



GOV. MSG. NO. **1183**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 1, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 1, 2011, the following bill was signed into law:

HB1045 HD1 SD2 CD1

RELATING TO INSURANCE
Act 080 (11)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1045
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:3-401, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding three new definitions of "benefit society",
4 "domestic insurer", and "health maintenance organization" to
5 read:

6 "Benefit society" means a mutual benefit society
7 registered under section 432:1-301 or a fraternal benefit
8 society organized under section 432:2-301.

9 "Domestic insurer" includes an insurer, a benefit society
10 or a health maintenance organization.

11 "Health maintenance organization" means a health
12 maintenance organization authorized under section 432D-2."

13 2. By amending the definition of "total adjusted capital"
14 to read:

15 "Total adjusted capital" means the sum of:

16 (1) An insurer's statutory capital and surplus, or net
17 worth, as determined in accordance with the statutory
18 accounting applicable to the annual financial



1 statements or reports required to be filed under
2 section 431:3-301[+], 432:1-404, 432:2-602, or 432D-5;
3 and

4 (2) Any other items that the risk-based capital
5 instructions may provide."

6 SECTION 2. Section 431:3-402, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§431:3-402 Risk-based capital reports.** (a) Every
9 domestic insurer, on or before each March 1 [-], the [^]filing
10 date[^^], shall prepare and submit to the commissioner a report
11 of its risk-based capital levels as of the end of the calendar
12 year just ended, in a form and containing any information that
13 is required by the risk-based capital instructions. In
14 addition, every domestic insurer shall file its risk-based
15 capital report:

16 (1) With the National Association of Insurance
17 Commissioners in accordance with the risk-based
18 capital instructions; and
19 (2) With the insurance commissioner in any state in which
20 the insurer is authorized to do business, if the
21 commissioner has notified the insurer of its request



1 in writing, in which case the insurer shall file its
2 risk-based capital report not later than the later of:

3 (A) Fifteen days from the receipt of notice to file
4 its risk-based capital report with that state; or

5 (B) The filing date.

6 (b) A life or accident and health or sickness insurer's
7 risk-based capital shall be determined in accordance with the
8 formula set forth in the risk-based capital instructions. The
9 formula shall take into account and may adjust for the
10 covariance among the following, which shall be determined in
11 each case by applying the factors in the manner set forth in the
12 risk-based capital instructions:

- 13 (1) The risk with respect to the insurer's assets;
- 14 (2) The risk of adverse insurance experience with respect
15 to the insurer's liabilities and obligations;
- 16 (3) The interest rate risk with respect to the insurer's
17 business; and
- 18 (4) All other business risks and any other relevant risks
19 that are set forth in the risk-based capital
20 instructions.

21 (c) A property and casualty insurer's risk-based capital
22 shall be determined in accordance with the formula set forth in



1 the risk-based capital instructions. The formula shall take
2 into account and may adjust for the covariance among the
3 following, which shall be determined in each case by applying
4 the factors in the manner set forth in the risk-based capital
5 instructions:

- 6 (1) Asset risk;
- 7 (2) Credit risk;
- 8 (3) Underwriting risk; and
- 9 (4) All other business risks and [~~such~~] any other relevant
10 risks as [~~are~~] set forth in the risk-based capital
11 instructions.

12 (d). A benefit society or health maintenance organization's
13 risk-based capital shall be determined in accordance with the
14 formula set forth in the risk-based capital instructions. The
15 formula shall take into account and may adjust for the
16 covariance among the following, which shall be determined in
17 each case by applying the factors in the manner set forth in the
18 risk-based capital instructions:

- 19 (1) Asset risk;
- 20 (2) Credit risk;
- 21 (3) Underwriting risk; and



1 (4) All other business risks and any other relevant risks
2 as set forth in the risk-based capital instructions.

3 ~~[(d)]~~ (e) An excess of capital, or net worth, over the
4 amount produced by the risk-based capital requirements contained
5 in this part and the formulas, schedules, and instructions
6 referenced in this part is desirable in the business of
7 insurance. Accordingly, insurers shall seek to maintain capital
8 above the risk-based capital levels required by this part.

9 Additional capital is used and useful in the business of
10 insurance and helps to secure an insurer against various risks
11 inherent in~~[-]~~ or affecting~~[-]~~ the business of insurance and not
12 accounted for or only partially measured by the risk-based
13 capital requirements contained in this part.

14 ~~[(e)]~~ (f) If a domestic insurer files a risk-based capital
15 report which, in the judgment of the commissioner, is
16 inaccurate, then the commissioner shall adjust the risk-based
17 capital report to correct the inaccuracy and shall notify the
18 insurer of the adjustment. The notice shall contain a statement
19 of the reason for the adjustment. A risk-based capital report
20 ~~[as so]~~ adjusted pursuant to this subsection is referred to as
21 an adjusted risk-based capital report."



