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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. Section 431:11-102, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4           "Group capital calculation instructions" means the group  
5 capital calculation instructions as adopted by the National  
6 Association of Insurance Commissioners or the most recent  
7 version if adopted by the commissioner, which the commissioner  
8 may adopt by order, which shall not constitute rulemaking under  
9 chapter 91.

10           "Liquidity stress test framework" means the separate  
11 National Association of Insurance Commissioners publication that  
12 includes a history of the National Association of Insurance  
13 Commissioners' development of regulatory liquidity stress  
14 testing, the scope criteria applicable for a specific data year,  
15 and the liquidity stress test instructions and reporting  
16 templates for a specific data year, such scope criteria,  
17 instructions and reporting template as adopted by the National  
18 Association of Insurance Commissioners or the most recent

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1 version of the separate National Association of Insurance  
2 Commissioners publication if adopted by the commissioner, which  
3 the commissioner may adopt by order, which shall not constitute  
4 rulemaking under chapter 91.

5 "Scope criteria", as referenced in the definition of  
6 liquidity stress test framework, means the designated exposure  
7 bases along with minimum magnitudes thereof for the specified  
8 data year, used to establish a preliminary list of insurers  
9 considered scoped into the liquidity stress test framework for  
10 that data year."

11 SECTION 2. Section 431:11-105, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By amending subsection (d) to read:

14 "(d) No information need be disclosed on the registration  
15 statement filed pursuant to subsection (b) if the information is  
16 not material for the purposes of this section. Unless the  
17 commissioner by rule, regulation or order provides otherwise;  
18 sales, purchases, exchanges, loans or extensions of credit,  
19 investments, or guarantees involving one-half of one percent  
20 (.5%) or less of an insurer's admitted assets as of the 31st day  
21 of December next preceding shall not be deemed material for  
22 purposes of this section. The definition of materiality

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1 provided in this subsection shall not apply for purposes of the  
2 group capital calculation or the liquidity stress test  
3 framework."

4 2. By amending subsection (1) to read:

5 "(1) (1) The ultimate controlling person of every insurer  
6 subject to registration shall also file an annual  
7 enterprise risk report. [~~The ultimate controlling~~  
8 ~~person of a domestic insurance holding company system~~  
9 ~~shall be exempt from this requirement.~~] The report  
10 shall [~~identify~~], to the best of the ultimate  
11 controlling person's knowledge and belief, identify  
12 the material risks within the insurance holding  
13 company system that could pose enterprise risk to the  
14 insurer. The report shall be filed with the lead  
15 state commissioner of the insurance holding company  
16 system as determined by the procedures within the  
17 financial analysis handbook adopted by the National  
18 Association of Insurance Commissioners.

19 (2) Except as provided below, the ultimate controlling  
20 person of every insurer subject to registration shall  
21 concurrently file with the registration an annual  
22 group capital calculation as directed by the lead

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1           state commissioner. The report shall be completed in  
2           accordance with the group capital calculation  
3           instructions, which may permit the lead state  
4           commissioner to allow a controlling person that is not  
5           the ultimate controlling person to file the group  
6           capital calculation. The report shall be filed with  
7           the lead state commissioner of the insurance holding  
8           company system as determined by the commissioner in  
9           accordance with the procedures within the financial  
10          analysis handbook adopted by the National Association  
11          of Insurance Commissioners. Insurance holding company  
12          systems described below are exempt from filing the  
13          group capital calculation:

14          (A) An insurance holding company system that has only  
15          one insurer within its holding company structure,  
16          that only writes business and is only licensed in  
17          its domestic state, and assumes no business from  
18          any other insurer;

19          (B) An insurance holding company system that is  
20          required to perform a group capital calculation  
21          specified by the United States Federal Reserve  
22          Board. The lead state commissioner shall request

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1           the calculation from the Federal Reserve Board  
2           under the terms of information sharing agreements  
3           in effect. If the Federal Reserve Board cannot  
4           share the calculation with the lead state  
5           commissioner, the insurance holding company  
6           system is not exempt from the group capital  
7           calculation filing;

8           (C) An insurance holding company system whose non-  
9           United States group-wide supervisor is located  
10           within a reciprocal jurisdiction as defined in  
11           section 431:4A-101 that recognizes the United  
12           States state regulatory approach to group  
13           supervision and group capital;

