

**ACT 176**

H.B. NO. 3011

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE W  
BUSINESS TRANSACTED WITH PRODUCER CONTROLLED  
PROPERTY/CASUALTY INSURER**

**§431:W-101 Definitions.** For purposes of this article:

“Accredited state” means a state in which the insurance department or regulatory agency meets the minimum financial regulatory standards promulgated from time to time by the National Association of Insurance Commissioners.

“Control” has the meaning ascribed in section 431:11-102.

“Controlled insurer” means a licensed insurer which is controlled, directly or indirectly, by a producer.

“Controlling producer” means a producer who, directly or indirectly, controls an insurer.

“Licensed insurer” or “insurer” means any person, firm, association, or corporation duly licensed to transact a property or casualty insurance business in this State. The following are not licensed insurers for the purposes of this article:

- (1) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), and the Risk Retention Act, 15 U.S.C. section 3901 et seq. (1982 & Supp. 1986), and chapter 431K;
- (2) All residual market pools and joint underwriting authorities or associations; and
- (3) Captive insurers as defined in section 431:19-101.

“Producer” means general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9, when, for any compensation, commission or other thing of value, the insurance broker or brokers or other person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the insurance broker or brokers, person, firm, association, or corporation.

**§431:W-102 Applicability.** This article shall apply to insurers either domiciled in this State or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of article 11, to the extent they are not in conflict with this article, shall apply to all parties within a holding company system subject to this article.

**§431:W-103 Minimum standards.** (a) The minimum standards specified in this section shall apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five per cent of the admitted assets of the controlled insurer, as reported in the controlled insurer’s quarterly statement filed as of September 30 of the prior year. However, the provisions of this section shall not apply if:

- (1) The controlling producer:
  - (A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer’s holding company system, or the controlled insurer’s parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance; and
  - (B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds;
- (2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer; and

- (3) The controlling producer is domiciled in the State and is authorized to do business only in the State and the controlled insurer is licensed and conducting business only in the State.

(b) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

- (1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;
- (2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;
- (3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected by the controlling producer shall be remitted no later than ninety days after the effective date of the policy or policies placed with the controlled insurer under the contract;
- (4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal savings and loan insurance corporation or similar federal agency pursuant to section 431:6-315;
- (5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;
- (6) The contract shall not be assigned in whole or in part by the controlling producer;
- (7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;
- (8) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;
- (9) If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the controlled insurer's profits on that business,

then that compensation shall not be determined and paid until at least five years after the premiums are earned on liability insurance and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (c);

- (10) A limit on the controlling producer's production in relation to the controlled insurer's surplus and total production. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if the producer has been notified by the controlled insurer that the limit has been reached; and
- (11) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the controlled insurer's loss reserves.

(d) In addition to any other required loss reserve certification, the controlled insurer annually, on April 1 of each year, shall file with the commissioner an opinion of an independent casualty actuary (or such other independent loss reserve specialist acceptable to the commissioner) reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end (including incurred but not reported) on business placed by the controlling producer. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the controlling producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance with the controlled insurer.

**§431:W-104 Disclosure.** Prior to the effective date of the policy, the controlling producer shall deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed statement from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and a written commitment that the subproducer has or will notify the insured of that relationship.

**§431:W-105 Penalties.** (a) If the commissioner believes that a controlling

producer or any other person has not complied with this article, or any applicable rule or order, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. If the commissioner finds that because of noncompliance by a controlling producer or any other person with this article or any applicable rule or order, the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder, or other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to article 15 and the receiver appointed under that order believes that the controlling producer or any other person has not complied with this article, or any applicable rule or order, and the controlled insurer suffered any loss or damage from the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the controlled insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance code.

(d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties."

SECTION 2. Controlled insurers and controlling producers who are not in compliance with section 1 of this Act on its effective date shall have sixty days to comply, and shall comply with this Act beginning with all policies written or renewed after the sixtieth day after the effective date of this Act.

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding six new sections to article 11 to read as follows:

**"§431:11-A Definitions.** The following definitions shall apply for the purposes of sections 431:11-B through 431:11-F only:

"Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

"Involved insurer" means an insurer which either acquires or is acquired, is affiliated with an acquirer or person acquired, or is the result of a merger.

