



1 information that will contain confidential and  
2 sensitive information related to an insurer or  
3 insurance group's internal operations and proprietary  
4 and trade secret information that, if made public,  
5 could potentially cause the insurer or insurance group  
6 competitive harm or disadvantage.

7 (b) Nothing in this article shall be construed to  
8 prescribe or impose corporate governance standards and internal  
9 procedures beyond those required under applicable state  
10 corporate law. Notwithstanding the foregoing, nothing in this  
11 article shall be construed to limit the commissioner's  
12 authority, or the rights or obligations of third parties, under  
13 sections 431:2-303 and 431:11-107.

14 (c) The requirements of this article shall apply to all  
15 insurers domiciled in this State.

16 **§431: -B Definitions.** For the purposes of this article:  
17 "Corporate governance annual disclosure" means a  
18 confidential report filed by the insurer or insurance group made  
19 in accordance with the requirements of 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" has the same meaning as in section 431:1-202,  
5 except that it shall not include agencies, authorities or  
6 instrumentalities of the United States, its possessions and  
7 territories, the Commonwealth of Puerto Rico, the District of  
8 Columbia, or a state or political subdivision of a state.

9 "Own risk and solvency assessment summary report" means the  
10 report filed in accordance with section 431:3D-105.

11 **§431: -C Disclosure requirement.** (a) An insurer or the  
12 insurance group of which the insurer is a member shall, no later  
13 than June 1 of each calendar year, submit to the commissioner a  
14 corporate governance annual disclosure that contains the  
15 information required by section 431: -E(a). Notwithstanding  
16 any request from the commissioner made pursuant to subsection  
17 (c), if the insurer is a member of an insurance group, the  
18 insurer shall submit the report required by this section to the  
19 commissioner of the lead state for the insurance group, in  
20 accordance with the laws of the lead state, as determined by the  
21 procedures outlined in the most recent Financial Analysis



1 Handbook adopted by the National Association of Insurance  
2 Commissioners.

3 (b) The corporate governance annual disclosure shall  
4 include a signature of the insurer or insurance group's chief  
5 executive officer or corporate secretary attesting to the best  
6 of that individual's belief and knowledge that the insurer has  
7 implemented the corporate governance practices and that a copy  
8 of the disclosure has been provided to the insurer's board of  
9 directors or the appropriate committee thereof.

10 (c) An insurer not required to submit a corporate  
11 governance annual disclosure under this section shall do so upon  
12 the commissioner's request.

13 (d) For purposes of completing the corporate governance  
14 annual disclosure, the insurer or insurance group may provide  
15 information regarding corporate governance at the ultimate  
16 controlling parent level, an intermediate holding company level,  
17 or the individual legal entity level, depending upon how the  
18 insurer or insurance group has structured its system of  
19 corporate governance. The insurer or insurance group is  
20 encouraged to make the corporate governance annual disclosure  
21 disclosures at the level at which:



1 (1) The insurer's or insurance group's risk appetite is  
2 determined;

3 (2) The earnings, capital, liquidity, operations, and  
4 reputation of the insurer are overseen collectively  
5 and at which the supervision of those factors is  
6 coordinated and exercised; or

7 (3) Legal liability for failure of general corporate  
8 governance duties would be placed.

9 If the insurer or insurance group determines the level of  
10 reporting based on these criteria, it shall indicate which of  
11 the criteria described in paragraphs (1) to (3) was used to  
12 determine the level of reporting and explain any subsequent  
13 changes in the level of reporting.

14 (e) The review of the corporate governance annual  
15 disclosure and any additional requests for information shall be  
16 made through the lead state as determined by the procedures  
17 within the most recent Financial Analysis Handbook adopted by  
18 the National Association of Insurance Commissioners.

19 (f) Insurers providing information substantially similar  
20 to the information required by this article in other documents  
21 provided to the commissioner, including proxy statements filed



1 in conjunction with Form B requirements, or other state or  
2 federal filings provided to the insurance division shall not be  
3 required to duplicate that information in the corporate  
4 governance annual disclosure, but shall only be required to  
5 cross-reference the document in which the information is  
6 included.

