18 in accordance with the requirements of this article.

19 "Insurance group" means those insurers and affiliates
20 included within an insurance holding company system as defined
21 in article 11.



1 "Insurer" has the same meaning as in section 431:1-202,
2 except that it shall not include agencies, authorities or
3 instrumentalities of the United States, its possessions and
4 territories, the Commonwealth of Puerto Rico, the District of
5 Columbia, or a state or political subdivision of a state.

6 "Own risk and solvency assessment summary report" means the
7 report filed in accordance with section 431:3D-105.

8 **§431: -C Disclosure requirement.** (a) An insurer or the
9 insurance group of which the insurer is a member shall, no later
10 than June 1 of each calendar year, submit to the commissioner a
11 corporate governance annual disclosure that contains the
12 information required by section 431: -E. Notwithstanding any
13 request from the commissioner made pursuant to subsection (c),
14 if the insurer is a member of an insurance group, the insurer
15 shall submit the report required by this section to the
16 commissioner of the lead state for the insurance group, in
17 accordance with the laws of the lead state, as determined by the
18 procedures outlined in the most recent Financial Analysis
19 Handbook adopted by the National Association of Insurance
20 Commissioners.



1 (b) The corporate governance annual disclosure shall
2 include a signature of the insurer's or insurance group's chief
3 executive officer or corporate secretary attesting to the best
4 of that individual's belief and knowledge that the insurer has
5 implemented the corporate governance practices and that a copy
6 of the disclosure has been provided to the insurer's board of
7 directors or the appropriate committee thereof.

8 (c) An insurer not required to submit a corporate
9 governance annual disclosure under this section shall do so upon
10 the commissioner's request.

11 (d) For purposes of completing the corporate governance
12 annual disclosure, the insurer or insurance group may provide
13 information regarding corporate governance at the ultimate
14 controlling parent level, an intermediate holding company level,
15 or the individual legal entity level, depending upon how the
16 insurer or insurance group has structured its system of
17 corporate governance. The insurer or insurance group is
18 encouraged to make disclosures at the level at which:

19 (1) The insurer's or insurance group's risk appetite is
20 determined;



1 (2) The earnings, capital, liquidity, operations, and
2 reputation of the insurer are overseen collectively
3 and at which the supervision of those factors is
4 coordinated and exercised; or

5 (3) Legal liability for failure of general corporate
6 governance duties would be placed.

7 If the insurer or insurance group determines the level of
8 reporting based on these criteria, it shall indicate which of
9 the criteria described in paragraphs (1) to (3) was used to
10 determine the level of reporting and explain any subsequent
11 changes in the level of reporting.

12 (e) The review of the corporate governance annual
13 disclosure and any additional requests for information shall be
14 made through the lead state as determined by the procedures
15 within the most recent Financial Analysis Handbook adopted by
16 the National Association of Insurance Commissioners.

17 (f) Insurers providing information substantially similar
18 to the information required by this article in other documents
19 provided to the commissioner, including proxy statements filed
20 in conjunction with Form B requirements, or other state or
21 federal filings provided to the insurance division shall not be



1 required to duplicate that information in the corporate
2 governance annual disclosure, but shall only be required to
3 cross-reference the document in which the information is
4 included.

5 **§431: -D Rules.** The commissioner may adopt rules and
6 issue orders to carry out the provisions of this article.

7 **§431: -E Contents of corporate governance annual**
8 **disclosure.** (a) The insurer or insurance group shall have
9 discretion over the responses to the corporate governance annual
10 disclosure inquiries; provided that the corporate governance
11 annual disclosure shall contain the material information
12 necessary to permit the commissioner to gain an understanding of
13 the insurer's or insurance group's corporate governance
14 structure, policies, and practices. The commissioner may
15 request additional information deemed material and necessary to
16 provide the commissioner with a clear understanding of the
17 corporate governance policies, the reporting or information
18 system, or the controls implementing those policies.

19 (b) Notwithstanding subsection (a), the corporate
20 governance annual disclosure shall be prepared consistent with
21 rules adopted by the commissioner. Documentation and supporting



1 information shall be maintained and made available upon
2 examination or request of the commissioner.

