

JAN 25 2012

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:16-105, Hawaii Revised Statutes, is
2 amended as follows:

3 (1) By adding three new definitions to be appropriately
4 inserted and to read as follows:

5 "Insured" means any named insured, any additional insured,
6 any vendor, any lessor, or any other party identified as an
7 insured under the policy.

8 "Receiver" includes liquidator, rehabilitator, conservator,
9 or ancillary receiver, as applicable.

10 "Self-insurer" means a person that covers its liability
11 through a qualified individual or group self-insurance program
12 or any other formal program created for the specific purpose of
13 covering liabilities typically covered by insurance."

14 (2) By amending the definitions of "covered claim" and
15 "net direct written premiums" to read as follows:

16 "Covered claim":

17 (1) Means an unpaid claim, including one for unearned
18 premiums, submitted by a claimant, that arises out of

1 and is within the coverage and is subject to the
2 applicable limits of an insurance policy to which this
3 part applies issued by an insurer, if the insurer
4 becomes an insolvent insurer after July 1, 2000, and:

5 (A) The claimant or insured is a resident of this
6 State at the time of the insured event; provided
7 that for entities other than an individual, the
8 residence of a claimant, insured, or policyholder
9 is the state in which its principal place of
10 business is located at the time of the insured
11 event; or

12 (B) The claim is a first party claim for damage to
13 property with a permanent location in this State;
14 and

15 (2) Shall not include:

16 (A) Any amount awarded as punitive or exemplary
17 damages;

18 (B) Any amount sought as a return of premium under
19 any retrospective rating plan;

20 (C) Any amount due any reinsurer, insurer, insurance
21 pool, or underwriting association, as subrogation

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1 recoveries, reinsurance recoveries, contribution,
2 indemnification, or otherwise;

3 (D) Any first party claims by an insured whose net
4 worth exceeds \$25,000,000 on December 31 of the
5 year prior to the year in which the insurer
6 becomes an insolvent insurer; provided that an
7 insured's net worth on that date shall be deemed
8 to include the aggregate net worth of the insured
9 and all of its subsidiaries as calculated on a
10 consolidated basis; [~~or~~]

11 (E) Any first party claims by an insured who is an
12 affiliate of the insolvent insurer[~~or~~];

13 (F) Any fee or other amount relating to goods or
14 services sought by or on behalf of any attorney
15 or other provider of goods or services retained
16 by the insolvent insurer or an insured prior to
17 the date it was determined to be insolvent;

18 (G) Any fee or other amount sought by or on behalf of
19 any attorney or other provider of goods or
20 services retained by any insured or claimant in
21 connection with the assertion or prosecution of

1 any claim, covered or otherwise, against the
2 association;
3 (H) Any claims for interest; or
4 (I) Any claim filed with the association or a
5 liquidator for protection afforded under the
6 insured's policy for incurred-but-not-reported
7 losses.

8 "Net direct written premiums" means direct gross premiums
9 written in this State on insurance policies to which this part
10 applies, including policy and membership fees, less ~~[return]~~ the
11 following amounts:

12 (1) Return premiums ~~[thereon]~~;
13 (2) Premiums on policies not taken; and ~~[dividends]~~
14 (3) Dividends paid or credited to policyholders on such
15 direct business.

16 Net direct written premiums ~~[de]~~ shall not include premiums on
17 contracts between insurers or reinsurers."

18 SECTION 2. Section 431:16-108, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§431:16-108 Powers and duties of the association.** (a)
21 The association shall:

1 (1) Be obligated to the extent of the covered claims
2 existing prior to the order of liquidation and arising
3 within thirty days after the order of liquidation, or
4 before the policy expiration date if less than thirty
5 days after the order of liquidation, or before the
6 insured replaces the policy or causes its
7 cancellation, if the insured does so within thirty
8 days of the order of liquidation. The obligation
9 shall be satisfied by paying to the claimant an amount
10 as follows:

- 11 (A) The full amount of a covered claim for benefits
12 under a workers' compensation insurance coverage;
13 (B) An amount not exceeding \$10,000 per policy for a
14 covered claim for the return of unearned premium;
15 or
16 (C) An amount not exceeding \$300,000 per claim for
17 all other covered claims.

18 In no event shall the association be obligated to a
19 policyholder or claimant in an amount in excess of the
20 stated policy limit of the insolvent insurer under the
21 policy from which the claim arises. Notwithstanding
22 any other provisions of this part, a covered claim

1 shall not include a claim filed with the association
2 after the final date set by the court for the filing
3 of claims against the liquidator or receiver of an
4 insolvent insurer. Any obligation of the association
5 to defend an insured shall cease upon the
6 association's payment or tender of an amount equal to
7 the lesser of the association's covered claim
8 obligation limit or the applicable policy limit;

9 (2) Be deemed the insurer, but only to the extent of its
10 obligation on covered claims and to that extent shall
11 have all rights, duties, and obligations of the
12 insolvent insurer as if the insurer had not become
13 insolvent, including but not limited to the right to
14 pursue and retain salvage and subrogation recoverable
15 on covered claim obligations to the extent paid by the
16 association;

17 (3) Assess insurers amounts necessary to pay the
18 obligations of the association under paragraph (1)
19 subsequent to an insolvency, the expenses of handling
20 covered claims subsequent to an insolvency, and the
21 cost of examinations under section 431:16-113, and
22 other expenses authorized by this part. The

1 assessments of each member insurer shall be in the
2 proportion that the net direct written premiums of the
3 member insurer for the preceding calendar year bears
4 to the net direct written premiums of all member
5 insurers for the preceding calendar year. Each member
6 insurer shall be notified of the assessment not later
7 than thirty days before it is due. No member insurer
8 may be assessed in any year an amount greater than two
9 per cent of that member insurer's net direct written
10 premiums for the preceding calendar year. If the
11 maximum assessment, together with the other assets of
12 the association, does not provide in any one year an
13 amount sufficient to make all necessary payments, the
14 funds available shall be prorated and the unpaid
15 portion shall be paid as soon thereafter as funds
16 become available. The association shall pay claims in
17 any order that it may deem reasonable, including the
18 payment of claims as they are received from the
19 claimants or in groups or categories of claims. The
20 association may exempt or defer, in whole or in part,
21 the assessment of any member insurer, if the
22 assessment would cause the member insurer's financial

1 statement to reflect amounts of capital or surplus
2 less than the minimum amounts required for a
3 certificate of authority by any jurisdiction in which
4 the member insurer is authorized to transact
5 insurance. However, during the period of deferment,
6 no dividends shall be paid to shareholders or
7 policyholders. Deferred assessments shall be paid
8 when the payment will not reduce capital or surplus
9 below required minimums. Payments shall be refunded
10 to those companies receiving larger assessments by
11 virtue of the deferment, or at the election of the
12 companies, credited against future assessments. Each
13 member insurer may set off against any assessment
14 payments authorized by the administrator of the
15 association to be made on covered claims and expenses
16 incurred in the payment of the claims by the member
17 insurer;

- 18 (4) Investigate claims brought against the association and
19 adjust, compromise, settle, and pay covered claims to
20 the extent of the association's obligation and deny
21 all other claims and may review settlements, releases,
22 and judgments to which the insolvent insurer or its

1 insureds were parties to determine the extent to which
2 the settlements, releases, and judgments may be
3 properly contested. The association may appoint or
4 substitute and direct legal counsel retained under
5 liability insurance policies for the defense of
6 covered claims;

7 (5) Notify the persons as the commissioner directs under
8 section 431:16-110(b)(1);

9 (6) Handle claims through its employees or through one or
10 more insurers or other persons designated as servicing
11 facilities. Designation of a servicing facility is
12 subject to the approval of the commissioner, but the
13 designation may be declined by a member insurer;

14 (7) Reimburse each servicing facility for obligations of
15 the association paid by the facility and for expenses
16 incurred by the facility while handling claims on
17 behalf of the association and pay the other expenses
18 of the association authorized by this part; and

19 (8) Have the authority, notwithstanding sections 431:10C-
20 110 and 431:10C-111, to cancel all policies issued by
21 an insolvent insurer. Covered claims under these
22 policies shall be paid by the association in an amount

1 not to exceed the stated policy limit of the insolvent
2 insurer under the policy from which the claim arises,
3 or as provided under paragraph (1)(A) to (C),
4 whichever is less.

