

JAN 27 2016

A BILL FOR AN ACT

RELATING TO THE INSURANCE HOLDING COMPANY SYSTEM.

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

1 SECTION 1. Section 431:11-102, Hawaii Revised Statutes, is
2 amended by amending the definitions of "domestic insurance
3 holding company system" and "statement" to read as follows:

4 "~~Domestic insurance holding company system~~" [~~means an~~
5 ~~insurance holding company system that consists of an ultimate~~
6 ~~controlling person formed in this State prior to January 1,~~
7 ~~2000, and its insurer affiliates, all of which are domestic~~
8 ~~insurers authorized to transact insurance business only in this~~
9 ~~State.~~] consists of two or more affiliated persons, one or more
10 of whom is an insurer, with an ultimate controlling person
11 formed in this State prior to January 1, 1995, and its insurer
12 affiliates, all of which are domestic insurers authorized to
13 transact insurance business only in this State.

14 "Statement" means information required to be filed with the
15 commissioner pursuant to sections 431:11-104[~~7~~] through 431:11-
16 104.5, 431:11-105, and 431:11-106, and guidelines set forth on a
17 form or in a format approved by the commissioner."

1 SECTION 2. Section 431:11-104, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The statement to be filed with the commissioner
4 hereunder shall be made under oath or affirmation and shall
5 contain the following information:

6 (1) The name and address of each person by whom or on
7 whose behalf the merger or other acquisition of
8 control referred to in subsection (a) is to be
9 effected (hereinafter called "acquiring party"), and:

10 (A) If the person is an individual, the principal
11 occupation and all offices and positions held by
12 the individual during the past five years, and
13 any conviction of crimes other than minor traffic
14 violations during the past ten years; or

15 (B) If the person is not an individual, a report of
16 the nature of its business operations during the
17 past five years or for such lesser period as the
18 person and any predecessors thereof shall have
19 been in existence; an informative description of
20 the business intended to be done by the person
21 and the person's subsidiaries; and a list of all
22 individuals who are or who have been selected to

1 become directors or executive officers of the
2 person, or who perform or will perform functions
3 appropriate to the positions. The list shall
4 include for each individual the information
5 required by subparagraph (A);

6 (2) The source, nature, and amount of the consideration
7 used or to be used in effecting the merger or other
8 acquisition of control, a description of any
9 transaction wherein funds were or are to be obtained
10 for any purpose (including any pledge of the insurer's
11 stock, or the stock of any of its subsidiaries or
12 controlling affiliates), and the identity of persons
13 furnishing the consideration; provided that where a
14 source of the consideration is a loan made in the
15 lender's ordinary course of business, the identity of
16 the lender shall remain confidential, if the person
17 filing the statement requests confidentiality;

18 (3) Fully audited financial information as to the earnings
19 and financial condition of each acquiring party for
20 the preceding five fiscal years (or for the lesser
21 period as the acquiring party and any predecessors
22 thereof shall have been in existence), and similar

- 1 unaudited information as of a date not earlier than
2 ninety days prior to the filing of the statement;
- 3 (4) Any plans or proposals that each acquiring party may
4 have to liquidate the insurer, to sell its assets or
5 merge or consolidate it with any person, or to make
6 any other material change in its business or corporate
7 structure or management;
- 8 (5) The number of shares of any security referred to in
9 subsection (a) that each acquiring party proposes to
10 acquire, and the terms of the offer, request,
11 invitation, agreement, or acquisition referred to in
12 subsection (a), and a statement as to the method by
13 which the fairness of the proposal was arrived at;
- 14 (6) The amount of each class of any security referred to
15 in subsection (a) that is beneficially owned or
16 concerning which there is a right to acquire
17 beneficial ownership by each acquiring party;
- 18 (7) A full description of any contracts, arrangements, or
19 understandings with respect to any security referred
20 to in subsection (a) in which any acquiring party is
21 involved including but not limited to transfer of any
22 of the securities, joint ventures, loan or option

1 arrangements, puts or calls, guarantees of loans,
2 guarantees against loss or guarantees of profits,
3 division of losses or profits, or the giving or
4 withholding of proxies. The description shall
5 identify the persons with whom the contracts,
6 arrangements, or understandings have been entered
7 into;

8 (8) A description of the purchase of any security referred
9 to in subsection (a) during the twelve calendar months
10 preceding the filing of the statement by any acquiring
11 party, including the dates of purchase, names of the
12 purchasers, and considerations paid or agreed to be
13 paid therefore;

