

ACT 348

S.B. NO. 361

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:2-214 and to read as follows:

“§431:2-214 The commissioner’s education and training fund. (a) The commissioner may establish a separate fund designated as the commissioner’s education and training fund.

(b) This fund may be used to compensate or reimburse staff and personnel of the insurance division for education and training. Upon approval by the commissioner, staff and personnel may be compensated or reimbursed for:

- (1) Actual travel expenses in amounts customary for these expenses;
- (2) A reasonable living expense allowance at a rate customary for these expenses;

- (3) Per diem compensation at a rate customary for these compensation; and
- (4) Any fees or charges necessary to attend educational and training conferences, workshops, seminars, and any other event of this nature.

(c) Any person receiving a reimbursement or compensation from the commissioner's education and training fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred on account of any education and training for the insurance division.

(d) Every rate filing shall be accompanied by a fee as designated in sections 431:14-104 and 431:14-205. This fee shall be credited to the commissioner's education and training fund."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:3-205 and to read as follows:

"§431:3-205 Funds required of new insurers. Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on December 31, 1987, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if (A) a reciprocal insurer, or (B) a mutual insurer which does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307, in an amount not less than shown in the applicable Schedule "A";
- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in the State; and
- (3) Secure the approval of the commissioner before making withdrawals from this designated depository.

Schedule "A"

Class of Insurance	Amount Required
Life	\$ 600,000
Disability	450,000
Property	750,000
Marine and Transportation	1,000,000
Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000"

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:3-208 and to read as follows:

"§431:3-208 Funds required of existing and new insurers for transacting additional classes of insurance. (a) An insurer otherwise qualified may be authorized to transact combinations of classes of insurance while having on deposit in a federally insured financial institution within the State, additional paid-up capital stock in the case of a stock insurer, or additional unimpaired surplus in the case of a mutual or reciprocal insurer, subject to subsection (c) as to domestic mutual or reciprocal insurers, and subject to

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section 431:3-203(a)(2). An insurer wanting to transact additional classes of insurance must:

- (1) Maintain at all times, in a federally insured financial institution within the State, capital if a stock insurer, or surplus, if a mutual or reciprocal insurer, equal to the sum required of each individual class of insurance it desires to transact, as listed in Schedule "A" of section 431:3-205;
- (2) Maintain a sum total not to exceed \$2,500,000; and
- (3) Obtain first the approval by the commissioner for any withdrawals from this deposit.

(b) An insurer while possessing in a federally insured financial institution within the State, \$2,500,000 of capital in the case of a stock insurer, or of unimpaired surplus in the case of a reciprocal or mutual insurer, may be authorized to transact all classes of insurance, subject to sections 431:3-204 to 431:3-206.

(c) To qualify for authority to transact a combination of classes of insurance, a domestic mutual or reciprocal insurer shall deposit in a federally insured financial institution within the State, surplus in an amount equal to the paid-up capital stock required of stock insurers for authority to transact a like combination of classes of insurance."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:3-209 and to read as follows:

"§431:3-209 Deposits of alien and foreign insurers; special deposits. (a) To qualify for and hold a certificate of authority, an alien or foreign insurer must deposit and maintain on deposit assets equal in amount to either the amount of paid-up capital stock in the case of a stock insurer, or surplus, in the case of a mutual or reciprocal insurer, required of a domestic insurer to transact a business of insurance in like class or classes of insurance, or the amount of \$500,000, whichever amount is the greater.

(b) The deposit shall be for the security of all policyholders and obligees of the insurer in the United States. It shall not be subject to diminution below the amount currently determined in accordance with subsection (a) so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(c) The deposit shall be maintained with the commissioner. In lieu of the deposit or part thereof, the commissioner shall accept the certificate of the public official having supervision over insurance in another state showing that deposits by the insurer, or like part thereof, maintained by the insurer in that state for the benefit of all of the insurer's policyholders in the United States or all of its policyholders and obligees in the United States, if the total deposit in this State and those evidenced by the certificate or certificates is in an amount not less than the amount required pursuant to subsection (a).

