
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 by order and without
8 regard to chapter 91.

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



1 recent version of the separate National Association of Insurance
2 Commissioners publication if adopted by the commissioner by
3 order and without regard to chapter 91.

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

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

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

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



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

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

4 "(1) (1) The ultimate controlling person of every insurer
5 subject to registration shall also file an annual
6 enterprise risk report. The ultimate controlling
7 person of a domestic insurance holding company system
8 shall be exempt from this requirement. The report
9 shall [~~identify~~], to the best of the ultimate
10 controlling person's knowledge and belief, identify
11 the material risks within the insurance holding
12 company system that could pose enterprise risk to the
13 insurer. The report shall be filed with the lead
14 state commissioner of the insurance holding company
15 system as determined by the procedures within the
16 Financial Analysis Handbook adopted by the National
17 Association of Insurance Commissioners.

18 (2) Except as otherwise provided in this paragraph, the
19 ultimate controlling person of every insurer subject
20 to registration shall concurrently file with the
21 registration an annual group capital calculation as



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

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

20 (B) An insurance holding company system that is
21 required to perform a group capital calculation



1 specified by the United States Federal Reserve
2 Board. The lead state commissioner shall request
3 the calculation from the Federal Reserve Board
4 under the terms of information sharing agreements
5 in effect. If the Federal Reserve Board cannot
6 share the calculation with the lead state
7 commissioner, the insurance holding company
8 system shall not be exempt from the group capital
9 calculation filing;

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

16 (D) An insurance holding company system:
17 (i) That provides information to the lead state
18 that meets the requirements for
19 accreditation under the National Association
20 of Insurance Commissioners' Financial
21 Regulation Standards and Accreditation



1 Program, either directly or indirectly
2 through the group-wide supervisor, who has
3 determined the information is satisfactory
4 to allow the lead state to comply with the
5 National Association of Insurance
6 Commissioners group supervision approach, as
7 detailed in the Financial Analysis Handbook
8 adopted by the National Association of
9 Insurance Commissioners; and
10 (ii) Whose non-United States group-wide
11 supervisor that is not in a reciprocal
12 jurisdiction recognizes and accepts, as
13 specified by the commissioner in rules, the
14 group capital calculation as the world-wide
15 group capital assessment for United States
16 insurance groups that operate in that
17 jurisdiction;
18 (E) The ultimate controlling person of a domestic
19 insurance holding company system shall be exempt
20 from this requirement;



- 1 (F) Notwithstanding subparagraphs (C) and (D), a lead
2 state commissioner shall require the group
3 capital calculation for United States operations
4 of any non-United States based insurance holding
5 company system where, after any necessary
6 consultation with other supervisors or officials,
7 it is deemed appropriate by the lead state
8 commissioner for prudential oversight and
9 solvency monitoring purposes or for ensuring the
10 competitiveness of the insurance marketplace;
11 (G) Notwithstanding the exemptions from filing the
12 group capital calculation stated in subparagraphs
13 (A) through (D), the lead state commissioner may
14 exempt the ultimate controlling person from
15 filing the annual group capital calculation or to
16 accept a limited group capital filing or report
17 in accordance with criteria as specified by the
18 commissioner in rules; and
19 (H) If the lead state commissioner determines that an
20 insurance holding company system no longer meets
21 one or more of the requirements for an exemption



1 from filing the group capital calculation under
2 this section, the insurance holding company
3 system shall file the group capital calculation
4 at the next annual filing date unless given an
5 extension by the lead state commissioner based on
6 reasonable grounds shown.

