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A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 PART I

2 SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
3 amended by adding a new article to be appropriately designated  
4 and to read as follows:

5 "ARTICLE

6 RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT

7 §431: - Scope and purpose. (a) This article applies to  
8 all insurers domiciled in this State unless exempt pursuant to  
9 section 431: - .

10 (b) The purposes of this article include:

11 (1) Providing the requirements for maintaining a risk  
12 management framework and completing an own risk and  
13 solvency assessment; and

14 (2) Providing guidance and instructions for filing an own  
15 risk and solvency assessment summary report with the  
16 commissioner.

17 §431: - Definitions. As used in this article:

1 "Insurance group" means those insurers and affiliates  
2 included within an insurance holding company system as defined  
3 in article 11.

4 "Insurer" shall have the same meaning as set forth in  
5 article 1, except that it shall not include:

- 6 (1) Agencies, authorities, or instrumentalities of the  
7 United States, its possessions and territories, the  
8 Commonwealth of Puerto Rico, the District of Columbia,  
9 or a state or political subdivision of a state;
- 10 (2) Fraternal benefit societies;
- 11 (3) Nonprofit medical and hospital service associations  
12 that are exempt from state and federal income taxes;  
13 or
- 14 (4) Unauthorized insurers.

15 "Own risk and solvency assessment" means a confidential  
16 internal assessment, appropriate to the nature, scale, and  
17 complexity of an insurer or insurance group and conducted by  
18 that insurer or insurance group, of the material and relevant  
19 risks associated with the insurer or insurance group's current  
20 business plan and the sufficiency of capital resources to  
21 support those risks.

1 "Own Risk and Solvency Assessment Guidance Manual" means  
2 the Own Risk and Solvency Assessment Guidance Manual as  
3 developed and adopted by the National Association of Insurance  
4 Commissioners and as amended from time to time. A change in the  
5 Own Risk and Solvency Assessment Guidance Manual shall take  
6 effect on the January 1 following the calendar year in which the  
7 changes have been adopted by the National Association of  
8 Insurance Commissioners.

9 "Own risk and solvency assessment summary report" means a  
10 confidential, high-level summary of an insurer or insurance  
11 group's own risk and solvency assessment.

12 §431: - Risk management framework. An insurer shall  
13 maintain a risk management framework to assist the insurer with  
14 identifying, assessing, monitoring, managing, and reporting its  
15 material and relevant risks. This requirement may be satisfied  
16 if the insurance group of which the insurer is a member  
17 maintains a risk management framework applicable to the  
18 operations of the insurer.

19 §431: - Own risk and solvency assessment requirement.  
20 Subject to section 431: - , an insurer or the insurance group  
21 of which the insurer is a member shall regularly conduct an own  
22 risk and solvency assessment consistent with a process

1 comparable to the Own Risk and Solvency Assessment Guidance  
2 Manual. The own risk and solvency assessment shall be conducted  
3 no less than annually but also at any time when there are  
4 significant changes to the risk profile of the insurer or the  
5 insurance group of which the insurer is a member.

6 §431: - Own risk and solvency assessment summary report.

7 (a) Upon the commissioner's request, and no more than once each  
8 year beginning in 2018, an insurer shall submit to the  
9 commissioner an own risk and solvency assessment summary report  
10 or any combination of reports that together contain the  
11 information described in the Own Risk and Solvency Assessment  
12 Guidance Manual, which is applicable to the insurer, the  
13 insurance group of which it is a member, or both.

14 (b) Notwithstanding any request from the commissioner, if  
15 the insurer is a member of an insurance group, the insurer shall  
16 submit any reports required by this section if the commissioner  
17 is the lead state commissioner of the insurance group as  
18 determined by the procedures in the Financial Analysis Handbook  
19 adopted by the National Association of Insurance Commissioners.

20 (c) Any reports filed pursuant to this section shall  
21 include a signature of the insurance group's chief risk officer  
22 or another executive responsible for the oversight of the

1 insurer's enterprise risk management process attesting, to the  
2 best of the person's belief and knowledge, that:

3 (1) The insurer applies the enterprise risk management  
4 process described in the own risk and solvency  
5 assessment summary report; and

6 (2) A copy of the report has been provided to the  
7 insurer's board of directors or the appropriate  
8 committee thereof.

