

# H.B. NO. 1324

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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. The purpose of this Act is to conform current  
2 statutes to the recommendations of the National Association of  
3 Insurance Commissioners to bring Hawaii's insurance laws into  
4 conformity with the federal law and national standards as  
5 follows:

6           (1) Part I authorizes the insurance commissioner to adopt  
7 rules to implement model standards that are being  
8 developed by the National Association of Insurance  
9 Commissioners to implement the directives of the  
10 federal Military Services Personnel Financial Services  
11 Protection Act (Public Law No. 109-290), which was  
12 signed into law in 2006 to protect members of the  
13 United States armed forces from unscrupulous practices  
14 regarding sales of insurance, financial, and  
15 investment products. The Military Services Personnel  
16 Financial Services Protection Act requires the states  
17 to implement its directives by September 29, 2007;

- 1 (2) Part II focuses on long-term care by promoting the  
2 availability of long-term care insurance, protecting  
3 applicants for long-term care insurance from unfair or  
4 deceptive sales or enrollment practices, updating  
5 standards for long-term care insurance, and  
6 facilitating flexibility and innovation in the  
7 development of long-term care insurance coverage; and
- 8 (3) Part III enables the sharing of information by the  
9 insurance commissioner with the insurance regulatory  
10 agencies of foreign countries, including the sharing  
11 of confidential information, to facilitate the  
12 regulation of the insurance industry.

## PART I.

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

17 "§431:2-A Sales to members of the armed forces. The  
18 commissioner may make rules regarding the sales of insurance  
19 products to members of the armed forces of the United States  
20 including, but not limited to:

- 21 (1) Limiting sales authority to persons licensed by the  
22 insurance division;



1        (b) Any policy or rider advertised, marketed, or offered  
2 as long-term care or nursing home insurance shall comply with  
3 the provisions of this article.

4        **§431:10H-BBB Delivery of the contract or certificate of**  
5 **insurance.** If an application for a long-term care insurance  
6 contract or certificate is approved, the issuer shall deliver  
7 the contract or certificate of insurance to the applicant no  
8 later than thirty days after the date of approval."

9        SECTION 4. Chapter 431, Hawaii Revised Statutes, is  
10 amended by adding to part II of article 10H seven new sections  
11 to be appropriately designated and to read as follows:

12        **"§431:10H-CCC Electronic enrollment for group policies.**

13        (a) In the case of a group defined in paragraph (1) of the  
14 definition of "group long-term care insurance" in section  
15 431:10H-104, any requirement that a signature of an insured be  
16 obtained by an agent or insurer shall be deemed satisfied if:

17        (1) The signature is obtained by electronic enrollment by  
18 the group policyholder or insurer. A verification of  
19 enrollment information shall be provided to the  
20 enrollee;

1       (2) The electronic enrollment provides necessary and  
2       reasonable safeguards to assure the accuracy,  
3       retention, and prompt retrieval of records; and

4       (3) The electronic enrollment provides necessary and  
5       reasonable safeguards to assure that the  
6       confidentiality of individually identifiable  
7       information and privileged information is maintained.

8       (b) The insurer shall make available, upon request of the  
9       commissioner, records that will demonstrate the insurer's  
10      ability to confirm enrollment and coverage amounts.

11      **§431:10H-DDD Required disclosure of rating practices to**  
12      **consumers.** (a) This section shall apply as follows:

13      (1) Except as provided in paragraph (2), this section  
14      applies to any long-term care policy or certificate  
15      issued in this State on or after January 1, 2008; and

16      (2) For policies or certificates issued on or after July  
17      1, 2007, under a group long-term care insurance policy  
18      as defined in paragraph (1) of the definition of  
19      "group long-term care insurance" in section 431:10H-  
20      104, which policy was in force on July 1, 2007, the  
21      provisions of this section shall apply on the policy  
22      anniversary following July 1, 2007.

1        (b) Other than for policies for which no applicable  
2 premium rate or rate schedule increases can be made, insurers  
3 shall provide all of the information listed in this subsection  
4 to the applicant at the time of application or enrollment;  
5 unless the method of application does not allow for delivery at  
6 that time. In such a case, an insurer shall provide all of the  
7 information listed in this subsection to the applicant no later  
8 than at the time of delivery of the policy or certificate as  
9 follows:

- 10        (1) A statement that the policy may be subject to rate  
11        increases in the future;
- 12        (2) An explanation of potential future premium rate  
13        revisions and the policyholder's or certificate  
14        holder's option in the event of a premium rate  
15        revision;
- 16        (3) The premium rate or rate schedules applicable to the  
17        applicant that will be in effect until a request is  
18        made for an increase;
- 19        (4) A general explanation for applying premium rate or  
20        rate schedule adjustments that shall include:

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- 1           (A) A description of when premium rate or rate  
2           schedule adjustments will be effective (e.g.,  
3           next anniversary date or next billing date); and
- 4           (B) The right to a revised premium rate or rate  
5           schedule as provided in paragraph (3) if the  
6           premium rate or rate schedule is changed;
- 7           (5) With respect to disclosure of premium rate increases:
- 8           (A) Information regarding each premium rate increase  
9           on this policy form or similar policy forms over  
10           the past ten years for this State or any other  
11           state that, at a minimum, identifies:
- 12           (i) The policy forms for which premium rates  
13           have been increased;
- 14           (ii) The calendar years when the policy form was  
15           available for purchase; and
- 16           (iii) The amount or per cent of each increase.  
17           The percentage may be expressed as a  
18           percentage of the premium rate prior to the  
19           increase and may also be expressed as  
20           minimum and maximum percentages if the rate  
21           increase is variable by rating  
22           characteristics;

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- 1           (B) The insurer may, in a fair manner, provide  
2           additional explanatory information related to the  
3           rate increases;
- 4           (C) An insurer shall have the right to exclude from  
5           the disclosure premium rate increases that only  
6           apply to blocks of business acquired from other  
7           nonaffiliated insurers or the long-term care  
8           policies acquired from other nonaffiliated  
9           insurers when those increases occurred prior to  
10           the acquisition;
- 11           (D) If an acquiring insurer files for a rate increase  
12           on a long-term care policy form acquired from  
13           nonaffiliated insurers or a block of policy forms  
14           acquired from nonaffiliated insurers on or before  
15           the later of July 1, 2007, or the end of a  
16           twenty-four-month period following the  
17           acquisition of the block or policies, the  
18           acquiring insurer may exclude that rate increase  
19           from the disclosure. However, the nonaffiliated  
20           selling company shall include the disclosure of  
21           that rate increase in accordance with  
22           subparagraph (A); and

1           (E) If the acquiring insurer in subparagraph (D)  
2           files for a subsequent rate increase, even within  
3           the twenty-four-month period, on the same policy  
4           form acquired from nonaffiliated insurers or  
5           block of policy forms acquired from nonaffiliated  
6           insurers referenced in subparagraph (D), the  
7           acquiring insurer shall make all disclosures  
8           required by paragraph (5), including disclosure  
9           of the earlier rate increase referenced in  
10           subparagraph (D).

11           (c) An applicant shall sign an acknowledgment at the time  
12           of application, unless the method of application does not allow  
13           for signature at that time, that the insurer made the disclosure  
14           required under subsection (b) (1) through (5). If due to the  
15           method of application the applicant cannot sign an  
16           acknowledgment at the time of application, the applicant shall  
17           sign no later than at the time of delivery of the policy or  
18           certificate.

19           (d) An insurer shall use the forms in Appendices B and F  
20           of the April 2002 NAIC Model Long-Term Care Insurance Model  
21           Regulation to comply with the requirements of subsections (b)  
22           and (c).

1        (e) An insurer shall provide notice of an upcoming premium  
2 rate schedule increase to all policyholders or certificate  
3 holders, if applicable, at least forty-five days prior to the  
4 implementation of the premium rate schedule increase by the  
5 insurer. The notice shall include the information required by  
6 subsection (b) when the rate increase is implemented.

7        **§431:10H-EEE Initial filing requirements.** (a) This  
8 section applies to any long-term care policy issued in this  
9 State on or after January 1, 2008.

10        (b) An insurer shall provide the information listed in  
11 this subsection to the commissioner thirty days prior to making  
12 a long-term care insurance form available for sale as follows:

13        (1) A copy of the disclosure documents required in section  
14 431:10H-221; and

15        (2) An actuarial certification consisting of at least the  
16 following:

17        (A) A statement that the initial premium rate  
18 schedule is sufficient to cover anticipated costs  
19 under moderately adverse experience and that the  
20 premium rate schedule is reasonably expected to  
21 be sustainable over the life of the form with no  
22 future premium increases anticipated;

- 1           (B) A statement that the policy design and coverage  
2           provided have been reviewed and taken into  
3           consideration;
- 4           (C) A statement that the underwriting and claims  
5           adjudication processes have been reviewed and  
6           taken into consideration;
- 7           (D) A complete description of the basis for contract  
8           reserves that are anticipated to be held under  
9           the form, to include:
- 10           (i) Sufficient detail or sample calculations  
11           provided so as to have a complete depiction  
12           of the reserve amounts to be held;
- 13           (ii) A statement that the assumptions used for  
14           reserves contain reasonable margins for  
15           adverse experience;
- 16           (iii) A statement that the net valuation premium  
17           for renewal years does not increase (except  
18           for attained-age rating where permitted);  
19           and
- 20           (iv) A statement that the difference between the  
21           gross premium and the net valuation premium  
22           for renewal years is sufficient to cover

1 expected renewal expenses; or if such a  
2 statement cannot be made, a complete  
3 description of the situations where this  
4 does not occur; provided that an aggregate  
5 distribution of anticipated issues may be  
6 used as long as the underlying gross  
7 premiums maintain a reasonably consistent  
8 relationship; provided further that if the  
9 gross premiums for certain age groups are  
10 inconsistent with this requirement, the  
11 commissioner may request a demonstration  
12 under subsection (c) based on a standard age  
13 distribution;

14 and

15 (E) With respect to premium rate schedules:

16 (i) A statement that the premium rate schedule  
17 is not less than the premium rate schedule  
18 for existing similar policy forms also  
19 available from the insurer except for  
20 reasonable differences attributable to  
21 benefits; or

1           (ii) A comparison of the premium schedules for  
2                     similar policy forms that are currently  
3                     available from the insurer with an  
4                     explanation of the differences.