3 **§431: -F Confidentiality.** (a) Documents, materials, or
4 other information including the corporate governance annual
5 disclosure, in the possession or control of the insurance
6 division that are obtained by, created by, or disclosed to the
7 commissioner or any other person under this article, and that
8 contain information originating in a corporate governance annual
9 disclosure under this article, are recognized by this State as
10 being proprietary and to contain trade secrets. All such
11 documents, materials, or other information shall be confidential
12 by law and privileged, shall not be subject to disclosure
13 pursuant to chapter 92F, shall not be subject to subpoena, and
14 shall not be subject to discovery or admissible in evidence in
15 any private civil action. However, the commissioner may use the
16 documents, materials, or other information in the furtherance of
17 any regulatory or legal action brought as a part of the
18 commissioner's official duties. The commissioner shall not
19 otherwise make the documents, materials, or other information
20 public without the prior written consent of the insurer.
21 Nothing in this section shall be construed to require written



1 consent of the insurer before the commissioner may share or
2 receive confidential documents, materials, or other information
3 related to the corporate governance annual disclosure pursuant
4 to subsection (c) to assist in the performance of the
5 commissioner's regular duties.

6 (b) Neither the commissioner nor any person who received
7 documents, materials, or other information related to the
8 corporate governance annual disclosure through examination or
9 otherwise, while acting under the authority of the commissioner,
10 or with whom such documents, materials, or other information are
11 shared pursuant to this article shall be permitted or required
12 to testify in any private civil action concerning any
13 confidential documents, materials, or information subject to
14 subsection (a).

15 (c) To assist in the performance of the commissioner's
16 regulatory duties, the commissioner may:

17 (1) Upon request, share documents, materials, or other
18 information related to the corporate governance annual
19 disclosure, including the confidential and privileged
20 documents, materials, or information subject to
21 subsection (a), including proprietary and trade secret



1 documents and materials with other state, federal, and
2 international financial regulatory agencies, including
3 members of any supervisory college as described in
4 section 431:11-107.5, the National Association of
5 Insurance Commissioners, and third-party consultants
6 pursuant to section 431: -G; provided that the
7 recipient agrees in writing to maintain the
8 confidentiality and privileged status of the
9 documents, material, or other information and has
10 verified in writing the legal authority to maintain
11 confidentiality; and

12 (2) Receive documents, materials, or other information
13 related to the corporate governance annual disclosure,
14 including otherwise confidential and privileged
15 documents, materials, or information, including
16 proprietary and trade-secret information or documents,
17 from regulatory officials of other state, federal, and
18 international financial regulatory agencies, including
19 members of any supervisory college as described in
20 section 431:11-107.5, and from the National
21 Association of Insurance Commissioners, and shall



1 maintain as confidential or privileged any documents,
2 materials, or information received with notice or the
3 understanding that it is confidential or privileged
4 under the laws of the jurisdiction that is the source
5 of the document, material, or information.

6 (d) The sharing of information and documents by the
7 commissioner pursuant to this article shall not constitute a
8 delegation of regulatory authority or rulemaking, and the
9 commissioner shall be solely responsible for the administration,
10 execution, and enforcement of this article.

11 (e) No waiver of any applicable privilege or claim of
12 confidentiality in the documents, proprietary and trade-secret
13 materials, or other information related to the corporate
14 governance annual disclosure shall occur as a result of
15 disclosure of any information related to the corporate
16 governance annual disclosure or documents to the commissioner
17 under this section or as a result of sharing as authorized in
18 this article.

19 **§431: -G National Association of Insurance Commissioners**
20 **and third-party consultants.** (a) The commissioner may retain,
21 at the insurer's expense, third-party consultants, including



1 attorneys, actuaries, accountants, and other experts not
2 otherwise a part of the commissioner's staff as may be
3 reasonably necessary to assist the commissioner in reviewing the
4 corporate governance annual disclosure and related information
5 or the insurer's compliance with this article.

6 (b) Any persons retained under subsection (a) shall be
7 under the direction and control of the commissioner and shall
8 act in a purely advisory capacity.

9 (c) The National Association of Insurance Commissioners
10 and third-party consultants shall be subject to the same
11 confidentiality standards and requirements as the commissioner.

12 (d) As part of the retention process, a third-party
13 consultant shall verify to the commissioner, with notice to the
14 insurer, that it is free from any conflict of interest and that
15 it has internal procedures in place to monitor compliance with a
16 conflict and to comply with the confidentiality standards and
17 requirements of this article.