9 (d) An insurer may comply with subsection (a) by providing  
10 the most recent and substantially similar report, which is  
11 provided by the insurer or another member of an insurance group  
12 of which the insurer is a member, or any combination of reports  
13 that together contain the information described in the Own Risk  
14 and Solvency Assessment Guidance Manual, to the commissioner of  
15 another state or a supervisor or regulator of a foreign  
16 jurisdiction if that report provides information comparable to  
17 that described in the Own Risk and Solvency Assessment Guidance  
18 Manual. Any such report in a language other than English must  
19 be accompanied by a translation of that report into the English  
20 language.

21 §431: - Exemption. (a) An insurer shall be exempt from  
22 the requirements of this article if:

1 (1) The insurer's annual direct written and assumed  
2 premium, excluding premiums reinsured with the Federal  
3 Crop Insurance Corporation and National Flood  
4 Insurance Program, is less than \$500,000,000; and

5 (2) The insurance group of which the insurer is a member  
6 has an annual direct written and assumed premium,  
7 excluding premiums reinsured with the Federal Crop  
8 Insurance Corporation and National Flood Insurance  
9 Program, less than \$1,000,000,000.

10 (b) If an insurer qualifies for exemption pursuant to  
11 subsection (a)(1), but the insurance group of which the insurer  
12 is a member does not qualify for exemption pursuant to  
13 subsection (a)(2), then the own risk and solvency assessment  
14 summary report required pursuant to section 431: - shall  
15 include every insurer within the insurance group. This  
16 requirement may be satisfied by the submission of more than one  
17 own risk and solvency assessment summary report for any  
18 combination of insurers, provided that any combination of  
19 reports includes every insurer within the insurance group.

20 (c) If an insurer does not qualify for exemption pursuant  
21 to subsection (a)(1), but the insurance group of which it is a  
22 member qualifies for exemption pursuant to subsection (a)(2),

1 then the only own risk and solvency assessment summary report  
2 required pursuant to section 431: - shall be the report  
3 applicable to that insurer.

4 (d) An insurer that does not qualify for exemption  
5 pursuant to subsection (a) may apply to the commissioner for a  
6 waiver from the requirements of this article based upon unique  
7 circumstances.

8 (1) In deciding whether to grant the insurer's request for  
9 waiver, the commissioner may consider:

10 (A) The type and volume of business written;

11 (B) The ownership and organizational structure; and

12 (C) Any other factor the commissioner considers  
13 relevant to the insurer or insurance group of  
14 which the insurer is a member.

15 (2) If the insurer is part of an insurance group with  
16 insurers domiciled in more than one state, the  
17 commissioner shall coordinate with the lead state  
18 commissioner and other domiciliary commissioners in  
19 considering whether to grant the insurer's request for  
20 a waiver.

21 (e) Notwithstanding the exemptions stated in this section:

- 1           (1) The commissioner may require that an insurer maintain  
2           a risk management framework, conduct an own risk and  
3           solvency assessment, and file an own risk and solvency  
4           assessment summary report based upon unique  
5           circumstances including, but not limited to, the type  
6           and volume of business written, the ownership and  
7           organizational structure, federal agency requests, and  
8           international supervisor requests.
- 9           (2) The commissioner may require that an insurer maintain  
10          a risk management framework, conduct an own risk and  
11          solvency assessment, and file an own risk and solvency  
12          assessment summary report if the insurer:
- 13               (A) Has risk-based capital for company action level  
14               event as set forth in section 431:3-403;
- 15               (B) Meets one or more of the standards of an insurer  
16               deemed to be in hazardous financial condition as  
17               defined in section 431:15-103.5; or
- 18               (C) Otherwise exhibits qualities of a troubled  
19               insurer as determined by the commissioner.
- 20          (f) If an insurer that qualifies for an exemption pursuant  
21          to subsection (a) subsequently no longer qualifies for that  
22          exemption due to changes in premium, as reflected in the



1 insurer's most recent annual statement or in the most recent  
2 annual statements of the insurers within the insurance group of  
3 which the insurer is a member, the insurer shall have one year  
4 following the year the threshold is exceeded to comply with the  
5 requirements of this article.

6 §431: - Contents of own risk and solvency assessment

7 summary report. (a) The own risk and solvency assessment  
8 summary report shall be prepared consistent with the Own Risk  
9 and Solvency Assessment Guidance Manual and subject to the  
10 requirements of subsection (b). Documentation and supporting  
11 information shall be maintained and made available upon  
12 examination or upon request of the commissioner.