5           (c) The commissioner may request an actuarial  
6 demonstration that benefits are reasonable in relation to  
7 premiums. The actuarial demonstration shall include either  
8 premium and claim experience on similar policy forms, adjusted  
9 for any premium or benefit differences, relevant and credible  
10 data from other studies, or both. In the event the commissioner  
11 asks for additional information under this provision, the period  
12 in subsection (b) does not include the period during which the  
13 insurer is preparing the requested information.

14           **§431:10H-FFF Licensing.** A producer is not authorized to  
15 sell, solicit, or negotiate with respect to long-term care  
16 insurance except as authorized by article 9A.

17           **§431:10H-GGG Premium rate schedule increases.** (a) This  
18 section shall apply as follows:

19           (1) Except as provided in paragraph (2), this section  
20 applies to any long-term care policy or certificate  
21 issued in this State on or after January 1, 2008; and

1       (2) For certificates issued on or after July 1, 2007,  
2       under a group long-term care insurance policy, as  
3       defined in paragraph (1) of the definition of "group  
4       long-term care insurance" in section 431:10H-104,  
5       which policy was in force on July 1, 2007, the  
6       provisions of this section shall apply on the policy  
7       anniversary following July 1, 2007.

8       (b) An insurer shall provide notice of a pending premium  
9       rate schedule increase, including an exceptional increase, to  
10      the commissioner at least thirty days prior to the notice to the  
11      policyholders and shall include:

12      (1) Information required by section 431:10H-221;

13      (2) A certification by a qualified actuary that:

14          (A) If the requested premium rate schedule increase  
15          is implemented and the underlying assumptions,  
16          which reflect moderately adverse conditions, are  
17          realized, no further premium rate schedule  
18          increases are anticipated; and

19          (B) The premium rate filing is in compliance with the  
20          provisions of this section;

21      (3) An actuarial memorandum justifying the rate schedule  
22      change request that includes:

- 1           (A) Lifetime projections of earned premiums and  
2           incurred claims based on the filed premium rate  
3           schedule increase and the method and assumptions  
4           used in determining the projected values,  
5           including reflection of any assumptions that  
6           deviate from those used for pricing other forms  
7           currently available for sale; provided that:
- 8           (i) Annual values for the five years preceding  
9           and the three years following the valuation  
10           date shall be provided separately;
- 11           (ii) The projections shall include the  
12           development of the lifetime loss ratio,  
13           unless the rate increase is an exceptional  
14           increase;
- 15           (iii) The projections shall demonstrate compliance  
16           with subsection (c); and
- 17           (iv) For exceptional increases, the projected  
18           experience should be limited to the  
19           increases in claims expenses attributable to  
20           the approved reasons for the exceptional  
21           increase. In the event the commissioner  
22           determines, as provided in paragraph (4) of

1           the definition of "exceptional increase" in  
2           section 431:10H-104, that offsets may exist,  
3           the insurer shall use appropriate net  
4           projected experience;

5        (B) Disclosure of how reserves have been incorporated  
6        in this rate increase whenever the rate increase  
7        will trigger a contingent benefit upon lapse;

8        (C) Disclosure of the analysis performed to determine  
9        why a rate adjustment is necessary, which pricing  
10       assumptions were not realized and why, and what  
11       other actions taken by the company have been  
12       relied on by the actuary;

13       (D) A statement that policy design, underwriting, and  
14       claims adjudication practices have been taken  
15       into consideration; and

16       (E) In the event that it is necessary to maintain  
17       consistent premium rates for new certificates and  
18       certificates receiving a rate increase, the  
19       insurer will need file composite rates reflecting  
20       projections of new certificates;

21       (4) A statement that renewal premium rate schedules are  
22       not greater than new business premium rate schedules

1 except for differences attributable to benefits,  
2 unless sufficient justification is provided to the  
3 commissioner; and

4 (5) Sufficient information for the review of the premium  
5 rate schedule increase by the commissioner.

6 (c) All premium rate schedule increases shall be  
7 determined in accordance with the following requirements:

8 (1) Exceptional increases shall provide that seventy per  
9 cent of the present value of projected additional  
10 premiums from the exceptional increase will be  
11 returned to policyholders in benefits;

12 (2) Premium rate schedule increases shall be calculated so  
13 that the sum of the accumulated value of incurred  
14 claims, without the inclusion of active life reserves,  
15 and the present value of future projected incurred  
16 claims, without the inclusion of active life reserves,  
17 will not be less than the sum of the following:

18 (A) The accumulated value of the initial earned  
19 premium times fifty-eight per cent;

20 (B) Eighty-five per cent of the accumulated value of  
21 prior premium rate schedule increases on an  
22 earned basis;

- 1           (C) The present value of future projected initial  
2           earned premiums times fifty-eight per cent; and  
3           (D) Eighty-five per cent of the present value of  
4           future projected premiums not in subparagraph (C)  
5           on an earned basis;
- 6           (3) In the event that a policy form has both exceptional  
7           and other increases, the values in paragraph (2) (B)  
8           and (D) shall also include seventy per cent for  
9           exceptional rate increase amounts; and
- 10          (4) All present and accumulated values used to determine  
11          rate increases shall use the maximum valuation  
12          interest rate for contract reserves, as applicable, as  
13          specified in sections 431:5-303 and 431:5-307. The  
14          actuary shall disclose as part of the actuarial  
15          memorandum the use of any appropriate averages.
- 16          (d) For each rate increase that is implemented, the  
17          insurer shall file for review by the commissioner updated  
18          projections, as provided in subsection (b) (3) (A), annually for  
19          the next three years, and include a comparison of actual results  
20          to projected values. The commissioner may extend the period to  
21          greater than three years if actual results are not consistent  
22          with projected values from prior projections. For group

1 insurance policies that meet the conditions in subsection (k),  
2 the projections required by this subsection shall be provided to  
3 the policyholder in lieu of filing with the commissioner.

4 (e) If any premium rate in the revised premium rate  
5 schedule is greater than two hundred per cent of the comparable  
6 rate in the initial premium schedule, lifetime projections, as  
7 provided in subsection (b) (3) (A), shall be filed for review by  
8 the commissioner every five years following the end of the  
9 required period in subsection (d). For group insurance policies  
10 that meet the conditions in subsection (k), the projections  
11 required by this subsection shall be provided to the  
12 policyholder in lieu of filing with the commissioner.

13 (f) If the commissioner has determined that the actual  
14 experience following a rate increase does not adequately match  
15 the projected experience and that the current projections under  
16 moderately adverse conditions demonstrate that incurred claims  
17 will not exceed proportions of premiums specified in subsection  
18 (c), the commissioner may require the insurer to implement any  
19 of the following:

- 20 (1) Premium rate schedule adjustments; or  
21 (2) Other measures to reduce the difference between the  
22 projected and actual experience.

1 In determining whether the actual experience adequately  
2 matches the projected experience, consideration should be given  
3 to subsection (b)(3)(E), if applicable.

4 (g) If the majority of the policies or certificates to  
5 which the increase is applicable are eligible for the contingent  
6 benefit upon lapse, the insurer shall file:

7 (1) A plan, subject to the commissioner's approval, for  
8 improved administration or claims processing designed  
9 to eliminate the potential for further deterioration  
10 of the policy form requiring further premium rate  
11 schedule increases, or both, or to demonstrate that  
12 appropriate administration and claims processing have  
13 been implemented or are in effect; otherwise the  
14 commissioner may impose the condition in subsection  
15 (h); and

16 (2) The original anticipated lifetime loss ratio and the  
17 premium rate schedule increase that would have been  
18 calculated according to subsection (c), had the  
19 greater of the original anticipated lifetime loss  
20 ratio or fifty-eight per cent been used in the  
21 calculations described in subsection (c)(2)(A) and  
22 (C).

1        (h) For a rate increase filing that meets the following  
2 criteria, the commissioner shall review, for all policies  
3 included in the filing, the projected lapse rates and past lapse  
4 rates during the twelve months following each increase to  
5 determine if significant adverse lapsing has occurred or is  
6 anticipated:

- 7        (1) The rate increase is not the first rate increase  
8        requested for the specific policy form or forms;  
9        (2) The rate increase is not an exceptional increase; and  
10       (3) The majority of the policies or certificates to which  
11       the increase is applicable are eligible for the  
12       contingent benefit upon lapse.

13       In the event significant adverse lapsing has occurred, is  
14 anticipated in the filing, or is evidenced in the actual results  
15 as presented in the updated projections provided by the insurer  
16 following the requested rate increase, the commissioner may  
17 determine that a rate spiral exists. Following the  
18 determination that a rate spiral exists, the commissioner may  
19 require the insurer to offer, without underwriting, to all in  
20 force insureds, subject to the rate increase, the option to  
21 replace existing coverage with one or more reasonably comparable  
22 products being offered by the insurer or its affiliates;

1 provided that the offer shall be subject to the approval of the  
2 commissioner, be based on actuarially sound principles but not  
3 on attained age, and provide that maximum benefits under any new  
4 policy accepted by an insured shall be reduced by comparable  
5 benefits already paid under the existing policy.