18 (e) A written agreement with the National Association of
19 Insurance Commissioners or a third-party consultant governing
20 sharing and use of information provided pursuant to this article
21 shall contain the following provisions and expressly require the



1 written consent of the insurer prior to making public
2 information provided under this article:

3 (1) Specific procedures and protocols for maintaining the
4 confidentiality and security of the corporate
5 governance annual disclosure and related information
6 shared with the National Association of Insurance
7 Commissioners or a third-party consultant pursuant to
8 this article;

9 (2) Procedures and protocols for sharing by the National
10 Association of Insurance Commissioners only with other
11 state regulators from states in which the insurance
12 group has domiciled insurers. The agreement shall
13 provide that the recipient agrees in writing to
14 maintain the confidentiality and privileged status of
15 the corporate governance annual disclosure and related
16 documents, materials, or other information and has
17 verified in writing the legal authority to maintain
18 confidentiality;

19 (3) A provision specifying that ownership of the corporate
20 governance annual disclosure and related information
21 shared with the National Association of Insurance



1 Commissioners or a third-party consultant remains with
2 the insurance division and that the National
3 Association of Insurance Commissioners' or third-party
4 consultant's use of the information is subject to the
5 direction of the commissioner;

6 (4) A provision that prohibits the National Association of
7 Insurance Commissioners or a third-party consultant
8 from storing the information shared pursuant to this
9 article in a permanent database after the underlying
10 analysis is completed;

11 (5) A provision requiring the National Association of
12 Insurance Commissioners or a third-party consultant to
13 provide prompt notice to the commissioner and the
14 insurer or insurance group regarding any subpoena,
15 request for disclosure, or request for production of
16 the insurer's corporate governance annual disclosure
17 or related information; and

18 (6) A requirement that the National Association of
19 Insurance Commissioners or a third-party consultant
20 consent to intervention by an insurer in any judicial
21 or administrative action in which the National



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

6 **§431: -H Sanctions.** Any insurer failing, without just
7 cause, to timely file the corporate governance annual disclosure
8 as required in this article shall be required, after notice and
9 an opportunity for hearing, to pay a penalty of not less than
10 \$100 and not more than \$500 for each day's delay, to be
11 recovered by the commissioner and paid into the compliance
12 resolution fund. The maximum penalty under this section shall
13 be \$50,000. The commissioner may reduce the penalty if the
14 insurer demonstrates to the commissioner that the imposition of
15 the penalty would constitute a financial hardship to the
16 insurer.

17 **§431: -I Severability.** If any provision of this article
18 other than section 431: -F, or the application thereof to any
19 person or circumstance, is held invalid, the determination of
20 invalidity shall not affect those provisions or applications of
21 this article that can be given effect without the invalid



1 provision or application; to that end, the provisions of this
2 article, except for section 431: -F, are severable."

3 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
4 amended by adding a new section to article 11 to be
5 appropriately designated and to read as follows:

6 "§431:11- Group-wide supervision of internationally
7 active insurance groups. (a) The commissioner is authorized to
8 act as the group-wide supervisor for any internationally active
9 insurance group in accordance with this section; provided that
10 the commissioner may otherwise acknowledge another regulatory
11 official as the group-wide supervisor where the internationally
12 active insurance group:

13 (1) Does not have substantial insurance operations in the
14 United States;

15 (2) Has substantial insurance operations in the United
16 States, but not in this State; or

17 (3) Has substantial insurance operations in the United
18 States and this State, but the commissioner has
19 determined pursuant to the factors in subsections (b)
20 and (f) that the other regulatory official is the
21 appropriate group-wide supervisor.



1 An insurance holding company system that does not otherwise
2 qualify as an internationally active insurance group may request
3 that the commissioner make a determination or an acknowledgment
4 as to a group-wide supervisor pursuant to this section.

5 (b) In cooperation with other state, federal, and
6 international regulatory agencies, the commissioner shall
7 identify a single group-wide supervisor for an internationally
8 active insurance group. The commissioner may determine that the
9 commissioner is the appropriate group-wide supervisor for an
10 internationally active insurance group that conducts substantial
11 insurance operations concentrated in this State. However, the
12 commissioner may acknowledge that a regulatory official from
13 another jurisdiction is the appropriate group-wide supervisor
14 for the internationally active insurance group. The
15 commissioner shall consider the following factors when making a
16 determination or an acknowledgment under this subsection:

17 (1) The place of domicile of the insurers within the
18 internationally active insurance group that holds the
19 largest share of the group's written premiums, assets,
20 or liabilities;



- 1 (2) The place of domicile of the top-tiered insurer or
2 insurers in the insurance holding company system of
3 the internationally active insurance group;
- 4 (3) The location of the executive offices or largest
5 operational offices of the internationally active
6 insurance group;
- 7 (4) Whether another regulatory official is acting or is
8 seeking to act as the group-wide supervisor under a
9 regulatory system that the commissioner determines to
10 be:
- 11 (A) Substantially similar to the system of regulation
12 provided under the laws of this State; or
- 13 (B) Otherwise sufficient in terms of providing for
14 group-wide supervision, enterprise risk analysis,
15 and cooperation with other regulatory officials;
16 and
- 17 (5) Whether another regulatory official acting or seeking
18 to act as the group-wide supervisor provides the
19 commissioner with reasonably reciprocal recognition
20 and cooperation.