7 (3) The ultimate controlling person of every insurer
8 subject to registration and also scoped into the
9 liquidity stress test framework shall file the results
10 of a specific year's liquidity stress test. The
11 filing shall be made to the lead state insurance
12 commissioner of the insurance holding company system
13 as determined by the procedures within the Financial
14 Analysis Handbook adopted by the National Association
15 of Insurance Commissioners:

16 (A) The liquidity stress test framework includes
17 scope criteria applicable to a specific data
18 year. These scope criteria are reviewed at least
19 annually by the National Association of Insurance
20 Commissioners Financial Stability Task Force or
21 its successor. Any change to the liquidity



1 stress test framework or to the data year for
2 which the scope criteria are to be measured shall
3 be effective on January 1 of the year following
4 the calendar year when the changes are adopted by
5 order of the commissioner as provided in section
6 431:11-102. Insurers meeting at least one
7 threshold of the scope criteria shall be
8 considered scoped into the liquidity stress test
9 framework for the specified data year unless the
10 lead state insurance commissioner, in
11 consultation with the National Association of
12 Insurance Commissioners Financial Stability Task
13 Force or its successor, determines the insurer
14 should not be scoped into the liquidity stress
15 test framework for that data year. Similarly,
16 insurers that do not trigger at least one
17 threshold of the scope criteria shall be
18 considered scoped out of the liquidity stress
19 test framework for the specified data year,
20 unless the lead state insurance commissioner, in
21 consultation with the National Association of



1 Insurance Commissioners Financial Stability Task
2 Force or its successor, determines the insurer
3 should be scoped into the liquidity stress test
4 framework for that data year.

5 To avoid having insurers scoped in and out
6 of the liquidity stress test framework on a
7 frequent basis, the lead state insurance
8 commissioner, in consultation with the National
9 Association of Insurance Commissioners Financial
10 Stability Task Force or its successor, shall
11 assess this concern as part of the determination
12 for an insurer;

13 (B) The performance of, and filing of the results
14 from, a specific year's liquidity stress test
15 shall comply with the liquidity stress test
16 framework's instructions and reporting templates
17 for that year and any lead state insurance
18 commissioner determinations, in consultation with
19 the National Association of Insurance
20 Commissioners Financial Stability Task Force or
21 its successor, provided within the framework; and



1 (C) The ultimate controlling person of a domestic
2 insurance holding company system shall be exempt
3 from this requirement."

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

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

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

10 (B) Agreements for cost sharing services and
11 management shall include provisions as required
12 by rule adopted by the commissioner;

13 (C) Charges or fees for services performed shall be
14 reasonable;

15 (D) Expenses incurred and payment received shall be
16 allocated to the insurer in conformity with
17 customary insurance accounting practices
18 consistently applied;

19 (E) The books, accounts, and records of each party to
20 all transactions shall be maintained so as to
21 clearly and accurately disclose the nature and



1 details of the transactions including the
2 accounting information necessary to support the
3 reasonableness of the charges or fees to the
4 respective parties; [and]

5 (F) The insurer's surplus as regards policyholders
6 following any dividends or distributions to
7 shareholder affiliates shall be reasonable in
8 relation to the insurer's outstanding liabilities
9 and adequate to its financial needs;

10 (G) If an insurer subject to this article is deemed
11 by the commissioner to be hazardous to its
12 policyholders, its creditors, or the general
13 public under section 431:15-103.5 or in a
14 condition that would be grounds for supervision,
15 conservation, or a delinquency proceeding, then
16 the commissioner may require the insurer to
17 secure and maintain either a deposit, held by the
18 commissioner, or a bond, as determined by the
19 insurer at the insurer's discretion, for the
20 protection of the insurer for the duration of the
21 contract or agreement, or the existence of the



1 condition for which the commissioner required the
2 deposit or the bond.

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

19 (H) All records and data of the insurer held by an
20 affiliate shall be and shall remain the property
21 of the insurer, shall be subject to control of



1 the insurer, shall be identifiable, and shall be
2 segregated or readily capable of segregation, at
3 no additional cost to the insurer, from all other
4 persons' records and data. This shall include
5 all records and data that are otherwise the
6 property of the insurer, in whatever form
7 maintained, including but not limited to claims
8 and claim files, policyholder lists, application
9 files, litigation files, premium records, rate
10 books, underwriting manuals, personnel records,
11 financial records or similar records within the
12 possession, custody, or control of the affiliate.
13 At the request of the insurer, the affiliate
14 shall provide that a receiver can obtain a
15 complete set of all records of any type that
16 pertain to the insurer's business; obtain access
17 to the operating systems on which the data is
18 maintained; obtain the software that runs those
19 systems either through assumption of licensing
20 agreements or otherwise; and restrict the use of
21 the data by the affiliate if it is not operating