5 (b) The association may:

6 (1) Employ or retain the persons as are necessary to
7 handle claims and perform other duties of the
8 association;

9 (2) Borrow funds necessary to effect the purposes of this
10 part in accord with the plan of operation;

11 (3) Sue or be sued;

12 (4) Negotiate and become a party to the contracts as are
13 necessary to carry out the purpose of this part; and

14 (5) Perform all other acts as are necessary or proper to
15 effectuate the purpose of this part.

16 (c) Except for actions by the receiver, all actions
17 relating to or arising out of this part against the association
18 shall be brought in the courts in this State. The courts shall
19 have exclusive jurisdiction over all actions relating to or
20 arising out of this part against the association.

21 The exclusive venue in any action by or against the
22 association shall be the circuit court of the first judicial

1 circuit of this State. The association may, at its option,
2 waive this venue as to specific actions."

3 SECTION 3. Section 431:16-112, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Any person having a claim against an insurer whether
6 or not the insurer is a member insurer under any provision in an
7 insurance policy other than a policy of an insolvent insurer
8 which is also a covered claim, shall be required to exhaust
9 first the person's rights under the policy. Any amount payable
10 on a covered claim under this part shall be reduced by the
11 amount of any recovery under the insurance policy. If there are
12 any other policies issued by an insolvent insurer applicable to
13 the covered claim, then all such policies must first be
14 exhausted before any claim can be deemed a covered claim subject
15 to being covered by the association.

16 (1) A claim under a policy providing liability coverage to
17 a person who may be jointly and severally liable as a
18 joint tortfeasor with a person covered under the
19 policy of the insolvent insurer that gives rise to the
20 covered claim shall be considered to be a claim
21 arising from the same facts, injury, or loss that gave
22 rise to the covered claim against the association.

(2) A claim under an insurance policy other than a life insurance policy shall include, but is not limited to:

(A) A claim against a health maintenance organization, a hospital plan corporation, a professional health service corporation, or disability insurance policy; and

(B) Any amount payable by or on behalf of a self-insurer.

(3) The person insured by the insolvent insurer's policy may not be pursued by a third-party claimant for any amount paid to the third party by which the association's obligation is reduced by the application of this section."

SECTION 4. Section 431:16-203, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-203 Coverage and limitations. (a) This part shall provide coverage[7] for the policies and contracts specified in subsection (b) to:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries,

1 assignees, or payees of the persons covered under
2 paragraph (2); [and]

3 (2) Persons who are owners of or certificate holders under
4 such policies or contracts, other than structured
5 settlement annuities, and who:

6 (A) Are residents; or

7 (B) Are not residents, but only under all of the
8 following conditions:

9 (i) The ~~[insurers which]~~ insurer that issued
10 ~~[such]~~ the policies or contracts ~~[are]~~ is
11 domiciled in this State;

12 (ii) ~~[Such insurers never held a license or~~
13 ~~certificate of authority in the states in~~
14 ~~which such persons reside;~~

15 ~~(iii) Such states have associations similar to the~~
16 ~~association created by this part; and~~

17 ~~(iv) Such persons are not eligible for coverage~~
18 ~~by such associations.]~~ The states in which
19 the persons reside have associations similar
20 to the association created by this part; and

21 (iii) The persons are not eligible for coverage by
22 an association in any other state because

1 the insurer was not licensed in the state at
2 the time specified in the state's guaranty
3 association law;

4 (3) For structured settlement annuities specified in
5 subsection (b), paragraphs (1) and (2) of this
6 subsection shall not apply, and this part shall,
7 except as provided in paragraphs (4) and (5) of this
8 subsection, provide coverage to a person who is a
9 payee under a structured settlement annuity, or
10 beneficiary of a payee if the payee is deceased, if
11 the payee:

12 (A) Is a resident, regardless of where the contract
13 owner resides; or

14 (B) Is not a resident; provided that:

15 (i) The contract owner of the structured
16 settlement annuity is a resident and neither
17 the payee, beneficiary, nor contract owner
18 is eligible for coverage by the association
19 in the state in which the payee or contract
20 owner resides; or

21 (ii) The contract owner of the structured
22 settlement annuity is not a resident, but

1 the insurer that issued the structured
2 settlement annuity is domiciled in this
3 State and the state in which the contract
4 owner resides has an association similar to
5 the association created by this part, and
6 neither the payee, beneficiary, nor the
7 contract owner is eligible for coverage by
8 the association of the state in which the
9 payee or contract owner resides;

- 10 (4) This part shall not provide coverage to a person who
11 is a payee or beneficiary of a contract owner resident
12 of this State, if the payee or beneficiary is afforded
13 any coverage by the association of another state; and
14 (5) This part is intended to provide coverage to a person
15 who is a resident of this State and, in special
16 circumstances, to a nonresident. To avoid duplicate
17 coverage, if a person who would otherwise receive
18 coverage under this part is provided coverage under
19 the laws of any other state, the person shall not be
20 provided coverage under this part. In determining the
21 application of the provisions of this paragraph in
22 situations where a person could be covered by the

1 association of more than one state, whether as an
2 owner, payee, beneficiary, or assignee, this part
3 shall be construed in conjunction with other state
4 laws to result in coverage by only one association.

5 (b) (1) This part shall provide coverage to the persons
6 specified in subsection (a) for direct, nongroup life,
7 accident and health or sickness, or annuity[~~7~~
8 ~~supplemental~~] policies or contracts, [~~and~~] for
9 certificates under direct group life, accident and
10 health or sickness, or annuity policies and contracts,
11 and for supplemental contracts to any of these, in
12 each case issued by member insurers except as limited
13 by this part[+]. Annuity contracts and certificates
14 under group annuity contracts include allocated
15 funding agreements, structured settlement annuities,
16 and any immediate or deferred annuity contracts.

17 (2) This part shall not provide coverage for:

18 (A) Any portion of a policy or contract not
19 guaranteed by the insurer, or under which the
20 risk is borne by the policy or contract [~~holder,~~]
21 owner;

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1 (B) Any policy or contract of reinsurance, unless
2 assumption certificates have been issued[+]
3 pursuant to the reinsurance policy or contract;

4 (C) Any portion of a policy or contract to the extent
5 that the rate of interest on which it is based:

6 (i) Averaged over the period of four years prior
7 to the date on which the association becomes
8 obligated with respect to such policy or
9 contract, exceeds a rate of interest
10 determined by subtracting two percentage
11 points from Moody's Corporate Bond Yield
12 Average averaged for that same four-year
13 period or for such lesser period if the
14 policy or contract was issued less than four
15 years before the association became
16 obligated; and

17 (ii) On or after the date on which the
18 association becomes obligated with respect
19 to such policy or contract, exceeds the rate
20 of interest determined by subtracting three
21 percentage points from Moody's Corporate

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Bond Yield Average as most recently

available;

(D) Any portion of a policy or contract issued to a
plan or program of an employer, association, or
~~[similar entity]~~ other person to provide life,
accident and health or sickness, or annuity
benefits to its employees ~~[or]~~, members, or other
persons to the extent that such plan or program
is self-funded or uninsured, including but not
limited to benefits payable by an employer,
association, or ~~[similar entity]~~ other person
under:

(i) A Multiple Employer Welfare Arrangement as
defined in section 514 of the Employee
Retirement Income Security Act of 1974, as
amended;

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) Any portion of a policy or contract to the extent
that it provides dividends or experience rating
credits~~[,]~~ or voting rights, or provides that any

1 fees or allowances be paid to any person,
2 including the policy or contract holder, in
3 connection with the service to or administration
4 of such policy or contract;

5 (F) Any policy or contract issued in this State by a
6 member insurer at a time when it was not licensed
7 or did not have a certificate of authority to
8 issue such policy or contract in this State;
9 [and]

10 (G) ~~[Any annuity contract or group annuity~~
11 ~~certificate which is not issued to or owned by an~~
12 ~~individual, except to the extent of any annuity~~
13 ~~benefits guaranteed to an individual by an~~
14 ~~insurer under such contract or certificate.]~~ A
15 portion of a policy or contract to the extent
16 that the assessments required by this part with
17 respect to the policy or contract are preempted
18 or otherwise not permitted by federal or state
19 law;