(d) The commissioner may require the foreign or alien insurer to place in a special deposit an amount determined by the commissioner in a federally insured financial institution within the State."

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:4-303 and to read as follows:

"§431:4-303 Mutual property insurer. (a) When applying for a certificate of authority a domestic mutual property insurer must:

- (1) Have applications from at least one hundred persons for insurance covering at least two hundred and fifty nonadjacent properties, for insurance aggregating not less than \$500,000; and
- (2) Have collected from each applicant the proper premium at a rate not less than a rate adopted by a licensed rating organization for a term of at least one year; and
- (3) Have a surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$750,000.

(b) The maximum of any single risk proposed to be assumed by the insurer shall not exceed ten per cent of its surplus. Any reinsurance taking effect simultaneously with the policy shall be deducted in determining the amount at risk for purposes of this provision.

(c) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$1,250,000 over all liabilities."

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:4-304 and to read as follows:

"§431:4-304 Mutual casualty insurer. (a) When applying for a certificate of authority a domestic mutual insurer proposing to transact casualty insurance, including vehicle insurance, must:

- (1) Have applications for the insurance in a reasonable amount from at least two hundred and fifty persons covering not less than five hundred separate risks; and
- (2) Have collected from each applicant the proper premium for a term of not less than one year at a rate filed with and approved by the commissioner; and
- (3) Have a surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$1,500,000.

(b) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$2,250,000 over all liabilities."

SECTION 7. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:4-305 and to read as follows:

"§431:4-305 Mutual vehicle insurer. (a) When applying for a certificate of authority, a domestic mutual insurer formed to transact vehicle insurance must:

- (1) Have applications from at least two hundred persons for insurance covering at least five hundred separate vehicles, for a maximum of retained liability not in excess of \$50,000 for any one accident or other liability; and
- (2) Have collected from each applicant the proper premium for insurance for one year according to its schedule of premium rates approved by the commissioner; and
- (3) Have a surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$1,000,000.

(b) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$1,500,000 over all liabilities."

SECTION 8. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:4-306 and to read as follows:

“§431:4-306 Mutual life insurer. (a) When applying for a certificate of authority, a domestic mutual life insurer must:

- (1) Have at least five hundred applications for life insurance, other than on the term plan for terms of ten years or less, covering at least five hundred separate insurable lives on an individual basis for a maximum insurance of not less than \$5,000,000; and
- (2) Have collected from each applicant the proper annual premium for one year, and have so received from all applicants premiums aggregating at least \$125,000; and
- (3) Have surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$600,000.

(b) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$900,000 over all liabilities.”

SECTION 9. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:4-307 and to read as follows:

“§431:4-307 Mutual disability insurer. (a) When applying for a certificate of authority, a domestic mutual disability insurer must:

- (1) Have at least five hundred applications from at least five hundred persons for individual disability insurance providing not more than \$1,000 of accidental death benefit and not more than \$25 of weekly indemnity for each applicant; and
- (2) Have collected from each applicant the proper premium for one year, and have so received from all applicants premiums aggregating at least \$25,000; and
- (3) Have a surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$450,000.

(b) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$675,000 over all liabilities.”

SECTION 10. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:6-201 and to read as follows:

“§431:6-201 Required investments for capital and reserves. (a) An insurer shall invest and keep invested its funds aggregating in amounts, if a stock insurer, not less than sixty per cent of its minimum required capital, or if a mutual or reciprocal insurer, not less than sixty per cent of its required minimum surplus, in cash or investments eligible in accordance with section 431:6-301 (public obligations), and in mortgage loans on real property, pursuant to section 431:6-306.

(b) In addition to the investments required by subsection (a), an insurer shall invest and keep invested its funds aggregating not less than one hundred per cent of its reserves required by this code in cash or premiums in course of collection, or in investments eligible in accordance with this article.”

