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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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

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

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



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

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

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

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

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



1 preceding shall not be deemed material for purposes of this  
2 section. The definition of materiality provided in this  
3 subsection shall not apply for purposes of the group capital  
4 calculation or the liquidity stress test framework."

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

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

20 (2) Except as provided below, the ultimate controlling  
21 person of every insurer subject to registration shall



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

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



1           (B) An insurance holding company system that is  
2           required to perform a group capital calculation  
3           specified by the United States Federal Reserve  
4           Board. The lead state commissioner shall request  
5           the calculation from the Federal Reserve Board  
6           under the terms of information sharing agreements  
7           in effect. If the Federal Reserve Board cannot  
8           share the calculation with the lead state  
9           commissioner, the insurance holding company  
10          system is not exempt from the group capital  
11          calculation filing;

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

18          (D) An insurance holding company system:  
19                (i) That provides information to the lead state  
20                that meets the requirements for  
21                accreditation under the National Association

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



- 1           (E) The ultimate controlling person of a domestic  
2           insurance holding company system shall be exempt  
3           from this requirement;
- 4           (F) Notwithstanding subparagraphs (C) and (D), a lead  
5           state commissioner shall require the group  
6           capital calculation for United States operations  
7           of any non-United States based insurance holding  
8           company system where, after any necessary  
9           consultation with other supervisors or officials,  
10           it is deemed appropriate by the lead state  
11           commissioner for prudential oversight and  
12           solvency monitoring purposes or for ensuring the  
13           competitiveness of the insurance marketplace;
- 14           (G) Notwithstanding the exemptions from filing the  
15           group capital calculation stated in subparagraphs  
16           (A) through (D), the lead state commissioner has  
17           the discretion to exempt the ultimate controlling  
18           person from filing the annual group capital  
19           calculation or to accept a limited group capital  
20           filing or report in accordance with criteria as  
21           specified by the commissioner in rules; and



1           (H) If the lead state commissioner determines that an  
2           insurance holding company system no longer meets  
3           one or more of the requirements for an exemption  
4           from filing the group capital calculation under  
5           this section, the insurance holding company  
6           system shall file the group capital calculation  
7           at the next annual filing date unless given an  
8           extension by the lead state commissioner based on  
9           reasonable grounds shown.

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

19          (A) The liquidity stress test framework includes  
20          scope criteria applicable to a specific data  
21          year. These scope criteria are reviewed at least

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



1 state insurance commissioner, in consultation  
 2 with the National Association of Insurance  
 3 Commissioners Financial Stability Task Force or  
 4 its successor, determines the insurer should be  
 5 scoped into the framework for that data year.

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

14 (B) The performance of, and filing of the results  
 15 from, a specific year's liquidity stress test  
 16 shall comply with the liquidity stress test  
 17 framework's instructions and reporting templates  
 18 for that year and any lead state insurance  
 19 commissioner determinations, in consultation with  
 20 the National Association of Insurance



1                   Commissioners Financial Stability Task Force or  
2                   its successor, provided within the framework; and  
3           (C)   The ultimate controlling person of a domestic  
4                   insurance holding company system shall be exempt  
5                   from this requirement."

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

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

- 11                   (A) The terms shall be fair and reasonable;
- 12                   (B) Agreements for cost sharing services and  
13                   management shall include provisions as required  
14                   by rule adopted by the commissioner;
- 15                   (C) Charges or fees for services performed shall be  
16                   reasonable;
- 17                   (D) Expenses incurred and payment received shall be  
18                   allocated to the insurer in conformity with  
19                   customary insurance accounting practices  
20                   consistently applied;



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



1           insurer at the insurer's discretion, for the  
2           protection of the insurer for the duration of the  
3           contract or agreement, or the existence of the  
4           condition for which the commissioner required the  
5           deposit or the bond.