1 the insurer's business. The affiliate shall
2 provide a waiver of any landlord lien or other
3 encumbrance to give the insurer access to all
4 records and data in the event of the affiliate's
5 default under a lease or other agreement; and
6 (I) Premiums or other funds belonging to the insurer
7 that are collected by or held by an affiliate
8 shall be the exclusive property of the insurer
9 and shall be subject to the control of the
10 insurer. Any right of offset in the event an
11 insurer is placed into receivership shall be
12 subject to article 15;
13 (2) The following transactions involving a domestic
14 insurer and any person in its insurance holding
15 company system, including amendments or modifications
16 of affiliate agreements previously filed pursuant to
17 this section, which are subject to any materiality
18 standards found in subparagraphs (A) through (G),
19 shall not be entered into unless the insurer has
20 notified the commissioner in writing of its intention
21 to enter into the transaction at least thirty days



1 prior to the transaction, or a shorter period as the
2 commissioner may permit, and the commissioner has not
3 disapproved the transaction within that period;
4 provided that the notice for amendments or
5 modifications shall include the reasons for the change
6 and the financial impact on the domestic insurer;
7 provided further that informal notice shall be
8 reported within thirty days after a termination of a
9 previously filed agreement to the commissioner for
10 determination of the type of filing required, if any:

11 (A) Sales, purchases, exchanges, loans, extensions of
12 credit, or investments; provided that the
13 transactions are equal to or exceed:

14 (i) With respect to nonlife insurers, the lesser
15 of three per cent of the insurer's admitted
16 assets or twenty-five per cent of surplus as
17 regards policyholders as of the December 31
18 next preceding; or

19 (ii) With respect to life insurers, three per
20 cent of the insurer's admitted assets as of
21 the December 31 next preceding;



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



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



1 to amount shall not be subject to the notice
2 requirements of this paragraph unless it exceeds
3 the lesser of one-half of one per cent of the
4 insurer's admitted assets or ten per cent of
5 surplus as regards policyholders as of the
6 December 31 next preceding. All guarantees that
7 are not quantifiable as to amount are subject to
8 the notice requirements of this paragraph;

9 (F) Direct or indirect acquisitions or investments in
10 a person that controls the insurer or in an
11 affiliate of the insurer in an amount that,
12 together with its present holdings in [~~such~~]
13 investments, exceeds two and one-half per cent of
14 the insurer's surplus to policyholders. Direct
15 or indirect acquisitions or investments in
16 subsidiaries acquired pursuant to section 431:11-
17 103, or in nonsubsidiary insurance affiliates
18 that are subject to this article, are exempt from
19 this requirement; and

20 (G) Any material transactions, specified by rule,
21 that the commissioner determines may adversely



1 affect the interests of the insurer's
2 policyholders.

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

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

17 (4) The commissioner, in reviewing transactions pursuant
18 to paragraph (2), shall consider whether the
19 transactions comply with the standards set forth in
20 paragraph (1) and whether the transactions may
21 adversely affect the interests of policyholders; [and]



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

7 (6) (A) Any affiliate that is party to an agreement or
8 contract with a domestic insurer that is subject
9 to paragraph (2) (D) shall be subject to the
10 jurisdiction of any supervision, seizure,
11 conservatorship, or receivership proceedings
12 against the insurer and to the authority of any
13 supervisor, conservator, rehabilitator, or
14 liquidator for the insurer appointed pursuant to
15 article 15 for the purpose of interpreting,
16 enforcing, and overseeing the affiliate's
17 obligations under the agreement or contract to
18 perform services for the insurer that:
19 (i) Are an integral part of the insurer's
20 operations, including but not limited to
21 management, administrative, accounting, data



1 processing, marketing, underwriting, claims
2 handling, investment, or any other similar
3 functions; or

4 (ii) Are essential to the insurer's ability to
5 fulfill its obligations under insurance
6 policies; and