13 (b) The review of the own risk and solvency assessment  
14 summary report and any additional requests for information shall  
15 be made using similar procedures currently used in the analysis  
16 and examination of multi-state or global insurers and insurance  
17 groups.

18 §431: - Confidentiality. (a) Documents, materials, or  
19 other information, including the own risk and solvency  
20 assessment summary report, in the possession or control of the  
21 commissioner that are obtained by, created by, or disclosed to

1 the commissioner or any other person under this article are  
2 recognized as proprietary and containing trade secrets.

3 All such documents, materials, or other information shall  
4 be confidential by law and privileged, shall not be subject to  
5 chapter 92F, shall not be subject to subpoena, and shall not be  
6 subject to discovery or admissible in evidence in any private  
7 civil action.

8 The commissioner is authorized to use the documents,  
9 materials, or other information to further any regulatory or  
10 legal action brought as a part of the commissioner's official  
11 duties. The commissioner shall not otherwise make the  
12 documents, materials, or other information public without prior  
13 written consent of the insurer.

14 (b) Neither the commissioner nor any person who received  
15 documents, materials, or other own risk and solvency assessment  
16 information through examination or otherwise, while acting under  
17 the authority of the commissioner or with whom such documents,  
18 materials, or other information are shared pursuant to this  
19 article, shall be permitted or required to testify in any  
20 private civil action concerning any confidential documents,  
21 materials, or information subject to subsection (a).

1 (c) To assist in performing the commissioner's regulatory  
2 duties, the commissioner:

3 (1) May, upon request, share information subject to  
4 subsection (a) and proprietary and trade secret  
5 documents with:

6 (A) Other state, federal, and international financial  
7 regulatory agencies; and

8 (B) Members of any supervisory college as defined in  
9 section 431:11-107.5, the National Association of  
10 Insurance Commissioners, and any third-party  
11 consultants designated by the commissioner,  
12 provided that the recipient agrees in writing to  
13 maintain the confidentiality and privileged status of  
14 the own risk and solvency assessment documents,  
15 materials, or other information and has verified in  
16 writing the legal authority to maintain  
17 confidentiality;

18 (2) May receive information subject to subsection (a) and  
19 proprietary and trade secret documents from regulatory  
20 officials of other foreign or domestic jurisdictions,  
21 including members of any supervisory college as  
22 defined in section 431:11-107.5, and the National

1 Association of Insurance Commissioners. The  
2 commissioner shall maintain as confidential or  
3 privileged any documents, materials, or information  
4 received with notice or the understanding that it is  
5 confidential or privileged under the laws of the  
6 jurisdiction that is the source of the document,  
7 material, or information; and

8 (3) Shall enter into a written agreement with the National  
9 Association of Insurance Commissioners or a third-  
10 party consultant governing sharing and use of  
11 information provided pursuant to this article and  
12 consistent with this subsection, which shall:

13 (A) Specify procedures and protocols regarding the  
14 confidentiality and security of information  
15 shared with the National Association of Insurance  
16 Commissioners or a third-party consultant  
17 pursuant to this article, including procedures  
18 and protocols for sharing by the National  
19 Association of Insurance Commissioners with other  
20 state regulators from states in which the  
21 insurance group has domiciled insurers. The  
22 agreement shall provide that the recipient agrees

1 to maintain the confidentiality and privileged  
2 status of the own risk and solvency assessment  
3 documents, materials, or other information and  
4 has verified in writing the legal authority to  
5 maintain confidentiality;

6 (B) Specify that ownership of information shared with  
7 the National Association of Insurance  
8 Commissioners or a third-party consultant  
9 pursuant to this article remains with the  
10 commissioner and that use of the information by  
11 the National Association of Insurance  
12 Commissioners or a third-party consultant is  
13 subject to the direction of the commissioner;

14 (C) Prohibit the National Association of Insurance  
15 Commissioners or third-party consultant from  
16 storing the information shared pursuant to this  
17 article in a permanent database after the  
18 underlying analysis is completed;

19 (D) Require prompt notice to be given to an insurer  
20 whose confidential information in the possession  
21 of the National Association of Insurance  
22 Commissioners or a third-party consultant

1           pursuant to this article is subject to a request  
2           or subpoena to the National Association of  
3           Insurance Commissioners or a third-party  
4           consultant for disclosure or production;

5           (E) Require the National Association of Insurance  
6           Commissioners or a third-party consultant to  
7           consent to intervention by an insurer in any  
8           judicial or administrative action in which the  
9           National Association of Insurance Commissioners  
10          or a third-party consultant may be required to  
11          disclose confidential information about the  
12          insurer shared with the National Association of  
13          Insurance Commissioners or a third-party  
14          consultant pursuant to this article; and

15          (F) In the case of an agreement involving a third-  
16          party consultant, provide for the insurer's  
17          written consent.