SECTION 11. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:6-306 and to read as follows:

"§431:6-306 Mortgage loans and contracts. An insurer may invest any of its funds in:

- (1) (A) Bonds or evidences of debt which are secured by first mortgage or deed of trust on real property, located in the United States, which meets either of the following requirements:
 - (i) Improved, unencumbered real property; or
 - (ii) Unimproved, unencumbered real property, only where the real property is to be improved, and the bond or evidence of debt is secured by a first mortgage or deed of trust on the real property and the improvement to be made thereon;
- (B) Security interests in connection therewith pursuant to section 431:6-310; or
- (C) The seller's equity in an agreement of sale in any property, covering the entire balance due on a bona fide sale of such property, in an amount not to exceed \$100,000 or the amount permissible under section 431:6-105, whichever is greater, in any one agreement of sale, or in any amount in excess of the following percentages of the actual sale price or fair value of the property, whichever is the smaller:
 - (i) If a dwelling primarily designed for single family occupancy and occupied by the purchaser under contract, seventy-five per cent,
 - (ii) In all other cases, sixty-six and two-thirds per cent;
- (2) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 431:6-311;
- (3) Evidences of debt secured by mortgage or trust deed guaranteed or insured by an agency of the United States; or
- (4) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, running for a term of not less than five years beyond the maturity of the loan as made or extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold."

SECTION 12. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:6-309 and to read as follows:

"§431:6-309 Appraisal; insurance; limit. (a) The fair value of property shall be determined by appraisal by a competent appraiser at the time of the making or acquiring of a mortgage loan or investing in a contract for the deed thereon.

(b) Buildings and other improvements located on the mortgaged premises shall be kept insured for the benefit of the mortgagee against loss or damage from fire in an amount not less than the unpaid balance of the obligation, or the insurable value of the property, whichever is the lesser.

(c) An insurer shall not make or acquire a loan or loans upon the security of any one parcel of real property in an aggregate amount in excess of \$250,000 or more than the amount permissible under section 431:6-105, whichever is the greater."

SECTION 13. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:6-311 and to read as follows:

"§431:6-311 Real property owned. (a) An insurer other than a life insurer may own and invest, or have invested in its home office and branch office buildings, any of its funds in an aggregate amount not to exceed twenty per cent of its admitted assets unless approved by the commissioner, or if a mutual or reciprocal insurer, not to exceed twenty per cent of its admitted assets nor an amount as would reduce its surplus, exclusive of such investment, below the minimum required surplus for the class, or combination of classes, of insurance authorized, unless approved by the commissioner. A life insurer may own and invest, or have invested in its home office building and branch office buildings, any of its funds in an aggregate amount not to exceed twenty per cent of its admitted assets, or fifty per cent of the excess of its admitted assets over its liabilities, other than capital stock if a stock life insurer, whichever is the lesser amount. The home office or branch office buildings may be constructed upon leasehold estates. However, if a life insurer has been licensed less than five years, a prior approval from the commissioner shall be required before investment may be made in home office or branch office buildings.

(b) An insurer may invest any of its funds, in an aggregate amount not exceeding thirty per cent of its assets in real property including those realty set forth in subsection (a), for realty acquired for the purpose of leasing the same to any person for a period of not less than twenty years, or in real property already leased for an unexpired period of not less than fifteen years of an original period of not less than twenty years, under the following terms and conditions:

- (1) The lessee, at the lessee's own cost, shall erect, or have already erected, thereon free of liens a building or other improvements costing an amount at least equal to the value of the real estate exclusive of improvements; but if the lease be entered into simultaneously with the purchase of the real estate, the lessor may agree to erect the improvements on the real estate;
- (2) The improvements shall remain on the property during the period of the lease, with provisions when the improvements are put upon the property at the cost of the lessee that at the termination of the lease the ownership of the improvements, free of liens, shall vest in the owner of the real estate;
- (3) The lessee, during the term of the lease, or the unexpired period of the lease if the property is bought subject to the lease, shall pay to the owner of the real estate rent in an amount as will enable the owner to amortize the investment at or before the normal termination of the lease, or at or before the end of fifty years should the lease, or the unexpired period of the lease, be for a longer period than fifty years; and
- (4) During the term of the lease the tenant shall pay all taxes and assessments levied on or against the real estate, including improvements, shall keep and maintain the improvements in good repair, and shall provide and maintain for the benefit of the lessor fire insurance on the improvements in an amount at least equal to the insurable value of the improvements, or at least equal to the amount invested by the lessor in the real estate, whichever is less.