1 SECTION 3. Section 431:3-403, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) "Company action level event" means any of the
4 following events:

5 (1) The filing of a risk-based capital report by an
6 insurer which indicates that:

7 (A) The insurer's total adjusted capital is greater
8 than or equal to its regulatory action level
9 risk-based capital but less than its company
10 action level risk-based capital; [~~or~~]

11 (B) If a life or accident and health or sickness
12 insurer, the insurer has total adjusted capital
13 [~~which is~~] greater than or equal to its company
14 action level risk-based capital but less than the
15 product of its authorized control level risk-
16 based capital and [~~2.57~~] two and a half, and has
17 a negative trend;

18 (C) If a property and casualty insurer, the insurer
19 has a total adjusted capital greater than or
20 equal to its company action level risk-based
21 capital but less than the product of its
22 authorized control level risk-based capital and



1 three, and triggers the trend test determined in
2 accordance with the trend test calculation
3 included in the property and casualty risk-based
4 capital instructions; or

5 (D) If a benefit society or health maintenance
6 organization, the benefit society or health
7 maintenance organization has a total adjusted
8 capital greater than or equal to its company
9 action level risk-based capital but less than the
10 product of its authorized control level risk-
11 based capital and three, and triggers the trend
12 test determined in accordance with the trend test
13 calculation included in the health risk-based
14 capital instructions;

15 (2) The notification by the commissioner to the insurer of
16 an adjusted risk-based capital report that indicates
17 the occurrence of the event in paragraph (1), if the
18 insurer does not challenge the adjusted risk-based
19 capital report under section 431:3-407; or

20 (3) If, pursuant to section 431:3-407, the insurer
21 challenges an adjusted risk-based capital report that
22 indicates the occurrence of the event in paragraph



1 (1), the notification by the commissioner to the
2 insurer that the commissioner has, after a hearing,
3 rejected the insurer's challenge."

4 SECTION 4. Section 431:3-406, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) In the event of a mandatory control level event:

7 (1) With respect to a life or accident and health or
8 sickness insurer, the commissioner shall take any
9 actions that are necessary to cause the insurer to be
10 placed under regulatory control under article 15. In
11 that event, the mandatory control level event shall be
12 deemed sufficient grounds for the commissioner to take
13 action under article 15, and the commissioner shall
14 have the rights, powers, and duties with respect to
15 the insurer as ~~[are set forth in]~~ provided by article
16 15. In the event the commissioner takes actions
17 pursuant to an adjusted risk-based capital report, the
18 insurer shall be entitled to the protections ~~[that~~
19 ~~are]~~ afforded to insurers under section 431:15-201.
20 Notwithstanding ~~[any of the foregoing,]~~ the
21 requirements of this paragraph, the commissioner may
22 forego action for up to ninety days after the



1 mandatory control level event if the commissioner
2 finds there is a reasonable expectation that the
3 mandatory control level event may be eliminated within
4 the ninety-day period; [~~e~~]

- 5 (2) With respect to a property and casualty insurer, the
6 commissioner shall take any actions that are necessary
7 to cause the insurer to be placed under regulatory
8 control under article 15, or, in the case of an
9 insurer that is writing no business and is running-off
10 its existing business, may allow the insurer to
11 continue its run-off under the supervision of the
12 commissioner. In either event, the mandatory control
13 level event shall be deemed sufficient grounds for the
14 commissioner to take action under article 15[~~7~~] and
15 the commissioner shall have the rights, powers, and
16 duties with respect to the insurer as are set forth in
17 article 15. In the event the commissioner takes
18 actions pursuant to an adjusted risk-based capital
19 report, the insurer shall be entitled to the
20 protections [~~that are~~] afforded to insurers under
21 section 431:15-201. Notwithstanding [~~any of the~~
22 ~~foregoing,~~] the requirements of this paragraph, the



1 commissioner may forego action for up to ninety days
2 after the mandatory control level event if the
3 commissioner finds there is a reasonable expectation
4 that the mandatory control level event may be
5 eliminated within the ninety-day period[-]; or

6 (3) With respect to a benefit society or health
7 maintenance organization, the commissioner shall take
8 any actions that are necessary to cause the insurer to
9 be placed under regulatory control under article 15.