**§431:11-B Scope.** (a) Except as otherwise provided in subsection (b), this section and sections 431:11-C through 431:11-F apply to any acquisition in which there is a change in control of an insurer authorized to do business in this State.

(b) This section and sections 431:11-C through 431:11-F shall not apply to the following:

- (1) An acquisition subject to approval by the commissioner pursuant to section 431:11-104;
- (2) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control as defined in section 431:11-102, it is not solely for investment purposes unless the commissioner of the

insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner;

- (3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with section 431:11-C thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section and sections 431:11-C through 431:11-F if the acquisition would otherwise be excluded by any other paragraph of this subsection;
- (4) The acquisition of affiliated persons;
- (5) An acquisition if, as an immediate result of the acquisition:
  - (A) In no market would the combined market share of the involved insurers exceed five per cent of the total market;
  - (B) There would be no increase in any market share; or
  - (C) In no market would:
    - (i) The combined market share of the involved insurers exceed twelve per cent of the total market; and
    - (ii) The market share increase by more than two per cent of the total market.

For the purpose of this paragraph, a market means direct written insurance premiums in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State;

- (6) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
- (7) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and those findings are communicated by the domiciliary commissioner to the commissioner.

**§431:11-C Preacquisition notification; waiting period.** (a) An acquisition covered by section 431:11-B may be subject to an order pursuant to section 431:11-E unless the acquiring person or the acquired person files a preacquisition notification and the waiting period has expired. The commissioner shall treat information submitted under this subsection as confidential in the same manner as provided in section 431:11-108.

(b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets in which the acquisition would not be exempted pursuant to section 431:11-B(b)(5). The commissioner may require such additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of section 431:11-D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience indicating that

economist's ability to render an informed opinion.

(c) The waiting period required shall begin on the date of receipt by the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of that receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner, on a one-time basis, may require the submission of additional information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

**§431:11-D Competitive standard.** (a) The commissioner may enter an order under section 431:11-E with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to substantially lessen competition in any line of insurance in this State, or tend to create a monopoly therein, or if the insurer fails to file adequate information in compliance with section 431:11-C.

(b) In determining whether a proposed acquisition would violate the competitive standard of subsection (a), the commissioner shall consider the following:

- (1) Any acquisition covered under section 431:11-B involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

- (A) If the market is highly concentrated and the involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
4%	4% or more
10%	2% or more
15%	1% or more; or

- (B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five per cent or more of the market. Percentages not shown in the tables shall be interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard of subsection (a). For the purpose of this paragraph, the insurer with the largest share of the market shall be deemed to be insurer A;

- (2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven per cent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under section 431:11-B involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subsection (a) if:

- (A) There is a significant trend toward increased concentration in the market;

- (B) One of the insurers involved is one of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and
- (C) Another involved insurer's market is two per cent or more;
- (3) For the purposes of this subsection:
  - (A) The term "insurer" includes any insurer or group of insurers under common management, ownership, or control;
  - (B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners, and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premiums for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State; and
  - (C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner; and
- (4) Even though an acquisition is not prima facie violative of the competitive standard under paragraph (1) or (2), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (1) or (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (c) An order may not be entered under section 431:11-E(a) if:
  - (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
  - (2) The acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits which would arise from not lessening competition.

**§431:11-E Orders and penalties.** (a) If an acquisition violates the competitive standards of section 431:11-D, the commissioner may enter an order:

- (1) Requiring an involved insurer to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation; or
  - (2) Denying the application of an acquired or acquiring insurer for a license to do business in this State.
- (b) Such an order shall not be entered unless there is a hearing, notice of such hearing is issued before the end of the waiting period and not less than fifteen days before the hearing, and the hearing is concluded and the order is issued



no later than sixty days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(c) An order entered under this section shall not become final earlier than thirty days after it is issued, during which time an involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, and the time period during which the aspects of the acquisition causing a violation of the competitive standards of section 431:11-D must be remedied, and may vacate or modify the order to set forth those conditions.

(d) Any order issued pursuant to this section shall be void if the acquisition is never consummated.

(e) Any person who violates a cease and desist order of the commissioner under subsection (a) while the order is in effect, upon order of the commissioner after notice and hearing, may be subject to one or both of the following:

- (1) A fine of not more than \$10,000 for every day of violation; and
- (2) Suspension or revocation of the person's license.