14 (9) A description of any recommendations to purchase any
15 security referred to in subsection (a) made during the
16 twelve calendar months preceding the filing of the
17 statement by any acquiring party, or by anyone based
18 upon interviews or at the suggestion of the acquiring
19 party;

20 (10) Copies of all tender offers for, requests or
21 invitation for tenders of, exchange offers for, and
22 agreements to acquire or exchange any securities

- 1 referred to in subsection (a), and (if distributed) of
2 additional soliciting material relating thereto;
- 3 (11) The term of any agreement, contract, or understanding
4 made with or proposed to be made with any broker-
5 dealer as to solicitation of securities referred to in
6 subsection (a) for tender, and the amount of any fees,
7 commissions, or other compensation to be paid to
8 broker-dealers with regard thereto;
- 9 (12) An agreement by the person required to file the
10 statement referred to in subsection (a) that the
11 person will provide the annual report, specified in
12 section [~~431:11-105(1)~~], 431:11-105(b)(1), for so long
13 as control exists;
- 14 (13) An acknowledgment by the person required to file the
15 statement referred to in subsection (a) that the
16 person and all subsidiaries within the person's
17 control in the insurance holding company system will
18 provide information to the commissioner upon request
19 as necessary to evaluate enterprise risk to the
20 insurer; and
- 21 (14) Any additional information as the commissioner may by

1 rule prescribe as necessary or appropriate for the
2 protection of policyholders of the insurer or in the
3 public interest.

4 If the person required to file the statement referred to in
5 subsection (a) is a partnership, limited partnership, or other
6 group, the commissioner may require that the information called
7 for by paragraphs (1) through (14) shall be given with respect
8 to each partner of the partnership or limited partnership, each
9 member of the group, and each person who controls such partner
10 or member. If any partner, member, or person is a corporation
11 or the person required to file the statement referred to in
12 subsection (a) is a corporation, the commissioner may require
13 that the information called for by paragraphs (1) through (14)
14 shall be given with respect to the corporation, each officer and
15 director of the corporation, and each person who is directly or
16 indirectly the beneficial owner of more than ten per cent of the
17 outstanding voting securities of the corporation.

18 If any material change occurs in the facts set forth in the
19 statement filed with the commissioner and sent to the insurer
20 pursuant to this section, an amendment setting forth the change,
21 together with copies of all documents and other material
22 relevant to the change, shall be filed with the commissioner and

1 sent to the insurer within two business days after the person
2 learns of the change. The insurer shall send the amendment to
3 its shareholders."

4 SECTION 3. Section 431:11-105, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Every insurer subject to registration shall file the
7 registration statement with the commissioner on a form and in a
8 format prescribed by the National Association of Insurance
9 Commissioners, which shall contain the following current
10 information:

11 (1) The capital structure, general financial condition,
12 ownership, and management of the insurer and any
13 person controlling the insurer;

14 (2) The identity and relationship of every member of the
15 insurance holding company system;

16 (3) The following agreements in force, and transactions
17 currently outstanding or that have occurred during the
18 last calendar year between the insurer and its
19 affiliates:

20 (A) Loans, other investments, or purchases, sales, or
21 exchanges of securities of the affiliates by the
22 insurer or of the insurer by its affiliates;

- 1 (B) Purchases, sales, or exchange of assets;
- 2 (C) Transactions not in the ordinary course of
3 business;
- 4 (D) Guarantees or undertakings for the benefit of an
5 affiliate that result in an actual contingent
6 exposure of the insurer's assets to liability,
7 other than insurance contracts entered into in
8 the ordinary course of the insurer's business;
- 9 (E) All management agreements, all service contracts,
10 and all cost-sharing arrangements;
- 11 (F) Reinsurance agreements;
- 12 (G) Dividends and other distributions to
13 shareholders; and
- 14 (H) Consolidated tax allocation agreements;
- 15 (4) Any pledge of the insurer's stock, including stock of
16 any subsidiary or controlling affiliate, for a loan
17 made to any member of the insurance holding company
18 system;
- 19 (5) If requested by the commissioner, financial statements
20 of an insurance holding company system~~(-)~~, including
21 all affiliates. Financial statements may include but
22 are not limited to annual audited financial statements

1 filed with the Securities and Exchange Commission
2 pursuant to the Securities Act of 1933, as amended, or
3 the Securities Exchange Act of 1934, as amended. An
4 insurer required to file financial statements pursuant
5 to this paragraph may satisfy the request by providing
6 the commissioner with the most recently filed
7 financial statements of the parent corporation that
8 have been filed with the Securities and Exchange
9 Commission;

10 (6) Other matters concerning transactions between
11 registered insurers and any affiliates as may be
12 included from time to time in any registration forms
13 adopted or approved by the commissioner; [~~and~~]

14 (7) Statements that the insurer's board of directors
15 oversees corporate governance and internal controls
16 and that the insurer's officers or senior management
17 have approved, implemented, and continue to maintain
18 and monitor corporate governance and internal control
19 procedures[-]; and

20 (8) Any other information required by the commissioner by
21 rule."