14           (D) An insurance holding company system:

15           (i) That provides information to the lead state  
16           that meets the requirements for  
17           accreditation under the National Association  
18           of Insurance Commissioners financial  
19           standards and accreditation program, either  
20           directly or indirectly through the group-  
21           wide supervisor, who has determined such  
22           information is satisfactory to allow the

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1                   lead state to comply with the National  
2                   Association of Insurance Commissioners group  
3                   supervision approach, as detailed in the  
4                   financial analysis handbook adopted by the  
5                   National Association of Insurance  
6                   Commissioners; and

7                   (ii) Whose non-United States group-wide  
8                   supervisor that is not in a reciprocal  
9                   jurisdiction recognizes and accepts, as  
10                   specified by the commissioner in rules, the  
11                   group capital calculation as the world-wide  
12                   group capital assessment for United States  
13                   insurance groups who operate in that  
14                   jurisdiction.

15                   (E) Notwithstanding subparagraphs (C) and (D), a lead  
16                   state commissioner shall require the group  
17                   capital calculation for United States operations  
18                   of any non-United States based insurance holding  
19                   company system where, after any necessary  
20                   consultation with other supervisors or officials,  
21                   it is deemed appropriate by the lead state  
22                   commissioner for prudential oversight and

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1 solvency monitoring purposes or for ensuring the  
2 competitiveness of the insurance marketplace.

3 (F) Notwithstanding the exemptions from filing the  
4 group capital calculation stated in subparagraphs  
5 (A) through (D), the lead state commissioner has  
6 the discretion to exempt the ultimate controlling  
7 person from filing the annual group capital  
8 calculation or to accept a limited group capital  
9 filing or report in accordance with criteria as  
10 specified by the commissioner in rules.

11 (G) If the lead state commissioner determines that an  
12 insurance holding company system no longer meets  
13 one or more of the requirements for an exemption  
14 from filing the group capital calculation under  
15 this section, the insurance holding company  
16 system shall file the group capital calculation  
17 at the next annual filing date unless given an  
18 extension by the lead state commissioner based on  
19 reasonable grounds shown.

20 (3) The ultimate controlling person of every insurer  
21 subject to registration and also scoped into the  
22 liquidity stress test framework shall file the results

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1 of a specific year's liquidity stress test. The  
2 filing shall be made to the lead state insurance  
3 commissioner of the insurance holding company system  
4 as determined by the procedures within the financial  
5 analysis handbook adopted by the National Association  
6 of Insurance Commissioners:

7 (A) The liquidity stress test framework includes  
8 scope criteria applicable to a specific data  
9 year. These scope criteria are reviewed at least  
10 annually by the National Association of Insurance  
11 Commissioners financial stability task force or  
12 its successor. Any change to the liquidity  
13 stress test framework or to the data year for  
14 which the scope criteria are to be measured shall  
15 be effective on January 1 of the year following  
16 the calendar year when such changes are adopted  
17 by order of the commissioner as provided in  
18 section 431:11-102. Insurers meeting at least  
19 one threshold of the scope criteria are  
20 considered scoped into the liquidity stress test  
21 framework for the specified data year unless the  
22 lead state insurance commissioner, in



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1                   consultation with the National Association of  
2                   Insurance Commissioners financial stability task  
3                   force or its successor, determines the insurer  
4                   should not be scoped into the framework for that  
5                   data year. Similarly, insurers that do not  
6                   trigger at least one threshold of the scope  
7                   criteria are considered scoped out of the  
8                   liquidity stress test framework for the specified  
9                   data year, unless the lead state insurance  
10                  commissioner, in consultation with the National  
11                  Association of Insurance Commissioners financial  
12                  stability task force or its successor, determines  
13                  the insurer should be scoped into the framework  
14                  for that data year.

15                   Regulators wish to avoid having insurers  
16                   scoped in and out of the liquidity stress test  
17                   framework on a frequent basis. The lead state  
18                   insurance commissioner, in consultation with the  
19                   Financial Stability Task Force or its successor,  
20                   will assess this concern as part of the  
21                   determination for an insurer.

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1           (B) The performance of, and filing of the results  
2           from, a specific year's liquidity stress test  
3           shall comply with the liquidity stress test  
4           framework's instructions and reporting templates  
5           for that year and any lead state insurance  
6           commissioner determinations, in consultation with  
7           the National Association of Insurance  
8           Commissioners financial stability task force or  
9           its successor, provided within the framework."

