

ACT 84

S.B. NO. 3083

A Bill for an Act Relating to Insurance.

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

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

“Group capital calculation instructions” means the group capital calculation instructions as adopted by the National Association of Insurance Commissioners or the most recent version if adopted by the commissioner by order and without regard to chapter 91.

“Liquidity stress test framework” means the separate National Association of Insurance Commissioners publication that includes a history of the National Association of Insurance Commissioners’ development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, with the scope criteria, instructions, and reporting template in the form adopted by the National Association of Insurance Commissioners or the most recent version of the separate National Association of Insurance Commissioners publication if adopted by the commissioner by order and without regard to chapter 91.

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

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

1. By amending subsection (d) to read:

“(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one per cent or less of an insurer’s admitted assets as of the December 31 next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the group capital calculation or the liquidity stress test framework.”

2. By amending subsection (l) to read:

“(1)(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The ultimate controlling person of a domestic insurance holding company system shall be exempt from this requirement. The report shall [identify], to the best of the ultimate controlling person’s knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(2) Except as otherwise provided in this paragraph, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the National Association

of Insurance Commissioners. Insurance holding company systems described in subparagraphs (A) through (D) shall be exempt from filing the group capital calculation:

- (A) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;
- (B) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system shall not be exempt from the group capital calculation filing;
- (C) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as defined in section 431:4A-101 that recognizes the United States state regulatory approach to group supervision and group capital;
- (D) An insurance holding company system:

 - (i) That provides information to the lead state that meets the requirements for accreditation under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program, either directly or indirectly through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the National Association of Insurance Commissioners group supervision approach, as detailed in the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners; and
 - (ii) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rules, the group capital calculation as the world-wide group capital assessment for United States insurance groups that operate in that jurisdiction;
- (E) The ultimate controlling person of a domestic insurance holding company system shall be exempt from this requirement;
- (F) Notwithstanding subparagraphs (C) and (D), a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace;
- (G) Notwithstanding the exemptions from filing the group capital calculation stated in subparagraphs (A) through (D), the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in rules; and

- (H) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.
- (3) The ultimate controlling person of every insurer subject to registration and also scoped into the liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners:
- (A) The liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the National Association of Insurance Commissioners Financial Stability Task Force or its successor. Any change to the liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when the changes are adopted by order of the commissioner as provided in section 431:11-102. Insurers meeting at least one threshold of the scope criteria shall be considered scoped into the liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the National Association of Insurance Commissioners' Financial Stability Task Force or its successor, determines the insurer should not be scoped into the liquidity stress test framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria shall be considered scoped out of the liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the National Association of Insurance Commissioners' Financial Stability Task Force or its successor, determines the insurer should be scoped into the liquidity stress test framework for that data year.
- To avoid having insurers scoped in and out of the liquidity stress test framework on a frequent basis, the lead state insurance commissioner, in consultation with the National Association of Insurance Commissioners' Financial Stability Task Force or its successor, shall assess this concern as part of the determination for an insurer;
- (B) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the National Association of Insurance Commissioners' Financial Stability Task Force or its successor, provided within the framework; and
- (C) The ultimate controlling person of a domestic insurance holding company system shall be exempt from this requirement."

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

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

- (A) The terms shall be fair and reasonable;
- (B) Agreements for cost sharing services and management shall include provisions as required by rule adopted by the commissioner;
- (C) Charges or fees for services performed shall be reasonable;
- (D) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (E) The books, accounts, and records of each party to all transactions shall be maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; ~~and~~
- (F) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs;
- (G) If an insurer subject to this article is deemed by the commissioner to be hazardous to its policyholders, its creditors, or the general public under section 431:15-103.5 or in a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer’s discretion, for the protection of the insurer for the duration of the contract or agreement, or the existence of the condition for which the commissioner required the deposit or the bond.

In determining whether a deposit or a bond is required, the commissioner should consider whether concerns exist with respect to the affiliated person’s ability to fulfill the contract or agreement if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the commissioner may determine the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether the deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person;

- (H) All records and data of the insurer held by an affiliate shall be and shall remain the property of the insurer, shall be subject to control of the insurer, shall be identifiable, and shall be segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons’ records and data. This shall include all records and data that are otherwise the property of the insurer, in whatever form maintained, including but not limited to claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwrit-

ing manuals, personnel records, financial records or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that a receiver can obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

- (I) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate shall be the exclusive property of the insurer and shall be subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to article 15;
- (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards found in subparagraphs (A) through (G), shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved the transaction within that period; provided that the notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer; provided further that informal notice shall be reported within thirty days after a termination of a previously filed agreement to the commissioner for determination of the type of filing required, if any:
- (A) Sales, purchases, exchanges, loans, extensions of credit, or investments; provided that the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders as of the December 31 next preceding; or
 - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the December 31 next preceding;
- (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit; provided that the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders as of the December 31 next preceding; or