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



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



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

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

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

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



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

4           (B) Loans or extensions of credit to any person who  
5                   is not an affiliate, where the insurer makes the  
6                   loans or extensions of credit with the agreement  
7                   or understanding that the proceeds of the  
8                   transactions, in whole or in substantial part,  
9                   are to be used to make loans or extensions of  
10                   credit to, to purchase assets of, or to make  
11                   investments in, any affiliate of the insurer  
12                   making the loans or extensions of credit;  
13                   provided that the transactions are equal to or  
14                   exceed:

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



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



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



1           103, or in nonsubsidiary insurance affiliates  
2           that are subject to this article, are exempt from  
3           this requirement; and

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

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

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



- 1           (4) The commissioner, in reviewing transactions pursuant  
2           to paragraph (2), shall consider whether the  
3           transactions comply with the standards set forth in  
4           paragraph (1) and whether the transactions may  
5           adversely affect the interests of policyholders; ~~and~~
- 6           (5) The commissioner shall be notified within thirty days  
7           of any investment of the domestic insurer in any one  
8           corporation if the total investment in the corporation  
9           by the insurance holding company system exceeds ten  
10          per cent of the corporation's voting securities ~~[ ]~~;  
11          and
- 12          (6) (A) Any affiliate that is party to an agreement or  
13          contract with a domestic insurer that is subject  
14          to paragraph (2)(D) shall be subject to the  
15          jurisdiction of any supervision, seizure,  
16          conservatorship, or receivership proceedings  
17          against the insurer and to the authority of any  
18          supervisor, conservator, rehabilitator, or  
19          liquidator for the insurer appointed pursuant to  
20          article 15 of this chapter for the purpose of  
21          interpreting, enforcing, and overseeing the



1 affiliate's obligations under the agreement or  
2 contract to perform services for the insurer  
3 that:

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

10 (ii) Are essential to the insurer's ability to  
11 fulfill its obligations under insurance  
12 policies; and

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

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

20 **"§431:11-108 Confidential treatment.**



1 (a) (1) Documents, materials, or other information in the  
2 possession or control of the insurance division that  
3 are obtained by or disclosed to the commissioner or  
4 any other person in the course of an examination or  
5 investigation made pursuant to section 431:11-107 and  
6 all information reported or provided to the insurance  
7 division pursuant to sections 431:11-104(b)(12) and  
8 (13), 431:11-105, 431:11-106, and 431:11-107.7, shall  
9 be recognized by the State as being proprietary and to  
10 contain trade secrets, shall be confidential by law  
11 and privileged, shall not be disclosable under chapter  
12 92F, shall not be subject to subpoena, and shall not  
13 be subject to discovery or admissible in evidence in  
14 any private civil action. The commissioner may use  
15 the documents, materials, or other information in the  
16 furtherance of any regulatory or legal action brought  
17 as part of the commissioner's official duties. The  
18 commissioner shall not otherwise make the documents,  
19 materials, or other information public without prior  
20 written consent of the insurer to which it pertains  
21 unless the commissioner, after giving the insurer and



1 its affiliates who would be affected thereby notice  
2 and opportunity to be heard, determines that the  
3 interest of the policyholders, shareholders, or the  
4 public will be served by the publication thereof, in  
5 which event the commissioner may publish all or any  
6 part in [~~such~~] a manner as may be deemed appropriate.

7 (2) For purposes of the information reported and provided  
8 to the commissioner pursuant to section 431:11-  
9 105(1)(2), the commissioner shall maintain the  
10 confidentiality of the group capital calculation and  
11 group capital ratio produced within the calculation  
12 and any group capital information received from an  
13 insurance holding company supervised by the Federal  
14 Reserve Board or any United States group wide  
15 supervisor.

16 (3) For purposes of the information reported and provided  
17 to the insurance division pursuant to section 431:11-  
18 105(1)(3), the commissioner shall maintain the  
19 confidentiality of the liquidity stress test results  
20 and supporting disclosures and any liquidity stress  
21 test information received from an insurance holding



1           company supervised by the Federal Reserve Board and  
2           non-United States group wide supervisors.

3           (b) Neither the commissioner nor any person who received  
4 documents, materials, or other information while acting under  
5 the authority of the commissioner or with whom the documents,  
6 materials, or other information are shared pursuant to this  
7 article shall be permitted or required to testify in any private  
8 civil action concerning any confidential documents, materials,  
9 or information subject to subsection (a).