20 (H) An obligation that does not arise under the
21 express written terms of the policy or contract

issued by the insurer to the contract owner or
policy owner, including without limitation:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders, or
other documents that were issued by the
insurer without meeting applicable policy
form filing or approval requirements;

(iii) Misrepresentations of or regarding policy
benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or
incidental damages;

(I) A contractual agreement that establishes the
member insurer's obligations to provide a book
value accounting guaranty for defined
contribution benefit plan participants by
reference to a portfolio of assets that is owned
by the benefit plan or its trustee, which in each
case is not an affiliate of the member insurer;

(J) An unallocated annuity contract;

(K) A portion of a policy or contract to the extent
it provides for interest or other changes in

1 value to be determined by the use of an index or
2 other external reference stated in the policy or
3 contract, but which have not been credited to the
4 policy or contract, or as to which the policy or
5 contract owner's rights are subject to
6 forfeiture, as of the date the member insurer
7 becomes an impaired or insolvent insurer under
8 this part. If a policy's or contract's interest
9 or changes in value are credited less frequently
10 than annually, then for purposes of determining
11 the values that have been credited and are not
12 subject to forfeiture under section 431:16-
13 403(b)(2)(L), the interest or change in value
14 determined by using the procedures defined in the
15 policy or contract shall be credited as if the
16 contractual date of crediting interest or
17 changing values were the date of impairment or
18 insolvency and shall not be subject to
19 forfeiture; or

20 (L) A policy or contract providing any hospital,
21 medical, prescription drug, or other health care
22 benefits pursuant to Part C or Part D of

1 subchapter XVIII, chapter 7, Title 42 of the
2 United States Code, commonly known as Medicare
3 Part C and D, or any regulations issued pursuant
4 thereto.

5 (c) The benefits for which the association may become
6 liable shall in no event exceed the lesser of:

7 (1) The contractual obligations for which the insurer is
8 liable or would have been liable if it were not an
9 impaired or insolvent insurer, or

10 (2) With respect to any one life, regardless of the number
11 of policies or contracts:

12 (A) \$300,000 in life insurance death benefits, but
13 not more than \$100,000 in net cash surrender and
14 net cash withdrawal values for life insurance;

15 ~~[(B) \$100,000 in accident and health or sickness~~
16 ~~insurance benefits, including any net cash~~
17 ~~surrender and net cash withdrawal values;~~

18 ~~(C) \$100,000 in the present value of annuity~~
19 ~~benefits, including net cash surrender and net~~
20 ~~cash withdrawal values;~~

21 ~~provided that in no event shall the association be~~
22 ~~liable to expend more than \$300,000 in the aggregate~~

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1 ~~with respect to any one life under subparagraphs (A),~~
2 ~~(B), and (C).]~~

3 (B) In accident and health or sickness insurance
4 benefits:

- 5 (i) \$100,000 for coverages not defined as
6 disability insurance or basic hospital,
7 medical, and surgical insurance, or major
8 medical insurance or long-term care
9 insurance, including any net cash surrender
10 and net cash withdrawal values;
11 (ii) \$300,000 for disability insurance and
12 \$300,000 for long-term care insurance; or
13 (iii) \$500,000 for basic hospital, medical, and
14 surgical insurance or major medical
15 insurance;

16 (C) \$250,000 in the present value of annuity
17 benefits, including net cash surrender and net
18 cash withdrawal values; or

19 (D) With respect to each payee of a structured
20 settlement annuity, or beneficiary or
21 beneficiaries of the payee if deceased, \$250,000
22 in present value annuity benefits, in the

1 aggregate, including net cash surrender and net
2 cash withdrawal values, if any.

3 (d) In no event shall the association be obligated to
4 cover more than:

5 (1) An aggregate of \$300,000 in benefits with respect to
6 any one life under subsection (c) except with respect
7 to benefits for basic hospital, medical, and surgical
8 insurance and major medical insurance under subsection
9 (c) (2) (B), in which case the aggregate liability of
10 the association shall not exceed \$500,000 with respect
11 to any one individual; or

12 (2) \$5,000,000 in benefits with respect to one owner or
13 multiple non-group policies of life insurance,
14 regardless of the number of policies and contracts
15 held by the owner, regardless of whether the policy
16 owner is an individual, firm, corporation, or other
17 person, and regardless of whether the persons insured
18 are officers, managers, employees, or other persons.

19 (e) The limitations set forth in this section are
20 limitations on the benefits for which the association is
21 obligated before taking into account either its subrogation and
22 assignment rights or the extent to which those benefits could be

1 provided out of the assets of the impaired or insolvent insurer
2 attributable to covered policies. The costs of the
3 association's obligations under this part may be met by the use
4 of assets attributable to covered policies or reimbursed to the
5 association pursuant to its subrogation and assignment rights.

6 (f) In performing its obligations to provide coverage
7 under section 431:16-208, the association shall not be required
8 to guarantee, assume, reinsure, or perform, or cause to be
9 guaranteed, assumed, reinsured, or performed, the contractual
10 obligations of the insolvent or impaired insurer under a covered
11 policy or contract that do not materially affect the economic
12 values or economic benefits of the covered policy or contract."

13 SECTION 5. Section 431:16-205, Hawaii Revised Statutes, is
14 amended as follows:

15 (1) By adding ten new definitions to be appropriately
16 inserted and to read as follows:

17 "Authorized assessment" or the term "authorized" when used
18 in the context of assessments means a resolution by the board of
19 directors that has been passed whereby an assessment will be
20 called immediately or in the future from member insurers for a
21 specified amount.

1 "Called assessment" or the term "called" when used in the
2 context of assessments means a notice that has been issued by
3 the association to member insurers requiring that an authorized
4 assessment be paid within the time frame set forth within the
5 notice.

6 "Extra-contractual claims" shall include, but not be
7 limited to, claims relating to bad faith in the payment of
8 claims, punitive or exemplary damages, or attorneys' fees and
9 costs.

10 "Owner" of a policy or contract, "policy owner", and
11 "contract owner" mean the person who is identified as the legal
12 owner under the terms of the policy or contract or who is
13 otherwise vested with legal title to the policy or contract
14 through a valid assignment completed in accordance with the
15 terms of the policy or contract and properly recorded as the
16 owner on the books of the insurer. The terms "owner", "contract
17 owner", and "policy owner" do not include persons with a mere
18 beneficial interest in a policy or contract.

19 "Receivership court" means the court in the insolvent or
20 impaired insurer's state having jurisdiction over the
21 conservation, rehabilitation, or liquidation of the insurer.

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1 "Structured settlement annuity" means an annuity purchased
 2 in order to fund periodic payments for a plaintiff or other
 3 claimant in payment for or with respect to personal injury
 4 suffered by the plaintiff or other claimant.

5 "State" means a state, the District of Columbia, Puerto
 6 Rico, or a United States possession, territory, or
 7 protectorate."

8 (2) By amending the definitions of "covered policy",
 9 "impaired insurer", "member insurer", "person", "premiums",
 10 "resident", and "supplemental contract" to read as follows:

11 "Covered policy" means any policy or contract [within the
 12 scope of this part] or portion of a policy or contract for which
 13 coverage is provided under section 431:16-203.

14 "Impaired insurer" means a member insurer that after July
 15 1, 1988, is not an insolvent insurer, and[+]

16 ~~-(1) Is deemed by the commissioner to be potentially unable~~
 17 ~~to fulfill its contractual obligations; or~~

18 ~~-(2) Is]~~ is placed under an order of rehabilitation or
 19 conservation by a court of competent jurisdiction.

20 "Member insurer" means any insurer licensed or who holds a
 21 certificate of authority to transact in this State any kind of
 22 insurance for which coverage is provided under section 431:16-

203, and includes any insurer whose license or certificate of authority in this State may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(1) A nonprofit hospital or medical service organization;

(2) A health maintenance organization;

(3) A fraternal benefit society;

(4) A mandatory state pooling plan;

(5) A mutual assessment company or any entity that operates on an assessment basis;

(6) An insurance exchange; [~~or~~]

(7) An organization that has a certificate or license limited to the issuance of charitable gift annuities;
or

(8) Any entity similar to any of the above.

"Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

"Premiums" means amounts and considerations received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts or consideration received for any policies or contracts or for the

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1 portions of any policies or contracts for which coverage is not
2 provided under section 431:16-203(b) except that assessable
3 premium shall not be reduced on accounts under section 431:16-
4 203(b)(2)(C) relating to interest limitations and section
5 431:16-203(c)(2) relating to limitations with respect to any one
6 life and any one contract holder. Premiums shall also not
7 include:

8 (1) Premiums on an unallocated annuity contract; or

9 (2) With respect to multiple non-group policies of life
10 insurance owned by one owner, whether the policy owner
11 is an individual, firm, corporation, or other person,
12 and whether the persons insured are officers,
13 managers, employees, or other persons, premiums in
14 excess of \$5,000,000, regardless of the number of
15 policies or contracts held by the owner.

16 "Resident" means ~~[any]~~ a person to whom a contractual
17 obligation is owed and who resides in this State ~~[at the time a~~
18 ~~member insurer is determined to be an impaired or insolvent~~
19 ~~insurer and to whom a contractual obligation is owed.]~~ on the
20 date of entry of a court order that determines a member insurer
21 to be an impaired insurer or an insolvent insurer. A person may
22 be a resident of only one state, which in the case of a person

1 other than a natural person shall be its principal place of
2 business. Citizens of the United States that are either:

3 (1) Residents of foreign countries, or

4 (2) Residents of United States possessions, territories,
5 or protectorates that do not have an association
6 similar to the association created by this part,

7 shall be deemed residents of the state of domicile of the
8 insurer that issued the policies or contracts.

9 "Supplemental contract" means [~~any~~] a written agreement
10 entered into for the distribution of [~~policy or contract~~]
11 proceeds[-] under a life, health, or annuity policy or life,
12 health, or annuity contract."

13 SECTION 6. Section 431:16-206, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) The association shall come under the immediate
16 supervision of the commissioner and shall be subject to the
17 applicable provisions of the insurance laws of this State.
18 Meetings or records of the association may be opened to the
19 public upon majority vote of the board of directors of the
20 association."

21 SECTION 7. Section 431:16-208, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "§431:16-208 Powers and duties of the association. (a)

2 If a member insurer is an impaired [domestic] insurer, the
3 association may, in its discretion, and subject to any
4 conditions imposed by the association that do not impair the
5 contractual obligations of the impaired insurer, that are
6 approved by the commissioner, and that are, except in cases of
7 court ordered conservation or rehabilitation, also approved by
8 the impaired insurer:

9 (1) Guarantee, assume, or reinsure, or cause to be
10 guaranteed, assumed, or reinsured, any or all of the
11 policies or contracts of the impaired insurer;

12 (2) Provide such moneys, pledges, notes, guarantees, or
13 other means as are proper to effectuate subsection
14 (a)(1) and assure payment of the contractual
15 obligations of the impaired insurer pending action
16 under subsection (a)(1); or

17 (3) Loan money to the impaired insurer.

18 ~~[(b)(1) If a member insurer is an impaired insurer, whether~~
19 ~~domestic, foreign, or alien, and the insurer is not~~
20 ~~paying claims timely, then subject to the~~
21 ~~preconditions specified in paragraph (2), the~~
22 ~~association shall, in its discretion, either:~~

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- 1 ~~(A) Take any of the actions specified in subsection~~
- 2 ~~(a), subject to the conditions therein, or~~
- 3 ~~(B) Provide substitute benefits in lieu of the~~
- 4 ~~contractual obligations of the impaired insurer~~
- 5 ~~solely for: accident and health or sickness~~
- 6 ~~claims, periodic annuity benefit payments, death~~
- 7 ~~benefits, supplemental benefits, and cash~~
- 8 ~~withdrawals for policy or contract owners who~~
- 9 ~~petition therefor under claims of emergency or~~
- 10 ~~hardship in accordance with standards proposed by~~
- 11 ~~the association and approved by the commissioner.~~
- 12 ~~(2) The association shall be subject to the requirements~~
- 13 ~~of paragraph (1) only if:~~
- 14 ~~(A) The laws of the impaired insurer's state of~~
- 15 ~~domicile provide that until all payments of or on~~
- 16 ~~account of the impaired insurer's contractual~~
- 17 ~~obligations by all guaranty associations, along~~
- 18 ~~with all expenses thereof and interest on all~~
- 19 ~~such payments and expenses, shall have been~~
- 20 ~~repaid to the guaranty associations or a plan of~~
- 21 ~~repayment by the impaired insurer shall have been~~
- 22 ~~approved by the guaranty associations;~~

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~~(i) The delinquency proceeding shall not be dismissed;~~

~~(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and~~

~~(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and~~

~~(B) (i) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this State, or;~~

~~(ii) If the impaired insurer is a foreign or alien insurer;~~

~~(I) It has been prohibited from soliciting or accepting new business in this State;~~

~~(II) Its certificate of authority has been suspended or revoked in this State, and~~

~~(III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of~~

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~~domicile by the commissioner of the
state.]~~

~~[(e)]~~ (b) If a member insurer is an insolvent insurer, the
association shall, in its discretion, either:

(1) (A) Guarantee, assume, or reinsure, or cause to be
guaranteed, assumed, or reinsured, the policies
or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of
the insolvent insurer; and

(C) Provide such moneys, pledges, guarantees, or
other means as are reasonably necessary to
discharge such duties; or

(2) ~~[With respect only to life and accident and health or
sickness insurance policies, provide]~~ Provide benefits
and coverages in accordance with ~~[subsection (d)].~~

~~(d) When proceeding under subsection (b) (1) (B) or (c) (2),
the association shall, with respect to only life and accident
and health or sickness insurance policies:~~

~~(1)~~ Assure the following provisions:

(A) With respect to life and accident and health or
sickness insurance policies and annuities, assure
payment of benefits for premiums identical to the

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1 premiums and benefits (except for terms of
2 conversion and renewability) that would have been
3 payable under the policies of the insolvent
4 insurer, for claims incurred:

5 ~~[(A)]~~ (i) With respect to group policies~~[-]~~ and
6 contracts, not later than the earlier of the
7 next renewal date under such policies or
8 contracts or forty-five days, but in no
9 event less than thirty days, after the date
10 on which the association becomes obligated
11 with respect to such policies;

12 ~~[(B)]~~ (ii) With respect to ~~[individual]~~ non-group
13 policies, contracts, and annuities, not
14 later than the earlier of the next renewal
15 date (if any) under such policies or
16 contracts or one year, but in no event less
17 than thirty days, from the date on which the
18 association becomes obligated with respect
19 to such policies~~[-]~~ or contracts.

20 ~~[(2)]~~ (B) Make diligent efforts to provide all known
21 insureds or ~~[group-policyholders]~~ annuitants (for
22 non-group policies and contracts), or group

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1 policy owners with respect to group policies and
2 contracts, thirty [~~days~~] days notice of the
3 termination of the benefits provided; [~~and~~]

4 [~~(3)~~] (C) With respect to [~~individual~~] non-group life and
5 accident and health or sickness insurance
6 policies[~~7~~] and annuities covered by the
7 association, make available to each known
8 insured[~~7~~] or annuitant, or owner if other than
9 the insured[~~7~~] or annuitant; and with respect to
10 an individual formerly insured or formerly an
11 annuitant under a group policy who is not
12 eligible for replacement group coverage, make
13 available substitute coverage on an individual
14 basis in accordance with paragraph [~~(4)~~7] (D), if
15 the insureds or annuitants had a right under law
16 or the terminated policy to convert coverage to
17 individual coverage or to continue an individual
18 policy or annuity in force until a specified age
19 or for a specified time, during which the insurer
20 had no right unilaterally to make changes in any
21 provision of the policy or annuity or had a right
22 only to make changes in premium by class.

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1 ~~[(4) (A)]~~ (D) (i) In providing the substitute coverage
2 required under paragraph ~~[(3) (C)]~~, the
3 association may offer either to reissue the
4 terminated coverage or to issue an
5 alternative policy.