18          (d) The sharing of information and documents by the  
19          commissioner pursuant to this article shall not constitute a  
20          delegation of regulatory authority or rulemaking, and the  
21          commissioner is solely responsible for the administration,  
22          execution, and enforcement of the provisions of this article.

1           (e) No waiver of any applicable privilege or claim of  
2 confidentiality in the documents, proprietary, and trade secret  
3 materials or other own risk and solvency assessment information  
4 shall occur as a result of disclosing any own risk and solvency  
5 assessment information or documents to the commissioner pursuant  
6 to this section or as a result of sharing as authorized in this  
7 article.

8           (f) Documents, materials, or other information in the  
9 possession or control of the National Association of Insurance  
10 Commissioners or a third-party consultant pursuant to this  
11 article shall be confidential by law and privileged, shall not  
12 be subject to chapter 92F, shall not be subject to subpoena, and  
13 shall not be subject to discovery or admissible in evidence in  
14 any private civil action.

15           §431: - Sanctions. (a) Any insurer failing without just  
16 cause to timely file the own risk and solvency assessment  
17 summary report as required in this article shall be required  
18 after notice and hearing to pay a penalty not less than \$100 and  
19 not more than \$500 for each day's delay, which shall be  
20 recovered by the commissioner. Any penalty recovered pursuant  
21 to this section shall be paid into the compliance resolution  
22 fund.

1           (b) The maximum penalty under this section is \$50,000.  
2 The commissioner may reduce the penalty if the insurer  
3 demonstrates to the commissioner that imposing the penalty would  
4 constitute a financial hardship to the insurer.

5           §431: - Severability clause. If any provision of this  
6 article or its application to any person or circumstance is held  
7 invalid, that determination shall not affect the provisions or  
8 applications of this article that can be given effect without  
9 the invalid provision or application, and to that end, the  
10 provisions of this article are severable."

11                           PART II

12           SECTION 2. Section 431:19-115, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14           "(b) Sections 431:3-302 to 431:3-304.5, 431:3-307, 431:3-  
15 401 to [~~431:3-408,~~] 431:3-409, 431:3-411, 431:3-412, and 431:3-  
16 414; articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and  
17 chapter 431K shall apply to risk retention captive insurance  
18 companies."

19                           PART III

20           SECTION 3. Section 431K-1, Hawaii Revised Statutes, is  
21 amended by adding new definitions to be appropriately inserted  
22 and to read as follows:



1        "Board of directors" or "board" means the governing body  
2 of the risk retention group elected by the shareholders or  
3 members to establish policy, elect or appoint officers and  
4 committees, and make other governing decisions.

5        "Director" means a natural person designated in the  
6 articles of the risk retention group or designated, elected, or  
7 appointed by any other manner, name, or title to act as a  
8 director."

9        SECTION 4. Section 431K-2, Hawaii Revised Statutes, is  
10 amended to read as follows:

11        "[~~+~~] 431K-2 [~~+~~] Risk retention groups chartered in this  
12 State. (a) A risk retention group seeking to be chartered in  
13 this State shall be chartered and licensed as a liability  
14 insurance company authorized by the insurance laws of this State  
15 and, except as provided elsewhere in this chapter, shall comply  
16 with all of the laws, rules, and requirements applicable to  
17 these insurers chartered and licensed in this State and with  
18 section 431K-3, to the extent these requirements are not a  
19 limitation on the laws, rules, or requirements of this State.  
20 Prior to offering insurance in any state, each risk retention  
21 group shall also submit for approval to the commissioner [~~of~~  
22 ~~this State~~] a plan of operation or [~~a~~] feasibility study and

1 revisions of such plan or study if the group intends to offer  
2 any additional lines of liability insurance. Immediately upon  
3 receipt of an application for charter, the commissioner shall  
4 provide summary information concerning the filing to the  
5 National Association of Insurance Commissioners, including:

- 6 (1) The name of the risk retention group;
- 7 (2) The identity of the initial members of the group;
- 8 (3) The identity of those individuals who organized the  
9 group or who will provide administrative services or  
10 otherwise influence or control the activities of the  
11 group;
- 12 (4) The amount and nature of initial capitalization;
- 13 (5) The coverages to be afforded; and
- 14 (6) The states in which the group intends to operate.