6 The insurer shall maintain the experience of all the  
7 replacement insureds separate from the experience of insureds  
8 originally issued the policy forms. In the event of a request  
9 for a rate increase on the policy form, the rate increase shall  
10 be limited to the lesser of the maximum rate increase determined  
11 based on the combined experience or the maximum rate increase  
12 determined based only on the experience of the insureds  
13 originally issued the form plus ten per cent.

14 (i) If the commissioner determines that the insurer has  
15 exhibited a persistent practice of filing inadequate initial  
16 premium rates for long-term care insurance, the commissioner  
17 may, in addition to the provisions of subsection (h), prohibit  
18 the insurer from either of the following:

19 (1) Filing and marketing comparable coverage for a period  
20 of up to five years; or

1        (2) Offering all other similar coverages and limiting  
2                    marketing of new applications to the products subject  
3                    to recent premium rate schedule increases.

4        (j) Subsections (a) through (i) shall not apply to  
5 policies for which the long-term care benefits provided by the  
6 policy are incidental, as defined in section 431:10H-104, if the  
7 policy complies with all of the following provisions:

8        (1) The interest credited internally to determine cash  
9                    value accumulations, including long-term care, if any,  
10                   are guaranteed not to be less than the minimum  
11                   guaranteed interest rate for cash value accumulations  
12                   without long-term care set forth in the policy;

13        (2) The portion of the policy that provides insurance  
14                   benefits, other than long-term care coverage, meets  
15                   the nonforfeiture requirements as applicable in any of  
16                   the following:

17                   (A) Section 431:10D-104; and

18                   (B) Section 431:10D-107;

19        (3) The policy meets the disclosure requirements of  
20                   sections 431:10H-113 and 431:10H-114;

- 1        (4) The portion of the policy that provides insurance  
2        benefits, other than long-term care coverage, meets  
3        the requirements as applicable in the following:  
4        (A) Policy illustrations as required by part IV of  
5        article 10D; and  
6        (B) Disclosure requirements, as applicable, in  
7        article 431:10D; and  
8        (5) An actuarial memorandum is filed with the insurance  
9        division that includes:  
10       (A) A description of the basis on which the long-term  
11       care rates were determined;  
12       (B) A description of the basis for the reserves;  
13       (C) A summary of the type of policy, benefits,  
14       renewability, general marketing method, and  
15       limits on ages of issuance;  
16       (D) A description and a table of each actuarial  
17       assumption used. For expenses, an insurer shall  
18       include per cent of premium dollars per policy  
19       and dollars per unit of benefits, if any;  
20       (E) A description and a table of the anticipated  
21       policy reserves and additional reserves to be  
22       held in each future year for active lives;

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1           (F) The estimated average annual premium per policy  
2           and the average issue age;

3           (G) A statement as to whether underwriting is  
4           performed at the time of application. The  
5           statement shall indicate whether underwriting is  
6           used and, if used, the statement shall include a  
7           description of the type or types of underwriting  
8           used, such as medical underwriting or functional  
9           assessment underwriting. Concerning a group  
10           policy, the statement shall indicate whether the  
11           enrollee or any dependent will be underwritten  
12           and when that underwriting occurs; and

13           (H) A description of the effect of the long-term care  
14           policy provision on the required premiums,  
15           nonforfeiture values, and reserves on the  
16           underlying insurance policy, both for active  
17           lives and those in long-term care claim status.

18           (k) Subsections (f) and (h) shall not apply to group  
19           insurance policies as defined in paragraph (1) of the definition  
20           of "group long-term care insurance" in section 431:10H-104  
21           where:

- 1        (1) The policies insure two hundred fifty or more persons  
2                    and the policyholder has five thousand or more  
3                    eligible employees of a single employer; or
- 4        (2) The policyholder, and not the certificate holders,  
5                    pays a material portion of the premium, which shall  
6                    not be less than twenty per cent of the total premium  
7                    for the group in the calendar year prior to the year a  
8                    rate increase is filed.

9        (1) "Exceptional increase" for purposes of this section  
10       shall be as defined in section 431:10H-104.

11        **§431:10H-HHH Additional standards for benefit triggers for**  
12       **qualified long-term care insurance contracts.** (a) For purposes  
13       of this section the following definitions apply:

14        "Chronically ill individual" has the meaning prescribed for  
15       this term by section 7702B(c)(2)(A) of the Internal Revenue Code  
16       of 1986, as amended. Under this provision, a chronically ill  
17       individual means any individual who has been certified by a  
18       licensed health care practitioner as:

- 19        (1) Being unable to perform (without substantial  
20                    assistance from another individual) at least two  
21                    activities of daily living for a period of at least  
22                    ninety days due to a loss of functional capacity;

1       (2) Having a level of disability similar (as determined  
2       under regulations prescribed by the Secretary of the  
3       Treasury in consultation with the Secretary of Health  
4       and Human Services) to the level of disability  
5       described in paragraph (1); or

6       (3) Requiring substantial supervision to protect the  
7       individual from threats to health and safety due to  
8       severe cognitive impairment.

9       "Chronically ill individual" shall not include an individual  
10      otherwise meeting these requirements unless within the preceding  
11      twelve-month period a licensed health care practitioner has  
12      certified that the individual meets these requirements.

13      "Licensed health care practitioner" means a physician, as  
14      defined in section 1861(r)(1) of the Social Security Act, and  
15      any registered professional nurse, licensed social worker, or  
16      other individual who meets requirements prescribed by the  
17      Secretary of the Treasury.

18      "Maintenance or personal care services" means any care the  
19      primary purpose of which is the provision of needed assistance  
20      with any of the disabilities as a result of which the individual  
21      is a chronically ill individual (including the protection from

1 threats to health and safety due to severe cognitive  
2 impairment).

3 "Qualified long-term care services" means services that  
4 meet the requirements of section 7702B(c)(1) of the Internal  
5 Revenue Code of 1986, as amended, as follows: necessary  
6 diagnostic, preventive, therapeutic, curative, treatment,  
7 mitigation and rehabilitative services, and maintenance or  
8 personal care services which are required by a chronically ill  
9 individual and are provided pursuant to a plan of care  
10 prescribed by a licensed health care practitioner.

11 (b) A qualified long term care insurance contract shall  
12 pay only for qualified long term care services received by a  
13 chronically ill individual provided pursuant to a plan of care  
14 prescribed by a licensed health care practitioner.

15 (c) A qualified long-term care insurance contract shall  
16 condition the payment of benefits on a determination of the  
17 insured's inability to perform activities of daily living for an  
18 expected period of at least ninety days due to a loss of  
19 functional capacity or to severe cognitive impairment.

20 (d) Certifications regarding activities of daily living  
21 and cognitive impairment required pursuant to subsection (c)  
22 shall be performed by a licensed health care practitioner.

1       (e) Certifications required pursuant to subsection (d) may  
2 be performed by a licensed health care practitioner at the  
3 direction of the carrier as is reasonably necessary with respect  
4 to a specific claim, except that when a licensed health care  
5 practitioner has certified that an insured is unable to perform  
6 activities of daily living for an expected period of at least  
7 ninety days due to a loss of functional capacity and the insured  
8 is claiming payment of benefits, the certification may not be  
9 rescinded and additional certifications may not be performed  
10 until after the expiration of the ninety-day period.

11       (f) Qualified long-term care insurance contracts shall  
12 include a clear description of the process for appealing and  
13 resolving disputes with respect to benefit determinations.

14       §431:10H-III Penalties. In addition to any other  
15 penalties provided by the laws of this State, any insurer or  
16 producer found to have violated any requirement of this State  
17 relating to the regulation of long-term care insurance or the  
18 marketing of such insurance shall be subject to a fine of up to  
19 three times the amount of any commissions paid for each policy  
20 involved in the violation or up to \$10,000, whichever is  
21 greater."

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1 SECTION 5. Section 431:10H-104, Hawaii Revised Statutes,  
2 is amended by adding three new definitions to read as follows:

3 "Exceptional increase" means only those increases filed by  
4 an insurer that are extraordinary and for which the commissioner  
5 determines the need for the premium rate increase is justified:

6 (1) Due to:

7 (A) Changes in laws or rules applicable to long-term  
8 care coverage in this State; or

9 (B) Increased and unexpected utilization that affects  
10 the majority of insurers of similar products;

11 (2) Except as provided in section 431:10H-232, exceptional  
12 increases are subject to the same requirements as  
13 other premium rate schedule increases;

14 (3) The commissioner may request a review by an  
15 independent actuary or a professional actuarial body  
16 of the basis for a request that an increase be  
17 considered an exceptional increase; and

18 (4) The commissioner, in determining that the necessary  
19 basis for an exceptional increase exists, shall also  
20 determine any potential offsets to higher claims  
21 costs.

1       "Incidental", as used in section 431:10H-GGG(j), means that  
2 the value of the long-term care benefits provided is less than  
3 ten per cent of the total value of the benefits provided over  
4 the life of the policy. These values shall be measured as of  
5 the date of issue.

