

JAN 26 2011

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:

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

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

9 "Health maintenance organization" means a health
10 maintenance organization authorized under section 432D-1.

11 "Domestic insurer" includes a benefit society or health
12 maintenance organization."

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

15 "Total adjusted capital" means the sum of:

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

1 statements required to be filed under section 431:3-
2 301[~~7~~], 432:1-404, 432:2-602, or 432D-5; and

3 (2) [~~Any~~] Those other items [~~that~~], if any, as the risk-
4 based capital instructions may provide."

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

7 "**§431:3-402 Risk-based capital reports.** (a) Every
8 domestic insurer, on or before each March 1 (the "filing date"),
9 shall prepare and submit to the commissioner a report of its
10 risk-based capital levels as of the end of the calendar year
11 just ended, in a form and containing any information that is
12 required by the risk-based capital instructions. In addition,
13 every domestic insurer shall file its risk-based capital report:

14 (1) With the National Association of Insurance
15 Commissioners in accordance with the risk-based
16 capital instructions; and

17 (2) With the insurance commissioner in any state in which
18 the insurer is authorized to do business, if the
19 commissioner has notified the insurer of its request
20 in writing, in which case the insurer shall file its
21 risk-based capital report not later than the later of:

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

3 (B) The filing date.

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

11 (1) The risk with respect to the insurer's assets;

12 (2) The risk of adverse insurance experience with respect
13 to the insurer's liabilities and obligations;

14 (3) The interest rate risk with respect to the insurer's
15 business; and

16 (4) All other business risks and any other relevant risks
17 that are set forth in the risk-based capital
18 instructions.

19 (c) A property and casualty insurer's risk-based capital
20 shall be determined in accordance with the formula set forth in
21 the risk-based capital instructions. The formula shall take
22 into account and may adjust for the covariance among the

1 following, which shall be determined in each case by applying
2 the factors in the manner set forth in the risk-based capital
3 instructions:

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

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

- 17 (1) Asset risk;
- 18 (2) Credit risk;
- 19 (3) Underwriting risk; and
- 20 (4) All other business risks and such other relevant risks
21 as are set forth in the risk-based capital
22 instructions.

1 ~~[(d)]~~ (e) An excess of capital (i.e., net worth) over the
2 amount produced by the risk-based capital requirements contained
3 in this part and the formulas, schedules, and instructions
4 referenced in this part is desirable in the business of
5 insurance. Accordingly, insurers shall seek to maintain capital
6 above the risk-based capital levels required by this part.
7 Additional capital is used and useful in the business of
8 insurance and helps to secure an insurer against various risks
9 inherent in, or affecting, the business of insurance and not
10 accounted for or only partially measured by the risk-based
11 capital requirements contained in this part.

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

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

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1 "(a) "Company action level event" means any of the
2 following events:

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

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

9 (B) If a life or accident and health or sickness
10 insurer, the insurer has total adjusted capital
11 which is greater than or equal to its company
12 action level risk-based capital but less than the
13 product of its authorized control level risk-
14 based capital and 2.5, and has a negative trend;

15 (C) If a property and casualty insurer, the insurer
16 has a total adjusted capital which is greater
17 than or equal to its company action level risk-
18 based capital but less than the product of its
19 authorized control level risk-based capital and
20 3.0, and triggers the trend test determined in
21 accordance with the trend test calculation

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1 included in the property and casualty risk-based
2 capital instructions; or

3 (D) If a benefit society or health maintenance
4 organization, the benefit society or health
5 maintenance organization has a total adjusted
6 capital which is greater than or equal to its
7 company action level risk-based capital but less
8 than the product of its authorized control level
9 risk-based capital and 3.0, and triggers the
10 trend test determined in accordance with the
11 trend test calculation included in the health
12 risk-based capital instructions;

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

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

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1 insurer that the commissioner has, after a hearing,
2 rejected the insurer's challenge."

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

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

6 (1) With respect to a life or accident and health or
7 sickness insurer, the commissioner shall take any
8 actions that are necessary to cause the insurer to be
9 placed under regulatory control under article 15. In
10 that event, the mandatory control level event shall be
11 deemed sufficient grounds for the commissioner to take
12 action under article 15, and the commissioner shall
13 have the rights, powers, and duties with respect to
14 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 any of the foregoing, the commissioner may forego
20 action for up to ninety days after the mandatory
21 control level event if the commissioner finds there is
22 a reasonable expectation that the mandatory control

1 level event may be eliminated within the ninety-day
2 period; [e~~r~~]

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

1 expectation that the mandatory control level event may
2 be eliminated within the ninety-day period[-] or

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

7 In that event, the mandatory control level event shall
8 be deemed sufficient grounds for the commissioner to

9 take action under article 15, and the commissioner
10 shall have the rights, powers, and duties with respect

11 to the insurer as are set forth in article 15. In the
12 event the commissioner takes actions pursuant to an

13 adjusted risk-based capital report, the insurer shall
14 be entitled to the protections that are afforded to

15 insurers under section 431:15-201. Notwithstanding
16 any of the foregoing, the commissioner may forego

17 action for up to ninety days after the mandatory
18 control level event if the commissioner finds there is

19 a reasonable expectation that the mandatory control
20 level event may be eliminated within the ninety-day

21 period."