7 §431: -D Rules. The commissioner may adopt rules and  
8 issue orders to carry out the provisions of this article.

9 §431: -E Contents of corporate governance annual  
10 disclosure. (a) The insurer or insurance group shall have  
11 discretion over the responses to the corporate governance annual  
12 disclosure inquiries; provided that the corporate governance  
13 annual disclosure shall contain the material information  
14 necessary to permit the commissioner to gain an understanding of  
15 the insurer's or insurance group's corporate governance  
16 structure, policies, and practices. The commissioner may  
17 request additional information deemed material and necessary to  
18 provide the commissioner with a clear understanding of the  
19 corporate governance policies, the reporting or information  
20 system, or the controls implementing those policies.



1 (b) Notwithstanding subsection (a), the corporate  
2 governance annual disclosure shall be prepared consistent with  
3 rules adopted by the commissioner. Documentation and supporting  
4 information shall be maintained and made available upon  
5 examination or request of the commissioner.

6 §431: -F Confidentiality. (a) Insofar as it includes  
7 information relating to specific insurers or insurance groups,  
8 any record or information in the possession or control of the  
9 insurance division that was obtained by, created by, or  
10 disclosed to the commissioner or any other person under this  
11 article, including but not limited to corporate governance  
12 annual disclosures and the information they contain,  
13 communications between the division and insurers or insurance  
14 groups, and internal records of the division, shall be  
15 confidential by law and privileged, shall not be subject to  
16 disclosure pursuant to chapter 92F, shall not be subject to  
17 subpoena, and shall not be subject to discovery or admissible in  
18 evidence in any private civil action. This section shall not be  
19 interpreted to limit the application of exceptions to disclosure  
20 under chapter 92F to any records or information not specifically  
21 made confidential by this section. However, the commissioner



1 may use the documents, materials, or other information in the  
2 furtherance of any regulatory or legal action brought as a part  
3 of the commissioner's official duties. The commissioner shall  
4 not otherwise make the documents, materials, or other  
5 information public without the prior written consent of the  
6 insurer. Nothing in this section shall be construed to require  
7 written consent of the insurer before the commissioner may share  
8 or receive confidential documents, materials, or other  
9 information related to the corporate governance annual  
10 disclosure pursuant to subsection (c) to assist in the  
11 performance of the commissioner's regular duties.

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





- 1 (c) To assist in the performance of the commissioner's  
2 regulatory duties, the commissioner may:
- 3 (1) Upon request, share documents, materials, or other  
4 information related to the corporate governance annual  
5 disclosure, including the confidential and privileged  
6 documents, materials, or information subject to  
7 subsection (a), including proprietary and trade secret  
8 documents and materials with other state, federal, and  
9 international financial regulatory agencies, including  
10 members of any supervisory college as described in  
11 section 431:11-107.5, the National Association of  
12 Insurance Commissioners, and third-party consultants  
13 pursuant to section 431: -G; provided that the  
14 recipient agrees in writing to maintain the  
15 confidentiality and privileged status of the  
16 documents, material, or other information and has  
17 verified in writing the legal authority to maintain  
18 confidentiality; and
- 19 (2) Receive documents, materials, or other information  
20 related to the corporate governance annual disclosure,  
21 including otherwise confidential and privileged



1 documents, materials, or information, including  
2 proprietary and trade-secret information or documents,  
3 from regulatory officials of other state, federal, and  
4 international financial regulatory agencies, including  
5 members of any supervisory college as described in  
6 section 431:11-107.5, and from the National  
7 Association of Insurance Commissioners, and shall  
8 maintain as confidential or privileged any documents,  
9 materials, or information received with notice or the  
10 understanding that it is confidential or privileged  
11 under the laws of the jurisdiction that is the source  
12 of the document, material, or information.

13 (d) The sharing of information and documents by the  
14 commissioner pursuant to this article shall not constitute a  
15 delegation of regulatory authority or rulemaking, and the  
16 commissioner shall be solely responsible for the administration,  
17 execution, and enforcement of this article.