15 Providing notification to the National Association of Insurance  
16 Commissioners is in addition to and shall not be sufficient to  
17 satisfy the requirements of section 431K-3 or any other sections  
18 of this chapter.

19 (b) New risk retention groups established on or after July  
20 1, 2016, shall be in compliance with the governance standards  
21 set forth in subsection (c).

1        (c) By July 1, 2017, existing risk retention groups shall  
2 be in compliance with the following:

3        (1) The board shall have a majority of independent  
4 directors. The board of directors shall: determine  
5 whether a director is independent and has no material  
6 relationship with the risk retention group; review  
7 such determination annually; and maintain a record of  
8 the determinations, which shall be provided to the  
9 commissioner annually. If the risk retention group is  
10 reciprocal, then the attorney-in-fact is required to  
11 adhere to the same standards regarding independence of  
12 operation and governance as imposed on the risk  
13 retention group's board of directors and subscribers  
14 advisory committee.

15        (2) The term of any material service provider contract  
16 entered into with a risk retention group shall not  
17 exceed five years. The contract or its renewal  
18 requires approval of a majority of the risk retention  
19 group's independent directors. The board of directors  
20 has the right to terminate a contract at any time for  
21 cause after providing adequate notice as defined in  
22 the terms of the contract. Service providers of a

1 reciprocal risk retention group shall contract with  
2 the risk retention group.

3 (3) A risk retention group shall not enter into a material  
4 service provider contract without the prior written  
5 approval of the commissioner.

6 (4) A risk retention group's plan of operation shall  
7 include written policies approved by its board of  
8 directors requiring the board to:

9 (A) Provide evidence of ownership interest to each  
10 risk retention group member;

11 (B) Develop governance standards applicable to the  
12 risk retention group;

13 (C) Oversee the evaluation of the risk retention  
14 group's management, including the performance of  
15 its captive manager, managing general  
16 underwriter, or any other person responsible for  
17 underwriting; rate determination, premium  
18 collection, claims adjustment and settlement, or  
19 preparation of financial statements;

20 (D) Review and approve the amount to be paid under a  
21 material service provider contract; and

22 (E) Review and approve at least annually:

- 1           (i) The risk retention group's goals and
- 2                   objectives relevant to the compensation of
- 3                   officers and service providers;
- 4           (ii) The performance of officers and service
- 5                   providers as measured against the risk
- 6                   retention group's goals and objectives; and
- 7           (iii) The continued engagement of officers and
- 8                   material service providers.
- 9    (5) A risk retention group shall have an audit committee
- 10           composed of at least three independent board members.
- 11           A nonindependent board member may participate in the
- 12           committee's activities if invited to do so by the
- 13           audit committee, but a nonindependent board member
- 14           shall not serve as a committee member. The
- 15           commissioner may waive the requirement of an audit
- 16           committee if the risk retention group demonstrates to
- 17           the commissioner's satisfaction that having such
- 18           committee is impracticable and that the board of
- 19           directors itself is able to sufficiently perform the
- 20           committee's responsibilities. The audit committee
- 21           shall have a written charter defining its
- 22           responsibilities, which shall include:

- 1            (A) Assisting board oversight of the integrity of  
2            financial statements, compliance with legal and  
3            regulatory requirements, and qualifications,  
4            independence, and performance of the independent  
5            auditor or actuary;
- 6            (B) Reviewing annual audited financial statements and  
7            quarterly financial statements with management;
- 8            (C) Reviewing annual audited financial statements  
9            with its independent auditor and, if deemed  
10           advisable, the risk retention group's quarterly  
11           financial statements;
- 12           (D) Reviewing risk assessment and risk management  
13           policies;
- 14           (E) Meeting with management, either directly or  
15           through a designated representative of the  
16           committee;
- 17           (F) Meeting with independent auditors, either  
18           directly or through a designated representative  
19           of the committee;
- 20           (G) Reviewing with the independent auditor any audit  
21           problems and management's response;