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

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

14 "**§431:11-108 Confidential treatment.**

15 (a) (1) Documents, materials, or other information in the
16 possession or control of the insurance division that
17 are obtained by or disclosed to the commissioner or
18 any other person in the course of an examination or
19 investigation made pursuant to section 431:11-107 and
20 all information reported or provided to the insurance
21 division pursuant to sections 431:11-104(b) (12) and



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



- 1 (2) For purposes of the information reported and provided
2 to the commissioner pursuant to section 431:11-
3 105(1)(2), the commissioner shall maintain the
4 confidentiality of the group capital calculation and
5 group capital ratio produced within the calculation
6 and any group capital information received from an
7 insurance holding company supervised by the Federal
8 Reserve Board or any United States group-wide
9 supervisor.
- 10 (3) For purposes of the information reported and provided
11 to the insurance division pursuant to section 431:11-
12 105(1)(3), the commissioner shall maintain the
13 confidentiality of the liquidity stress test results
14 and supporting disclosures and any liquidity stress
15 test information received from an insurance holding
16 company supervised by the Federal Reserve Board and
17 non-United States group-wide supervisors.
- 18 (b) Neither the commissioner nor any person who received
19 documents, materials, or other information while acting under
20 the authority of the commissioner or with whom the documents,
21 materials, or other information are shared pursuant to this



1 article shall be permitted or required to testify in any private
2 civil action concerning any confidential documents, materials,
3 or information subject to subsection (a).

4 (c) To assist in the performance of the commissioner's
5 duties, the commissioner:

6 (1) May share documents, materials, or other information,
7 including the confidential and privileged documents,
8 materials, or information subject to subsection (a),
9 including proprietary and trade secret documents and
10 materials, with other state, federal, and
11 international regulatory agencies, with the National
12 Association of Insurance Commissioners [~~and its~~
13 ~~affiliates and subsidiaries, and~~], with any third-
14 party consultants designated by the commissioner, and
15 with state, federal, and international law enforcement
16 authorities, including members of any supervisory
17 college described in section 431:11-107.5; provided
18 that the recipient agrees in writing to maintain the
19 confidentiality and privileged status of the document,
20 material, or other information, and has verified in



1 writing the legal authority to maintain
2 confidentiality;

3 (2) Notwithstanding paragraph (1) to the contrary, may
4 only share confidential and privileged documents,
5 material, or information reported pursuant to section
6 431:11-105(1) with commissioners of states having
7 statutes or regulations substantially similar to
8 subsection (a) and who have agreed in writing not to
9 disclose [~~such~~] information;

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



1 of the jurisdiction that is the source of the
2 document, material, or information; and
3 (4) Shall enter into written agreements with the National
4 Association of Insurance Commissioners and any third-
5 party consultant designated by the commissioner
6 governing sharing and use of information provided
7 pursuant to this article and consistent with this
8 subsection that shall:
9 (A) Specify procedures and protocols regarding the
10 confidentiality and security of information
11 shared with the National Association of Insurance
12 Commissioners [~~and its affiliates and~~
13 ~~subsidiaries]~~ or a third-party consultant
14 designated by the commissioner pursuant to this
15 article, including procedures and protocols for
16 sharing by the National Association of Insurance
17 Commissioners with other state, federal, or
18 international regulators; provided that the
19 agreement shall provide that the recipient of the
20 documents, materials, or other information agrees
21 in writing to maintain the confidentiality and



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

4 (B) Specify that ownership of information shared with
5 the National Association of Insurance
6 Commissioners [~~and its affiliates and~~
7 ~~subsidiaries~~] or a third-party consultant, as
8 designated by the commissioner, pursuant to this
9 article remains with [and for use by the
10 ~~commissioner and]~~ the National Association of
11 Insurance Commissioners or the third-party
12 consultant and is subject to the direction of the
13 commissioner;

14 (C) Excluding documents, material, or information
15 reported pursuant to section 431:11-105(1)(3),
16 prohibit the National Association of Insurance
17 Commissioners or a third-party consultant
18 designated by the commissioner from storing the
19 information shared pursuant to this article in a
20 permanent database after the underlying analysis
21 is completed;



