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# 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 to be appropriately  
4 inserted and to read:

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

8           "Health maintenance organization" means a health  
9 maintenance organization defined in section 432D-1.

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

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

14           "Total adjusted capital" means the sum of:

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



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

3 (2) Any other items that the risk-based capital  
4 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  
9 date" [+], shall prepare and submit to the commissioner a report  
10 of its risk-based capital levels as of the end of the calendar  
11 year just ended, in a form and containing any information that  
12 is required by the risk-based capital instructions. In  
13 addition, every domestic insurer shall file its risk-based  
14 capital report:

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

18 (2) With the insurance commissioner in any state in which  
19 the insurer is authorized to do business, if the  
20 commissioner has notified the insurer of its request  
21 in writing, in which case the insurer shall file its  
22 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~~] any other relevant  
8 risks [~~as~~] that are set forth in the risk-based  
9 capital 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 any other relevant risks  
21 that are set forth in the risk-based capital  
22 instructions.



1           ~~[(d)]~~ (e) An excess of capital, or 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]~~ pursuant to this section shall be referred  
19 to as an adjusted risk-based capital report."

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



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~~] indicating 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



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~~] pursuant to section 431:3-407;  
18                   or

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

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 provisions of this  
20 paragraph, 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 (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 provisions of this paragraph, the  
21 commissioner may forego action for up to ninety days  
22 after the mandatory control level event if the



1 commissioner finds there is a reasonable expectation  
2 that the mandatory control level event may be  
3 eliminated within the ninety-day period[-] or  
4 (3) With respect to a benefit society or health  
5 maintenance organization, the commissioner shall take  
6 any actions that are necessary to cause the insurer to  
7 be placed under regulatory control under article 15.  
8 In that event, the mandatory control level event shall  
9 be deemed sufficient grounds for the commissioner to  
10 take action under article 15, and the commissioner  
11 shall have the rights, powers, and duties with respect  
12 to the insurer as are set forth in article 15. In the  
13 event the commissioner takes actions pursuant to an  
14 adjusted risk-based capital report, the insurer shall  
15 be entitled to the protections that are afforded to  
16 insurers under section 431:15-201. Notwithstanding  
17 the provisions of this paragraph, the commissioner may  
18 forego action for up to ninety days after the  
19 mandatory control level event if the commissioner  
20 finds there is a reasonable expectation that the  
21 mandatory control level event may be eliminated within  
22 the ninety-day 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  
6 [therein] contained in the report is not required to be set  
7 forth in a publicly available annual statement schedule[+(], and  
8 risk-based capital plans [+(], including the results or report of  
9 any examination or analysis of an insurer performed pursuant to  
10 this part and any corrective order issued by the commissioner  
11 pursuant to examination or analysis[+(], with respect to any  
12 domestic insurer or foreign insurer [~~which are filed with~~], that  
13 are in possession or control of the commissioner[, ~~constitute~~  
14 ~~information that might be damaging to the insurer if made~~  
15 ~~available to its competitors, and therefore]~~ shall be [kept]  
16 confidential by [the commissioner. This information] law and  
17 privileged, shall not be made public [or], shall not be subject  
18 to subpoena[, ~~other than by the commissioner, and then only to~~  
19 ~~enforce actions taken by the commissioner pursuant to this part~~  
20 ~~or any other provision of the insurance laws of this State.] or  
21 discovery, and shall not be admissible as evidence in any  
22 private civil action; provided 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 any of 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,~~]



1 applicable, then the insurer may publish an announcement in a  
2 written publication if the sole purpose of the announcement is  
3 to rebut the 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[7] but not limited  
21 to article 15.



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 that:

6 (1) Writes direct business in this State;

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

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

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

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

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

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

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





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

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

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

14 "(b) Nothing in this article shall exempt fraternal  
15 benefit societies from the provisions and requirements of part  
16 IV of article 2, part IV of article 3, and article 15 of chapter  
17 431 and of section 431:2-215."

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

20 "(d) Article 2, article 2D, part IV of article 3, article  
21 13, [~~and~~] article 14G, and article 15 of chapter 431, and the  
22 [~~power there~~] powers granted by those articles to the



1 commissioner, shall apply to health maintenance organizations [  
2 ~~so long as~~]; provided that the application in any particular  
3 case is in compliance with and is not preempted by applicable  
4 federal statutes and regulations."

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

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

8



**Report Title:**

Insurance; Risk-Based Capital.

**Description:**

Updates the Insurance Code to adopt revisions to the National Association of Insurance Commissioners model laws and regulations for risk-based capital trend test for property and casualty insurers as required for National Association of Insurance Commissioners accreditation. (SD1)

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