6 ~~[(B)]~~ (ii) Alternative or reissued policies shall be
7 offered without requiring evidence of
8 insurability, and shall not provide for any
9 waiting period or exclusion that would not
10 have applied under the terminated policy.

11 ~~[(C)]~~ (iii) The association may reinsure any
12 alternative or reissued policy.

13 ~~[(5) (A)]~~ (E) (i) Alternative policies adopted by the
14 association shall be subject to the approval
15 of the domiciliary commissioner~~[-]~~ or the
16 receivership court. The association may
17 adopt alternative policies of various types
18 for future issuance without regard to any
19 particular impairment or insolvency.

20 ~~[(B)]~~ (ii) Alternative policies shall contain at
21 least the minimum statutory provisions
22 required in this State and provide benefits

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1 that shall not be unreasonable in relation
2 to the premium charged. The association
3 shall set the premium in accordance with a
4 table of rates which it shall adopt. The
5 premium shall reflect the amount of
6 insurance to be provided and the age and
7 class of risk of each insured, but shall not
8 reflect any changes in the health of the
9 insured after the original policy was last
10 underwritten.

11 ~~[(C)]~~ (iii) Any alternative policy issued by the
12 association shall provide coverage of a type
13 similar to that of the policy issued by the
14 impaired or insolvent insurer, as determined
15 by the association.

16 ~~[(F)]~~ (F) If the association elects to reissue terminated
17 coverage at a premium rate different from that
18 charged under the terminated policy, the premium
19 shall be set by the association in accordance
20 with the amount of insurance provided and the age
21 and class of risk, subject to approval of the

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1 domiciliary insurance commissioner or by a court
2 of competent jurisdiction.

3 ~~[(+7)]~~ (G) The association's obligations with respect to
4 coverage under any policy of the impaired or
5 insolvent insurer or under any reissued or
6 alternative policy shall cease on the date such
7 coverage or policy is replaced by another similar
8 policy by the policyholder, the insured, or the
9 association.

10 ~~[(+e)]~~ (H) When proceeding under ~~[subsections (b)(1)(B) or~~
11 ~~(+e)]~~ subsection (b)(2) with respect to any policy
12 or contract carrying guaranteed minimum interest
13 rates, the association shall assure the payment
14 or crediting of a rate of interest consistent
15 with section 431:16-203(b)(2)(C).

16 ~~[(+f)]~~ (c) Nonpayment of premiums within thirty-one days
17 after the date required under the terms of any guaranteed,
18 assumed, alternative, or reissued policy or contract or
19 substitute coverage shall terminate the association's
20 obligations under such policy or coverage under this part with
21 respect to such policy or coverage, except with respect to any

1 claims incurred or any net cash surrender value which may be due
2 in accordance with the provisions of this part.

3 ~~[(g)]~~ (d) Premiums due for coverage after entry of an
4 order of liquidation of an insolvent insurer shall belong to and
5 be payable at the direction of the association, and the
6 association shall be liable for unearned premiums due to policy
7 or contract owners arising after the entry of such order.

8 ~~[(h)]~~ (e) The protection provided by this part shall not
9 apply where any guaranty protection is provided to residents of
10 this State by the laws of the domiciliary state or jurisdiction
11 of the impaired or insolvent insurer other than this State.

12 ~~[(i)]~~ (f) In carrying out its duties under ~~[subsections~~
13 ~~(b) and (c)]~~ subsection (b), the association may, subject to
14 approval by ~~[the]~~ a court~~[+]~~ of competent jurisdiction:

- 15 (1) Impose permanent policy or contract liens in
16 connection with any guarantee, assumption, or
17 reinsurance agreement, if the association finds that
18 the amounts which can be assessed under this part are
19 less than the amounts needed to assure full and prompt
20 performance of the association's duties under this
21 part, or that the economic or financial conditions as
22 they affect member insurers are sufficiently adverse

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1 to render the imposition of such permanent policy or
2 contract liens, to be in the public interest; and
3 (2) Impose temporary moratoriums or liens on payments of
4 cash values and policy loans, or any other right to
5 withdraw funds held in conjunction with policies or
6 contracts, in addition to any contractual provisions
7 for deferral of cash or policy loan value. In
8 addition, the association may defer the payment of
9 cash values, policy loans, or other rights by the
10 association for the period of any moratorium or
11 moratorium charge imposed by the receivership court on
12 the payment of cash values or policy loans, or on any
13 other right to withdraw funds held in conjunction with
14 policies or contracts, out of the assets of the
15 impaired or insolvent insurer, except that the
16 association may not defer the payment for claims
17 covered by the association to be paid in accordance
18 with a hardship procedure established by the
19 liquidator or rehabilitator and approved by the
20 receivership court.

21 [(+j+)] (g) If the association fails to act within a
22 reasonable period of time as provided in ~~[subsections (b)(1)(B),~~

1 ~~(e) and (d),~~ subsection (b), the commissioner shall have the
2 powers and duties of the association under this part with
3 respect to ~~[impaired or]~~ the insolvent [insurers.] insurer.

4 ~~[(k)]~~ (h) The association may render assistance and advice
5 to the commissioner, upon the commissioner's request, concerning
6 rehabilitation, payment of claims, continuance of coverage, or
7 the performance of other contractual obligations of any impaired
8 or insolvent insurer.

9 ~~[(l)]~~ (i) The association shall have standing to appear or
10 intervene before any court or agency in this State with
11 jurisdiction over an impaired or insolvent insurer concerning
12 which the association is or may become obligated under this
13 part~~[-]~~ or with jurisdiction over any person or property against
14 which the association may have rights through subrogation or
15 otherwise. Such standing shall extend to all matters germane to
16 the powers and duties of the association, including, but not
17 limited to, proposals for reinsuring, modifying, or guaranteeing
18 the policies or contracts of the impaired or insolvent insurer
19 and the determination of the policies or contracts and
20 contractual obligations. The association shall also have the
21 right to appear or intervene before ~~[a]~~ any court or agency in
22 another state with jurisdiction over an impaired or insolvent

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1 insurer for which the association is or may become obligated or
2 with jurisdiction over ~~[a third party]~~ any person or property
3 against whom the association may have rights through subrogation
4 ~~[of the insurer's policyholders.]~~ or otherwise.

5 ~~[(m)(1)]~~ (j)(1) Any person receiving benefits under this part
6 shall be deemed to have assigned the rights under, and
7 any causes of action ~~[relating to,]~~ against any person
8 for losses arising under, resulting from, or otherwise
9 relating to, the covered policy or contract to the
10 association to the extent of the benefits received
11 because of this part, whether the benefits are
12 payments of or on account of contractual obligations,
13 continuation of coverage, or provision of substitute
14 or alternative coverages. The association may require
15 an assignment to it of such rights and causes of
16 action by any payee, policy or contract owner,
17 beneficiary, insured, or annuitant as a condition
18 precedent to the receipt of any right or benefits
19 conferred by this part upon such person.

20 (2) The subrogation rights of the association under this
21 section shall have the same priority against the
22 assets of the impaired or insolvent insurer as that

1 possessed by the person entitled to receive benefits
2 under this part.

3 (3) In addition to ~~[items]~~ paragraphs (1) and (2), the
4 association shall have all common law rights of
5 subrogation and any other equitable or legal remedy
6 which would have been available to the impaired or
7 insolvent insurer ~~[or holder of a policy or contract~~
8 ~~with respect to such policy or contracts.]~~, owner,
9 beneficiary, or payee of a policy or contract with
10 respect to the policy or contracts, including without
11 limitation, in the case of a structured settlement
12 annuity, any rights of the owner, beneficiary, or
13 payee of the annuity, to the extent of benefits
14 received pursuant to this part, against a person
15 originally or by succession responsible for the losses
16 arising from the personal injury relating to the
17 annuity or payment therefore, excepting any such
18 person responsible solely by reason of serving as an
19 assignee of a qualified assignment under Internal
20 Revenue Code Section 130.

21 (4) If the preceding provisions of this subsection are
22 invalid or ineffective with respect to any person or

1 claim for any reason, the amount payable by the
2 association with respect to the related covered
3 obligations shall be reduced by the amount realized by
4 any other person with respect to the person or claim
5 that is attributable to the policies, or portion
6 thereof, covered by the association.