6       "Qualified long-term care insurance contract" or "federally  
7 tax-qualified long-term care insurance contract" means an  
8 individual or group insurance contract that meets the  
9 requirements of Section 7702B(b) of the Internal Revenue Code of  
10 1986, as amended, as follows:

11       (1) The only insurance protection provided under the  
12 contract is coverage of qualified long-term care  
13 services. A contract shall not fail to satisfy the  
14 requirements of this paragraph by reason of payments  
15 being made on a per diem or other periodic basis  
16 without regard to the expenses incurred during the  
17 period to which the payments relate;

18       (2) The contract does not pay or reimburse expenses  
19 incurred for services or items to the extent that the  
20 expenses are reimbursable under title XVIII of the  
21 Social Security Act, as amended, or would be so  
22 reimbursable but for the application of a deductible

1 or coinsurance amount. The requirements of this  
2 paragraph do not apply to expenses that are  
3 reimbursable under title XVIII of the Social Security  
4 Act only as a secondary payor. A contract shall not  
5 fail to satisfy the requirements of this paragraph by  
6 reason of payments being made on a per diem or other  
7 periodic basis without regard to the expenses incurred  
8 during the period to which the payments relate;

9 (3) The contract is guaranteed renewable, within the  
10 meaning of section 7702B(b)(1)(C) of the Internal  
11 Revenue Code of 1986, as amended;

12 (4) The contract does not provide for a cash surrender  
13 value or other money that can be paid, assigned,  
14 pledged as collateral for a loan, or borrowed except  
15 as provided in paragraph (5);

16 (5) All refunds of premiums and all policyholder dividends  
17 or similar amounts under the contract are to be  
18 applied as a reduction in future premiums or to  
19 increase future benefits, except that a refund on the  
20 event of death of the insured or a complete surrender  
21 or cancellation of the contract cannot exceed the  
22 aggregate premiums paid under the contract; and

1       (6) The contract meets the consumer protection provisions  
2           set forth in section 7702B(g) of the Internal Revenue  
3           Code of 1986, as amended.

4       "Qualified long-term care insurance contract" or "federally tax-  
5       qualified long term care insurance contract" also means the  
6       portion of a life insurance contract that provides long-term  
7       care insurance coverage by rider or as part of the contract and  
8       that satisfies the requirements of sections 7702B(b) and (e) of  
9       the Internal Revenue Code of 1986, as amended."

10       SECTION 6. Section 431:10H-104, Hawaii Revised Statutes,  
11 is amended by amending the definition of "long-term care  
12 insurance" to read as follows:

13        "Long-term care insurance" means any insurance policy or  
14 rider advertised, marketed, offered, or designed to provide  
15 coverage for not less than twelve consecutive months for each  
16 covered person on an expense incurred, indemnity, prepaid, or  
17 other basis, for one or more necessary or medically necessary  
18 diagnostic, preventive, therapeutic, rehabilitative,  
19 maintenance, or personal care services, provided in a setting  
20 other than an acute care unit of a hospital. The term includes  
21 group and individual annuities and life insurance policies or  
22 riders that provide directly or that supplement long-term care

1 insurance. The term also includes a policy or rider that  
2 provides for payment of benefits based upon cognitive impairment  
3 or loss of functional capacity. The term shall also include  
4 qualified long-term care insurance contracts. Long-term care  
5 insurance may be issued by insurers, fraternal benefit  
6 societies, nonprofit health, hospital, and medical service  
7 corporations, prepaid health plans, health maintenance  
8 organizations, or any similar organization to the extent they  
9 are otherwise authorized to issue life or health insurance.

10 Long-term care insurance shall not include any insurance  
11 policy [~~which~~] that is offered primarily to provide basic  
12 medicare supplement coverage, basic hospital expense coverage,  
13 basic medical-surgical expense coverage, hospital confinement  
14 indemnity coverage, major medical expense coverage, disability  
15 income or related asset-protection coverage, accident only  
16 coverage, specified disease or specified accident coverage, or  
17 limited benefit health coverage.

18 With regard to life insurance, this term does not include  
19 life insurance policies [~~which~~] that accelerate the death  
20 benefit specifically for one or more of the qualifying events of  
21 terminal illness, medical conditions requiring extraordinary  
22 medical intervention, or permanent institutional confinement,

1 and [~~which~~] that provide the option of a lump-sum payment for  
2 those benefits and in which neither the benefits nor the  
3 eligibility for the benefits is conditioned upon the receipt of  
4 long-term care.

5 Notwithstanding any other provision contained herein, any  
6 product advertised, marketed, or offered as long-term care  
7 insurance shall be subject to this article."

8 SECTION 7. Section 431:10H-111, Hawaii Revised Statutes,  
9 is amended to read as follows:

10 "[+]§431:10H-111[+] **Right to return; free look provision.**

11 Long-term care insurance applicants shall have the right to  
12 return the policy or certificate within thirty days of its  
13 delivery and to have the premium refunded if, after examination  
14 of the policy or certificate, the applicant is not satisfied for  
15 any reason. Long-term care insurance policies and certificates  
16 shall have a notice prominently printed on the first page or  
17 attached thereto stating in substance that the applicant shall  
18 have the right to return the policy or certificate within thirty  
19 days of its delivery and to have the premium refunded if, after  
20 examination of the policy or certificate, other than a  
21 certificate issued pursuant to a policy issued to a group  
22 defined in paragraph (1) of the definition of "group long-term

1 care insurance" in section 431:10H-104, the applicant is not  
2 satisfied for any reason. This section shall also apply to a  
3 denial of an application for a long-term care contract. Any  
4 refund shall be made within thirty days of the return or  
5 denial."

6 SECTION 8. Section 431:10H-112, Hawaii Revised Statutes,  
7 is amended by amending subsection (b) to read as follows:

8 "(b) The outline of coverage shall include:

- 9 (1) A description of the principal benefits and coverage  
10 provided in the policy;
- 11 (2) A statement of the principal exclusions, reductions,  
12 and limitations contained in the policy;
- 13 (3) A statement of the terms under which the policy or  
14 certificate, or both, may be continued in force or  
15 discontinued, including any reservation in the policy  
16 of a right to change premium. Continuation or  
17 conversion provisions of group coverage shall be  
18 specifically described;
- 19 (4) A statement that the outline of coverage is a summary  
20 only, not a contract of insurance, and that the policy  
21 or group master policy contains governing contractual  
22 provisions;

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1 (5) A description of the terms under which the policy or  
2 certificate may be returned and premium refunded;  
3 [~~and~~]

4 (6) A brief description of the relationship of costs of  
5 care and benefits[-]; and

6 (7) A statement that discloses to the policyholder or  
7 certificate holder whether the policy is intended to  
8 be a federally tax-qualified long-term care insurance  
9 contract under section 7702B(b) of the Internal  
10 Revenue Code of 1986, as amended."

11 SECTION 9. Section 431:10H-114, Hawaii Revised Statutes,  
12 is amended by amending subsection (a) to read as follows:

13 "(a) At the time of policy delivery, a policy summary  
14 shall be delivered for an individual life insurance policy that  
15 provides long-term care benefits within the policy[-] or by  
16 rider. In the case of direct response solicitations, the  
17 insurer shall deliver the policy summary upon the applicant's  
18 request, but regardless of the request shall make delivery no  
19 later than at the time of policy delivery. In addition to  
20 complying with all applicable requirements, the policy summary  
21 shall also include:

- 1 (1) An explanation of how the long-term care benefit  
2 interacts with other components of the policy,  
3 including deductions from death benefits;
- 4 (2) An illustration of the amount of benefits, the length  
5 of benefit, and the guaranteed lifetime benefits if  
6 any, for each covered person;
- 7 (3) Any exclusions, reductions, and limitations on  
8 benefits of long-term care;
- 9 (4) A statement that any long-term care inflation  
10 protection option required by section 431:10H-220 is  
11 not available under this policy;
- 12 (5) If applicable to the policy type, the summary shall  
13 also include a disclosure of the effects of exercising  
14 other rights under the policy, a disclosure of  
15 guarantees related to long-term care costs of  
16 insurance charges, and current and projected maximum  
17 lifetime benefits; and
- 18 (6) The provisions of the policy summary listed above may  
19 be incorporated into a basic illustration required to  
20 be delivered or into the life insurance policy summary  
21 ~~[which]~~ that is required to be delivered."

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1 SECTION 10. Section 431:10H-201, Hawaii Revised Statutes,  
2 is amended to read as follows:

3 "[+]§431:10H-201[+] **Policy definitions.** (a) No long-term  
4 care insurance policy delivered or issued for delivery in this  
5 State shall use the terms set forth in this section, unless the  
6 terms are defined in the policy and the definitions satisfy the  
7 following requirements:

8 "Activities of daily living" means at least bathing,  
9 continence, dressing, eating, toileting, and transferring.

10 "Acute condition" means that the individual is medically  
11 unstable. This individual requires frequent monitoring by  
12 medical professionals such as physicians and registered nurses,  
13 in order to maintain the individual's health status.

14 "Adult day care" means a program for six or more  
15 individuals, of social and health-related services provided  
16 during the day in a community group setting for the purpose of  
17 supporting frail, impaired elderly or other disabled adults who  
18 can benefit from care in a group setting outside the home.

19 "Bathing" means washing oneself by sponge bath, or in either  
20 a tub or shower, including the task of getting into or out of the  
21 tub or shower.

1 "Cognitive impairment" means a deficiency in a person's  
2 short- or long-term memory, orientation as to person, place, and  
3 time, deductive or abstract reasoning, or judgment as it relates  
4 to safety awareness.

5 "Continence" means the ability to maintain control of bowel  
6 and bladder function, or when unable to maintain control of bowel  
7 or bladder function, the ability to perform associated personal  
8 hygiene (including caring for catheter or colostomy bag).

9 "Dressing" means putting on and taking off all items of  
10 clothing and any necessary braces, fasteners, or artificial  
11 limbs.

12 "Eating" means feeding oneself by getting food into the body  
13 from a receptacle (such as a plate, cup, or table) or by a  
14 feeding tube or intravenously.

15 "Hands-on assistance" means physical assistance (minimal,  
16 moderate, or maximal) without which the individual would not be  
17 able to perform the activity of daily living.

18 "Home health care services" means medical and nonmedical  
19 services, provided to ill, disabled, or infirm persons in their  
20 residences. These services may include homemaker services,  
21 assistance with activities of daily living, and respite care  
22 services.