1 However, a commissioner identified under this section as the
2 group-wide supervisor may determine that it is appropriate to
3 acknowledge another supervisor to serve as the group-wide
4 supervisor. The acknowledgment of the group-wide supervisor
5 shall be made after consideration of the factors in paragraphs
6 (1) through (5), and shall be made in cooperation with and
7 subject to the acknowledgment of other regulatory officials
8 involved with supervising members of the internationally active
9 insurance group, and in consultation with the internationally
10 active insurance group.

11 (c) Notwithstanding any other provision of law to the
12 contrary, when another regulatory official is acting as the
13 group-wide supervisor of an internationally active insurance
14 group, the commissioner shall acknowledge that regulatory
15 official as the group-wide supervisor; provided that in the
16 event of a material change in the internationally active
17 insurance group that results in:

18 (1) The internationally active insurance group's insurers
19 domiciled in this State holding the largest share of
20 the group's premiums, assets, or liabilities; or



1 (2) This State being the place of domicile of the top-
2 tiered insurer or insurers in the insurance holding
3 company system of the internationally active insurance
4 group,

5 the commissioner shall make a determination or acknowledgment as
6 to the appropriate group-wide supervisor for the internationally
7 active insurance group pursuant to subsection (b).

8 (d) Pursuant to section 431:11-107, the commissioner is
9 authorized to collect from any insurer registered pursuant to
10 section 431:11-105 all information necessary to determine
11 whether the commissioner may act as the group-wide supervisor of
12 an internationally active insurance group or if the commissioner
13 may acknowledge another regulatory official to act as the group-
14 wide supervisor. Prior to issuing a determination that an
15 internationally active insurance group is subject to group-wide
16 supervision by the commissioner, the commissioner shall notify
17 the insurer registered pursuant to section 431:11-105 and the
18 ultimate controlling person within the internationally active
19 insurance group. The internationally active insurance group
20 shall have not less than thirty days to provide the commissioner
21 with additional information pertinent to the pending



1 determination. The commissioner shall publish on the insurance
2 division's internet website the identity of internationally
3 active insurance groups that the commissioner has determined are
4 subject to group-wide supervision by the commissioner.

5 (e) If the commissioner is the group-wide supervisor for
6 an internationally active insurance group, the commissioner may
7 engage in any of the following group-wide supervision
8 activities:

9 (1) Assess the enterprise risks within the internationally
10 active insurance group to ensure that:

11 (A) The material financial condition and liquidity
12 risks to the members of the internationally
13 active insurance group that are engaged in the
14 business of insurance are identified by
15 management; and

16 (B) Reasonable and effective mitigation measures are
17 in place;

18 (2) Request, from any member of an internationally active
19 insurance group subject to the commissioner's
20 supervision, information necessary and appropriate to
21 assess enterprise risk, including but not limited to



1 information about the members of the internationally
2 active insurance group regarding:
3 (A) Governance, risk assessment, and management;
4 (B) Capital adequacy; and
5 (C) Material intercompany transactions;
6 (3) Coordinate and, through the authority of the
7 regulatory officials of the jurisdictions where
8 members of the internationally active insurance group
9 are domiciled, compel development and implementation
10 of reasonable measures designed to ensure that the
11 internationally active insurance group is able to
12 timely recognize and mitigate enterprise risks to
13 members of the internationally active insurance group
14 that are engaged in the business of insurance;
15 (4) Communicate with other state, federal, and
16 international regulatory agencies for members within
17 the internationally active insurance group and share
18 relevant information subject to the confidentiality
19 provisions of section 431:11-108, through supervisory
20 colleges as set forth in section 431:11-107.5 or
21 otherwise;



1 (5) Enter into agreements with or obtain documentation
2 from any insurer registered under section 431:11-105,
3 any member of the internationally active insurance
4 group, and any other state, federal, and international
5 regulatory agencies for members of the internationally
6 active insurance group, providing the basis for or
7 otherwise clarifying the commissioner's role as group-
8 wide supervisor, including provisions for resolving
9 disputes with other regulatory officials. These
10 agreements or documentation shall not serve as
11 evidence in any proceeding that any insurer or person
12 within an insurance holding company system not
13 domiciled or incorporated in this State is doing
14 business in this State or is otherwise subject to
15 jurisdiction in this State; and

16 (6) Other group-wide supervision activities, consistent
17 with the authorities and purposes enumerated above, as
18 considered necessary by the commissioner.

