

ACT 71

S.B. NO. 1210

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“ARTICLE
CORPORATE GOVERNANCE ANNUAL DISCLOSURE**

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

- (1) Provide the insurance commissioner a summary of an insurer's or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework;
- (2) Outline the requirements for completing a corporate governance annual disclosure with the commissioner; and
- (3) Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer's or insurance group's internal operations and proprietary and trade secret information that, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

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

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

§431: -B Definitions. For the purposes of this article:

“Corporate governance annual disclosure” means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this article.

“Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in article 11.

“Insurer” has the same meaning as in section 431:1-202, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

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

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

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

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

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

- (1) The insurer's or insurance group's risk appetite is determined;
- (2) The earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors is coordinated and exercised; or
- (3) Legal liability for failure of general corporate governance duties would be placed.

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

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

(f) Insurers providing information substantially similar to the information required by this article in other documents provided to the commissioner, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to the insurance division shall not be required to duplicate that information in the corporate governance annual disclosure, but shall only be required to cross-reference the document in which the information is included.

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

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

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

§431: -F Confidentiality. (a) Documents, materials, or other information including the corporate governance annual disclosure, in the possession or control of the insurance division that are obtained by, created by, or disclosed to the commissioner or any other person under this article, and that contain information originating in a corporate governance annual disclosure under this

article, are recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be subject to disclosure pursuant to chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the commissioner may share or receive confidential documents, materials, or other information related to the corporate governance annual disclosure pursuant to subsection (c) to assist in the performance of the commissioner's regular duties.

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

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

- (1) Upon request, share documents, materials, or other information related to the corporate governance annual disclosure, including the confidential and privileged documents, materials, or information subject to subsection (a), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 431:11-107.5, the National Association of Insurance Commissioners, and third-party consultants pursuant to section 431: -G; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, material, or other information and has verified in writing the legal authority to maintain confidentiality; and
- (2) Receive documents, materials, or other information related to the corporate governance annual disclosure, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 431:11-107.5, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

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

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

closure or documents to the commissioner under this section or as a result of sharing as authorized in this article.

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

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

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

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

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

- (1) Specific procedures and protocols for maintaining the confidentiality and security of the corporate governance annual disclosure and related information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article;
- (2) Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the corporate governance annual disclosure and related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;
- (3) A provision specifying that ownership of the corporate governance annual disclosure and related information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the insurance division and that the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner;
- (4) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;
- (5) A provision requiring the National Association of Insurance Commissioners or a third-party consultant to provide prompt notice to the commissioner and the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's corporate governance annual disclosure or related information; and

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

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

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

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

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

- (1) Does not have substantial insurance operations in the United States;
- (2) Has substantial insurance operations in the United States, but not in this State; or
- (3) Has substantial insurance operations in the United States and this State, but the commissioner has determined pursuant to the factors in subsections (b) and (f) that the other regulatory official is the appropriate group-wide supervisor.

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

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

consider the following factors when making a determination or an acknowledgment under this subsection:

- (1) The place of domicile of the insurers within the internationally active insurance group that holds the largest share of the group's written premiums, assets, or liabilities;
- (2) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group;
- (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:
 - (A) Substantially similar to the system of regulation provided under the laws of this State; or
 - (B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
- (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors in paragraphs (1) through (5), and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervising members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(c) Notwithstanding any other provision of law to the contrary, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor; provided that in the event of a material change in the internationally active insurance group that results in:

- (1) The internationally active insurance group's insurers domiciled in this State holding the largest share of the group's premiums, assets, or liabilities; or
- (2) This State being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group,

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

(d) Pursuant to section 431:11-107, the commissioner is authorized to collect from any insurer registered pursuant to section 431:11-105 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to section 431:11-105 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty days to provide the commissioner with additional information pertinent to the pending determi-

nation. The commissioner shall publish on the insurance division's internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(e) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner may engage in any of the following group-wide supervision activities:

- (1) Assess the enterprise risks within the internationally active insurance group to ensure that:
 - (A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and
 - (B) Reasonable and effective mitigation measures are in place;
- (2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including but not limited to information about the members of the internationally active insurance group regarding:
 - (A) Governance, risk assessment, and management;
 - (B) Capital adequacy; and
 - (C) Material intercompany transactions;
- (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance;
- (4) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section 431:11-108, through supervisory colleges as set forth in section 431:11-107.5 or otherwise;
- (5) Enter into agreements with or obtain documentation from any insurer registered under section 431:11-105, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. These agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this State is doing business in this State or is otherwise subject to jurisdiction in this State; and
- (6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

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

- (1) The commissioner's cooperation is in compliance with the laws of this State; and
- (2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation are not reasonably reciprocal, the commissioner may refuse recognition and cooperation.
- (g) The commissioner may enter into agreements with or obtain documentation from any insurer registered under section 431:11-105, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.
- (h) The commissioner may adopt rules necessary for the administration of this section.
- (i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals, and all reasonable travel expenses."

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

"Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under section 431:11- to have sufficient significant contacts with the internationally active insurance group.

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

- (1) Includes an insurer registered under section 431:11-105; and
- (2) Meets the following criteria:
 - (A) Premiums written in at least three countries;
 - (B) The percentage of gross premiums written outside the United States is at least ten per cent of the insurance holding company system's total gross written premiums; and
 - (C) Based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50,000,000,000 or the total gross written premiums of the insurance holding company system are at least \$10,000,000,000."

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

"(a) Documents, materials, or other information in the possession or control of the insurance division that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 431:11-107 and all information reported or provided to the insurance division pursuant to sections 431:11-104(b)(12) and (13), 431:11-105, [and] 431:11-106, and 431:11- , shall be confidential by law and privileged, shall not be disclosable under chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without prior written consent of the insurer to which it pertains unless the commissioner, after giving the in-

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surer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.”

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

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on January 1, 2020.

(Approved June 7, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.