(f) Any insurer or other person who fails to make any filing required by this section or sections 431:11-B and 431:11-C, and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than \$50,000.

**§431:11-F Inapplicable provisions.** Sections 431:11-110(b), 431:11-110(c), and 431:11-112 do not apply to acquisitions to which sections 431:11-A through 431:11-E apply."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## "ARTICLE X MANAGING GENERAL AGENTS

**§431:X-101 Definitions.** For purposes of this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Insurer" means any person, firm, association, or corporation duly licensed in this State as an insurance company pursuant to section 431:3-201.

"Managing general agent" or "MGA" means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; together with one or more of the following activities related to the business produced: adjusts or pays claims in excess of an amount determined by the commissioner; or negotiates reinsurance on behalf of the insurer. Notwithstanding the preceding sentence, the following persons shall not be considered as MGAs for the purposes of this article:

- (1) An employee of the insurer;
- (2) A United States manager of the United States branch of an alien insurer;

- (3) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to article 11, and whose compensation is not based on the volume of premiums written;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney; and
- (5) Any person, firm, association or corporation domiciled in the State and authorized to do business only in the State and acting as an MGA for an insurer licensed and conducting business only in the State.

“Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**§431:X-102 Licensure.** (a) No person, firm, association, or corporation shall act as an MGA, with respect to risks located in this State for an insurer licensed in this State, unless licensed as a general agent in this State.

(b) No person, firm, association, or corporation shall act as an MGA, representing an insurer domiciled in this State with respect to risks located outside this State, unless licensed as a general agent in this State.

(c) The commissioner may require the MGA to furnish a bond in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner.

**§431:X-103 Required contract provisions.** No person, firm, association, or corporation acting as an MGA shall place business with an insurer unless there is in force, a written contract between the MGA and the insurer which sets forth the responsibilities of each party and, where both the MGA and the insurer share responsibility for a particular function, specifies the division of those responsibilities, and which contains at least the following additional provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination;
- (2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity and deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the MGA. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the MGA will be maintained. The insurer shall have access to and the right to copy all accounts and records of the MGA related to the insurer’s business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner. The records shall be retained according to section 431:9-229;

- (5) The contract may not be assigned in whole or in part by the MGA;
- (6) Appropriate underwriting guidelines including:
  - (A) The maximum annual premium volume;
  - (B) The basis of the rates to be charged;
  - (C) The types of risks which may be written;
  - (D) Maximum limits of liability;
  - (E) Applicable exclusions;
  - (F) Territorial limitations;
  - (G) Policy cancellation provisions; and
  - (H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies;
- (7) If the contract permits the MGA to settle claims on behalf of the insurer:
  - (A) All claims must be reported to the insurer in a timely manner;
  - (B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
    - (i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
    - (ii) Involves a coverage dispute;
    - (iii) May exceed the MGA's claims settlement authority;
    - (iv) Is open for more than six months; or
    - (v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
  - (C) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the MGA shall have reasonable access to and the right to copy the files on a timely basis;
  - (D) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and
  - (E) Where electronic claims files are in existence, the contract must address the timely transmission of the data;
- (8) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business, and in any event, not until the profits have been verified pursuant to section 431:X-105; and
- (9) The MGA shall not:
  - (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which those automatic agreements are

- in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- (B) Commit the insurer to participate in insurance or reinsurance syndicates;
- (C) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which the agent is appointed;
- (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;
- (F) Permit its subagent to serve on the board of directors of the insurer;
- (G) Employ an individual who is also employed by the insurer; or
- (H) Appoint a subMGA.

**§431:X-104 Duties of insurers.** (a) An insurer shall have on file an independent financial examination of each MGA with which it has done business in a form acceptable to the commissioner.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification required by this chapter.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(e) The insurer shall notify the commissioner in writing within thirty days of entering into or terminating a contract with an MGA. Notices of appointment of an MGA shall include a statement of duties which the MGA is expected to perform on behalf of the insurer, the lines of insurance for which the MGA is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer as defined in section 431:W-101 has become an MGA. If the insurer determines that a producer has become an MGA, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and producer shall fully comply with this article within thirty days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of any of its MGAs; provided that this subsection shall not apply to relationships governed by article 11.

**§431:X-105 Examination authority.** The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined pursuant to article 2 as if it were the insurer.