1 "Medicare" shall be defined as "The Health Insurance for the  
2 Aged Act, Title XVIII of the Social Security Amendments of 1965  
3 as Then Constituted or Later Amended," or Title I, Part I of  
4 Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the  
5 United States of America and popularly known as the Health  
6 Insurance for the Aged Act, as then constituted and any later  
7 amendments or substitutes thereof, or words of similar import.

8 "Mental or nervous disorder" means neurosis, psychoneurosis,  
9 psychopathy, psychosis, or mental or emotional disease or  
10 disorder, and shall not be defined beyond these terms.

11 "Personal care" means the provision of hands-on services to  
12 assist an individual with activities of daily living.

13 "Skilled nursing care", [~~"intermediate care"~~], "personal  
14 care", "home care", "specialized care", "assisted living care",  
15 and other services shall be defined in relation to the level of  
16 skill required, the nature of the care, and the setting in which  
17 care must be delivered.

18 "Toileting" means getting to and from the toilet, getting on  
19 and off the toilet, and performing associated personal hygiene.

20 "Transferring" means moving into or out of a bed, chair, or  
21 wheelchair.

1 (b) All providers of services, including but not limited to  
2 a "skilled nursing facility", "extended care facility",  
3 [~~"intermediate care facility",~~] "convalescent nursing home",  
4 "personal care facility", [~~and~~] "assisted living facility", "home  
5 care agency", and "specialized care providers", shall be defined  
6 in relation to the services and facilities required to be  
7 available and the licensure, certification, registration, or  
8 degree status of those providing or supervising the services.  
9 The definition may require that the provider be appropriately  
10 licensed [~~or~~], certified[~~-~~], or registered; provided that when  
11 the definition so requires, it shall also state what requirements  
12 a provider shall meet in lieu of licensure, certification, or  
13 registration when the state in which the service is to be  
14 furnished does not require a provider of these services to be  
15 licensed, certified, or registered, or when the state licenses,  
16 certifies, or registers the provider of services under another  
17 name."

18 SECTION 11. Section 431:10H-202, Hawaii Revised Statutes,  
19 is amended to read as follows:

20 "[~~+~~]**§431:10H-202**[~~+~~] **Renewability.** (a) The terms  
21 "guaranteed renewable" and "noncancellable" shall not be used in  
22 any individual long-term care insurance policy without further

1 explanatory language in accordance with the disclosure  
2 requirements of section 431:10H-211. A policy issued to an  
3 individual shall not contain renewal provisions other than  
4 guaranteed renewable or noncancellable.

5 (b) The term "guaranteed renewable" may be used only when  
6 the insured has the right to continue the long-term care  
7 insurance in force by the timely payment of premiums and when  
8 the insurer has no unilateral right to make any change in any  
9 provision of the policy or rider while the insurance is in  
10 force, and cannot decline to renew, except that rates may be  
11 revised by the insurer on a class basis.

12 (c) The term "noncancellable" means the insured has the  
13 right to continue the long-term care insurance in force by the  
14 timely payment of premiums during which period the insurer has  
15 no right to unilaterally make any change in any provision of the  
16 insurance or in the premium rate.

17 (d) The term "level premium" may only be used when the  
18 insurer does not have the right to change the premium.

19 (e) In addition to the other requirements of this section,  
20 a qualified long-term care insurance contract shall be  
21 guaranteed renewable, within the meaning of section

1 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as  
2 amended."

3 SECTION 12. Section 431:10H-203, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 "[~~f~~]**\$431:10H-203**[~~f~~] **Limitations and exclusions.** (a) A  
6 policy may not be delivered or issued for delivery in this State  
7 as long-term care insurance if the policy limits or excludes  
8 coverage by type of illness, treatment, medical condition, or  
9 accident, except as follows:

- 10 (1) Preexisting conditions or diseases;
- 11 (2) Mental or nervous disorders; however, this shall not  
12 permit exclusion or limitation of benefits on the  
13 basis of Alzheimer's disease;
- 14 (3) Alcoholism and drug addiction;
- 15 (4) Illness, treatment, or medical condition arising out  
16 of:
  - 17 (A) War or act of war, whether declared or  
18 undeclared;
  - 19 (B) Participation in a felony, riot, or insurrection;
  - 20 (C) Service in the armed forces or units auxiliary  
21 thereto;

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- 1 (D) Suicide (sane or insane), attempted suicide, or  
2 intentionally self-inflicted injury; or  
3 (E) Aviation (this exclusion applies only to non-  
4 fare-paying passengers); [~~or~~]
- 5 (5) Treatment provided in a government facility (unless  
6 required by law), services for which benefits are  
7 available under medicare or other governmental program  
8 (except medicaid), any state or federal workers'  
9 compensation, employer's liability, or occupational  
10 disease law, or any motor vehicle insurance law,  
11 services provided by a member of the covered person's  
12 immediate family, and services for which no charge is  
13 normally made in the absence of insurance[-];
- 14 (6) Expenses for services or items available or paid under  
15 another long-term care insurance or health insurance  
16 policy; or
- 17 (7) In the case of a qualified long-term care insurance  
18 contract, expenses for services or items to the extent  
19 that the expenses are reimbursable under title XVIII  
20 of the Social Security Act or would be so reimbursable  
21 but for the application of a deductible or coinsurance  
22 amount.

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1 (b) This section is not intended to prohibit exclusions  
2 and limitations by type of provider [~~or territorial~~  
3 ~~limitations~~]. However, no long-term care issuer may deny a  
4 claim because services are provided in a state other than the  
5 state of policy issue under the following conditions:

6 (1) When the state other than the state of policy issue  
7 does not have the provider licensing, certification,  
8 or registration required in the policy, but where the  
9 provider satisfies the policy requirements outlined  
10 for providers in lieu of licensure, certification,  
11 registration; or

12 (2) When the state other than the state of policy issue  
13 licenses, certifies, or registers the provider under  
14 another name.

15 For purposes of this paragraph, "state of policy issue"  
16 means the state in which the individual policy or certificate  
17 was originally issued.

18 (c) This section is not intended to prohibit territorial  
19 limitations."

20 SECTION 13. Section 431:10H-211, Hawaii Revised Statutes,  
21 is amended to read as follows:

1           "~~+~~§431:10H-211~~+~~ **Disclosure; renewability.** (a)  
2 Individual long-term care insurance policies shall contain a  
3 renewability provision. The provision shall be appropriately  
4 captioned, shall appear on the first page of the policy, and  
5 shall clearly state the duration, where limited, of renewability  
6 and the duration of the term of coverage for which the policy is  
7 issued and for which it may be renewed. This provision shall  
8 not apply to policies that do not contain a nonrenewability  
9 provision, and under which the right to nonrenew is reserved  
10 solely to the policyholder.

11           (b) A long-term care insurance policy or certificate,  
12 other than one where the insurer does not have the right to  
13 change the premium, shall include a statement that premium rates  
14 may change."

15           SECTION 14. Section 431:10H-216, Hawaii Revised Statutes,  
16 is amended to read as follows:

17           "~~+~~§431:10H-216~~+~~ **Disclosure of tax consequences.** With  
18 regard to life insurance policies that provide for an  
19 accelerated benefit for long-term care, a disclosure is required  
20 at the time of application for the policy and at the time the  
21 accelerated benefit payment request is submitted that receipt of  
22 these accelerated benefits may be taxable, and that assistance

1 should be sought from a personal tax advisor. The disclosure  
2 statement shall be prominently displayed on the first page of  
3 the policy and any other related documents. This section shall  
4 not apply to qualified long-term care insurance contracts."

5 SECTION 15. Section 431:10H-218, Hawaii Revised Statutes,  
6 is amended by amending subsection (f) to read as follows:

7 "(f) Every insurer or other entity selling or issuing  
8 long-term care insurance benefits shall maintain a record of all  
9 policy or certificate rescissions, both state and countrywide,  
10 except those that the insured voluntarily effectuated. Every  
11 insurer shall annually furnish this information to the insurance  
12 commissioner in the format prescribed by the National  
13 Association of Insurance Commissioners in Appendix A to the  
14 [~~July 1998~~] April 2002 NAIC Long-Term Care Insurance Model  
15 Regulation."

16 SECTION 16. Section 431:10H-221, Hawaii Revised Statutes,  
17 is amended by amending subsections (c) and (d) to read as  
18 follows:

19 "(c) Upon determining that a sale will involve  
20 replacement, an insurer, other than an insurer using direct  
21 response solicitation methods, or its producer, shall furnish  
22 the applicant, prior to issuance or delivery of the individual

1 long-term care insurance policy, a notice regarding replacement  
2 of accident and health or sickness or long-term care coverage.  
3 One copy of the notice shall be retained by the applicant and an  
4 additional copy signed by the applicant shall be retained by the  
5 insurer. The required notice shall be provided in the same  
6 manner as shown in [~~Section 12(C) of the July 1998~~] section 14C  
7 of the April 2002 NAIC Long-Term Care Insurance Model  
8 Regulation.

9 (d) Insurers using direct response solicitation methods  
10 shall deliver a notice regarding replacement of accident and  
11 health or sickness or long-term care coverage to the applicant  
12 upon issuance of the policy. The required notice shall be  
13 provided in the same manner as shown in [~~Section 12(D) of the~~  
14 ~~July 1998~~] section 14D of the April 2002 NAIC Long-Term Care  
15 Insurance Model Regulation."

16 SECTION 17. Section 431:10H-222, Hawaii Revised Statutes,  
17 is amended to read as follows:

18 "**§431:10H-222 Reporting requirements.** (a) Every insurer  
19 shall maintain records for each producer of the producer's  
20 amount of replacement sales as a per cent of the producer's  
21 total annual sales and the amount of lapses of long-term care

1 insurance policies sold by the producer as a per cent of the  
2 producer's total annual sales.