18 (e) No waiver of any applicable privilege or claim of  
19 confidentiality in the documents, proprietary and trade-secret  
20 materials, or other information related to the corporate  
21 governance annual disclosure shall occur as a result of



1 disclosure of any information related to the corporate  
2 governance annual disclosure or documents to the commissioner  
3 under this section or as a result of sharing as authorized in  
4 this article.

5       **§431: -G National Association of Insurance Commissioners**  
6 **and third-party consultants.** (a) The commissioner may retain,  
7 at the insurer's expense, third-party consultants, including  
8 attorneys, actuaries, accountants, and other experts not  
9 otherwise a part of the commissioner's staff as may be  
10 reasonably necessary to assist the commissioner in reviewing the  
11 corporate governance annual disclosure and related information  
12 or the insurer's compliance with this article.

13       (b) Any persons retained under subsection (a) shall be  
14 under the direction and control of the commissioner and shall  
15 act in a purely advisory capacity.

16       (c) The National Association of Insurance Commissioners  
17 and third-party consultants shall be subject to the same  
18 confidentiality standards and requirements as the commissioner.

19       (d) As part of the retention process, a third-party  
20 consultant shall verify to the commissioner, with notice to the  
21 insurer, that it is free from any conflict of interest and that



1 it has internal procedures in place to monitor compliance with a  
2 conflict and to comply with the confidentiality standards and  
3 requirements of this article.

4 (e) A written agreement with the National Association of  
5 Insurance Commissioners or a third-party consultant governing  
6 sharing and use of information provided pursuant to this article  
7 shall contain the following provisions and expressly require the  
8 written consent of the insurer prior to making public  
9 information provided under this article:

10 (1) Specific procedures and protocols for maintaining the  
11 confidentiality and security of the corporate  
12 governance annual disclosure and related information  
13 shared with the National Association of Insurance  
14 Commissioners or a third-party consultant pursuant to  
15 this article;

16 (2) Procedures and protocols for sharing by the National  
17 Association of Insurance Commissioners only with other  
18 state regulators from states in which the insurance  
19 group has domiciled insurers. The agreement shall  
20 provide that the recipient agrees in writing to  
21 maintain the confidentiality and privileged status of



1 the corporate governance annual disclosure and related  
2 documents, materials, or other information and has  
3 verified in writing the legal authority to maintain  
4 confidentiality;

5 (3) A provision specifying that ownership of the corporate  
6 governance annual disclosure and related information  
7 shared with the National Association of Insurance  
8 Commissioners or a third-party consultant remains with  
9 the insurance division and that the National  
10 Association of Insurance Commissioners' or third-party  
11 consultant's use of the information is subject to the  
12 direction of the commissioner;

13 (4) A provision that prohibits the National Association of  
14 Insurance Commissioners or a third-party consultant  
15 from storing the information shared pursuant to this  
16 article in a permanent database after the underlying  
17 analysis is completed;

18 (5) A provision requiring the National Association of  
19 Insurance Commissioners or a third-party consultant to  
20 provide prompt notice to the commissioner and the  
21 insurer or insurance group regarding any subpoena,



1 request for disclosure, or request for production of  
2 the insurer's corporate governance annual disclosure  
3 or related information; and

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

13 **§431: -H Sanctions.** Any insurer failing, without just  
14 cause, to timely file the corporate governance annual disclosure  
15 as required in this article shall be required, after notice and  
16 an opportunity for hearing, to pay a penalty of not less than  
17 \$100 and not more than \$500 for each day's delay, to be  
18 recovered by the commissioner and paid into the compliance  
19 resolution fund. The maximum penalty under this section shall  
20 be \$50,000. The commissioner may reduce the penalty if the  
21 insurer demonstrates to the commissioner that the imposition of



1 the penalty would constitute a financial hardship to the  
2 insurer.