(c) Real property acquired pursuant to subsection (b) shall not be treated as an investment unless and until the required improvements have been constructed and the lease agreement entered into, and the amount to which the real property shall be treated as an investment shall not exceed the amount actually invested reduced each year in the amounts as will suffice to amortize completely the investment at the normal termination of the lease or at the end of fifty years should the term of the lease, or the unexpired period of the lease, be for a longer period than fifty years.

(d) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, or other debts previously owing to the insurer in the course of its business, and may invest or have invested in an aggregate amount not exceeding three per cent of its assets in other real property, and in the repair, alteration, furnishing, or improvement thereof, as follows only:

- (1) Other real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner;
- (2) Real property acquired by gift or devise;
- (3) Real property acquired in exchange for real property owned by it. If necessary in order to consummate an exchange, the insurer may put up cash in an amount not to exceed twenty per cent of the fair value of its real property to be so exchanged, in addition to the property;
- (4) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (a) and subsection (b)(1); or
- (5) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer."

SECTION 14. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:7-206 and to read as follows:

"§431:7-206 Domestic company credit for retaliatory taxes paid other states. If by the laws of any state other than this State, or by the action of any public official of another state, any insurer or company, as defined in section 431:1-202, organized or domiciled in this State, shall be required to pay taxes for the privilege of doing business in the other state, and the amounts are imposed or assessed so that the taxes which are or would be imposed against Hawaii domestic insurance companies are greater than those taxes required of insurers organized or domiciled in the other state, to the extent the amounts are legally due to the other states, an insurer or company organized or domiciled in this State may claim a credit against the tax payable pursuant to this article of a sum not to exceed one hundred per cent of the amount. The credit shall not be greater than the tax payable pursuant to this article during the taxable year."

SECTION 15. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:8-205 and to read as follows:

"§431:8-205 Insurance independently procured; duty to report and pay tax. (a) Each insured who in this State procures or continues or renews insurance with an unauthorized insurer on a risk located or to be performed in whole or in part in this State, other than insurance procured through a

surplus lines broker pursuant to part III of this article shall, within sixty days after the date the insurance was so procured, continued, or renewed, file a written report of the same with the commissioner, upon forms prescribed by the commissioner, showing:

- (1) The name and address of the insured or insureds;
- (2) The name and address of the insurer;
- (3) The subject of the insurance;
- (4) A general description of the coverage;
- (5) The amount of premium currently charged therefor; and
- (6) Such additional pertinent information as is reasonably requested by the commissioner.

(b) Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of 4.68 per cent. At the time of filing the report required in subsection (a), the insured shall pay the tax to the commissioner.

(c) If an independently procured policy covers risks or exposures only partially located or to be performed in this State, the tax payable shall be computed on the portion of the premium properly attributable to the risks or exposures located or to be performed in this State.

(d) Delinquent taxes hereunder shall bear interest at the rate of ten per cent per annum.

(e) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of section 431:8-202 or any other provision of this code.

(f) This section shall not apply to life insurance, accident and sickness insurance, or annuities."

SECTION 16. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:10B-108 and to read as follows:

"§431:10B-108 Filing, approval, and withdrawal of forms and premium rates. (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner for approval. Forms and rates so filed shall be approved at the expiration of forty-five days after filing, unless earlier approved or disapproved by the commissioner. The commissioner by written notice to the insurer, within the forty-five day period, may extend the period for an additional thirty days.

(b) The commissioner, within the waiting period or any extension thereof after the filing of any of the policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, shall disapprove any form or any premium rates if:

- (1) The benefits provided are not reasonable in relation to the premium charge; or
- (2) The form contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the code or of any rule adopted thereunder.