19 (f) If the commissioner acknowledges that another
20 regulatory official from a jurisdiction that is not accredited
21 by the National Association of Insurance Commissioners is the



1 group-wide supervisor, the commissioner may reasonably
2 cooperate, through supervisory colleges or otherwise, with
3 group-wide supervision undertaken by the group-wide supervisor;
4 provided that:

5 (1) The commissioner's cooperation is in compliance with
6 the laws of this State; and

7 (2) The regulatory official acknowledged as the group-wide
8 supervisor also recognizes and cooperates with the
9 commissioner's activities as a group-wide supervisor
10 for other internationally active insurance groups
11 where applicable. Where such recognition and
12 cooperation are not reasonably reciprocal, the
13 commissioner may refuse recognition and cooperation.

14 (g) The commissioner may enter into agreements with or
15 obtain documentation from any insurer registered under section
16 431:11-105, any affiliate of the insurer, and other state,
17 federal, and international regulatory agencies for members of
18 the internationally active insurance group, that provide the
19 basis for or otherwise clarify a regulatory official's role as
20 group-wide supervisor.



1 (h) The commissioner may adopt rules necessary for the
2 administration of this section.

3 (i) A registered insurer subject to this section shall be
4 liable for and shall pay the reasonable expenses of the
5 commissioner's participation in the administration of this
6 section, including the engagement of attorneys, actuaries, and
7 any other professionals, and all reasonable travel expenses."

8 SECTION 3. Section 431:11-102, Hawaii Revised Statutes, is
9 amended by adding two new definitions to be appropriately
10 inserted and to read as follows:

11 "Group-wide supervisor" means the regulatory official
12 authorized to engage in conducting and coordinating group-wide
13 supervision activities who is determined or acknowledged by the
14 commissioner under section 431:11- to have sufficient
15 significant contacts with the internationally active insurance
16 group.

17 "Internationally active insurance group" means an insurance
18 holding company system that:

19 (1) Includes an insurer registered under section 431:11-
20 105; and

21 (2) Meets the following criteria:



- 1 (A) Premiums written in at least three countries;
- 2 (B) The percentage of gross premiums written outside
- 3 the United States is at least ten per cent of the
- 4 insurance holding company system's total gross
- 5 written premiums; and
- 6 (C) Based on a three-year rolling average, the total
- 7 assets of the insurance holding company system
- 8 are at least \$50,000,000,000 or the total gross
- 9 written premiums of the insurance holding company
- 10 system are at least \$10,000,000,000."

11 SECTION 4. Section 431:11-108, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

13 "(a) Documents, materials, or other information in the
 14 possession or control of the insurance division that are
 15 obtained by or disclosed to the commissioner or any other person
 16 in the course of an examination or investigation made pursuant
 17 to section 431:11-107 and all information reported or provided
 18 to the insurance division pursuant to sections 431:11-104(b) (12)
 19 and (13), 431:11-105, [~~and~~] 431:11-106, and 431:11- , shall be
 20 confidential by law and privileged, shall not be disclosable
 21 under chapter 92F, shall not be subject to subpoena, and shall



1 not be subject to discovery or admissible in evidence in any
2 private civil action. The commissioner may use the documents,
3 materials, or other information in the furtherance of any
4 regulatory or legal action brought as part of the commissioner's
5 official duties. The commissioner shall not otherwise make the
6 documents, materials, or other information public without prior
7 written consent of the insurer to which it pertains unless the
8 commissioner, after giving the insurer and its affiliates who
9 would be affected thereby notice and opportunity to be heard,
10 determines that the interest of the policyholders, shareholders,
11 or the public will be served by the publication thereof, in
12 which event the commissioner may publish all or any part in such
13 manner as may be deemed appropriate."

14 SECTION 5. The commissioner shall adopt rules effectuating
15 the purposes of this Act by January 1, 2020.

16 SECTION 6. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 and referring to the new sections in this Act.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on January 1, 2020.



S.B. NO. 1210
S.D. 1
H.D. 1
C.D. 1

Report Title:

Insurance; NAIC; Corporate Governance Annual Disclosure Model Act; Insurance Holding Company System Regulatory Act

Description:

Meets National Association of Insurance Commissioners (NAIC) accreditation requirements by adopting the NAIC Corporate Governance Annual Disclosure Model Act and adopting revisions to the NAIC Insurance Holding Company System Regulatory Act. Takes effect 1/1/20. (CD1)

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