3 §431: -I Severability. If any provision of this article  
4 other than section 431: -F, or the application thereof to any  
5 person or circumstance, is held invalid, the determination of  
6 invalidity shall not affect those provisions or applications of  
7 this article that can be given effect without the invalid  
8 provision or application; to that end, the provisions of this  
9 article, except for section 431: -F, are severable."

10 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
11 amended by adding a new section to article 11 to be  
12 appropriately designated and to read as follows:

13 "§431:11- Group-wide supervision of internationally  
14 active insurance groups. (a) The commissioner is authorized to  
15 act as the group-wide supervisor for any internationally active  
16 insurance group in accordance with this section; provided that  
17 the commissioner may otherwise acknowledge another regulatory  
18 official as the group-wide supervisor where the internationally  
19 active insurance group:

20 (1) Does not have substantial insurance operations in the  
21 United States;



1       (2) Has substantial insurance operations in the United  
2       States, but not in this State; or

3       (3) Has substantial insurance operations in the United  
4       States and this State, but the commissioner has  
5       determined pursuant to the factors in subsections (b)  
6       and (f) that the other regulatory official is the  
7       appropriate group-wide supervisor.

8       An insurance holding company system that does not otherwise  
9       qualify as an internationally active insurance group may request  
10       that the commissioner make a determination or acknowledgment as  
11       to a group-wide supervisor pursuant to this section.

12       (b) In cooperation with other state, federal, and  
13       international regulatory agencies, the commissioner shall  
14       identify a single group-wide supervisor for an internationally  
15       active insurance group. The commissioner may determine that the  
16       commissioner is the appropriate group-wide supervisor for an  
17       internationally active insurance group that conducts substantial  
18       insurance operations concentrated in this State. However, the  
19       commissioner may acknowledge that a regulatory official from  
20       another jurisdiction is the appropriate group-wide supervisor  
21       for the internationally active insurance group. The





1 commissioner shall consider the following factors when making a  
2 determination or an acknowledgment under this subsection:

3       (1) The place of domicile of the insurers within the  
4           internationally active insurance group that holds the  
5           largest share of the group's written premiums, assets,  
6           or liabilities;

7       (2) The place of domicile of the top-tiered insurer or  
8           insurers in the insurance holding company system of  
9           the internationally active insurance group;

10       (3) The location of the executive offices or largest  
11           operational offices of the internationally active  
12           insurance group;

13       (4) Whether another regulatory official is acting or is  
14           seeking to act as the group-wide supervisor under a  
15           regulatory system that the commissioner determines to  
16           be:

17           (A) Substantially similar to the system of regulation  
18           provided under the laws of this State; or

19           (B) Otherwise sufficient in terms of providing for  
20           group-wide supervision, enterprise risk analysis,



1 and cooperation with other regulatory officials;

2 and

3 (5) Whether another regulatory official acting or seeking

4 to act as the group-wide supervisor provides the

5 commissioner with reasonably reciprocal recognition

6 and cooperation.

7 However, a commissioner identified under this section as the

8 group-wide supervisor may determine that it is appropriate to

9 acknowledge another supervisor to serve as the group-wide

10 supervisor. The acknowledgment of the group-wide supervisor

11 shall be made after consideration of the factors in paragraphs

12 (1) through (5), and shall be made in cooperation with and

13 subject to the acknowledgment of other regulatory officials

14 involved with supervising members of the internationally active

15 insurance group, and in consultation with the internationally

16 active insurance group.

17 (c) Notwithstanding any other provision of law to the

18 contrary, when another regulatory official is acting as the

19 group-wide supervisor of an internationally active insurance

20 group, the commissioner shall acknowledge that regulatory

21 official as the group-wide supervisor; provided that in the



1 event a material change in the internationally active insurance  
2 group results in:

3 (1) The internationally active insurance group's insurers  
4 domiciled in this State holding the largest share of  
5 the group's premiums, assets, or liabilities; or

6 (2) This State being the place of domicile of the top-  
7 tiered insurer or insurers in the insurance holding  
8 company system of the internationally active insurance  
9 group,

10 the commissioner shall make a determination or acknowledgment as  
11 to the appropriate group-wide supervisor for the internationally  
12 active insurance group pursuant to subsection (b).