(c) The benefits provided by the policy form shall not be deemed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is not at least sixty per cent. In the determination of the reasonableness of the relation of benefits and premiums consistent with a sixty per cent loss ratio, the commissioner may establish a common authorized premium rate for similar or substantially

similar coverage by class of creditor. The commissioner may approve a higher rate than the common rate where a creditor's experience under a specific policy form reasonably indicates an ultimate loss ratio higher than sixty per cent, but the commissioner shall limit the use of the higher rate to those creditors whose experience was the basis of the approval of the higher rates. The commissioner shall require insurers to file the information as the commissioner deems necessary to determine that this standard is met every two years, or more often in the commissioner's discretion, on forms recommended by the National Association of Insurance Commissioners for that purpose. Upon giving notice as is required by law, the commissioner may withdraw approval of any form including the rate set forth therein, on the ground that a reasonable relation of benefits to premiums no longer exists, or may approve a higher or lower rate if justified by experience.

The commissioner shall adopt a rate that shall be deemed acceptable as satisfying this standard without any actuarial or statistical filing.

(d) The commissioner shall adopt by rules *prima facie* acceptable premium rates, except as set forth below, which shall be usable without statistical justification when filed together with an otherwise acceptable policy form submission. The rates shall produce or shall reasonably be expected to produce a ratio of losses incurred to premiums earned of at least sixty per cent. The rules shall specify the plans of benefits to which the premium rates apply.

(e) The commissioner shall approve deviations to rates higher than the *prima facie* acceptable rates upon filing of reasonable evidence that loss experience for a creditor or a class of creditors exceeds the average loss experience used to determine the established rate and shall base the commissioner's determination on the sixty per cent loss ratio standard. Except where the deviated rate exceeds sixty cents per \$100 initial insurance per year for reducing term credit life insurance and its actuarial equivalent for other forms of credit life insurance, a reasonable variance from the sixty per cent loss ratio standard may be required. The deviation may be limited to the debtors or creditors whose experience was the statistical basis for the filing.

(f) Credit life insurance policies for which premium rates vary by individual ages or by age brackets shall be filed as provided in this section. The commissioner shall approve or disapprove the filings in accordance with the sixty per cent loss ratio standard and the other applicable provisions of law.

(g) If the commissioner notifies the insurer that the form or premium rate is disapproved, it shall be unlawful thereafter for the insurer to issue or use the form or premium rate. In the notice, the commissioner shall specify the reason for the commissioner's disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No policy, certificate of insurance, or notice of proposed insurance, nor any application, endorsement, or rider, or premium rate, shall be issued or used until the expiration of thirty days after it has been so filed, unless the commissioner gives the commissioner's prior written approval.

(h) The commissioner at any time after hearing held not less than twenty days after written notice to the insurer, may withdraw the commissioner's approval of a form or premium rate on any ground set forth in subsection (b). The written notice of the hearing shall state the reason for the proposed withdrawal.

(i) It shall be unlawful for the insurer to issue or use forms or premium rates after the effective date of their withdrawal.

(j) If a group policy of credit life insurance or credit disability insurance:

- (1) Has been delivered in this State before July 1, 1969, or
- (2) Has been or is delivered in another state before or after July 1, 1969, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in subsections (b) and (e) of section 431:10B-107. The forms shall be approved by the commissioner if:
 - (i) They conform with the requirements specified in those subsections;
 - (ii) They are accompanied by a certification in a form satisfactory to the commissioner that the substance of the forms are in substantial conformity with the master policy; and
 - (iii) The schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with and approved by the commissioner;

provided the premium rate in effect on existing group policies may be continued until the first policy anniversary date following July 1, 1969.

(k) Any order or final determination of the commissioner under this section shall be subject to chapter 91."

SECTION 17. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:10C-203 and to read as follows:

"§431:10C-203 Rate filings. (a) Every insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance at least thirty days before the proposed effective date of the filing.

(b) The commissioner also may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

(c) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(d) A filing and any supporting information shall be open to public inspection upon filing with the commissioner."