10           SECTION 3. Section 431:11-106, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12           "(a) (1) Transactions within an insurance holding company  
13           system to which an insurer subject to registration is  
14           a party shall be subject to the following standards:

15           (A) The terms shall be fair and reasonable;

16           (B) Agreements for cost sharing services and  
17           management shall include provisions as required  
18           by rule adopted by the commissioner;

19           (C) Charges or fees for services performed shall be  
20           reasonable;

21           (D) Expenses incurred and payment received shall be  
22           allocated to the insurer in conformity with

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- 1           customary insurance accounting practices  
2           consistently applied;
- 3           (E) The books, accounts, and records of each party to  
4           all transactions shall be maintained so as to  
5           clearly and accurately disclose the nature and  
6           details of the transactions including the  
7           accounting information necessary to support the  
8           reasonableness of the charges or fees to the  
9           respective parties; ~~and~~
- 10          (F) The insurer's surplus as regards policyholders  
11          following any dividends or distributions to  
12          shareholder affiliates shall be reasonable in  
13          relation to the insurer's outstanding liabilities  
14          and adequate to its financial needs;
- 15          (G) If an insurer subject to this article is deemed  
16          by the commissioner to be hazardous to its policy  
17          holders, its creditors, or to the general public  
18          under section 431:15-103.5 or a condition that  
19          would be grounds for supervision, conservation,  
20          or a delinquency proceeding, then the  
21          commissioner may require the insurer to secure  
22          and maintain either a deposit, held by the

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1           commissioner, or a bond, as determined by the  
2           insurer at the insurer's discretion, for the  
3           protection of the insurer for the duration of the  
4           contract(s) or agreement(s), or the existence of  
5           the condition for which the commissioner required  
6           the deposit or the bond.

7           In determining whether a deposit or a bond  
8           is required, the commissioner should consider  
9           whether concerns exist with respect to the  
10          affiliated person's ability to fulfill the  
11          contract(s) or agreement(s) if the insurer were  
12          to be put into liquidation. Once the insurer is  
13          deemed to be in a hazardous financial condition  
14          or a condition that would be grounds for  
15          supervision, conservation, or a delinquency  
16          proceeding, and a deposit or bond is necessary,  
17          the commissioner has discretion to determine the  
18          amount of the deposit or bond, not to exceed the  
19          value of the contract(s) or agreement(s) in any  
20          one year, and whether the deposit or bond should  
21          be required for a single contract, multiple

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1                   contracts, or a contract only with a specific  
2                   person(s);  
3           (H) All records and data of the insurer held by an  
4                   affiliate are and remain the property of the  
5                   insurer, are subject to control of the insurer,  
6                   are identifiable, and are segregated or readily  
7                   capable of segregation, at no additional cost to  
8                   the insurer, from all other persons' records and  
9                   data. This includes all records and data that  
10                   are otherwise the property of the insurer, in  
11                   whatever form maintained, including, but not  
12                   limited to, claims and claim files, policyholder  
13                   lists, application files, litigation files,  
14                   premium records, rate books, underwriting  
15                   manuals, personnel records, financial records or  
16                   similar records within the possession, custody or  
17                   control of the affiliate. At the request of the  
18                   insurer, the affiliate shall provide that a  
19                   receiver can obtain a complete set of all records  
20                   of any type that pertain to the insurer's  
21                   business; obtain access to the operating systems  
22                   on which the data is maintained; obtain the

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1           software that runs those systems either through  
2           assumption of licensing agreements or otherwise;  
3           and restrict the use of the data by the affiliate  
4           if it is not operating the insurer's business.  
5           The affiliate shall provide a waiver of any  
6           landlord lien or other encumbrance to give the  
7           insurer access to all records and data in the  
8           event of the affiliate's default under a lease or  
9           other agreement; and

10          (I) Premiums or other funds belonging to the insurer  
11           that are collected by or held by an affiliate are  
12           the exclusive property of the insurer and are  
13           subject to the control of the insurer. Any right  
14           of offset in the event an insurer is placed into  
15           receivership shall be subject to article 15 of  
16           this chapter.