3 (b) Every insurer shall report annually by June 30 the ten  
4 per cent of its producers with the greatest percentages of  
5 lapses and replacements as measured in subsection (a). The form  
6 shall be in the format contained in Appendix G to the April 2002  
7 NAIC Long-Term Care Insurance Model Regulation.

8 (c) Reported replacement and lapse rates do not alone  
9 constitute a violation of insurance laws or necessarily imply  
10 wrongdoing. The reports are for the purpose of reviewing more  
11 closely producer activities regarding the sale of long-term care  
12 insurance.

13 (d) Every insurer shall report annually by June 30 the  
14 number of lapsed policies as a per cent of its total annual  
15 sales and as a per cent of its total number of policies in force  
16 as of the end of the preceding calendar year. The form shall be  
17 in the format contained in Appendix G to the April 2002 NAIC  
18 Long-Term Care Insurance Model Regulation.

19 (e) Every insurer shall report annually by June 30 the  
20 number of replacement policies sold as a per cent of its total  
21 annual sales and as a per cent of its total number of policies  
22 in force as of the end of the preceding calendar year. The form

1 shall be in the format contained in Appendix G to the April 2002  
2 NAIC Long-Term Care Insurance Model Regulation.

3 (f) For [~~purposes of this section, "policy" means only~~  
4 ~~long term care insurance and "report" means on a statewide~~  
5 ~~basis.] qualified long-term care insurance contracts, every  
6 insurer shall report annually by June 30, the number of claims  
7 denied for each class of business, expressed as a percentage of  
8 claims denied. The form shall be in the format contained in  
9 Appendix E to the April 2002 NAIC Long-Term Care Insurance Model  
10 Regulation.~~

11 (g) Reports required under this section shall be filed  
12 with the commissioner.

13 (h) For purposes of this section:

14 "Claim" means a request for payment of benefits under an in  
15 force policy regardless of whether the benefit claimed is  
16 covered under the policy or any terms or conditions of the  
17 policy have been met. Claims shall be subject to the definition  
18 of "denied".

19 "Denied" means the insurer refuses to pay a claim for any  
20 reason other than for claims not paid for failure to meet the  
21 waiting period or because of an applicable preexisting  
22 condition.

1 "Policy" means only long-term care insurance.

2 "Report" means on a statewide basis."

3 SECTION 18. Section 431:10H-226, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 "[+]§431:10H-226[+] **Loss ratio.** (a) Benefits under long-  
6 term care insurance policies shall be deemed reasonable in  
7 relation to premiums; provided that the expected loss ratio is  
8 at least sixty per cent, calculated in a manner that provides  
9 for adequate reserving of the long-term care insurance risk. In  
10 evaluating the expected loss ratio due consideration shall be  
11 given to all relevant factors, including:

- 12 (1) Statistical credibility of incurred claims experience  
13 and earned premiums;
- 14 (2) The period for which rates are computed to provide  
15 coverage;
- 16 (3) Experienced and projected trends;
- 17 (4) Concentration of experience within early policy  
18 duration;
- 19 (5) Expected claim fluctuation;
- 20 (6) Experience refunds, adjustments, or dividends;
- 21 (7) Renewability features;
- 22 (8) All appropriate expense factors;

- 1       (9) Interest;
- 2       (10) Experimental nature of the coverage;
- 3       (11) Policy reserves;
- 4       (12) Mix of business by risk classification, if applicable;
- 5             and
- 6       (13) Product features such as long elimination periods,
- 7             high deductibles, and high maximum limits.
- 8       (b) For purposes of this section, the commissioner shall
- 9 consult with a qualified long-term care actuary.
- 10       (c) Subsection (a) shall not apply to life insurance
- 11 policies that accelerate benefits for long-term care. A life
- 12 insurance policy that funds long-term care benefits entirely by
- 13 accelerating the death benefit is considered to provide
- 14 reasonable benefits in relation to premiums paid, if the policy
- 15 complies with all of the following provisions:
- 16       (1) The interest credited internally to determine cash
- 17             value accumulations, including long-term care, if any,
- 18             are guaranteed not to be less than the minimum
- 19             guaranteed interest rate for cash value accumulations
- 20             without long-term care set forth in the policy;

- 1           (2) The portion of the policy that provides life insurance  
2           benefits meets the nonforfeiture requirements for life  
3           insurance;
- 4           (3) The policy meets the disclosure requirements of  
5           section 431:10H-114 as applicable;
- 6           (4) Any policy illustration that meets the applicable  
7           requirements for policy illustration;
- 8           (5) An actuarial memorandum is filed with the insurance  
9           division that includes:
- 10           (A) A description of the basis on which the long-term  
11           care rates were determined;
- 12           (B) A description of the basis for the reserves;
- 13           (C) A summary of the type of policy, benefits,  
14           renewability, general marketing method, and  
15           limits on ages of issuance;
- 16           (D) A description and a table of each actuarial  
17           assumption used. For expenses, an insurer shall  
18           include per cent of premium dollars per policy  
19           and dollars per unit of benefits, if any;
- 20           (E) A description and a table of the anticipated  
21           policy reserves and additional reserves to be  
22           held in each future year for active lives;

1 (F) The estimated average annual premium per policy  
2 and the average issue age;

3 (G) A statement as to whether underwriting is  
4 performed at the time of application. The  
5 statement shall indicate whether underwriting is  
6 used, and if used, the statement shall include a  
7 description of the type or types of underwriting  
8 used such as medical underwriting or functional  
9 assessment underwriting. Concerning a group  
10 policy, the statement shall indicate whether the  
11 enrollee or any dependent will be underwritten  
12 and when underwriting occurs; and

13 (H) A description of the effect of the long-term care  
14 policy provision on the required premiums,  
15 nonforfeiture values, and reserves on the  
16 underlying life insurance policy, both for active  
17 lives and those in long-term care claim status.

18 (d) This section shall apply to all long-term care  
19 insurance policies or certificates except those covered under  
20 sections 431:10H-EEE and 431:10H-GGG."

21 SECTION 19. Section 431:10H-229, Hawaii Revised Statutes,  
22 is amended to read as follows:

1           "**§431:10H-229 Standards for marketing.** (a) Every  
2 insurer, health care service plan, or other entity marketing  
3 long-term care insurance coverage in this State, directly or  
4 through producers, shall:

5           (1) Establish marketing procedures to assure that any  
6 comparison of policies by its producers will be fair  
7 and accurate;

8           (2) Establish marketing procedures to assure excessive  
9 insurance is not sold or issued;

10          (3) Display prominently by type, stamp, or other  
11 appropriate means, on the first page of the outline of  
12 coverage and policy the following:

13           "Notice to buyer: This policy may not cover all of  
14 the costs associated with long-term care incurred by  
15 the buyer during the period of coverage. The buyer is  
16 advised to review carefully all policy limitations.";

17          (4) Inquire and otherwise make every reasonable effort to  
18 identify whether a prospective applicant or enrollee  
19 for long-term care insurance currently has long-term  
20 care insurance and the types and amounts of any such  
21 insurance[+], except that in the case of qualified  
22 long-term care insurance contracts, an inquiry into

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- 1           whether a prospective applicant or enrollee for long-  
2           term care insurance has accident and sickness  
3           insurance is not required;
- 4           (5) Every insurer or entity marketing long-term care  
5           insurance shall establish auditable procedures for  
6           verifying compliance with subsection (a);
- 7           (6) If the state in which the policy or certificate is to  
8           be delivered or issued for delivery has a senior  
9           insurance counseling program approved by the  
10          commissioner, the insurer, at solicitation, shall  
11          provide written notice to the prospective policyholder  
12          or certificate holder of a state senior insurance  
13          counseling program including the name, address, and  
14          telephone number of the program; [~~and~~]
- 15          (7) For long-term care health insurance policies and  
16          certificates, use the terms "noncancellable" or "level  
17          premium" only when the policy or certificate conforms  
18          to section 431:10H-202[~~-~~];
- 19          (8) Provide copies of the disclosure forms required in  
20          section 431:10H-DDD(c) to the applicant; and
- 21          (9) Provide an explanation of contingent benefit upon  
22          lapse provided for in section 431:10H-233(f).

1           (b) In addition to the acts or practices prohibited in  
2 article 13 of this chapter, all of the following acts and  
3 practices are prohibited:

4           (1) Twisting. Knowingly making any misleading  
5 representation or incomplete or fraudulent comparison  
6 of any insurance policies or insurers for the purpose  
7 of inducing, or tending to induce, any person to  
8 lapse, forfeit, surrender, terminate, retain, pledge,  
9 assign, borrow on, or convert any insurance policy or  
10 to take out a policy of insurance with another  
11 insurer.

12           (2) High pressure tactics. Employing any method of  
13 marketing having the effect of or tending to induce  
14 the purchase of insurance through force, fright,  
15 threat, whether explicit or implied, or undue pressure  
16 to purchase or recommend purchase of insurance.

17           (3) Cold lead advertising. Making use directly or  
18 indirectly of any method of marketing which fails to  
19 disclose in a conspicuous manner that a purpose of the  
20 method of marketing is solicitation of insurance and  
21 that contact will be made by an insurance producer or  
22 insurance company.

1        (4) Misrepresentation. Falsifying a material fact in  
2        selling or offering to sell a long-term care insurance  
3        policy."