SECTION 18. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:10C-503 and to read as follows:

"§431:10C-503 Required motorcycles and motor scooters policy coverage. (a) An insurance policy covering a motorcycle or motor scooter shall provide insurance to pay, on behalf of the owner or any operator of the insured vehicle, sums which the owner or any operator may legally be obligated to pay for injury, death or damage to the property of others, except property owned by, being transported by, or in the charge of the insured which arise out of the ownership, operation, maintenance, or use of the vehicle:

- (1) Liability coverage of not less than \$35,000 for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm; and

- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident.
- (b) At the option of the owner, each insurer shall:
 - (1) Offer medical payment coverage up to \$15,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, and necessary ambulance, hospital, professional nursing, and funeral services; and
 - (2) Offer an income disability plan."

SECTION 19. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:14-104 and to read as follows:

"§431:14-104 Rate filings. (a) Every insurer shall file in triplicate with the commissioner, except as to specific inland marine risks which by general custom of the business are not written according to manual rate or rating plans, every manual of classifications, rules, and rates, every rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income.

(b) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(c) When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the insurer to furnish additional information and, in the event, the waiting period shall commence as of the date the information is furnished. The information furnished in support of a filing may include:

- (1) The experience or judgment of the insurer or rating organization making the filing,
- (2) Its interpretation of any statistical data it relies upon,
- (3) The experience of other insurers or rating organizations, or
- (4) Any other relevant factors.

(d) A filing and any supporting information shall be open to public inspection upon filing with the commissioner.

(e) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(f) An insurer may satisfy its obligation to make the filings by becoming a member of, or a subscriber to, a licensed rating organization which makes the filings, and by authorizing the commissioner to accept the filings on its behalf; provided that nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(g) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this article. The commissioner shall calculate the investment income and accuracy of loss reserves upon which filings are based, and the insurer shall provide the information necessary to make the calculation.

(h) Subject to the exception specified in subsection (i), each filing shall be on file for a waiting period of thirty days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or rating organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(i) The following rates shall become effective when filed:

- (1) Specific inland marine rates on risks specially rated by a rating organization; and
- (2) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing.

The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.

(j) The commissioner, by written order, may suspend or modify the requirement of filing as to any class of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The orders shall be made known to the affected insurers and rating organizations. The commissioner may make examinations as the commissioner may deem advisable to ascertain whether any rates affected by the order meet the standards set forth in section 431:14-103(a)(7).

(k) The commissioner may approve a rate on any specific risk in excess of that set by an applicable rate filing, provided the insured files with the commissioner a written application stating the insured's reasons for consenting to the excess rate. Upon approval by the commissioner, the rate shall be deemed effective retroactive to the date of the insured's application.

(l) No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for the insurer as provided in this article or in accordance with subsections (j) or (k). This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required."

SECTION 20. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:16-108 and to read as follows:

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

- (1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency, which the insolvent insurer would have been legally obligated to pay but for its insolvency, and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or causes its cancellation, if the insurer does so within thirty days of the determination, but the obligation shall include only that amount of each covered claim which is less than \$300,000, except that the association shall pay the full amount of any

- covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the stated policy limit of the insolvent insurer under the policy from which the claim arises;
- (2) Be deemed the insurer, but only to the extent of its obligation on covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;
 - (3) Assess insurers amounts necessary to pay the obligations of the association under subsection (a)(1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 431:16-113, and other expenses authorized by this part. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment payments authorized by the administrator of the association to be made on covered claims and expenses incurred in the payment of the claims by the member insurer;
 - (4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested;
 - (5) Notify the persons as the commissioner directs under section 431:16-110(b)(1);
 - (6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer;
 - (7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this code; and

- (8) Have the authority, notwithstanding sections 431:10C-110 and 431:10C-111, to cancel all policies issued by an insolvent insurer. All claims under these policies shall be covered by the association in an amount not to exceed the state policy limit of the insolvent insurer under the policy from which the claim arises.
- (b) The association may:
 - (1) Employ or retain the persons as are necessary to handle claims and perform other duties of the association;
 - (2) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation;
 - (3) Sue or be sued;
 - (4) Negotiate and become a party to the contracts as are necessary to carry out the purpose of this part; and
 - (5) Perform all other acts as are necessary or proper to effectuate the purpose of this part."