- (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the December 31 next preceding;
- (C) Reinsurance agreements or modifications to reinsurance agreements, including:
 - (i) All reinsurance pooling agreements; and
 - (ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five per cent of the insurer's surplus as regards policyholders, as of the December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (D) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;
- (E) Guarantees when made by a domestic insurer; provided that a guarantee that is quantifiable as to amount shall not be subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one per cent of the insurer's admitted assets or ten per cent of surplus as regards policyholders as of the December 31 next preceding. All guarantees that are not quantifiable as to amount are subject to the notice requirements of this paragraph;
- (F) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in ~~such~~ investments, exceeds two and one-half per cent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 431:11-103, or in nonsubsidiary insurance affiliates that are subject to this article, are exempt from this requirement; and
- (G) Any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

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

- (3) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur; provided that the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111;
- (4) The commissioner, in reviewing transactions pursuant to paragraph (2), shall consider whether the transactions comply with the standards set forth in paragraph (1) and whether the transactions may adversely affect the interests of policyholders; ~~and~~

- (5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten per cent of the corporation's voting securities[-]; and
- (6) (A) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to paragraph (2)(D) shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to article 15 for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:
- (i) Are an integral part of the insurer's operations, including but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or
 - (ii) Are essential to the insurer's ability to fulfill its obligations under insurance policies; and
- (B) The commissioner may require that an agreement or contract pursuant to paragraph (2)(D) for the provision of services described in subparagraph (A) specify that the affiliate consents to the jurisdiction as set forth in this paragraph."

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

"§431:11-108 Confidential treatment.

- (a) (1) 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, 431:11-106, and 431:11-107.7, shall be recognized by the State as being proprietary and to contain trade secrets, 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 insurer 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] a manner as may be deemed appropriate.
- (2) For purposes of the information reported and provided to the commissioner pursuant to section 431:11-105(l)(2), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding com-

pany supervised by the Federal Reserve Board or any United States group-wide supervisor.

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

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the 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 duties, the commissioner:

- (1) May share documents, materials, or other information, 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 regulatory agencies, with the National Association of Insurance Commissioners ~~[and its affiliates and subsidiaries, and]~~, with any third-party consultants designated by the commissioner, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 431:11-107.5; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;
- (2) Notwithstanding paragraph (1) to the contrary, may only share confidential and privileged documents, material, or information reported pursuant to section 431:11-105(l) with commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose ~~[such]~~ information;
- (3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including propriety and trade-secret information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, 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; and
- (4) Shall enter into written agreements with the National Association of Insurance Commissioners and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this article and consistent with this subsection that shall:
- (A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners ~~[and its affiliates and subsidiaries]~~ or a third-party consultant designated by the

- commissioner pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators; provided that the agreement shall provide that the recipient of the documents, materials, or other information agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;
- (B) Specify that ownership of information shared with the National Association of Insurance Commissioners [~~and its affiliates and subsidiaries~~] or a third-party consultant, as designated by the commissioner, pursuant to this article remains with [~~and for use by the commissioner and~~] the National Association of Insurance Commissioners or the third-party consultant and is subject to the direction of the commissioner;
- (C) Excluding documents, material, or information reported pursuant to section 431:11-105(1)(3), prohibit the National Association of Insurance Commissioners or a third-party consultant designated by the commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;
- ~~(C)~~ (D) Require that prompt notice be given to an insurer whose confidential information is in the possession of the National Association of Insurance Commissioners pursuant to this article and require that the insurer is subject to a request or subpoena from the National Association of Insurance Commissioners for disclosure or production; [~~and~~]
- ~~(D)~~ (E) Require the National Association of Insurance Commissioners [~~and its affiliates and subsidiaries~~] or a third-party consultant, designated by the commissioner, to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners [~~and its affiliates and subsidiaries~~] or the third-party consultant may be required to disclose confidential information about the insurer shared [~~pursuant to this article.~~] with the National Association of Insurance Commissioners or the third-party consultant; and
- (F) For documents, material, or information reported pursuant to section 431:11-105(1)(3), in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurers.

(d) The sharing of information 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, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c).

(f) Documents, materials, or information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant designated by the commissioner pursuant to this article 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.

(g) The group capital calculation and resulting group capital ratio required under section 431:11-105(1)(2) and the liquidity stress test along with its results and supporting disclosures required under section 431:11-105(1)(3) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business shall be deemed misleading and prohibited; provided that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement."

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

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

(Approved June 21, 2024.)