10 In that event, the mandatory control level event shall
11 be deemed sufficient grounds for the commissioner to
12 take action under article 15, and the commissioner
13 shall have the rights, powers, and duties with respect
14 to the insurer as are set forth in article 15. In the
15 event the commissioner takes actions pursuant to an
16 adjusted risk-based capital report, the insurer shall
17 be entitled to the protections that are afforded to
18 insurers under section 431:15-201. Notwithstanding
19 the requirements of this paragraph, the commissioner
20 may forego action for up to ninety days after the
21 mandatory control level event if the commissioner
22 finds there is a reasonable expectation that the



1 mandatory control level event may be eliminated within
2 the ninety-day period."

3 SECTION 5. Section 431:3-408, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:3-408 Confidentiality and prohibition on**
6 **announcements; prohibition on use in ratemaking.** (a) All risk-
7 based capital reports[+], to the extent the information
8 [therein] contained in the report is not required to be set
9 forth in a publicly available annual statement schedule[+], and
10 risk-based capital plans[+], including the results or report of
11 any examination or analysis of an insurer performed pursuant to
12 this part and any corrective order issued by the commissioner
13 pursuant to examination or analysis[+], with respect to any
14 domestic insurer or foreign insurer [~~which are filed with~~ that
15 are in the possession or under the control of the commissioner[~~-~~
16 ~~constitute information that might be damaging to the insurer if~~
17 ~~made available to its competitors, and therefore]~~ shall be
18 [~~kept~~] confidential by [~~the commissioner. This information~~] law
19 and shall be privileged. Risk-based capital reports and risk-
20 based capital plans subject to this section shall not be made
21 public [~~or~~], shall not be subject to subpoena[~~, other than by~~
22 ~~the commissioner and then only to enforce actions taken by the~~



1 ~~commissioner pursuant to this part or any other provision of the~~
2 ~~insurance laws of this State.]~~ or discovery, and shall not be
3 admissible as evidence in any private civil action; provided
4 that:

- 5 (1) This section shall not be construed to limit the
6 commissioner's authority to use the documents,
7 materials, or other information in furtherance of any
8 regulatory or legal action brought as part of the
9 commissioner's official duties; and
- 10 (2) Neither the commissioner nor any person who received
11 documents, materials, or other information while
12 acting under the authority of the commissioner shall
13 be permitted or required to testify in any private
14 civil action concerning any confidential documents,
15 materials, or information subject to this subsection.

16 (b) The commissioner may share documents, materials, or
17 other information, including confidential and privileged
18 documents, materials, or information subject to subsection (a),
19 with other state, federal, and international regulatory
20 agencies, with the National Association of Insurance
21 Commissioners and its affiliates and subsidiaries, and with
22 state, federal, and international law enforcement authorities;



1 provided that the recipient agrees to maintain the confidential
2 and privileged status of the document, material, or other
3 information and has the legal authority to do so.

4 (c) The commissioner may receive documents, materials, or
5 information, including otherwise confidential and privileged
6 documents, materials, or information, from the National
7 Association of Insurance Commissioners and its affiliates and
8 subsidiaries, and from regulatory and law enforcement officials
9 of other foreign or domestic jurisdictions. The commissioner
10 shall maintain as confidential or privileged, pursuant to
11 subsection (a)(2), any document, material, or information
12 received with notice or the understanding that it is
13 confidential or privileged under the laws of the jurisdiction
14 that is the source of the document, material, or information.

15 (d) The commissioner may enter into agreements governing
16 sharing and use of information consistent with subsections (b)
17 and (c).

18 (e) No waiver of any applicable privilege or claim of
19 confidentiality in the documents, materials, or information
20 subject to this section shall occur as a result of disclosure to
21 the commissioner under this section or as a result of sharing as
22 authorized in subsections (b) and (c).



1 ~~[(b)]~~ (f) The comparison of an insurer's total adjusted
2 capital to any of its risk-based capital levels is a regulatory
3 tool which may indicate the need for possible corrective action
4 with respect to the insurer and is not intended as a means to
5 rank insurers generally. ~~[Therefore, except]~~ Except as
6 otherwise required under this part, ~~[the]~~ making, publishing,
7 disseminating, circulating, or placing before the public~~[7]~~ or
8 causing, directly or indirectly, to be made, published,
9 disseminated, circulated, or placed before the public~~[7]~~ in a
10 newspaper, magazine, or other publication~~[7-0x]~~; in the form of
11 a notice, circular, pamphlet, letter, or poster~~[7-0x]~~; over any
12 radio or television station~~[7]~~; or in any other way, an
13 advertisement, announcement, or statement containing an
14 assertion, representation, or statement with regard to the risk-
15 based capital levels of any insurer~~[7]~~ or of any component
16 derived in the calculation~~[7]~~ by any insurer, producer, or other
17 person engaged in any manner in the insurance business ~~[would~~
18 ~~be]~~ is misleading and is ~~[therefore]~~ prohibited~~[7- provided that~~
19 ~~if]~~. If any materially false statement with respect to the
20 comparison ~~[regarding]~~ of an insurer's total adjusted capital to
21 any or all of its risk-based capital levels ~~[(or any of them)]~~
22 or ~~[an]~~ any inappropriate comparison of any other amount to the