7 (5) If the association has provided benefits with respect
8 to a covered obligation and a person recovers amounts
9 to which the association has rights as described in
10 the preceding paragraphs of this subsection, the
11 person shall pay to the association the portion of the
12 recovery attributable to the policies, or portion
13 thereof, covered by the association.

14 ~~[(n)]~~ (k) The association may:

- 15 (1) Enter into such contracts as are necessary or proper
16 to carry out the provisions and purposes of this part;
17 (2) Sue or be sued, including taking any legal actions
18 necessary or proper to recover any unpaid assessments
19 under section 431:16-209 and to settle claims or
20 potential claims against it;
21 (3) Borrow money to effect the purposes of this part; any
22 notes or other evidence of indebtedness of the

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1 association not in default shall be legal investments
2 for domestic insurers and may be carried as admitted
3 assets;

4 (4) Employ or retain such persons as are necessary to
5 handle the financial transactions of the association,
6 and to perform such other functions as become
7 necessary or proper under this part;

8 (5) Take such legal action as may be necessary to avoid
9 payment of improper claims[~~+~~and] or recover payment
10 of improper claims;

11 (6) Exercise, for the purposes of this part and to the
12 extent approved by the commissioner, the powers of a
13 domestic life or accident and health or sickness
14 insurer, but in no case may the association issue
15 insurance policies or annuity contracts other than
16 those issued to perform its obligations under this
17 part[~~-~~];

18 (7) Organize itself as a corporation or in other legal
19 form permitted by the laws of the State;

20 (8) Request information from a person seeking coverage
21 from the association in order to aid the association
22 in determining its obligations under this part with

1 respect to the person, and the person shall promptly
2 comply with the request; and

3 (9) Take other necessary or appropriate action to
4 discharge its duties and obligations under this part
5 or to exercise its powers under this part.

6 ~~[(e)]~~ (1) The association may join an organization of one
7 or more other state associations of similar purposes, to further
8 the purposes and administer the powers and duties of the
9 association.

10 (m) With respect to covered policies for which the
11 association becomes obligated after an entry of an order of
12 liquidation or rehabilitation, the association may elect to
13 succeed to the rights of the insolvent insurer arising after the
14 date of the order of liquidation or rehabilitation under any
15 contract of reinsurance to which the insolvent insurer was a
16 party, to the extent that the contract provides coverage for
17 losses occurring after the date of the order of liquidation or
18 rehabilitation. As a condition to making this election, the
19 association must pay all unpaid premiums due under the contract
20 for coverage relating to periods before and after the date of
21 the order of liquidation or rehabilitation.

1 (n) The board of directors of the association shall have
2 discretion and shall exercise reasonable business judgment to
3 determine the means by which the association is to provide the
4 benefits of this part in an economical and efficient manner.

5 (o) Where the association has arranged or offered to
6 provide the benefits of this part to a covered person under a
7 plan or arrangement that fulfills the association's obligations
8 under this part, the person shall not be entitled to benefits
9 from the association in addition to or other than those provided
10 under the plan or arrangement.

11 (p) Venue in a suit against the association arising under
12 this part shall be in the circuit court of the first circuit.
13 The association shall not be required to give an appeal bond in
14 an appeal that relates to a cause of action arising under this
15 part.

16 (q) In carrying out its duties in connection with
17 guaranteeing, assuming, or reinsuring policies or contracts
18 under subsections (a) or (b), the association may, subject to
19 approval of the receivership court, issue substitute coverage
20 for a policy or contract that provides an interest rate,
21 crediting rate, or similar factor determined by use of an index
22 or other external reference stated in the policy or contract

1 employed in calculating returns or changes in value by issuing
2 an alternative policy or contract in accordance with the
3 following provisions:

4 (1) In lieu of the index or other external reference
5 provided for in the original policy or contract, the
6 alternative policy or contract provides for (i) a
7 fixed interest rate or (ii) payment of dividends with
8 minimum guarantees or (iii) a different method for
9 calculating interest or changes in value;

10 (2) There is no requirement for evidence of insurability,
11 waiting period, or other exclusion that would not have
12 applied under the replaced policy or contract; and

13 (3) The alternative policy or contract is substantially
14 similar to the replaced policy or contract in all
15 other material terms."

16 SECTION 8. Section 431:16-209, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§431:16-209 Assessments.** (a) For the purpose of
19 providing the funds necessary to carry out the powers and duties
20 of the association, the board of directors shall assess the
21 member insurers, separately for each account, at such time and
22 for such amounts as the board finds necessary. Assessments

1 shall be due not less than thirty days after prior written
2 notice to the member insurers and shall accrue interest at
3 eighteen per cent per annum on and after the due date.

4 (b) There shall be two assessments, as follows:

5 (1) Class A assessments shall be [~~made~~] authorized and
6 called for the purpose of meeting administrative and
7 legal costs, and other expenses and examinations
8 conducted under the authority of section 431:16-
9 212(e). Class A assessments may be [~~made~~] authorized
10 and called whether or not related to a particular
11 impaired or insolvent insurer.

12 (2) Class B assessments shall be [~~made~~] authorized and
13 called to the extent necessary to carry out the powers
14 and duties of the association under section 431:16-208
15 with regard to an impaired or an insolvent insurer.

16 (c) (1) The amount of any Class A assessment shall be
17 determined by the board of directors and may be [~~made~~]
18 authorized and called on a pro rata or non-pro rata
19 basis. If pro rata, the board of directors may
20 provide that it be credited against future Class B
21 assessments. A non-pro rata assessment shall not
22 exceed [~~\$150~~] \$300 per member insurer in any one

1 calendar year. The amount of any Class B assessment
2 shall be allocated for assessment purposes among the
3 accounts pursuant to an allocation formula which may
4 be based on the premiums or reserves of the impaired
5 or insolvent insurer or any other standard deemed by
6 the board of directors in its sole discretion as being
7 fair and reasonable under the circumstances.

8 (2) Class B assessments against member insurers for each
9 account shall be in the proportion that the premiums
10 received on business in this State by each assessed
11 member insurer [†]on[†] policies or contracts covered
12 by each account for the three most recent calendar
13 years for which information is available preceding the
14 year in which the insurer became impaired or
15 insolvent, as the case may be, bears to such premiums
16 received on business in this State for such calendar
17 years by all assessed member insurers.

18 (3) Assessments for funds to meet the requirements of the
19 association with respect to an impaired or insolvent
20 insurer shall not be [~~made~~] authorized or called until
21 necessary to implement the purposes of this part.

22 Classification of assessments under subsection (b) and

1 computation of assessments under this subsection shall
2 be made with a reasonable degree of accuracy,
3 recognizing that exact determinations may not always
4 be possible. The association shall notify each member
5 insurer of its anticipated pro rata share of an
6 authorized assessment not yet called within one
7 hundred eighty days after the assessment is
8 authorized.

9 (d) The association may abate or defer, in whole or in
10 part, the assessment of a member insurer if, in the opinion of
11 the board of directors, payment of the assessment would endanger
12 the ability of the member insurer to fulfill its contractual
13 obligations. In the event an assessment against a member
14 insurer is abated, or deferred in whole or in part, the amount
15 by which such assessment is abated or deferred may be assessed
16 against the other member insurers in a manner consistent with
17 the basis for assessments set forth in this section. Once the
18 conditions that caused the deferral have been removed or
19 rectified, the member shall pay all assessments that were
20 deferred pursuant to a repayment plan approved by the
21 association.

22 (e) [The] Subject to the provisions of paragraph (1), the

1 total of all assessments [~~upon~~] authorized by the association
2 with respect to a member insurer for each account shall not in
3 any one calendar year exceed two per cent of such insurer's
4 average premiums received in this State on the policies and
5 contracts covered by the account during the three calendar years
6 preceding the year in which the insurer became an impaired or
7 insolvent insurer.

8 (1) If two or more assessments are authorized in one
9 calendar year with respect to insurers that become
10 impaired or insolvent in different calendar years, the
11 average annual premiums for purposes of the aggregate
12 assessment percentage limitation referenced in this
13 section shall be equal and limited to the higher of
14 the three-year average annual premiums for the
15 applicable account as calculated pursuant to this
16 section.