4        SECTION 20. Section 431:10H-230, Hawaii Revised Statutes,  
5 is amended by amending subsection (f) to read as follows:

6        "(f) The association shall also:

- 7        (1) At the time of the association's decision to endorse,  
8        engage the services of a person with expertise in  
9        long-term care insurance not affiliated with the  
10        insurer to conduct an examination of the policies,  
11        including benefits, features, and rates, and update  
12        the examination thereafter in the event of material  
13        change;
- 14        (2) Actively monitor the marketing efforts of the insurer  
15        and its producers; and
- 16        (3) Review and approve all marketing materials or other  
17        insurance communications used to promote sales or sent  
18        to members regarding the policies or certificates.

19        This subsection shall not apply to qualified long-term care  
20        insurance contracts."

21        SECTION 21. Section 431:10H-231, Hawaii Revised Statutes,  
22 is amended by amending subsection (c) to read as follows:

1           "(c) To determine whether the applicant meets the  
2 standards developed by the issuer, the producer and issuer shall  
3 develop procedures that take the following into consideration:

4           (1) The ability to pay for the proposed coverage and other  
5           pertinent financial information related to the  
6           purchase of the coverage;

7           (2) The applicant's goals or needs with respect to long-  
8           term care and the advantages and disadvantages of  
9           insurance to meet these goals or needs; and

10          (3) The values, benefits, and costs of the applicant's  
11          existing insurance, if any, when compared to the  
12          values, benefits, and costs of the recommended  
13          purchase or replacement.

14 The issuer, and where a producer is involved, the producer shall  
15 make reasonable efforts to obtain the information set out above.

16 The efforts shall include presentation to the applicant, at or  
17 prior to application, the "Long-Term Care Insurance Personal

18 Worksheet". The personal worksheet used by the issuer shall

19 contain, at a minimum, information in the format contained in

20 Appendix B of the [~~July 1998~~] April 2002 NAIC Long-Term Care

21 Insurance Model Regulation, in not less than twelve-point type.

22 The issuer may request the applicant to provide additional

1 information to comply with its suitability standards. A copy of  
2 the issuer's personal worksheet shall be filed with the  
3 commissioner."

4 SECTION 22. Section 431:10H-231, Hawaii Revised Statutes,  
5 is amended by amending subsection (e) to read as follows:

6 "(e) The sale or dissemination outside the company or  
7 agency by the issuer or producer of information obtained through  
8 the personal worksheet in Appendix B of the [~~July 1998~~] April  
9 2002 NAIC Long-Term Care Insurance Model Regulation is  
10 prohibited."

11 SECTION 23. Section 431:10H-231, Hawaii Revised Statutes,  
12 is amended by amending subsections (g) and (h) to read as  
13 follows:

14 "(g) At the same time as the personal worksheet is  
15 provided to the applicant, the disclosure form entitled "Things  
16 You Should Know Before You Buy Long-Term Care Insurance" shall  
17 be provided. The form shall be in the format contained in  
18 Appendix C to the [~~July 1998~~] December 2006 NAIC Long-Term Care  
19 Insurance Model Regulation, in not less than twelve-point type.

20 (h) If the issuer determines that the applicant does not  
21 meet its financial suitability standards, or if the applicant  
22 has declined to provide the information, the issuer may reject

1 the application. In the alternative, the issuer shall send the  
2 applicant a letter similar to the [~~July 1998~~] April 2002 NAIC  
3 Long-Term Care Insurance Model Regulation, Appendix D. However,  
4 if the applicant has declined to provide financial information,  
5 the issuer may use some other method to verify the applicant's  
6 intent. Either the applicant's returned letter or a record of  
7 the alternate method of verification shall be made part of the  
8 applicant's file."

9 SECTION 24. Section 431:10H-233, Hawaii Revised Statutes,  
10 is amended to read as follows:

11 "[~~§~~]**431:10H-233**[~~]~~ **Nonforfeiture benefit requirement.**

12 (a) This section does not apply to life insurance policies  
13 containing accelerated long-term care benefits.

14 (b) To comply with the requirement to offer a  
15 nonforfeiture benefit pursuant to section 431:10H-116, the  
16 following shall be met:

17 (1) A policy or certificate offered with nonforfeiture  
18 benefits shall have coverage elements, eligibility,  
19 benefit triggers, and benefit length that are the same  
20 as coverage to be issued without nonforfeiture  
21 benefits. The nonforfeiture benefit included in the

1 offer shall be the benefit described in subsection  
2 (h); and

3 (2) The offer shall be in writing if the nonforfeiture  
4 benefit is not otherwise described in the outline of  
5 coverage or other materials given to the prospective  
6 policyholder.

7 (c) If the offer required to be made under section  
8 431:10H-116 is rejected, the insurer shall provide the  
9 contingent benefit upon lapse described in this section.

10 (d) After rejection of the offer required under section  
11 431:10H-116, for individual and group policies without  
12 nonforfeiture benefits issued after June 30, 2000, the insurer  
13 shall provide a contingent benefit upon lapse.

14 (e) If a group policyholder elects to make the  
15 nonforfeiture benefit an option to the certificate holder, a  
16 certificate shall provide either the nonforfeiture benefit or  
17 the contingent benefit upon lapse.

18 (f) The contingent benefit on lapse shall be triggered  
19 every time an insurer increases the premium rates to a level  
20 which results in a cumulative increase of the annual premium  
21 equal to or exceeding the percentage of the insured's initial  
22 annual premium set forth in the table below based on the

1 insured's issue age, and the policy or certificate lapses within  
 2 one hundred twenty days of the due date of the premium so  
 3 increased. Unless otherwise required, policyholders and  
 4 certificate holders shall be notified at least thirty days prior  
 5 to the due date of the premium reflecting the rate increase.

6 Triggers for a Substantial Premium Increase

7		Per Cent Increase Over
8	<u>Issue Age</u>	<u>Initial Premium</u>
9	29 and under	200%
10	30-34	190%
11	35-39	170%
12	40-44	150%
13	45-49	130%
14	50-54	110%
15	55-59	90%
16	60	70%
17	61	66%
18	62	62%
19	63	58%
20	64	54%
21	65	50%
22	66	48%

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1	67	46%
2	68	44%
3	69	42%
4	70	40%
5	71	38%
6	72	36%
7	73	34%
8	74	32%
9	75	30%
10	76	28%
11	77	26%
12	78	24%
13	79	22%
14	80	20%
15	81	19%
16	82	18%
17	83	17%
18	84	16%
19	85	15%
20	86	14%
21	87	13%
22	88	12%



- 1           (1) For purposes of this subsection, attained age rating  
2           is defined as a schedule of premiums starting from the  
3           issue date which increases age at least one per cent  
4           per year prior to age fifty, and at least three per  
5           cent per year beyond age fifty;
- 6           (2) For purposes of this subsection, the nonforfeiture  
7           benefit shall be of a shortened benefit period  
8           providing paid-up long-term care insurance coverage  
9           after lapse. The same benefits (amounts and frequency  
10          in effect at the time of lapse but not increased  
11          thereafter) shall be payable for a qualifying claim,  
12          but the lifetime maximum dollars or days of benefits  
13          shall be determined as provided in paragraph (3);
- 14          (3) The standard nonforfeiture credit shall be equal to  
15          one hundred per cent of the sum of all premiums paid,  
16          including the premiums paid prior to any changes in  
17          benefits. The insurer may offer additional shortened  
18          benefit period options, as long as the benefits for  
19          each duration equal or exceed the standard forfeiture  
20          credit for that duration. However, the minimum  
21          nonforfeiture credit shall not be less than thirty  
22          times the daily nursing home benefit at the time of

1 lapse. In either event, the calculation of the  
2 nonforfeiture credit is subject to the limitation of  
3 subsection (i);

4 (4) The nonforfeiture benefit and contingent benefit upon  
5 lapse shall begin not later than the end of the third  
6 year following the policy or certificate issue date.  
7 Notwithstanding the preceding sentence, except for a  
8 policy or certificate with a contingent benefit upon  
9 lapse or a policy or certificate with attained age  
10 rating, the nonforfeiture benefit shall begin the  
11 earlier of:

12 (A) The end of the tenth year following the policy or  
13 certificate issue date; or

14 (B) The end of the second year following the date the  
15 policy or certificate is no longer subject to  
16 attained age rating; and

17 (5) Nonforfeiture credits may be used for all care and  
18 services qualifying for benefits under the terms of  
19 the policy or certificate, up to the limits specified  
20 in the policy or certificate.

21 (i) All benefits paid by the insurer while the policy or  
22 certificate is in premium paying status and in paid up status

1 shall not exceed the maximum benefits which would be payable if  
2 the policy or certificate had remained in premium paying status.

3 (j) There shall be no difference in the minimum  
4 nonforfeiture benefits as required under this section for group  
5 and individual policies.

6 (k) The requirements set forth in this section shall  
7 become effective July 1, 2000, and shall apply as follows:

8 (1) This section shall apply to any long-term care policy  
9 issued in this State after June 30, 2000; and

10 (2) For certificates issued after June 30, 2000, under a  
11 group long-term care insurance policy as defined in  
12 paragraph (1) under the definition of "group long-term  
13 care insurance" in section 431:10H-104, which policy  
14 was in force on July 1, 2000, this section shall not  
15 apply.

16 (1) Premiums charged for a policy or certificate  
17 containing nonforfeiture benefits or contingent benefit on lapse  
18 shall be subject to the loss ratio requirements of section  
19 431:10H-226 or section 431:10H-GGG, whichever is applicable,  
20 treating the policy as a whole.

21 (m) To determine whether contingent nonforfeiture upon  
22 lapse provisions are triggered under subsection (f), a replacing

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1 insurer that purchases or assumes a block or blocks of long-term  
2 care insurance policies from another insurer shall calculate the  
3 percentage increase based on the initial annual premium paid by  
4 the insured when the policy was first purchased from the  
5 original insurer.

