

**ACT 292**

**H.B. NO. 509**

**A Bill for an Act Relating to Insurance.**

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

SECTION 1. Section 431-538, Hawaii Revised Statutes, is hereby amended to read as follows:

**"§431-538 Policy loan.** (a) In the case of policies issued prior to the operative date of the Standard Nonforfeiture Law (section 431-561), a provision that after the policy has been in force three full years, the insurer at any time, while the policy is in force, will advance on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, computed according to a mortality table, interest rate, and method of valuation permitted by section 431-269, less a sum of not more than two and one-half per cent of the amount insured by the policy and of any dividend additions thereto; and that the insurer will deduct from the loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that the loan may be deferred for not exceeding six months after the application therefor is made. This subsection (a) shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies.

[(b)] (1) In the case of policies issued on or after the operative date of the Standard Nonforfeiture Law (section 431-561), a provision that after the policy has a cash surrender value and while no premium is in default, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest not exceeding eight per cent a year, an amount at the option of party entitled thereto, not to exceed the loan value less any prior indebtedness on the policy. If the policy shall provide for a rate of return in excess of six per cent a year, the insurance commissioner may require of the insurers that the holders of such policies will benefit through higher dividends or lower premiums. The policy shall provide for a loan value at least equal to the cash surrender value of the policy without indebtedness at the end of the then current policy year, less any unpaid balance of the premium for the current policy year, and less interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application therefor is made. This [subsection] paragraph shall not apply to term policies not to term insurance benefits provided by rider or supplemental policy provisions.

(2) Policies issued on or after the effective date of this Act shall provide for maximum policy loan interest rates as follows:

- (A) A provision permitting a maximum interest rate of not more than eight per cent per annum; or
- (B) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.
- (3) Insurers issuing policies with interest rates as provided in subparagraph (a)(2)(B) shall make available policies with interest rates as provided in subparagraph (a)(2)(A).
- (b) The rate of interest charged on a policy loan made under subparagraph (a)(2)(B) shall not exceed the higher of the following:
  - (1) The Moody's Corporate Bond Yield Average-Monthly Average Corporate, as published by Moody's Investors Service, Inc. or any successor thereto, for the calendar month ending two months before the date on which the rate is determined; or
  - (2) The rate used to compute the cash surrender values under the policy during the applicable period plus one per cent per annum;
- In the event that the Moody's Corporate Bond Yield Average-Monthly Average Corporate is no longer published by Moody's Investors Service, Inc., a substantially similar average, approved by rule adopted by the commissioner, shall be substituted.
- (c) If the maximum rate of interest is determined pursuant to subparagraph (a)(2)(B), the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy. The maximum rate for each policy shall be determined at regular intervals at least once every 12 months, but not more frequently than once in any three month period. At the intervals specified in the policy, the rate being charged shall be reduced whenever such reduction as determined under subparagraph (a)(2)(B) would decrease that rate by one-half per cent or more per annum.
- (d) The life insurer shall:
  - (1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
  - (2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in (3) below; and
  - (3) Send to policyholders with loans reasonable advance notice of any increase in the rate.
- (e) No policy shall terminate in a policy year as the sole result of a change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.
- (f) The substance of the pertinent provisions of subsections (a), (b) and (c) shall be set forth in the policies to which they apply.
- (g) For purposes of this section:
  - (1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.
  - (2) The term "policy loan" includes any premium loan made under a policy

to pay one or more premiums that were not paid to the life insurer as they fell due.

(3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(h) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates."

**SECTION 2. Applicability to existing policies.** The provisions of this Act shall not apply to any insurance contract issued before the effective date of this Act unless the policyholder agrees in writing to the applicability of such provisions.

**SECTION 3.** Statutory material to be repealed is bracketed. New material is underscored.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 22, 1982.)