17 (2) If the maximum assessment, together with the other
18 assets of the association in any account, does not
19 provide in any one year in either account an amount
20 sufficient to carry out the responsibilities of the
21 association, the necessary additional funds shall be
22 assessed as soon thereafter as permitted by this part.

1 The board of directors may provide in the plan of operation
2 a method of allocating funds among claims, whether relating to
3 one or more impaired or insolvent insurers, when the maximum
4 assessment will be insufficient to cover anticipated claims.

5 (f) The board may, by an equitable method as established
6 in the plan of operation, refund to member insurers, in
7 proportion to the contribution of each insurer to that account,
8 the amount by which the assets of the account exceed the amount
9 the board finds is necessary to carry out during the coming year
10 the obligations of the association with regard to that account,
11 including assets accruing from assignment, subrogation, net
12 realized gains, and income from investments. A reasonable
13 amount may be retained in any account to provide funds for the
14 continuing expenses of the association and for future losses[+]
15 and claims.

16 (g) It shall be proper for any member insurer, in
17 determining its premium rates and policy owner dividends as to
18 any kind of insurance within the scope of this part, to consider
19 the amount reasonably necessary to meet its assessment
20 obligations under this part.

21 (h) The association shall issue to each insurer paying an
22 assessment under this part, other than a Class A assessment, a

1 certificate of contribution, in a form prescribed by the
2 commissioner, for the amount of the assessment so paid. All
3 outstanding certificates shall be of equal dignity and priority
4 without reference to amounts or dates of issue. A certificate
5 of contribution may be shown by the insurer in its financial
6 statement as an asset in such form and for such amount, if any,
7 and period of time as the commissioner may approve.

8 (i) A member insurer that wishes to protest all or part of
9 an assessment shall pay when due the full amount of the
10 assessment as set forth in the notice provided by the
11 association. The payment shall be available to meet association
12 obligations during the pendency of the protest or any subsequent
13 appeal. Payment shall be accompanied by a statement in writing
14 that the payment is made under protest and setting forth a brief
15 statement of the grounds for the protest.

16 (1) Within sixty days following the payment of an
17 assessment under protest by a member insurer, the
18 association shall notify the member insurer in writing
19 of its determination with respect to the protest,
20 unless the association notifies the member insurer
21 that additional time is required to resolve the issues
22 raised by the protest.

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1 (2) Within thirty days after a final decision has been
2 made, the association shall notify the protesting
3 member insurer in writing of the final decision.

4 Within sixty days of receipt of notice of the final
5 decision, the protesting member insurer may appeal the
6 final decision to the commissioner.

7 (3) In the alternative to rendering a final decision with
8 respect to a protest based on a question regarding the
9 assessment base, the association may refer protests to
10 the commissioner for a final decision with or without
11 a recommendation from the association.

12 (4) If the protest or appeal on the assessment is upheld,
13 the amount paid in error or excess shall be returned
14 to the member company. Interest on a refund due a
15 protesting member shall be paid at the rate actually
16 earned by the association.

17 (j) The association may request information of member
18 insurers to aid in the exercise of its powers under this section
19 and member insurers shall promptly comply with any request."

20 SECTION 9. Section 431:16-210, Hawaii Revised Statutes, is
21 amended by amending subsections (c) and (d) to read as follows:

22 "(c) The plan of operation shall, in addition to

requirements enumerated elsewhere in this part:

- (1) Establish procedures for handling the assets of the association;
- (2) Establish the amount and method of reimbursing members of the board of directors under section 431:16-207(c);
- (3) Establish regular places and times for meetings including telephone conference calls of the board of directors;
- (4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;
- (6) Establish any additional procedures for assessments under section 431:16-209;
- (7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association[-];
- (8) Establish procedures whereby a director may be removed for cause, including the case in which a director is affiliated with a member insurer that becomes an

1 impaired or insolvent insurer; and

2 (9) Require the board of directors to establish a policy
3 and procedure for addressing conflicts of interests.

4 (d) The plan of operation may provide that any or all
5 powers and duties of the association, except those under
6 ~~[section 431:16-208(n)(3)]~~ sections 431:16-208(k)(3) and
7 ~~[section]~~ 431:16-209, are delegated to a corporation,
8 association, or other organization which performs or will
9 perform functions similar to those of this association, or its
10 equivalent, in two or more states. ~~[Such a]~~ The corporation,
11 association, or organization shall be reimbursed for any
12 payments made on behalf of the association and shall be paid for
13 its performance of any function of the association. A
14 delegation under this subsection shall take effect only with the
15 approval of both the board of directors and the commissioner,
16 and may be made only to a corporation, association, or
17 organization which extends protection not substantially less
18 favorable and effective than that provided by this part."

19 SECTION 10. Section 431:16-212, Hawaii Revised Statutes,
20 is amended to read as follows:

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1 "**§431:16-212 Prevention of insolvencies.** [+] (a) [+] To
2 aid in the detection and prevention of insurer insolvencies or
3 impairments, it shall be the duty of the commissioner:

4 (1) To notify the commissioners of all the other states,
5 territories of the United States, and the District of
6 Columbia when the commissioner takes any of the
7 following actions against a member insurer:

8 (A) Revocation of license;

9 (B) Suspension of license; or

10 (C) Makes any formal order that such company

11 ~~[restricts]~~ restrict its premium writing, obtain
12 additional contributions to surplus, withdraw
13 from the State, reinsure all or any part of its
14 business, or increase capital, surplus, or any
15 other account for the security of policyholders
16 or creditors.

17 ~~[Such]~~ The notice shall be mailed to all commissioners
18 within thirty days following the action taken or the
19 date on which such action occurs;

20 (2) To report to the board of directors when the
21 commissioner has taken any of the actions set forth in
22 paragraph (1) or has received a report from any other

1 commissioner indicating that any such action has been
2 taken in another state. [~~Sueh~~] The report to the
3 board of directors shall contain all significant
4 details of the action taken or the report received
5 from another commissioner;

6 (3) To report to the board of directors when the
7 commissioner has reasonable cause to believe from any
8 examination, whether completed or in process, of any
9 member company that [~~sueh~~] the company may be an
10 impaired or insolvent insurer; and

11 (4) To furnish to the board of directors the National
12 Association of Insurance Commissioners Insurance
13 Regulatory Information System (IRIS) ratios and
14 listings of companies not included in the ratios
15 developed by the National Association of Insurance
16 Commissioners, and the board may use the information
17 contained therein in carrying out its duties and
18 responsibilities under this section. [~~Sueh~~] The
19 report and the information contained therein shall be
20 kept confidential by the board of directors until such
21 time as made public by the commissioner or other
22 lawful authority.

1 (b) The commissioner may seek the advice and
2 recommendations of the board of directors concerning any matter
3 affecting the commissioner's duties and responsibilities
4 regarding the financial condition of member companies and
5 companies seeking admission to transact insurance business in
6 this State.

7 (c) The board of directors may, upon majority vote, make
8 reports and recommendations to the commissioner upon any matter
9 germane to the solvency, liquidation, rehabilitation, or
10 conservation of any member insurer or germane to the solvency of
11 any company seeking to do an insurance business in this State.
12 [~~Such~~] The reports and recommendations shall not be considered
13 public documents.

14 (d) It shall be the duty of the board of directors, upon
15 majority vote, to notify the commissioner of any information
16 indicating any member insurer may be an impaired insurer or
17 insolvent insurer.

18 (e) The board of directors may, upon majority vote,
19 request that the commissioner order an examination of any member
20 insurer which the board in good faith believes may be an
21 impaired or insolvent insurer. Within thirty days of the
22 receipt of such request, the commissioner shall begin [~~such~~] the

1 examination. The examination may be conducted as a National
2 Association of Insurance Commissioners' examination or may be
3 conducted by such persons as the commissioner designates. The
4 cost of [such] the examination shall be paid by the association
5 and the examination report shall be treated as are other
6 examination reports. In no event shall [such] the examination
7 report be released to the board of directors prior to its
8 release to the public, but this shall not excuse the
9 commissioner from complying with subsection (a). The
10 commissioner shall notify the board of directors when the
11 examination is completed. The request for an examination shall
12 be kept on file by the commissioner but it shall not be open to
13 public inspection prior to the release of the examination report
14 to the public.