10           (c) To assist in the performance of the commissioner's  
11 duties, the commissioner:

12           (1) May share documents, materials, or other information,  
13 including the confidential and privileged documents,  
14 materials, or information subject to subsection (a),  
15 including proprietary and trade secret documents and  
16 materials, with other state, federal, and  
17 international regulatory agencies, with the National  
18 Association of Insurance Commissioners [~~and its~~  
19 ~~affiliates and subsidiaries, and~~], with any third-  
20 party consultants designated by the commissioner, and  
21 with state, federal, and international law enforcement



1 authorities, including members of any supervisory  
2 college described in section 431:11-107.5; provided  
3 that the recipient agrees in writing to maintain the  
4 confidentiality and privileged status of the document,  
5 material, or other information, and has verified in  
6 writing the legal authority to maintain  
7 confidentiality;

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

15 (3) May receive documents, materials, or information,  
16 including otherwise confidential and privileged  
17 documents, materials, or information, including  
18 propriety and trade-secret information, from the  
19 National Association of Insurance Commissioners and  
20 its affiliates and subsidiaries and from regulatory  
21 and law enforcement officials of other foreign or



1 domestic jurisdictions, and shall maintain as  
2 confidential or privileged any document, material, or  
3 information received with notice or the understanding  
4 that it is confidential or privileged under the laws  
5 of the jurisdiction that is the source of the  
6 document, material, or information; and

7 (4) Shall enter into written agreements with the National  
8 Association of Insurance Commissioners and any third-  
9 party consultant designated by the commissioner  
10 governing sharing and use of information provided  
11 pursuant to this article and consistent with this  
12 subsection that shall:

13 (A) Specify procedures and protocols regarding the  
14 confidentiality and security of information  
15 shared with the National Association of Insurance  
16 Commissioners [~~and its affiliates and~~  
17 ~~subsidiaries~~] or a third-party consultant  
18 designated by the commissioner pursuant to this  
19 article, including procedures and protocols for  
20 sharing by the National Association of Insurance  
21 Commissioners with other state, federal, or



1 international regulators; provided that the  
2 agreement shall provide that the recipient of the  
3 documents, materials, or other information agrees  
4 in writing to maintain the confidentiality and  
5 privileged status of the documents, materials, or  
6 other information and has verified in writing the  
7 legal authority to maintain confidentiality;

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

18 (C) Excluding documents, material, or information  
19 reported pursuant to section 431:11-105(1)(3),  
20 prohibit the National Association of Insurance  
21 Commissioners or a third-party consultant



1 designated by the commissioner from storing the  
 2 information shared pursuant to this article in a  
 3 permanent database after the underlying analysis  
 4 is completed;

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

13 ~~[(D)]~~ (E) Require the National Association of  
 14 Insurance Commissioners ~~[and its affiliates and~~  
 15 ~~subsidiaries]~~ or a third-party consultant,  
 16 designated by the commissioner, to consent to  
 17 intervention by an insurer in any judicial or  
 18 administrative action in which the National  
 19 Association of Insurance Commissioners ~~[and its~~  
 20 ~~affiliates and subsidiaries]~~ or the third-party  
 21 consultant may be required to disclose



1 confidential information about the insurer shared  
2 [~~pursuant to this article.~~] with the National  
3 Association of Insurance Commissioners or the  
4 third-party consultant; and  
5 (F) For documents, material, or information reporting  
6 pursuant to section 431:11-105(1)(3), in the case  
7 of an agreement involving a third-party  
8 consultant designated by the commissioner,  
9 provide for notification of the identity of the  
10 consultant to the applicable insurers.

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

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



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

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



1 any electronic means of communication available to the public,  
2 or in any other way as an advertisement, announcement, or  
3 statement containing a representation or statement with regard  
4 to the group capital calculation, group capital ratio, the  
5 liquidity stress test results, or supporting disclosures for the  
6 liquidity stress test of any insurer or any insurer group, or of  
7 any component derived in the calculation by any insurer, broker,  
8 or other person engaged in any manner in the insurance business  
9 would be misleading and is therefore prohibited; provided,  
10 however, that if any materially false statement with respect to  
11 the group capital calculation, resulting group capital ratio, an  
12 inappropriate comparison of any amount to an insurer's or  
13 insurance group's group capital calculation or resulting group  
14 capital ratio, liquidity stress test result, supporting  
15 disclosures for the liquidity stress test, or an inappropriate  
16 comparison of any amount to an insurer's or insurance group's  
17 liquidity stress test result or supporting disclosures is  
18 published in any written publication and the insurer is able to  
19 demonstrate to the commissioner with substantial proof the  
20 falsity of the statement or the inappropriateness, as the case  
21 may be, then the insurer may publish announcements in a written



1 publication if the sole purpose of the announcement is to rebut  
2 the materially false statement."

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

5 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 chapter 431, article 11, HRS, to adopt revisions to the National Association of Insurance Commissioners Model No. 440, Insurance Holding Company System Regulatory Act. Takes effect 7/1/2040. (SD1)

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