17          (2) The following transactions involving a domestic  
18           insurer and any person in its insurance holding  
19           company system, including amendments or modifications  
20           of affiliate agreements previously filed pursuant to  
21           this section, which are subject to any materiality  
22           standards found in subparagraphs (A) through (G),

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1 shall not be entered into unless the insurer has  
2 notified the commissioner in writing of its intention  
3 to enter into the transaction at least thirty days  
4 prior to the transaction, or a shorter period as the  
5 commissioner may permit, and the commissioner has not  
6 disapproved the transaction within that period;  
7 provided that the notice for amendments or  
8 modifications shall include the reasons for the change  
9 and the financial impact on the domestic insurer;  
10 provided further that informal notice shall be  
11 reported within thirty days after a termination of a  
12 previously filed agreement to the commissioner for  
13 determination of the type of filing required, if any:  
14 (A) Sales, purchases, exchanges, loans, extensions of  
15 credit, or investments; provided that the  
16 transactions are equal to or exceed:  
17 (i) With respect to nonlife insurers, the lesser  
18 of three per cent of the insurer's admitted  
19 assets or twenty-five per cent of surplus as  
20 regards policyholders as of the December 31  
21 next preceding; or

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- 1 (ii) With respect to life insurers, three per  
2 cent of the insurer's admitted assets as of  
3 the December 31 next preceding;
- 4 (B) Loans or extensions of credit to any person who  
5 is not an affiliate, where the insurer makes the  
6 loans or extensions of credit with the agreement  
7 or understanding that the proceeds of the  
8 transactions, in whole or in substantial part,  
9 are to be used to make loans or extensions of  
10 credit to, to purchase assets of, or to make  
11 investments in, any affiliate of the insurer  
12 making the loans or extensions of credit;  
13 provided that the transactions are equal to or  
14 exceed:
- 15 (i) With respect to nonlife insurers, the lesser  
16 of three per cent of the insurer's admitted  
17 assets or twenty-five per cent of surplus as  
18 regards policyholders as of the December 31  
19 next preceding; or
- 20 (ii) With respect to life insurers, three per  
21 cent of the insurer's admitted assets as of  
22 the December 31 next preceding;



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- 1 (C) Reinsurance agreements or modifications to  
2 reinsurance agreements, including:  
3 (i) All reinsurance pooling agreements;  
4 (ii) Agreements in which the reinsurance premium  
5 or a change in the insurer's liabilities, or  
6 the projected reinsurance premium or a  
7 change in the insurer's liabilities in any  
8 of the next three years, equals or exceeds  
9 five per cent of the insurer's surplus as  
10 regards policyholders, as of the December 31  
11 next preceding, including those agreements  
12 that may require as consideration the  
13 transfer of assets from an insurer to a  
14 nonaffiliate, if an agreement or  
15 understanding exists between the insurer and  
16 nonaffiliate that any portion of the assets  
17 will be transferred to one or more  
18 affiliates of the insurer;
- 19 (D) All management agreements, service contracts, tax  
20 allocation agreements, guarantees, and all cost-  
21 sharing arrangements;

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1           (E) Guarantees when made by a domestic insurer;  
2           provided that a guarantee that is quantifiable as  
3           to amount shall not be subject to the notice  
4           requirements of this paragraph unless it exceeds  
5           the lesser of one-half of one per cent of the  
6           insurer's admitted assets or ten per cent of  
7           surplus as regards policyholders as of the  
8           December 31 next preceding. All guarantees that  
9           are not quantifiable as to amount are subject to  
10          the notice requirements of this paragraph;  
11          (F) Direct or indirect acquisitions or investments in  
12          a person that controls the insurer or in an  
13          affiliate of the insurer in an amount that,  
14          together with its present holdings in such  
15          investments, exceeds two and one-half per cent of  
16          the insurer's surplus to policyholders. Direct  
17          or indirect acquisitions or investments in  
18          subsidiaries acquired pursuant to section 431:11-  
19          103, or in nonsubsidiary insurance affiliates  
20          that are subject to this article, are exempt from  
21          this requirement; and

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1           (G) Any material transactions, specified by rule,  
2                           that the commissioner determines may adversely  
3                           affect the interests of the insurer's  
4                           policyholders.

