
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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

4 "ARTICLE

5 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

6 §431: -A Purpose and scope. (a) The purpose of this
7 article is to:

- 8 (1) Provide the insurance commissioner a summary of an
9 insurer's or insurance group's corporate governance
10 structure, policies, and practices to permit the
11 commissioner to gain and maintain an understanding of
12 the insurer's corporate governance framework;
- 13 (2) Outline the requirements for completing a corporate
14 governance annual disclosure with the commissioner;
15 and
- 16 (3) Provide for the confidential treatment of the
17 corporate governance annual disclosure and related



1 information that will contain confidential and
2 sensitive information related to an insurer's 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. Notwithstanding any
16 request from the commissioner made pursuant to subsection (c),
17 if the insurer is a member of an insurance group, the insurer
18 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's 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 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) Documents, materials, or
7 other information including the corporate governance annual
8 disclosure, in the possession or control of the insurance
9 division that are obtained by, created by, or disclosed to the
10 commissioner or any other person under this article, and that
11 contain information originating in a corporate governance annual
12 disclosure under this article, are recognized by this State as
13 being proprietary and to contain trade secrets. All such
14 documents, materials, or other information shall be confidential
15 by law and privileged, shall not be subject to disclosure
16 pursuant to chapter 92F, shall not be subject to subpoena, and
17 shall not be subject to discovery or admissible in evidence in
18 any private civil action. However, the commissioner may use the
19 documents, materials, or other information in the furtherance of
20 any regulatory or legal action brought as a part of the
21 commissioner's official duties. The commissioner shall not



1 otherwise make the documents, materials, or other information
2 public without the prior written consent of the insurer.
3 Nothing in this section shall be construed to require written
4 consent of the insurer before the commissioner may share or
5 receive confidential documents, materials, or other information
6 related to the corporate governance annual disclosure pursuant
7 to subsection (c) to assist in the performance of the
8 commissioner's regular duties.

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

18 (c) To assist in the performance of the commissioner's
19 regulatory duties, the commissioner may:

20 (1) Upon request, share documents, materials, or other
21 information related to the corporate governance annual



1 disclosure, including the confidential and privileged
2 documents, materials, or information subject to
3 subsection (a), including proprietary and trade secret
4 documents and materials with other state, federal, and
5 international financial regulatory agencies, including
6 members of any supervisory college as described in
7 section 431:11-107.5, the National Association of
8 Insurance Commissioners, and third-party consultants
9 pursuant to section 431: -G; provided that the
10 recipient agrees in writing to maintain the
11 confidentiality and privileged status of the
12 documents, material, or other information and has
13 verified in writing the legal authority to maintain
14 confidentiality; and

- 15 (2) Receive documents, materials, or other information
16 related to the corporate governance annual disclosure,
17 including otherwise confidential and privileged
18 documents, materials, or information, including
19 proprietary and trade-secret information or documents,
20 from regulatory officials of other state, federal, and
21 international financial regulatory agencies, including



1 members of any supervisory college as described in
2 section 431:11-107.5, and from the National
3 Association of Insurance Commissioners, and shall
4 maintain as confidential or privileged any documents,
5 materials, or information received with notice or the
6 understanding that it is confidential or privileged
7 under the laws of the jurisdiction that is the source
8 of the document, material, or information.

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

14 (e) No waiver of any applicable privilege or claim of
15 confidentiality in the documents, proprietary and trade-secret
16 materials, or other information related to the corporate
17 governance annual disclosure shall occur as a result of
18 disclosure of any information related to the corporate
19 governance annual disclosure or documents to the commissioner
20 under this section or as a result of sharing as authorized in
21 this article.



1 §431: -G National Association of Insurance Commissioners
2 and third-party consultants. (a) The commissioner may retain,
3 at the insurer's expense, third-party consultants, including
4 attorneys, actuaries, accountants, and other experts not
5 otherwise a part of the commissioner's staff as may be
6 reasonably necessary to assist the commissioner in reviewing the
7 corporate governance annual disclosure and related information
8 or the insurer's compliance with this article.