6 (n) A nonforfeiture benefit for qualified long-term care  
7 insurance contracts that are level premium contracts shall be  
8 offered that meets the following requirements:

9 (1) The nonforfeiture provision shall be appropriately  
10 captioned;

11 (2) The nonforfeiture provision shall provide a benefit  
12 available in the event of a default in the payment of  
13 any premiums and shall state that the amount of the  
14 benefit may be adjusted subsequent to being initially  
15 granted only as necessary to reflect changes in  
16 claims, persistency, and interest as reflected in  
17 changes in rates for premium paying contracts approved  
18 by the commissioner for the same contract form; and

19 (3) The nonforfeiture provision shall provide at least one  
20 of the following:

21 (A) Reduced paid-up insurance;

22 (B) Extended term insurance;

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- 1            (C) Shortened benefit period; or
- 2            (D) Other similar offerings approved by the
- 3            commissioner."

4            SECTION 25. Section 431:10H-235, Hawaii Revised Statutes,  
5 is amended to read as follows:

6            "[+]§431:10H-235[+] **Standard format outline of coverage;**  
7 **group and individual policies.** This section implements,  
8 interprets, and makes specific, the provisions of section  
9 431:10H-112 in prescribing a standard format and the content of  
10 an outline of coverage, as follows:

- 11            (1) The outline of coverage shall be a freestanding
- 12            document, using no smaller than ten-point type;
- 13            (2) The outline of coverage shall contain no material of
- 14            an advertising nature;
- 15            (3) Text that is capitalized or underscored in the
- 16            standard format outline of coverage may be emphasized
- 17            by other means that provide prominence equivalent to
- 18            the capitalization or underscoring;
- 19            (4) Use of the text and sequence of text of the standard
- 20            format outline of coverage is mandatory, unless
- 21            otherwise specifically indicated; and



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1 territories, and commonwealths that are confidential in  
2 other jurisdictions. The commissioner [~~shall be~~  
3 ~~authorized to~~] may share information, including  
4 otherwise confidential information, with the National  
5 Association of Insurance Commissioners, the federal  
6 government, insurance regulatory agencies of foreign  
7 countries, or insurance departments of other states,  
8 territories, and commonwealths so long as the statutes  
9 or regulations of the other jurisdictions permit them  
10 to maintain the same level of confidentiality as  
11 required under Hawaii law."

12 SECTION 27. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 28. This Act shall take effect on July 1, 2007.

15  
16 INTRODUCED BY: Calvin K. Aoy  
17 BY REQUEST  
JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL RELATING TO INSURANCE.

PURPOSE: To update and conform current statutes to recommendations of the National Association of Insurance Commissioners (NAIC) with respect to: (1) the authority required to implement rules to carry out the directives of the federal Military Personnel Financial Services Protection Act; (2) long-term care insurance; and (3) the sharing of information with the insurance regulatory agencies of foreign countries.

MEANS: Add a new section to article 2, chapter 431, Hawaii Revised Statutes (HRS); add nine new sections to part I of article 10H, chapter 431, HRS, and amend sections 431:2-209(e), 431:10H-104, 431:10H-111, 431:10H-112(b), 431:10H-114(a), 431:10H-201, 431:10H-202, 431:10H-203, 431:10H-211, 431:10H-216, 431:10H-218(f); 431:10H-221(c) and (d), 431:10H-222, 431:10H-226, 431:10H-229, 431:10H-230(f), 431:10H-231(c), (e), (g), and (h), 431:10H-233, and 431:10H-235, HRS.

JUSTIFICATION: The Department of Commerce and Consumer Affairs is continuing its efforts to modernize Hawaii's insurance laws, ease insurers' filing requirements, and bring Hawaii's insurance laws into conformity with the federal law and national standards.

Thus, Part I of the bill provides the Insurance Commissioner with the requisite authority to adopt rules to implement upcoming NAIC model standards

that carry out the objectives of the federal Military Personnel Financial Services Protection Act, Public Law No. 109-290, which protect members of the United States armed forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

Part II of the bill updates and conforms current long-term care statutes to the changes and revisions in the most currently adopted NAIC Model Laws, Regulations, and Guidelines, thus promoting the availability of long-term care insurance policies, protecting applicants of long-term care insurance from unfair or deceptive sales or enrollment practices, updating standards for long-term care insurance, and facilitating flexibility and innovation in the development of long-term care insurance coverage.

Finally, Part III of the bill incorporates the NAIC recommendation that all states allow for the sharing of information regarding domestic companies with the regulatory officials of foreign countries.

More specifically:

1. Part I of this bill authorizes the Insurance Commissioner to develop and adopt rules to implement model standards that are being developed by the NAIC to implement the directives of the Military Personnel Financial Services Protection Act, which was recently signed into law in 2006. In preparing for implementation of the upcoming NAIC model standards, the legal staff of the Insurance Division, with the assistance of the Department of the Attorney

General, determined that existing state law may not be specific enough to authorize the adoption of the necessary rules. Part I of this bill corrects the deficiency by adding a new section to article 2, chapter 431, HRS, specifically authorizing the Insurance Commissioner to make rules regarding the sale of insurance products to members of the United States armed forces. At minimum, these rules will: (A) limit sales authority to persons licensed by the Insurance Division; (B) allow the establishment of standards for insurance products designed for members of the United States armed forces; and (C) determine the extent to which life insurance products marketed to members of the armed forces comply with otherwise applicable provisions of state law. Passage of Part I of the bill during the 2007 Regular Session is necessary to authorize the Insurance Commissioner to meet the September 29, 2007, implementation deadline set by the federal Act.

2. Part II of this bill incorporates into Hawaii law several new consumer protection provisions that have been developed by the NAIC for its long-term care model regulation. These provisions were developed to prevent the problem of consumers buying long-term care insurance in their 60s (when it is affordable), only to find in their 70s and 80s (the time period when they need the coverage) that they cannot keep up with premiums because rate increases have made the coverage too expensive. Thus, these provisions focus on

stabilizing premium rates, ensuring proper product pricing that will keep premiums level, and ensuring that consumers receive necessary documents and disclosures in a timely manner.

This part of the measure adds nine new sections to article 10H of chapter 431, HRS, which, among other things: requires an insurer to respond in writing if a claim for benefits is denied; requires an insurer to deliver a contract or certificate to a policyholder thirty days after the date of approval; allows for the electronic enrollment for group policies; requires insurers to disclose certain rating practices to consumers; updates insurer filing requirements with the Insurance Division; requires that persons selling long-term care insurance be properly licensed as producers; requires insurers to provide at least thirty days notice to consumers of pending premium increases; defines "chronically ill individual", "licensed health care practitioner", "maintenance or personal care services", "qualified long-term care insurance contract", "federally tax-qualified long-term care insurance contract", "exceptional increase", "incidental", and "qualified long-term care services"; and establishes penalties for insurers and producers that violate long-term care regulations.

This part also amends current statutes by, among other things: defining "claim", "denied",

"policy", and "report"; amending the term "long-term care insurance"; requiring that refunds be made within thirty days of a policy's return or denial; requiring that a policy outline include a statement as to whether the policy is intended to be a federally tax-qualified long-term care insurance contract; clarifying how "specialized care" and "assisted living care" should be defined; requiring a qualified long-term care insurance contract to be guaranteed to be renewable; allowing for the exclusion of certain payments under the long-term care policy if the expenses are already covered under another insurance policy or are reimbursable; clarifying what expenses are reimbursable for qualified long-term care insurance contracts; prohibiting claim denial because services are provided in a state other than the state of policy issue and specifying the conditions applicable thereto; requiring the insurer to disclose to policyholders that, when applicable, premium rates may change; clarifying that qualified long-term care insurance contracts do not have to comply with the disclosure requirements which apply to life insurance policies that provide for accelerated benefits; exempting long-term care insurance policies from complying with loss ratio requirements if they already comply with initial filing requirements and premium rate schedule increases; requiring that insurers report annually by June 30 of each year the number of claims denied for each class of

business, expressed by a percentage of claims, for qualified long-term care insurance contracts; clarifying that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required; requiring that copies of the disclosure forms and explanations of contingent benefits be provided to applicants; prohibiting the misrepresentation by a licensee of a policy's material facts in the selling or the offering to sell a long-term care insurance policy; requiring qualified long-term care insurance contracts that are level premium contracts offering nonforfeiture benefits follow specific guidelines; and making other technical changes; and

3. Part III of the bill incorporates the recommendation of the NAIC Financial Regulation Standards and Accreditation Program that all states allow for the sharing of information regarding domestic companies with the regulatory officials of foreign countries. This will promote the protection of the public by enabling the exchange of information, including confidential information, which is needed for effective and efficient regulation of the insurance industry.

This part accomplishes the foregoing by amending section 431:2-209, HRS, to add the regulatory agencies of foreign countries to the list of entities

with which the Insurance Commissioner may share information, including confidential information, regarding domestic companies. The bill allows this sharing of confidential information only if the recipients of the information are required, under the laws of their respective jurisdictions, to maintain the information's confidentiality.

Impact on the public: Part I of the bill should have a positive impact on the members of the United States armed forces and their families as it will facilitate the implementation of the objectives of the federal Military Personnel Financial Services Protection Act. Part II should have a positive impact on the public by promoting the availability of long-term care insurance policies, protecting applicants for long-term care insurance from unfair and deceptive sales and enrollment practices, updating standards for long-term care insurance, and facilitating flexibility and innovation in the development of long-term care coverage. Part III should have a positive impact on the public by promoting information exchange between different jurisdictions worldwide, while maintaining the confidentiality of the information.

Impact on the department and other agencies: The Department of Commerce and Consumer Affairs will be able to better protect and serve the members of the United States armed forces and their families, as well as the public in general.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2007.