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

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

- 1 (1) This section shall not be construed to limit the
2 commissioner's authority to use the documents,
3 materials, or other information in furtherance of any
4 regulatory or legal action brought as part of the
5 commissioner's official duties; and
- 6 (2) Neither the commissioner nor any person who received
7 documents, materials, or other information while
8 acting under the authority of the commissioner shall
9 be permitted or required to testify in any private
10 civil action concerning any confidential documents,
11 materials, or information subject to this subsection.
- 12 (b) The commissioner may share documents, materials, or
13 other information, including the confidential and privileged
14 documents, materials, or information subject to subsection (a),
15 with other state, federal, and international regulatory
16 agencies, with the National Association of Insurance
17 Commissioners and its affiliates and subsidiaries, and with
18 state, federal, and international law enforcement authorities,
19 provided that the recipient agrees to maintain the
20 confidentiality and privileged status of the document, material,
21 or other information and has the legal authority to do so.

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

12 (d) The commissioner may enter into agreements governing
13 sharing and use of information consistent with subsections (b)
14 and (c).

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

20 ~~+(b)+~~ (f) The comparison of an insurer's total adjusted
21 capital to any of its risk-based capital levels is a regulatory
22 tool which may indicate the need for possible corrective action

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

1 the insurer may publish an announcement in a written publication
2 if the sole purpose of the announcement is to rebut the
3 materially false statement.

4 [~~(e)~~] (g) The risk-based capital instructions, risk-based
5 capital reports, adjusted risk-based capital reports, risk-based
6 capital plans, and revised risk-based capital plans are intended
7 solely for use by the commissioner in monitoring the solvency of
8 insurers and the need for possible corrective action with
9 respect to insurers and shall not be used by the commissioner
10 for ratemaking, nor considered or introduced as evidence in any
11 rate proceeding, nor used by the commissioner to calculate or
12 derive any elements of an appropriate premium level or rate of
13 return for any line of insurance which an insurer or any
14 affiliate is authorized to write."

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

17 "**§431:3-409 Supplemental provisions; rules; exceptions.**

18 (a) This part is supplemental to any other laws of this State,
19 and shall not preclude or limit any other powers or duties of
20 the commissioner under those laws, including, but not limited to
21 article 15.

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1 (b) The commissioner may adopt rules necessary for the
2 implementation of this part.

3 (c) The commissioner may exempt from the application of
4 this part any domestic property and casualty insurer which:

5 (1) Writes direct business in this State;

6 (2) Writes direct annual premiums of \$2,000,000 or less;

7 and

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

10 (d) The commissioner may exempt from the application of
11 this part any domestic benefit society or health maintenance
12 organization which:

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

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

16 (3) Writes direct annual premiums for comprehensive
17 medical business of \$2,000,000 or less; or

18 (4) Is a limited benefit society or health maintenance
19 organization that covers less than two-thousand
20 lives."

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

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

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

11 "(b) Nothing in this article shall exempt fraternal
12 benefit societies from the provisions and requirements of part
13 IV of article 2, part IV of article 3, and article 15 of chapter
14 431 and of section 431:2-215."

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

17 "(d) Article 2, article 2D, part IV of article 3, article
18 13, [~~and~~] article 14G, and article 15 of chapter 431, and the
19 [~~power~~] powers there granted to the commissioner, shall apply to
20 health maintenance organizations, so long as the application in
21 any particular case is in compliance with and is not preempted
22 by applicable federal statutes and regulations."

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

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

4

5

INTRODUCED BY: AS.TJ.

6

BY REQUEST

Report Title:

Insurance; Risk-Based Capital.

Description:

Updates the Insurance Code and related provisions to adopt the revisions to the National Association of Insurance Commissioners model laws and regulations for risk-based capital trend test for property and casualty insurers which is required for National Association of Insurance Commissioners accreditation.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To maintain National Association of Insurance Commissioners (NAIC) accreditation by adopting the Risk-Based Capital (RBC) for Health Organizations Model Act.

MEANS: Amend sections 431:3-401, 431:3-402, 431:3-403(a), 431:3-406(b), 431:3-408, 431:3-409, 432:1-102(b), 432:2-102(b), and 432D-19(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The NAIC financial regulation standards and accreditation program ensures that each state has adequate solvency laws and regulations to protect consumers and guarantee funds.

Adoption of NAIC model laws and regulations is essential for the Insurance Division to retain NAIC accreditation.

This bill adopts the NAIC Risk-Based Capital (RBC) for Health Organizations Model Act. The intent of this model act is to apply consistent regulatory treatment to health maintenance organizations, managed care plans, and similar risk-bearing entities.

Risk-based capital is a method of establishing the minimum amount of capital appropriate for an insurer to support its overall business operations, in consideration of its size, structure, and risk profile.

Risk-based capital requirements are currently contained in part IV of article 3, of the insurance code, HRS chapter 431. These provisions currently apply to property and casualty insurers and life or accident and health or sickness insurers.

Mutual benefit societies (MBS), fraternal benefit societies (FBS), and health maintenance organizations (HMO) are governed by HRS chapters 432 and 432D. Unless expressly provided, these entities are exempt from provisions of the insurance code, pursuant to sections 432:1-101, 432:2-102(a), and 432D-19(a). Providing an express reference to part IV of article 3 in sections 432:1-102(b), 432:2-102(b), and 432D-19(d), will ensure that the risk-based capital requirements apply to MBS, FBS, and HMO.

Impact on the public: This bill promotes the public interest by ensuring the financial solvency of insurers.

Impact on the department and other agencies: These amendments contribute to the Insurance Division retaining NAIC accreditation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2011.