5           Nothing in this paragraph shall be deemed to authorize  
6                           or permit any transactions that, in the case of an  
7                           insurer not a member of the same insurance holding  
8                           company system, would be otherwise contrary to law;

9           (3) A domestic insurer may not enter into transactions  
10                           that are part of a plan or series of like transactions  
11                           with persons within the insurance holding company  
12                           system if the purpose of those separate transactions  
13                           is to avoid the statutory threshold amount and thus  
14                           avoid the review that would otherwise occur; provided  
15                           that the commissioner determines that the separate  
16                           transactions were entered into over any twelve-month  
17                           period for that purpose, the commissioner may exercise  
18                           the commissioner's authority under section 431:11-111;

19           (4) The commissioner, in reviewing transactions pursuant  
20                           to paragraph (2), shall consider whether the  
21                           transactions comply with the standards set forth in

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1 paragraph (1) and whether the transactions may  
2 adversely affect the interests of policyholders; [and]

3 (5) The commissioner shall be notified within thirty days  
4 of any investment of the domestic insurer in any one  
5 corporation if the total investment in the corporation  
6 by the insurance holding company system exceeds ten  
7 per cent of the corporation's voting securities[-] ;  
8 and

9 (6) (A) Any affiliate that is party to an agreement or  
10 contract with a domestic insurer that is subject  
11 to paragraph (2) (D) shall be subject to the  
12 jurisdiction of any supervision, seizure,  
13 conservatorship, or receivership proceedings  
14 against the insurer and to the authority of any  
15 supervisor, conservator, rehabilitator, or  
16 liquidator for the insurer appointed pursuant to  
17 article 15 of this chapter for the purpose of  
18 interpreting, enforcing, and overseeing the  
19 affiliate's obligations under the agreement or  
20 contract to perform services for the insurer  
21 that:

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1            (i) Are an integral part of the insurer's  
2            operations, including but not limited to  
3            management, administrative, accounting, data  
4            processing, marketing, underwriting, claims  
5            handling, investment, or any other similar  
6            functions; or

7            (ii) Are essential to the insurer's ability to  
8            fulfill its obligations under insurance  
9            policies.

10           (B) The commissioner may require that an agreement or  
11           contract pursuant to paragraph (2)(D) for the  
12           provision of services described in subparagraph  
13           (A) above specify that the affiliate consents to  
14           the jurisdiction as set forth in this paragraph."

15           SECTION 4. Section 431:11-108, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "§431:11-108 Confidential treatment. (a) Documents,  
18 materials, or other information in the possession or control of  
19 the insurance division that are obtained by or disclosed to the  
20 commissioner or any other person in the course of an examination  
21 or investigation made pursuant to section 431:11-107 and all  
22 information reported or provided to the insurance division

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1 pursuant to sections 431:11-104(b)(12) and (13), 431:11-105,  
2 431:11-106, and 431:11-107.7, shall be recognized by the State  
3 as being proprietary and to contain trade secrets, shall be  
4 confidential by law and privileged, shall not be disclosable  
5 under chapter 92F, shall not be subject to subpoena, and shall  
6 not be subject to discovery or admissible in evidence in any  
7 private civil action. The commissioner may use the documents,  
8 materials, or other information in the furtherance of any  
9 regulatory or legal action brought as part of the commissioner's  
10 official duties. The commissioner shall not otherwise make the  
11 documents, materials, or other information public without prior  
12 written consent of the insurer to which it pertains unless the  
13 commissioner, after giving the insurer and its affiliates who  
14 would be affected thereby notice and opportunity to be heard,  
15 determines that the interest of the policyholders, shareholders,  
16 or the public will be served by the publication thereof, in  
17 which event the commissioner may publish all or any part in such  
18 manner as may be deemed appropriate.

19 (1) For purposes of the information reported and provided  
20 to the commissioner pursuant to section 431:11-  
21 105(1)(2), the commissioner shall maintain the  
22 confidentiality of the group capital calculation and

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1           group capital ratio produced within the calculation  
2           and any group capital information received from an  
3           insurance holding company supervised by the Federal  
4           Reserve Board or any United States group wide  
5           supervisor.

6           (2) For purposes of the information reported and provided  
7           to the insurance division pursuant to section 431:11-  
8           105(1)(3), the commissioner shall maintain the  
9           confidentiality of the liquidity stress test results  
10           and supporting disclosures and any liquidity stress  
11           test information received from an insurance holding  
12           company supervised by the Federal Reserve Board and  
13           non-United States group wide supervisors.