**§431:X-106 Penalties and liabilities.** (a) If after a hearing conducted in accordance with section 431:2-308 and chapter 91, the commissioner finds that

any person has violated any provision of this article, the commissioner may order any or all of the following:

- (1) For each separate violation, a fine in an amount of not less than \$500 and not more than \$50,000, pursuant to section 431:3-221;
- (2) Revocation or suspension of the agent's license; and
- (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this article by the MGA.

(b) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(c) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**§431:X-107 Rules.** The commissioner may adopt reasonable rules under chapter 91 for the implementation and administration of this article.

**§431:X-108 Effective date.** No insurer may continue to utilize the services of an MGA on and after the effective date of this article unless that utilization is in compliance with this article."

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

#### **"ARTICLE Y CREDIT FOR REINSURANCE**

**§431:Y-101 Credit allowed a domestic ceding insurer.** Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on the domestic ceding insurer's financial statements on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (1), (2), (3), (4), or (5). The requirements of paragraph (6) must also be met if the reinsurer attempts to meet the requirements of paragraph (3) or (4).

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this State. An accredited reinsurer is one which:
  - (A) Files with the commissioner evidence of its submission to this State's jurisdiction;
  - (B) Submits to this State's authority to examine its books and records;
  - (C) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
  - (D) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either:
    - (i) Maintains a surplus as regards policyholders in an amount which is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner

within ninety days of its submission; or

- (ii) Maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

- (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance equal to or exceeding those applicable under this article and the assuming insurer or United States branch of an alien assuming insurer:

- (A) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

- (B) Submits to the authority of this State to examine its books and records;

provided that the requirement of subparagraph (A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

- (4) When insurers do not satisfy both the licensing and financial standards of paragraphs (2) and (3), credit shall be allowed when all of the following are met:

- (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 431:Y-103(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

- (B) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph (A), and which has continuously transacted an insurance business outside the United States for

at least three years immediately prior to making application for accreditation, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10,000,000,000, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus, of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant;

- (C) The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and
- (D) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.
- (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (1), (2), (3), or (4), but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
- (6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by paragraphs (3) and (4) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
  - (A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give that court jurisdiction, and will abide by the final decision of that court or of any appellate court in the event of an appeal; and
  - (B) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on

behalf of the ceding company.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

**§431:Y-102 Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 431:Y-101 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

- (1) Cash;
- (2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, no later than December 31st in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit issued by issuing (or confirming) institutions meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
- (4) Any other form of security acceptable to the commissioner.

**§431:Y-103 Qualified United States financial institutions.** (a) For purposes of section 431:Y-102(3), a "qualified United States financial institution" means an institution that:

- (1) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) For purposes of those provisions of this article specifying those institutions that are eligible to act as a fiduciary of a trust, "qualified United States financial institution" means an institution that:

- (1) Is organized, or (in the case of a United States branch or agency office of a foreign banking organization) licensed, under the laws of



- the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

**§431:Y-104 Rules.** The commissioner may adopt rules under chapter 91 implementing this article.

**§431:Y-105 Reinsurance agreements affected.** Sections 431:Y-101 through 431:Y-104 shall apply to all cessions after the effective date of this article under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six months after the effective date of this article."

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## **"ARTICLE Z REINSURANCE INTERMEDIARY**

**§431:Z-101 Definitions.** For purposes of this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Controlling person" means any individual, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

"Insurer" means any individual, firm, association, or corporation duly licensed in this State pursuant to this chapter as an insurer.

"Licensed producer" or "producer" means an agent, solicitor, broker, or reinsurance intermediary licensed pursuant to this chapter.

"Qualified United States financial institution" means an institution that:

- (1) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

"Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in this section.

"Reinsurance intermediary-broker" or "RB" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation that solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

"Reinsurance intermediary-manager" or "RM" means any individual, firm, association, or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for

the reinsurer whether known as an RM, manager, or other similar term. Notwithstanding the above, the following persons shall not be considered an RM, with respect to the reinsurer, for the purposes of this article:

- (1) An employee of the reinsurer;
- (2) A United States manager of the United States branch of an alien reinsurer;
- (3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article 11, and whose compensation is not based on the volume of premiums written; and
- (4) The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and who is subject to examination by the commissioner of the state in which the manager's principal business office is located.

"Reinsurer" means any person, firm, association, or corporation duly licensed in this State pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.