1 ~~[-(C)-]~~ (D) Require that prompt notice be given to an
2 insurer whose confidential information is in the
3 possession of the National Association of
4 Insurance Commissioners pursuant to this article
5 and require that the insurer is subject to a
6 request or subpoena from the National Association
7 of Insurance Commissioners for disclosure or
8 production; ~~[and]~~

9 ~~[-(D)-]~~ (E) Require the National Association of
10 Insurance Commissioners ~~[and its affiliates and~~
11 ~~subsidiaries]~~ or a third-party consultant,
12 designated by the commissioner, to consent to
13 intervention by an insurer in any judicial or
14 administrative action in which the National
15 Association of Insurance Commissioners ~~[and its~~
16 ~~affiliates and subsidiaries]~~ or the third-party
17 consultant may be required to disclose
18 confidential information about the insurer shared
19 ~~[pursuant to this article.]~~ with the National
20 Association of Insurance Commissioners or the
21 third-party consultant; and



1 (F) For documents, material, or information reported
2 pursuant to section 431:11-105(1)(3), in the case
3 of an agreement involving a third-party
4 consultant designated by the commissioner,
5 provide for notification of the identity of the
6 consultant to the applicable insurers.

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

12 (e) No waiver of any applicable privilege or claim of
13 confidentiality in the documents, materials, or information
14 shall occur as a result of disclosure to the commissioner under
15 this section or as a result of sharing as authorized in
16 subsection (c).

17 (f) Documents, materials, or information in the possession
18 or control of the National Association of Insurance
19 Commissioners or a third-party consultant designated by the
20 commissioner pursuant to this article shall be confidential by
21 law and privileged, shall not be disclosable under chapter 92F,



1 shall not be subject to subpoena, and shall not be subject to
2 discovery or admissible in evidence in any private civil action.

3 (g) The group capital calculation and resulting group
4 capital ratio required under section 431:11-105(1)(2) and the
5 liquidity stress test along with its results and supporting
6 disclosures required under section 431:11-105(1)(3) are
7 regulatory tools for assessing group risks and capital adequacy
8 and group liquidity risks, respectively, and are not intended as
9 a means to rank insurers or insurance holding company systems
10 generally. Therefore, except as otherwise may be required under
11 this article, the making, publishing, disseminating,
12 circulating, or placing before the public, or causing directly
13 or indirectly to be made, published, disseminated, circulated,
14 or placed before the public in a newspaper, magazine, or other
15 publication, or in the form of a notice, circular, pamphlet,
16 letter, or poster, or over any radio or television station or
17 any electronic means of communication available to the public,
18 or in any other way as an advertisement, announcement, or
19 statement containing a representation or statement with regard
20 to the group capital calculation, group capital ratio, the
21 liquidity stress test results, or supporting disclosures for the



1 liquidity stress test of any insurer or any insurer group, or of
2 any component derived in the calculation by any insurer, broker,
3 or other person engaged in any manner in the insurance business
4 shall be deemed misleading and prohibited; provided that if any
5 materially false statement with respect to the group capital
6 calculation, resulting group capital ratio, an inappropriate
7 comparison of any amount to an insurer's or insurance group's
8 group capital calculation or resulting group capital ratio,
9 liquidity stress test result, supporting disclosures for the
10 liquidity stress test, or an inappropriate comparison of any
11 amount to an insurer's or insurance group's liquidity stress
12 test result or supporting disclosures is published in any
13 written publication and the insurer is able to demonstrate to
14 the commissioner with substantial proof the falsity of the
15 statement or the inappropriateness, as the case may be, then the
16 insurer may publish announcements in a written publication if
17 the sole purpose of the announcement is to rebut the materially
18 false statement."

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



1 SECTION 6. This Act shall take effect on July 1, 2040.



Report Title:

Insurance Code; Insurance Holding Company System; Group Capital Calculation; Liquidity Stress Test Framework

Description:

Amends various sections of article 11 of the Insurance Code to adopt revisions to the National Association of Insurance Commissioners Model No. 440, Insurance Holding Company System Regulatory Act. Effective 7/1/2040. (HD1)

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