1 SECTION 4. Section 431:11-107, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:11-107 Examination. (a) Subject to the limitation
4 contained in this section and in addition to the powers that the
5 commissioner has under article 2 relating to the examination of
6 insurers, the commissioner may examine any insurer registered
7 under section 431:11-105 and its affiliates as is reasonably
8 necessary to ascertain the financial condition of the insurer,
9 including the enterprise risk to the insurer by the ultimate
10 controlling party, or by any entity or combination of entities
11 within the insurance holding company system, or by the insurance
12 holding company system on a consolidated basis.

13 (b) [~~To evaluate whether the operations of an ultimate~~
14 ~~controlling person, affiliate, or any combination of entities~~
15 ~~within the insurance holding company system may adversely and~~
16 ~~materially affect the operations, management, or financial~~
17 ~~condition of an insurer, the]~~ The commissioner may order any
18 insurer registered under section 431:11-105 to:

19 (1) Produce the records, books, or other information in
20 the possession of the insurer or its affiliates that
21 are reasonably necessary to determine compliance with
22 this article; and

1 (2) [~~Determine compliance with this article, produce~~
2 Produce information not in the possession of the
3 insurer if the insurer can obtain access to that
4 information pursuant to contractual relationships,
5 statutory obligations, or other methods[-] to
6 determine compliance with this article. In the event
7 the insurer cannot obtain the information requested by
8 the commissioner, the insurer shall provide the
9 commissioner a detailed explanation of the reason that
10 the insurer cannot obtain the information and the
11 identity of the holder of the information. Whenever
12 it appears to the commissioner that the detailed
13 explanation is without merit, the commissioner may
14 require, after notice and hearing, the insurer to pay
15 a penalty of not less than \$100 and not more than \$500
16 for each day's delay, or may suspend or revoke the
17 insurer's license.

18 (c) The commissioner may retain at the registered
19 insurer's expense attorneys, actuaries, accountants, and other
20 experts not otherwise a part of the commissioner's staff as
21 shall be reasonably necessary to assist in the conduct of the
22 examination under [~~subsections (a) and (e).~~] this section. Any

1 persons so retained shall be under the direction and control of
2 the commissioner and shall act in a purely advisory capacity.

3 (d) Each registered insurer producing for examination
4 records, books, and papers pursuant to [~~subsections (a) and (e)~~]
5 this section shall be liable for and shall pay the expense of
6 the examination in accordance with article 2.

7 (e) In the event that [+

8 ~~(1) An insurer fails to comply with an order pursuant to~~
9 ~~subsection (b); or~~

10 ~~(2) The commissioner, upon evaluating whether the~~
11 ~~operations of an ultimate controlling person,~~
12 ~~affiliate, or any combination of entities within the~~
13 ~~insurance holding company system pursuant to~~
14 ~~subsection (b), has reasonable cause to believe that:~~

15 ~~(A) The operations of the ultimate controlling~~
16 ~~person, affiliate, or any combination of entities~~
17 ~~within the insurance holding company system may~~
18 ~~adversely and materially affect the operations,~~
19 ~~management, or financial condition of an insurer;~~
20 ~~or~~

21 ~~(B) The commissioner is unable to obtain relevant~~
22 ~~information from the controlled insurer,~~

1 ~~the commissioner may examine the ultimate controlling~~
2 ~~person, affiliate, or any combination of entities~~
3 ~~within the insurance holding company system.]~~
4 an insurer fails to comply with an order, the commissioner may
5 examine the insurer's affiliates to obtain the information. The
6 commissioner may also issue subpoenas, administer oaths, and
7 examine under oath any person for purposes of determining
8 compliance with this section. Upon the failure or refusal of
9 any person to obey a subpoena, the commissioner may petition a
10 court of competent jurisdiction, and upon proper showing, the
11 court may enter an order compelling the witness to appear and
12 testify or produce documentary evidence. Failure to obey the
13 court order shall be punishable as contempt of court. Every
14 person shall be obliged to attend as a witness at the place
15 specified in the subpoena, when subpoenaed, anywhere within the
16 State. Every person shall be entitled to the same fees and
17 mileage, if claimed, as a witness in a court of record, which
18 fees, mileage, and actual expense, if any, necessarily incurred
19 in securing the attendance of witnesses, and their testimony,
20 shall be itemized and charged against, and be paid by, the
21 company being examined.