"To be in violation" means that the reinsurance intermediary, or insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with this article.

**§431:Z-102 Licensure.** (a) No person, firm, association, or corporation shall act as an RB in this State if the RB maintains an office either directly or as a member or employee of a firm or association or an officer, director, or employee of a corporation:

- (1) In this State, unless the RB is a licensed agent in this State; or
- (2) In another state, unless the RB is a licensed agent in this State or another state having a law substantially similar to this law, or such RB is licensed in this State as a nonresident reinsurance intermediary.

(b) No person, firm, association, or corporation shall act as an RM:

- (1) For a reinsurer domiciled in this State, unless the RM is a licensed producer in this State;
- (2) In this State, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this State, unless the RM is a licensed producer in this State; or
- (3) In another state for a nondomestic insurer, unless the RM is a licensed producer in this State or another state having a law substantially similar to this law, or the person is licensed in this State as a nonresident reinsurance intermediary.

(c) The commissioner may require an RM subject to subsection (b) to:

- (1) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and
  - (2) Maintain an errors and omissions policy in an amount and from an insurer acceptable to the commissioner.
- (d) (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this article. Any such license issued to a firm or association will authorize all the members of that firm or association and any designated employees to act as reinsurance intermediaries under the license, and all those persons shall be named in the application and any supplements thereto. Any such

license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any supplements thereto.

- (2) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this article for service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

(e) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to disclosure pursuant to chapter 92F.

(f) Licensed attorneys at law of this State when acting in their professional capacity as such shall be exempt from this section.

**§431:Z-103 Required contract provisions; reinsurance intermediary brokers.** Transactions between an RB and the insurer it represents in that capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization, at a minimum, shall provide that:

- (1) The insurer may terminate the RB's authority at any time;
- (2) The RB shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the RB, and remit all funds due to the insurer within thirty days of receipt;
- (3) All funds collected for the insurer's account shall be held by the RB in a fiduciary capacity and deposited in a bank which is a qualified United States financial institution;
- (4) The RB shall comply with section 431:Z-105.
- (5) The RB shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and
- (6) The RB shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

**§431:Z-104 Books and records; reinsurance intermediary brokers.** (a) For at least ten years after expiration of each contract of reinsurance transacted by the RB, the RB shall keep a complete record for each transaction showing:

- (1) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
  - (2) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required for cancellation;
  - (3) Reporting and settlement requirements of balances;
  - (4) Rate used to compute the reinsurance premium;
  - (5) Names and addresses of assuming reinsurers;
  - (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB;
  - (7) Related correspondence and memoranda;
  - (8) Proof of placement;
  - (9) Details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;
  - (10) Financial records, including but not limited to, premium and loss accounts; and
  - (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
    - (A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
    - (B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- (b) The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

**§431:Z-105 Duties of insurers utilizing the services of a reinsurance intermediary-broker.** (a) An insurer shall not engage the services of any person, firm, association, or corporation to act as an RB on its behalf unless the person, firm, association, or corporation is licensed as required by section 431:Z-102.

(b) An insurer may not employ an individual who is employed by an RB with which it transacts business, unless the RB is under common control with the insurer and subject to article 11.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

**§431:Z-106 Required contract provisions; reinsurance intermediary; managers.** Transactions between an RM and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through the RM, a true copy of the approved contract shall be filed with the commissioner for approval. The contract, at a minimum, shall provide that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

- (3) All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity and deposited in a bank which is a qualified United States financial institution. The RM may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transaction showing:
  - (A) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
  - (B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and disposition of outstanding reserves on covered risks;
  - (C) Reporting and settlement requirements of balances;
  - (D) Rate used to compute the reinsurance premium;
  - (E) Names and addresses of reinsurers;
  - (F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
  - (G) Related correspondence and memoranda;
  - (H) Proof of placement;
  - (I) Details regarding retrocessions handled by the RM, as permitted by section 431:Z-108(a), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
  - (J) Financial records, including but not limited to, premium and loss accounts; and
  - (K) When the RM places a reinsurance contract on behalf of a ceding insurer:
    - (i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
    - (ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;
- (5) The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer;
- (6) The contract cannot be assigned in whole or in part by the RM;
- (7) The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
- (8) Sets forth the rates, terms, and purposes of commissions, charges, and other fees which the RM may levy against the reinsurer;
- (9) If the contract permits the RM to settle claims on behalf of the reinsurer:
  - (A) All claims shall be reported to the reinsurer in a timely manner;
  - (B) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
    - (i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