- 1           (H) Establishing clear hiring policies applicable to  
2           the hiring of employees or former employees of  
3           the independent auditor by the risk retention  
4           group;
- 5           (I) Requiring the independent auditor to rotate the  
6           lead audit partner having primary responsibility  
7           for the risk retention group's audit, as well as  
8           the audit partner responsible for reviewing that  
9           audit, so that neither individual performs audit  
10           services for the risk retention group for more  
11           than five consecutive fiscal years; and
- 12           (J) Reporting regularly to the board of directors.
- 13       (6) The board of directors shall adopt governance  
14       standards, which shall be available to risk retention  
15       group members through electronic or other means and,  
16       upon request, provided to risk retention group  
17       members. The governance standards shall include:
- 18           (A) A process by which risk retention group members  
19           elect directors;
- 20           (B) Director qualifications, responsibilities, and  
21           compensation;

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- 1           (C) Director orientation and continuing education  
2           requirements;
- 3           (D) A process allowing the board access to management  
4           and, as necessary and appropriate, independent  
5           advisors;
- 6           (E) Policies and procedures for management  
7           succession; and
- 8           (F) Policies and procedures providing for an annual  
9           performance evaluation of the board.
- 10          (7) The board of directors shall adopt a code of business  
11          conduct and ethics applicable to directors, officers,  
12          and employees of the risk retention group and disclose  
13          criteria for waivers of code provisions to the board  
14          of directors, which shall be available to risk  
15          retention group members through electronic or other  
16          means and, upon request, provided to risk retention  
17          group members. Provisions of the code shall address:
- 18          (A) Conflicts of interest;
- 19          (B) Matters covered under the Hawaii corporate  
20          opportunities doctrine;
- 21          (C) Confidentiality;
- 22          (D) Fair dealing;



- 1           (E) Protection and proper use of risk retention group  
2           assets;
- 3           (F) Standards for complying with applicable laws,  
4           rules, and regulations; and
- 5           (G) Mandatory reporting of illegal or unethical  
6           behavior affecting the operation of the risk  
7           retention group.
- 8           (8) The captive manager, president, or chief executive  
9           officer of a risk retention group shall promptly  
10           notify the commissioner in writing of any known  
11           noncompliance with the governance standards  
12           established in this subsection.
- 13           (d) For the purposes of this section:
- 14           (1) "Independent director" means a director who does not  
15           have a material relationship with the risk retention  
16           group. A person who is a direct or an indirect owner  
17           of or subscriber in the risk retention group, as  
18           referenced in the definition of "risk retention group"  
19           in section 431K-1, or who is an officer, a director,  
20           or an employee of the owner and insured unless some  
21           other position of the officer, director, or employee  
22           constitutes a "material relationship," is considered

1 independent. The commissioner shall have the  
2 authority to determine whether or not a director is  
3 independent.

4 A director has a "material relationship" with a  
5 risk retention group if the director or a member of  
6 the director's immediate family:

7 (A) Receives in any twelve-month period from the risk  
8 retention group or a consultant or service  
9 provider to the risk retention group compensation  
10 or other item of value in an amount equal to or  
11 greater than five per cent of the risk retention  
12 group's gross written premium or two per cent of  
13 the risk retention group's surplus as measured at  
14 the end of any fiscal quarter falling in the  
15 twelve-month period, whichever is greater. This  
16 provision also applies to compensation or items  
17 of value received by any business with which the  
18 director or a member of the director's immediate  
19 family is affiliated. The material relationship  
20 shall be deemed to exist for one year after the  
21 item of value is received or the compensation

1 ceases or falls below the threshold established

2 in this paragraph, as applicable.

3 (B) Is affiliated with or employed in a professional

4 capacity by a current or former internal or

5 external auditor of the risk retention group.

6 The material relationship shall be deemed to

7 exist for one year after the affiliation,

8 employment, or audit ends.

9 (C) Is employed as an executive officer of another

10 company whose board of directors includes

11 executive officers of the risk retention group

12 unless a majority of the membership of the other

13 company's board of directors is the same as the

14 membership of the board of directors of the risk

15 retention group. The material relationship shall

16 be deemed to exist for one year after the

17 employment or service ends.