22 (f) ~~[An examination of affiliates by the commissioner~~

1 ~~under subsection (c) shall specify the grounds for the~~
2 ~~examination and shall be confined to those specified grounds.]~~
3 The non-insurance affiliates of a domestic insurance holding
4 company system shall be exempt from this section."

5 SECTION 5. Section 431:11-108, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) To assist in the performance of the commissioner's
8 duties, the commissioner:

9 (1) May share documents, materials, or other information,
10 including the confidential and privileged documents,
11 materials, or information subject to subsection (a),
12 with other state, federal, and international
13 regulatory agencies, with the National Association of
14 Insurance Commissioners and its affiliates and
15 subsidiaries, and with state, federal, and
16 international law enforcement authorities, including
17 members of any supervisory college described in
18 section 431:11-107.5; provided that the recipient
19 agrees in writing to maintain the confidentiality and
20 privileged status of the document, material, or other
21 information, and has verified in writing the legal
22 authority to maintain confidentiality;

- 1 (2) Notwithstanding paragraph (1) to the contrary, may
2 only share confidential and privileged documents,
3 material, or information reported pursuant to section
4 ~~[431:11-105(1)]~~ 431:11-105(b)(1) with the
5 commissioners of states having statutes or regulations
6 substantially similar to subsection (a) and who have
7 agreed in writing not to disclose such information;
- 8 (3) May receive documents, materials, or information,
9 including otherwise confidential and privileged
10 documents, materials, or information from the National
11 Association of Insurance Commissioners and its
12 affiliates and subsidiaries and from regulatory and
13 law enforcement officials of other foreign or domestic
14 jurisdictions, and shall maintain as confidential or
15 privileged any document, material, or information
16 received with notice or the understanding that it is
17 confidential or privileged under the laws of the
18 jurisdiction that is the source of the document,
19 material, or information; and
- 20 (4) Shall enter into written agreements with the National
21 Association of Insurance Commissioners governing
22 sharing and use of information provided pursuant to

1 this article and consistent with this subsection that
2 shall:

3 (A) Specify procedures and protocols regarding the
4 confidentiality and security of information
5 shared with the National Association of Insurance
6 Commissioners and its affiliates and subsidiaries
7 pursuant to this article, including procedures
8 and protocols for sharing by the National
9 Association of Insurance Commissioners with other
10 state, federal, or international regulators;

11 (B) Specify that ownership of information shared with
12 the National Association of Insurance
13 Commissioners and its affiliates and subsidiaries
14 pursuant to this article remains with [~~and for~~
15 ~~use by~~] the commissioner, and specify that the
16 National Association of Insurance [~~Commissioners~~
17 ~~and~~] Commissioners' use of the information is
18 subject to the direction of the commissioner;

19 (C) Require that prompt notice be given to an insurer
20 whose confidential information is in the
21 possession of the National Association of
22 Insurance Commissioners pursuant to this article

S.B. NO. 2852

Report Title:

The Insurance Holding Company System

Description:

Adopts revisions to the National Association of Insurance Commissioners' model law on the Insurance Holding Company System Regulatory 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 THE INSURANCE HOLDING COMPANY SYSTEM.

PURPOSE: To amend the Insurance Holding Company System Regulatory Act, codified at sections 431:11-101 through -117, Hawaii Revised Statutes (HRS), to maintain the Insurance Division's accreditation with the National Association of Insurance Commissioners (NAIC) and to make technical, substantive, and nonsubstantive amendments for clarity and consistency.

MEANS: Amend sections 431:11-102, 431:11-104, 431:11-105, 431:11-107, and 431:11-108, HRS.

JUSTIFICATION: During the Insurance Division's last interim accreditation review in August 2014, the NAIC stated the Insurance Holding Company System Regulatory Act will need to be revised by January 1, 2016, as changes made by the 2014 Legislature would make Hawaii noncompliant with NAIC accreditation standards. Accordingly, the Insurance Holding Company System Regulatory Act should be amended to resolve its substantial deviations from the NAIC Insurance Holding Company System Regulatory Model Act.

Impact on the public: 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 Insurance Holding Company System Regulatory Model Act by January 1, 2016.

SB. NO. 2852

GENERAL FUNDS: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: CCA-106.
OTHER AFFECTED
AGENCIES: None.
EFFECTIVE DATE: January 1, 2016.