13 (d) Pursuant to section 431:11-107, the commissioner is  
14 authorized to collect from any insurer registered pursuant to  
15 section 431:11-105 all information necessary to determine  
16 whether the commissioner may act as the group-wide supervisor of  
17 an internationally active insurance group or if the commissioner  
18 may acknowledge another regulatory official to act as the group-  
19 wide supervisor. Prior to issuing a determination that an  
20 internationally active insurance group is subject to group-wide  
21 supervision by the commissioner, the commissioner shall notify



1 the insurer registered pursuant to section 431:11-105 and the  
2 ultimate controlling person within the internationally active  
3 insurance group. The internationally active insurance group  
4 shall have not less than thirty days to provide the commissioner  
5 with additional information pertinent to the pending  
6 determination. The commissioner shall publish on the insurance  
7 division's internet website the identity of internationally  
8 active insurance groups that the commissioner has determined are  
9 subject to group-wide supervision by the commissioner.

10 (e) If the commissioner is the group-wide supervisor for  
11 an internationally active insurance group, the commissioner is  
12 authorized to engage in any of the following group-wide  
13 supervision activities:

14 (1) Assess the enterprise risks within the internationally  
15 active insurance group to ensure that:

16 (A) The material financial condition and liquidity  
17 risks to the members of the internationally  
18 active insurance group that are engaged in the  
19 business of insurance are identified by  
20 management; and



- 1           (B) Reasonable and effective mitigation measures are  
2           in place;
- 3           (2) Request, from any member of an internationally active  
4           insurance group subject to the commissioner's  
5           supervision, information necessary and appropriate to  
6           assess enterprise risk, including but not limited to  
7           information about the members of the internationally  
8           active insurance group regarding:
- 9           (A) Governance, risk assessment, and management;  
10          (B) Capital adequacy; and  
11          (C) Material intercompany transactions;
- 12          (3) Coordinate and, through the authority of the  
13          regulatory officials of the jurisdictions where  
14          members of the internationally active insurance group  
15          are domiciled, compel development and implementation  
16          of reasonable measures designed to ensure that the  
17          internationally active insurance group is able to  
18          timely recognize and mitigate enterprise risks to  
19          members of the internationally active insurance group  
20          that are engaged in the business of insurance;



- 1       (4) Communicate with other state, federal, and  
2       international regulatory agencies for members within  
3       the internationally active insurance group and share  
4       relevant information subject to the confidentiality  
5       provisions of section 431:11-108, through supervisory  
6       colleges as set forth in section 431:11-107.5 or  
7       otherwise;
- 8       (5) Enter into agreements with or obtain documentation  
9       from any insurer registered under section 431:11-105,  
10       any member of the internationally active insurance  
11       group, and any other state, federal, and international  
12       regulatory agencies for members of the internationally  
13       active insurance group, providing the basis for or  
14       otherwise clarifying the commissioner's role as group-  
15       wide supervisor, including provisions for resolving  
16       disputes with other regulatory officials. These  
17       agreements or documents shall not serve as evidence in  
18       any proceeding that any insurer or person within an  
19       insurance holding company system not domiciled or  
20       incorporated in this State is doing business in this



1           State or is otherwise subject to jurisdiction in this  
2           State; and

3           (6) Other group-wide supervision activities, consistent  
4           with the authorities and purposes enumerated above, as  
5           considered necessary by the commissioner.

6           (f) If the commissioner acknowledges that another  
7           regulatory official from a jurisdiction that is not accredited  
8           by the National Association of Insurance Commissioners is the  
9           group-wide supervisor, the commissioner is authorized to  
10           reasonably cooperate, through supervisory colleges or otherwise,  
11           with group-wide supervision undertaken by the group-wide  
12           supervisor; provided that:

13           (1) The commissioner's cooperation is in compliance with  
14           the laws of this State; and

15           (2) The regulatory official acknowledged as the group-wide  
16           supervisor also recognizes and cooperates with the  
17           commissioner's activities as a group-wide supervisor  
18           for other internationally active insurance groups  
19           where applicable. Where such recognition and  
20           cooperation is not reasonably reciprocal, the



1 commissioner is authorized to refuse recognition and  
2 cooperation.