- (ii) Involves a coverage dispute;
  - (iii) May exceed the RM's claims settlement authority;
  - (iv) Is open for more than six months; or
  - (v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
- (C) All claim files shall be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis; and
- (D) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;
- (10) If the contract provides for a sharing of interim profits by the RM, that such interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to section 431:Z-108(c);
- (11) The RM shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the RM;
- (13) The RM shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract; and
- (14) Within the scope of its actual or apparent authority the acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

**§431:Z-107 Prohibited acts.** The RM shall not:

- (1) Cede retrocessions on behalf of the reinsurer, except that the RM may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which those automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- (2) Commit the reinsurer to participate in reinsurance syndicates;
- (3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed;
- (4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay, a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one per cent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;
- (5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior

approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

- (6) Jointly employ an individual who is employed by the reinsurer unless the RM is under common control with the reinsurer subject to article 11; or
- (7) Appoint a subRM.

**§431:Z-108 Duties of reinsurers utilizing the services of a reinsurance intermediary manager.** (a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as an RM on its behalf unless the person, firm, association, or corporation is licensed as required by section 431:Z-102(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(c) If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(e) Within thirty days of termination of a contract with an RM, the reinsurer shall provide written notification of the termination to the commissioner.

(f) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subagent of its RM; provided that this subsection shall not apply to relationships governed by article 11.

**§431:Z-109 Examination authority.** (a) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable by the commissioner.

(b) An RM may be examined as if it were the reinsurer.

**§431:Z-110 Penalties and liabilities.** (a) After a hearing conducted in accordance with section 431:2-308, a reinsurance intermediary, insurer, or reinsurer found by the commissioner to be in violation of any provisions of this article shall:

- (1) For each separate violation, pay a penalty in an amount not exceeding \$5,000;
- (2) Be subject to revocation or suspension of its license; and
- (3) If a violation was committed by a reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(b) The decision, determination, or order of the commissioner pursuant to subsection (a) shall be subject to judicial review pursuant to chapter 91 and section 431:2-308.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third

parties or confer any rights on those persons.

**§431:Z-111 Rules.** The commissioner may adopt reasonable rules under chapter 91 for the implementation and administration of this article.”

**SECTION 7.** No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after the effective date of this Act unless the reinsurance intermediary and the utilization of the reinsurance intermediary are in compliance with this Act.

**SECTION 8.** Section 431:3-211, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-211 Alien reinsurers.** No credit shall be allowed to any insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer, other than under a contract of ocean marine insurance, covering a subject of insurance resident, located, or to be performed in this State unless the alien reinsurer:

- (1) Is authorized to transact insurance in a state of the United States; [and]
- (2) Maintains an adequate guaranty deposit in a state of the United States for the protection of its insurance obligees in the United States; [and]
- (3) Has an attorney-in-fact resident in the United States upon whom service of legal process may be made[.]; and
- (4) Files annually a copy of its annual statement.”

**SECTION 9.** Section 431:3-301, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-301 Annual filings with commissioner.** (a) Annually before March 16, or such day subsequent thereto as the commissioner upon request and for cause may specify, the following documents are required to be filed with the commissioner:

- (1) By each insurer:
  - (A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, in general form and context as approved by the National Association of Insurance Commissioners plus any additional information required by the commissioner, verified by oaths of at least two of the insurer’s principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer is required to relate only to its transactions and affairs in the United States. The commissioner shall annually during November furnish each domestic insurer duplicate copies of annual statement forms required to be filed[.];
  - (B) The tax statement provided for by section 431:7-201[.];
  - (C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212[.];



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- (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
  - (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance which it is transacting; and
  - (4) By each alien insurer, a certificate of the proper public official as to any deposit made or held as compliance with this code.
- (b) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to file any of the documents to which subsection (a) relates.”

SECTION 10. In codifying the new sections added to article 11 of chapter 431, Hawaii Revised Statutes, by section 3 of this Act, and the new articles added by sections 1, 4, 5, and 6 of this Act, the revisor of statutes shall substitute appropriate section and article numbers for the letters used in designating the new sections and articles in this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.