9 (b) Any persons retained under subsection (a) shall be
10 under the direction and control of the commissioner and shall
11 act in a purely advisory capacity.

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

15 (d) As part of the retention process, a third-party
16 consultant shall verify to the commissioner, with notice to the
17 insurer, that it is free from any conflict of interest and that
18 it has internal procedures in place to monitor compliance with a
19 conflict and to comply with the confidentiality standards and
20 requirements of this article.



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

- 7 (1) Specific procedures and protocols for maintaining the
8 confidentiality and security of the corporate
9 governance annual disclosure and related information
10 shared with the National Association of Insurance
11 Commissioners or a third-party consultant pursuant to
12 this article;
- 13 (2) Procedures and protocols for sharing by the National
14 Association of Insurance Commissioners only with other
15 state regulators from states in which the insurance
16 group has domiciled insurers. The agreement shall
17 provide that the recipient agrees in writing to
18 maintain the confidentiality and privileged status of
19 the corporate governance annual disclosure and related
20 documents, materials, or other information and has



- 1 verified in writing the legal authority to maintain
2 confidentiality;
- 3 (3) A provision specifying that ownership of the corporate
4 governance annual disclosure and related information
5 shared with the National Association of Insurance
6 Commissioners or a third-party consultant remains with
7 the insurance division and that the National
8 Association of Insurance Commissioners' or third-party
9 consultant's use of the information is subject to the
10 direction of the commissioner;
- 11 (4) A provision that prohibits the National Association of
12 Insurance Commissioners or a third-party consultant
13 from storing the information shared pursuant to this
14 article in a permanent database after the underlying
15 analysis is completed;
- 16 (5) A provision requiring the National Association of
17 Insurance Commissioners or a third-party consultant to
18 provide prompt notice to the commissioner and the
19 insurer or insurance group regarding any subpoena,
20 request for disclosure, or request for production of



1 the insurer's corporate governance annual disclosure
2 or related information; and
3 (6) A requirement that the National Association of
4 Insurance Commissioners or a third-party consultant
5 consent to intervention by an insurer in any judicial
6 or administrative action in which the National
7 Association of Insurance Commissioners or a third-
8 party consultant may be required to disclose
9 confidential information about the insurer shared with
10 the National Association of Insurance Commissioners or
11 a third-party consultant pursuant to this article.

12 §431: -H **Sanctions.** Any insurer failing, without just
13 cause, to timely file the corporate governance annual disclosure
14 as required in this article shall be required, after notice and
15 an opportunity for hearing, to pay a penalty of not less than
16 \$100 and not more than \$500 for each day's delay, to be
17 recovered by the commissioner and paid into the compliance
18 resolution fund. The maximum penalty under this section shall
19 be \$50,000. The commissioner may reduce the penalty if the
20 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 an acknowledgment
11 as 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 of a material change in the internationally active
2 insurance group that 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 may
12 engage in any of the following group-wide supervision
13 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 documentation shall not serve as
18 evidence in any proceeding that any insurer or person
19 within an insurance holding company system not
20 domiciled or incorporated in this State is doing



1 business in this State or is otherwise subject to
2 jurisdiction in this 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 may reasonably
10 cooperate, through supervisory colleges or otherwise, with
11 group-wide supervision undertaken by the group-wide supervisor;
12 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 are not reasonably reciprocal, the
21 commissioner may refuse recognition and cooperation.



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

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

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

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

18 "Group-wide supervisor" means the regulatory official
19 authorized to engage in conducting and coordinating group-wide
20 supervision activities who is determined or acknowledged by the
21 commissioner under section 431:11- to have sufficient



1 significant contacts with the internationally active insurance
2 group.

3 "Internationally active insurance group" means an insurance
4 holding company system that:

5 (1) Includes an insurer registered under section 431:11-
6 105; and

7 (2) Meets the following criteria:

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

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

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

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

20 "(a) Documents, materials, or other information in the
21 possession or control of the insurance division that are



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



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

3 SECTION 6. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 and referring to the new sections in this Act.

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 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.
(SB1210 HD1)

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