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

21           (c) To assist in the performance of the commissioner's  
22 duties, the commissioner:

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- 1           (1) May share documents, materials, or other information,  
2                   including the confidential and privileged documents,  
3                   materials, or information subject to subsection (a),  
4                   including proprietary and trade secret documents and  
5                   materials, with other state, federal, and  
6                   international regulatory agencies, with the National  
7                   Association of Insurance Commissioners [~~and its~~  
8                   ~~affiliates and subsidiaries, and~~], with any third-  
9                   party consultants designated by the commissioner, and  
10                  with state, federal, and international law enforcement  
11                  authorities, including members of any supervisory  
12                  college described in section 431:11-107.5; provided  
13                  that the recipient agrees in writing to maintain the  
14                  confidentiality and privileged status of the document,  
15                  material, or other information, and has verified in  
16                  writing the legal authority to maintain  
17                  confidentiality;
- 18           (2) Notwithstanding paragraph (1) to the contrary, may  
19                  only share confidential and privileged documents,  
20                  material, or information reported pursuant to section  
21                  431:11-105(1) with commissioners of states having  
22                  statutes or regulations substantially similar to



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1 subsection (a) and who have agreed in writing not to  
2 disclose such information;

3 (3) May receive documents, materials, or information,  
4 including otherwise confidential and privileged  
5 documents, materials, or information, including  
6 propriety and trade-secret information, from the  
7 National Association of Insurance Commissioners and  
8 its affiliates and subsidiaries and from regulatory  
9 and law enforcement officials of other foreign or  
10 domestic jurisdictions, and shall maintain as  
11 confidential or privileged any document, material, or  
12 information received with notice or the understanding  
13 that it is confidential or privileged under the laws  
14 of the jurisdiction that is the source of the  
15 document, material, or information; and

16 (4) Shall enter into written agreements with the National  
17 Association of Insurance Commissioner and any third-  
18 party consultant designated by the commissioner  
19 governing sharing and use of information provided  
20 pursuant to this article and consistent with this  
21 subsection that shall:

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- 1           (A) Specify procedures and protocols regarding the  
2           confidentiality and security of information  
3           shared with the National Association of Insurance  
4           Commissioners [~~and its affiliates and~~  
5           ~~subsidiaries~~] or a third-party consultant  
6           designated by the commissioner pursuant to this  
7           article, including procedures and protocols for  
8           sharing by the National Association of Insurance  
9           Commissioners with other state, federal, or  
10          international regulators; the agreement shall  
11          provide that the recipient of the documents,  
12          materials, or other information agrees in writing  
13          to maintain the confidentiality and privileged  
14          status of the documents, materials, or other  
15          information and has verified in writing the legal  
16          authority to maintain such confidentiality;
- 17          (B) Specify that ownership of information shared with  
18          the National Association of Insurance  
19          Commissioners [~~and its affiliates and~~  
20          ~~subsidiaries~~] or a third-party consultant, as  
21          designated by the commissioner, pursuant to this  
22          article remains with [~~and for use by the~~

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1 ~~commissioner and~~] the National Association of  
2 Insurance Commissioners or the third-party  
3 consultant and is subject to the direction of the  
4 commissioner;

5 (C) Excluding documents, material, or information  
6 reported pursuant to section 431:11-105(1)(3),  
7 prohibit the National Association of Insurance  
8 Commissioners or a third-party consultant  
9 designated by the commissioner from storing the  
10 information shared pursuant to this article in a  
11 permanent database after the underlying analysis  
12 is completed;

13 ~~[-(C)-]~~ (D) Require that prompt notice be given to an  
14 insurer whose confidential information is in the  
15 possession of the National Association of  
16 Insurance Commissioners pursuant to this article  
17 and require that the insurer is subject to a  
18 request or subpoena from the National Association  
19 of Insurance Commissioners for disclosure or  
20 production; ~~[and]~~

21 ~~[-(D)-]~~ (E) Require the National Association of  
22 Insurance Commissioners ~~[and its affiliates and~~

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1           ~~subsidiaries]~~ or a third-party consultant,  
2           designated by the commissioner, to consent to  
3           intervention by an insurer in any judicial or  
4           administrative action in which the National  
5           Association of Insurance Commissioners [~~and its~~  
6           ~~affiliates and subsidiaries]~~ or the third-party  
7           consultant may be required to disclose  
8           confidential information about the insurer shared  
9           [~~pursuant to this article.~~] with the National  
10          Association of Insurance Commissioners or the  
11          third-party consultant; and

12          (F) For documents, material, or information reporting  
13          pursuant to section 431:11-105(1)(3), in the case  
14          of an agreement involving a third-party  
15          consultant designated by the commissioner,  
16          provide for notification of the identity of the  
17          consultant to the applicable insurers.