18 (2) "Material service provider" includes a captive

19 manager, auditor, accountant, actuary, investment

20 advisor, attorney, managing general underwriter, or

21 other person responsible for underwriting,

22 determination of rates, premium collection, claims

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1           adjustment or settlement, or preparation of financial  
2           statements, whose aggregate annual contract fees are  
3           equal to or greater than five per cent of the risk  
4           retention group's annual gross written premium or two  
5           per cent of its surplus, whichever is greater. It  
6           does not mean defense counsel retained by a risk  
7           retention group unless the counsel's annual fees are  
8           equal to or greater than five per cent of a risk  
9           retention group's annual gross premium or two per cent  
10           of its surplus, whichever is greater."

11           SECTION 5. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13           SECTION 6. This Act shall take effect upon its approval.

14  
15  
16

INTRODUCED BY:   
BY REQUEST

JAN 25 2016

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**Report Title:**

Risk Management and Own Risk and Solvency Assessment Act; Model Risk Retention Act; Captives; Insurance

**Description:**

Adopts the National Association of Insurance Commissioners' ("NAIC") Risk Management and Own Risk and Solvency Assessment Act; applies chapter 431, Hawaii Revised Statutes, provisions to risk retention captive insurance companies; includes new corporate governance language from the NAIC Model Risk Retention Act.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: Part I requires insurers and insurance groups to maintain a risk management framework; to regularly perform an own risk and solvency assessment (ORSA); and to annually file an ORSA summary report with the Insurance Commissioner upon request, and if the insurer is part of a group, to also file an ORSA summary report with the lead state commissioner of that group.

Part II amends section 431:19-115(b), Hawaii Revised Statutes (HRS), to cite sections 431:3-409, 431:3-411, and 431:3-412, HRS, as being applicable to risk retention captive insurance companies, as required for accreditation by the National Association of Insurance Commissioners (NAIC).

Part III amends section 431K-1 to include the definitions "board of directors" and "director" and amends section 431K-2 to include new corporate governance language from the NAIC Model Risk Retention Act, as required for accreditation purposes.

MEANS: Add a new article to chapter 431 and amend sections 431:19-115(b), 431K-1, and 431K-2, HRS.

JUSTIFICATION: Part I adopts the NAIC's Risk Management and ORSA Model Act, which stems from the NAIC's Solvency Modernization Initiative (SMI). The SMI is a critical self-examination to update the U.S. insurance solvency regulation framework and to review international developments regarding insurance supervision, banking supervision, and international accounting standards and their use in national insurance regulation.

The SMI focuses on key issues, such as capital requirements, governance and risk management, group supervision, statutory accounting and financial reporting, and reinsurance.

In 2011, the NAIC Group Solvency Issues (E) Working Group determined that the enterprise risk management and ORSA requirements were appropriate and beneficial for inclusion in the U.S. solvency framework. The ORSA would give state insurance regulators access to information that would improve their understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefiting solvency regulation. In addition, the ORSA would provide a group-level perspective on risk and capital.

The NAIC has required that all states adopt its Risk Management and ORSA Model Act by January 1, 2018, to maintain accreditation with the NAIC. Accordingly, the Insurance Division proposes adopting this bill to retain its accreditation and to enable it to adopt Hawaii Administrative Rules in a timely manner before the 2018 deadline.

Part II amends section 431:19-115(b) to apply supplemental provisions, rules, and exceptions for risk-based capital, as well as severability and notice provisions, to risk retention captive insurance companies for NAIC accreditation purposes.

Part III amends sections 431K-1 and 431K-2 to adopt the NAIC's Model Risk Retention Act for NAIC accreditation purposes. The NAIC has required that all states licensing captive risk retention groups (RRGs) adopt its model act by January 1, 2017.

Impact on the public: As part of the SMI, this bill promotes the public interest by providing solvency protection for and prudent regulation of insurers.

Impact on the department and other agencies:  
Adopting this bill would allow the Insurance Division to maintain its accreditation with the NAIC. For accreditation purposes, the NAIC is requiring that the State adopt its Risk Management and ORSA Model Act by January 1, 2018, and that all states licensing captive RRGs adopt its model act by January 1, 2017.

GENERAL FUNDS: None.  
OTHER FUNDS: None.  
PPBS PROGRAM  
DESIGNATION: CCA-106.  
OTHER AFFECTED  
AGENCIES: None.  
EFFECTIVE DATE: Upon approval.