3 (g) The commissioner is authorized to enter into  
4 agreements with or obtain documentation from any insurer  
5 registered under section 431:11-105, any affiliate of the  
6 insurer, and other state, federal, and international regulatory  
7 agencies for members of the internationally active insurance  
8 group, that provide the basis for or otherwise clarify a  
9 regulatory official's role as group-wide supervisor.

10 (h) The commissioner may adopt rules necessary for the  
11 administration of this section.

12 (i) A registered insurer subject to this section shall be  
13 liable for and shall pay the reasonable expenses of the  
14 commissioner's participation in the administration of this  
15 section, including the engagement of attorneys, actuaries, and  
16 any other professionals, and all reasonable travel expenses."

17 SECTION 3. Section 431:11-102, Hawaii Revised Statutes, is  
18 amended by adding two new definitions to be appropriately  
19 inserted and to read as follows:

20 "Group-wide supervisor" means the regulatory official  
21 authorized to engage in conducting and coordinating group-wide





1 supervision activities who is determined or acknowledged by the  
2 commissioner under section 431:11- to have sufficient  
3 significant contacts with the internationally active insurance  
4 group.

5 "Internationally active insurance group" means an insurance  
6 holding company system that:

7 (1) Includes an insurer registered under section 431:11-  
8 105; and

9 (2) Meets the following criteria:

10 (A) Premiums written in at least three countries;

11 (B) The percentage of gross premiums written outside  
12 the United States is at least ten per cent of the  
13 insurance holding company system's total gross  
14 written premiums; and

15 (C) Based on a three-year rolling average, the total  
16 assets of the insurance holding company system  
17 are at least \$50,000,000,000 or the total gross  
18 written premiums of the insurance holding company  
19 system are at least \$10,000,000,000."

20 SECTION 4. Section 431:11-108, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Documents, materials, or other information in the  
2 possession or control of the insurance division that are  
3 obtained by or disclosed to the commissioner or any other person  
4 in the course of an examination or investigation made pursuant  
5 to section 431:11-107 and all information reported or provided  
6 to the insurance division pursuant to sections 431:11-104(b)(12)  
7 and (13), 431:11-105, [~~and~~] 431:11-106, and 431:11- , shall be  
8 confidential by law and privileged, shall not be disclosable  
9 under chapter 92F, shall not be subject to subpoena, and shall  
10 not be subject to discovery or admissible in evidence in any  
11 private civil action. The commissioner may use the documents,  
12 materials, or other information in the furtherance of any  
13 regulatory or legal action brought as part of the commissioner's  
14 official duties. The commissioner shall not otherwise make the  
15 documents, materials, or other information public without prior  
16 written consent of the insurer to which it pertains unless the  
17 commissioner, after giving the insurer and its affiliates who  
18 would be affected thereby notice and opportunity to be heard,  
19 determines that the interest of the policyholders, shareholders,  
20 or the public will be served by the publication thereof, in



1 which event the commissioner may publish all or any part in such  
2 manner as may be deemed appropriate."

3 SECTION 5. The commissioner shall adopt rules effectuating  
4 the purposes of this Act by January 1, 2020.

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

7 SECTION 7. In codifying the new sections added by sections  
8 1 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 and referring to the new sections in this Act.

11 SECTION 8. This Act shall take effect on July 1, 2050.



**Report Title:**

Insurance; NAIC; Corporate Governance Annual Disclosure Model Act; Insurance Holding Company System Regulatory Act

**Description:**

Meets National Association of Insurance Commissioners (NAIC) accreditation requirements by adopting the NAIC Corporate Governance Annual Disclosure Model Act and adopting revisions to the NAIC Insurance Holding Company System Regulatory Act.  
(HB984 HD1)

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