15 (f) The board of directors may, upon majority vote, make
16 recommendations to the commissioner for the detection and
17 prevention of insurer insolvencies.

18 ~~[(g) The board of directors shall, at the conclusion of~~
19 ~~any insurer insolvency in which the association was obligated to~~
20 ~~pay covered claims, prepare a report to the commissioner~~
21 ~~containing such information as it may have in its possession~~
22 ~~bearing on the history and causes of such insolvency. The board~~

~~shall cooperate with the board of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.] "~~

SECTION 11. Section 431:16-214, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-214 Miscellaneous provisions. (a) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) ~~[All meetings and records of the board of directors shall be open to all member insurers except for those meetings and records pertaining to the solvency, liquidation, rehabilitation, or conservation of any member insurer deemed confidential. A member insurer shall provide written designation of its representative or representatives to the board meetings.]~~

~~(c) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 431:16-208.]~~

1 Records shall be kept of all meetings of the board of directors
2 to discuss the activities of the association in carrying out its
3 powers and duties under section 431:16-208. The records of the
4 association with respect to an impaired or insolvent insurer
5 shall not be disclosed prior to the termination of a
6 liquidation, rehabilitation, or conservation proceeding
7 involving the impaired or insolvent insurer, except:

8 (1) Upon the termination of the impairment or insolvency
9 of the insurer; or

10 (2) Upon the order of a court of competent jurisdiction.

11 Nothing in this subsection [~~(b)~~] shall limit the duty of the
12 association to render a report of its activities under section
13 431:2-304(b).

14 [~~(d)~~] (c) For the purpose of carrying out its obligations
15 under this part, the association shall be deemed to be a
16 creditor of the impaired or insolvent insurer to the extent of
17 assets attributable to covered policies reduced by any amounts
18 to which the association is entitled as subrogee pursuant to
19 section [~~431:16-208(m)~~] 431:16-208(j). Assets of the impaired
20 or insolvent insurer attributable to covered policies shall be
21 used to continue all covered policies and pay all contractual
22 obligations of the impaired or insolvent insurer as required by

1 this part. Assets attributable to covered policies, as used in
2 this subsection, are that proportion of the assets which the
3 reserves that should have been established for such policies
4 bear to the reserves that should have been established for all
5 policies of insurance written by the impaired or insolvent
6 insurer.

7 (d) As a creditor of the impaired or insolvent insurer as
8 established in subsection (c) and consistent with section
9 431:15-324, the association and other similar associations shall
10 be entitled to receive a disbursement of assets out of the
11 marshaled assets, from time to time as the assets become
12 available to reimburse it, as a credit against contractual
13 obligations under this part. If the liquidator has not, within
14 one hundred twenty days of a final determination of insolvency
15 of an insurer by the receivership court, made an application to
16 the court for the approval of a proposal to disburse assets out
17 of marshaled assets to guaranty associations having obligations
18 because of the insolvency, the association shall be entitled to
19 make application to the receivership court for approval of its
20 own proposal to disburse these assets.

21 (e)(1) Prior to the termination of any liquidation,
22 rehabilitation, or conservation proceeding, the court

1 may take into consideration the contributions of the
2 respective parties, including the association, the
3 shareholders, and policy owners of the insolvent
4 insurer, and any other party with a bona fide
5 interest, in making an equitable distribution of the
6 ownership rights of such insolvent insurer. In such a
7 determination consideration shall be given to the
8 welfare of the policyholders of the continuing or
9 successor insurer.

10 (2) No distribution to stockholders, if any, of an
11 impaired or insolvent insurer shall be made until and
12 unless the total amount of valid claims of the
13 association with interest thereon for funds expended
14 in carrying out its powers and duties under section
15 431:16-208 with respect to such insurer have been
16 fully recovered by the association.

17 (f) (1) If an order for liquidation or rehabilitation of an
18 insurer domiciled in this State has been entered, the
19 receiver appointed under such order shall have a right
20 to recover on behalf of the insurer, from any
21 affiliate that controlled it, the amount of
22 distributions, other than stock dividends paid by the

1 insurer on its capital stock, made at any time during
2 the five years preceding the petition for liquidation
3 or rehabilitation subject to the limitations of
4 [†]paragraphs (2) to (4)[†].

5 (2) No such distribution shall be recoverable if the
6 insurer shows that when paid the distribution was
7 lawful and reasonable, and that the insurer did not
8 know and could not reasonably have known that the
9 distribution might adversely affect the ability of the
10 insurer to fulfill its contractual obligations.

11 (3) Any person who was an affiliate that controlled the
12 insurer at the time the distributions were paid shall
13 be liable up to the amount of distributions the person
14 received. Any person who was an affiliate that
15 controlled the insurer at the time the distributions
16 were declared, shall be liable up to the amount of
17 distributions the person would have received if they
18 had been paid immediately. If two or more persons are
19 liable with respect to the same distributions, they
20 shall be jointly and severally liable.

21 (4) The maximum amount recoverable under this
22 [†]subsection[†] shall be the amount needed in excess

1 of all other available assets of the insolvent insurer
2 to pay the contractual obligations of the insolvent
3 insurer.

4 (5) If any person liable under [+]paragraph (3)[+] is
5 insolvent, all its affiliates that controlled it at
6 the time the distribution was paid, shall be jointly
7 and severally liable for any resulting deficiency in
8 the amount recovered from the insolvent affiliate."

9 SECTION 12. Section 431:16-217, Hawaii Revised Statutes,
10 is amended to read as follows:

11 **"§431:16-217 Stay of proceedings; reopening default**
12 **judgments.** All proceedings in which the insolvent insurer is a
13 party in any court in this State shall be stayed [~~sixty~~] one-
14 hundred eighty days from the date an order of liquidation,
15 rehabilitation, or conservation is final to permit proper legal
16 action by the association on any matters germane to its powers
17 or duties. As to judgment under any decision, order, verdict,
18 or finding based on default the association may apply to have
19 such judgment set aside by the same court that made such
20 judgment and shall be permitted to defend against such suit on
21 the merits."

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SECTION 13. Section 431:16-219, Hawaii Revised Statutes,
is repealed.

~~["§431:16-219 Prospective application. This part shall
not apply to any insurer which is insolvent or unable to fulfill
its contractual obligations on July 1, 1988."]~~

SECTION 14. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2012;
provided that sections 4 to 13 of this Act shall not apply to
any proceedings in which a member insurer is placed under an
order of liquidation prior to July 1, 2012.

INTRODUCED BY: 

BY REQUEST

S.B. NO. 2767

Report Title:

Insurance Guaranty Association

Description:

Updates the laws governing guaranty associations in conformity with the National Association of Insurance Commissioners' Property and Casualty Insurance Guaranty Model Act and the Life and Health Insurance Guaranty Association Model Act.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update the Hawaii Insurance Guaranty Association Act and the Hawaii Life and Disability Insurance Guaranty Association Act by adopting the National Association of Insurance Commissioners' (NAIC) Property and Casualty Insurance Guaranty Association Model Act (April 2009) and the NAIC Life and Health Insurance Guaranty Association Model Act (July 2009), respectively.

MEANS: Amend sections 431:16-105, 431:16-108, 431:16-112(a), 431:16-203, 431:16-205, 431:16-206(b), 431:16-208, 431:16-209, 431:16-210(c) and (d), 431:16-212, 431:16-214, and 431:16-217; and repeal section 431:16-219, Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii Insurance Guaranty Association was established to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, and to minimize financial loss to claimants or policyholders due to the insolvency of licensed insurers.

The Hawaii Life and Disability Insurance Guaranty Association was created to protect policyholders against failure in the performance of contractual obligations under life and accident and health or sickness policies and annuity contracts.

This bill updates the guaranty association laws by adopting the NAIC model acts.

Impact on the public: This proposal promotes the public interest by ensuring the adequacy of the insurance guaranty association laws for the protection of Hawaii policyholders and consumers.

Impact on the department and other agencies:
These amendments ensure that the guaranty associations are able to fulfill their statutory purpose.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2012; except that amendments to the Hawaii Life and Disability Insurance Guaranty Association Act shall not apply to a member-insurer ordered into liquidation prior to July 1, 2012.