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

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1           (e) No waiver of any applicable privilege or claim of  
2 confidentiality in the documents, materials, or information  
3 shall occur as a result of disclosure to the commissioner under  
4 this section or as a result of sharing as authorized in  
5 subsection (c).

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

13           (g) The group capital calculation and resulting group  
14 capital ratio required under section 431:11-105(1)(2) and the  
15 liquidity stress test along with its results and supporting  
16 disclosures required under section 431:11-105(1)(3) are  
17 regulatory tools for assessing group risks and capital adequacy  
18 and group liquidity risks, respectively, and are not intended as  
19 a means to rank insurers or insurance holding company systems  
20 generally. Therefore, except as otherwise may be required under  
21 this article, the making, publishing, disseminating,  
22 circulating, or placing before the public, or causing directly

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1 or indirectly to be made, published, disseminated, circulated,  
2 or placed before the public in a newspaper, magazine, or other  
3 publication, or in the form of a notice, circular, pamphlet,  
4 letter, or poster, or over any radio or television station or  
5 any electronic means of communication available to the public,  
6 or in any other way as an advertisement, announcement, or  
7 statement containing a representation or statement with regard  
8 to the group capital calculation, group capital ratio, the  
9 liquidity stress test results, or supporting disclosures for the  
10 liquidity stress test of any insurer or any insurer group, or of  
11 any component derived in the calculation by any insurer, broker,  
12 or other person engaged in any manner in the insurance business  
13 would be misleading and is therefore prohibited; provided,  
14 however, that if any materially false statement with respect to  
15 the group capital calculation, resulting group capital ratio, an  
16 inappropriate comparison of any amount to an insurer's or  
17 insurance group's group capital calculation or resulting group  
18 capital ratio, liquidity stress test result, supporting  
19 disclosures for the liquidity stress test, or an inappropriate  
20 comparison of any amount to an insurer's or insurance group's  
21 liquidity stress test result or supporting disclosures is  
22 published in any written publication and the insurer is able to

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1 demonstrate to the commissioner with substantial proof the  
2 falsity of such statement or the inappropriateness, as the case  
3 may be, then the insurer may publish announcements in a written  
4 publication if the sole purpose of the announcement is to rebut  
5 the materially false statement."

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

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

9

10

INTRODUCED BY: \_\_\_\_\_



11

BY REQUEST  
JAN 22 2024

# H.B. NO. 2394

**Report Title:**

Insurance Code; Insurance Holding Company System

**Description:**

Amends various sections of chapter 431, article 11, Hawaii Revised Statutes to adopt revisions to the National Association of Insurance Commissioners Model #440, 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 INSURANCE.

PURPOSE: To amend various provisions of chapter 431, article 11, of the Hawaii Revised Statutes (HRS) to update and improve existing provisions, including:

Amending 431:11-102, 431:11-105(d) and (l), 431:11-106(a), and 431:11-108, HRS, to implement amendments to National Association of Insurance Commissioners Model #440, Insurance Holding Company System Regulatory Act, which are necessary for accreditation. (Sections 1, 2, 3, and 4)

MEANS: Amend sections 431:11-102, 431:11-105(d) and (l), 431:11-106(a), and 431:11-108, HRS.

JUSTIFICATION: Amending sections 431:11-102, 431:11-105(d) and (l), 431:11-106(a), and 431:11-108, HRS, to implement amendments to National Association of Insurance Commissioners Model #440, Insurance Holding Company System Regulatory Act, will be necessary for maintaining accreditation status with the National Association of Insurance Commissioners.

Impact on the public: This bill will enhance consumer protection by making necessary updates and improvements to title 24, HRS.

Impact on the department and other agencies: This bill will implement changes that are necessary to continue the Insurance Division's accreditation status with the National Association of Insurance Commissioners.

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GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.