SECTION 21. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:20-107 and to read as follows:

"§431:20-107 Capital requirements. A title insurer shall have a minimum capital, which shall be paid in and maintained, of not less than \$400,000."

SECTION 22. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:20-108 and to read as follows:

"§431:20-108 Guarantee fund. (a) A title insurer, before issuing any title insurance policy covering property located in this State, shall deposit \$400,000 with the commissioner, which deposit shall be known as a guarantee fund and shall be held for the security and protection of the holders or beneficiaries under its title insurance policies.

(b) The deposit required under subsection (a) may be made in lawful money of the United States or in the securities authorized for investment by domestic incorporated insurers under article 6 of this code.

(c) Assets deposited pursuant to subsection (a), with the commissioner's approval, may be exchanged from time to time for other assets that qualify under subsection (b).

(d) The depositing title insurer shall receive the income, interests, and dividends on any assets deposited.

(e) A title insurer that has deposited assets pursuant to this section, with the approval of the commissioner, may withdraw any part of the assets so deposited. If a title insurer continues to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposits below the amount required by subsection (a).

(f) In the event of the insolvency or dissolution of a title insurer, the deposit made pursuant to this section shall be retained by the commissioner until the time all outstanding liabilities created by the title insurance policies issued or reinsurance assumed by the title insurer have been discharged by reinsurance or otherwise. As much of the deposit as shall be necessary may be used by or with the written approval of the commissioner in the payment of claims arising under the title insurance policies or reinsurance assumed or to purchase reinsurance thereon. Any amounts then remaining shall be applied first to the payment of other obligations of the title insurer, and second, shall be distributed to the stockholders of the title insurer.

(g) In lieu of a deposit maintained in this State, the commissioner shall accept the certificate in proper form of the public officer having general supervision of insurers in any other state to the effect that a deposit, in a like amount, by the insurer is being maintained for like purposes in public custody or control pursuant to the laws of that state."

SECTION 23. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated as section 431:20-114 and to read as follows:

"§431:20-114 Reinsurance reserve. (a) A domestic title insurer shall establish and maintain a reinsurance reserve computed in accordance with this section, and all sums attributed to the reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements.

(b) The reinsurance reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reinsurance reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured.

(c) A foreign or alien title insurance company licensed to transact title insurance business in this State shall maintain at least the same reserves on title insurance policies issued on properties located in this State as are required of domestic title insurance companies, unless the laws of jurisdiction of domicile of the foreign or alien title insurance company require a higher amount.

(d) The reinsurance reserve shall consist of:

- (1) The amount of this surplus fund on the effective date of this code; and
- (2) A sum equal to twenty cents for each \$1,000 of net retained liability under each title insurance policy on a single risk written on properties located in this State written after the effective date of this code.

(e) Amounts placed in the reinsurance reserve in any year in accordance with subsection (d)(2) shall be deducted in determining the net profit of the title insurer for that year.

(f) A title insurer shall release from the reinsurance reserve a sum equal to ten per cent of the amount added to the reserve during a calendar year on July 1 of each of the five years following the year in which the sum was added, and shall release from the reinsurance reserve a sum equal to three and one-third per cent of the amount added to the reserve during that year on each succeeding July 1 until the entire amount for that year has been released. The amount of the reinsurance reserve or similar unearned premium reserve maintained before the effective date of this Act shall be released in accordance with the law in effect before the effective date of this code."

SECTION 24. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be designated section 431:20-116 and to read as follows:

"§431:20-116 Loss and loss expense reserve. (a) All title insurers licensed in this State shall establish and maintain reserves against unpaid losses and loss expenses.

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(b) Upon receiving notice from or on behalf of the insured of a title defect in, or lien or adverse claim against, the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim.

(c) Reserves required under this section may be revised from time to time and shall be redetermined at least once each year."

SECTION 25. New statutory material is underscored¹.

SECTION 26. This Act shall take effect on July 1, 1988 only if H.B. No. 410, H.D. 1, S.D. 1, C.D. 1, in any form passed by the legislature, Regular Session of 1987, becomes an Act.

(Approved July 2, 1987.)

Note

1. Edited pursuant to HRS §23G-16.5.