1 insurer's risk-based capital levels is published in any written
2 publication and the insurer is able to demonstrate to the
3 commissioner with substantial proof the falsity or
4 inappropriateness of the statement [~~, or the inappropriateness,~~
5 ~~as the case may be,~~] then the insurer may publish an
6 announcement in a written publication [~~if~~] for the sole purpose
7 of [~~the announcement is to rebut~~] rebutting the materially false
8 or inappropriate statement.

9 [~~(c) The risk-based~~] (g) Risk-based capital instructions,
10 risk-based capital reports, adjusted risk-based capital reports,
11 risk-based capital plans, and revised risk-based capital plans
12 are intended solely for use by the commissioner in monitoring
13 the solvency of insurers and the need for possible corrective
14 action with respect to insurers and shall not be used by the
15 commissioner for ratemaking, [~~not~~] considered or introduced as
16 evidence in any rate proceeding, [~~not~~] or used by the
17 commissioner to calculate or derive any elements of an
18 appropriate premium level or rate of return for any line of
19 insurance which an insurer or any affiliate is authorized to
20 write."

21 SECTION 6. Section 431:3-409, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§431:3-409 Supplemental provisions; rules; exceptions.

2 (a) This part is supplemental to any other laws of this State,
3 and shall not preclude or limit any other powers or duties of
4 the commissioner under those laws, including[7] but not limited
5 to article 15.

6 (b) The commissioner may adopt rules pursuant to chapter
7 91 necessary for the implementation of this part.

8 (c) The commissioner may exempt from the application of
9 this part any domestic property and casualty insurer [~~which~~]
10 that:

11 (1) Writes direct business in this State;

12 (2) Writes direct annual premiums of \$2,000,000 or less;
13 and

14 (3) Assumes no reinsurance in excess of five per cent of
15 direct premiums written.

16 (d) The commissioner may exempt from the application of
17 this part any domestic benefit society or health maintenance
18 organization that:

19 (1) Writes direct business only in this State;

20 (2) Assumes no reinsurance in excess of five per cent of
21 direct premiums written; and



- 1 (3) Writes direct annual premiums for comprehensive
- 2 medical business of \$2,000,000 or less; or
- 3 (4) Is a benefit society or health maintenance
- 4 organization that covers fewer than two-thousand
- 5 lives."

6 SECTION 7. Section 432:1-102, Hawaii Revised Statutes, is
 7 amended by amending subsection (b) to read as follows:

8 "(b) Article 2, article 2D, part IV of article 3, article
 9 13, [~~and~~] article 14G, and article 15 of chapter 431, and the
 10 powers [~~there~~] granted by those provisions to the commissioner,
 11 shall apply to managed care plans, health maintenance
 12 organizations, or medical indemnity or hospital service
 13 associations [~~which~~] that are owned or controlled by mutual
 14 benefit societies [~~]~~ so long as the application in any
 15 particular case is in compliance with and is not preempted by
 16 applicable federal statutes and regulations."

17 SECTION 8. Section 432:2-102, Hawaii Revised Statutes, is
 18 amended by amending subsection (b) to read as follows:

19 "(b) Nothing in this article shall exempt fraternal
 20 benefit societies from the provisions and requirements of part
 21 IV of article 2, part IV of article 3, and article 15 of chapter
 22 431 and of section 431:2-215."

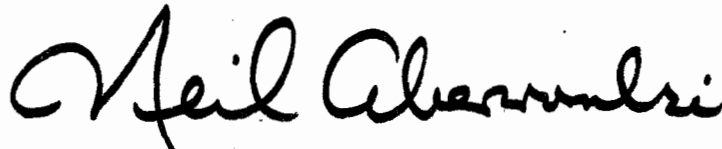
1 SECTION 9. Section 432D-19, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Article 2, article 2D, part IV of article 3, article
4 13, [~~and~~] article 14G, and article 15 of chapter 431, and the
5 [~~power there~~] powers granted by those provisions to the
6 commissioner[~~7~~] shall apply to health maintenance organizations,
7 so long as the application in any particular case is in
8 compliance with and is not preempted by applicable federal
9 statutes and regulations."

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

12 SECTION 11. This Act shall take effect on July 1, 2011.

APPROVED this 1 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII

