

A Bill for an Act Relating to the Insurance Laws.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 19 three new sections to be appropriately designated and to read as follows:

“§431:19- Redomestication; approval as a domestic captive insurer.

(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:

- (1) Compliance with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type and any requirements which the commissioner may adopt by rule; and
- (2) By filing with the department of commerce and consumer affairs its articles of association, charter, or other organizational document together with appropriate amendments bringing the articles of association, charter, or other organizational document into compliance with the laws of this State, along with a certificate of general good issued by the commissioner.

(b) The domestic captive insurance company shall be entitled to the necessary or appropriate certificates and licenses to do business in this State and shall be subject to the authority and jurisdiction of this State. No captive insurance company redomesticating into this State need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

(c) Upon redomestication in accordance with this section, the foreign or alien captive insurance company shall become a domestic captive insurance company organized under the laws of this State and shall have all the rights, privileges, immunities, and powers and be subject to all applicable laws, duties, and liabilities of a domestic captive insurance company of the same type. The domestic captive insurance company shall possess all rights that it had prior to the redomestication to the extent permitted by the law of this State and shall be responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company shall remain in full force and effect.

§431:19- Redomestication; conversion to foreign insurer. Any domestic captive insurance company, upon approval by the commissioner, may transfer its domicile to any other jurisdiction in accordance with the laws of that jurisdiction. Upon such a transfer, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the filing of proof of redomestication with the department of commerce and consumer affairs along with payment of a filing fee of \$300.

§431:19- Applicability of other laws to captive insurance companies writing no-fault policies in this State. Captive insurance companies writing no-

fault policies in this State shall be subject to sections 431:10C-102, 431:10C-103, 431:10C-107, 431:10C-108, 431:10C-109, 431:10C-112, 431:10C-115, 431:10C-115.5, 431:10C-119, 431:10C-120, 431:10C-207, 431:10C-211, 431:10C-212, 431:10C-213, 431:10C-215, 431:10C-301, and 431:10C-303 through 431:10C-315. Captive insurance companies shall also be subject to the rules adopted by the commissioner to implement these sections.”

SECTION 2. Section 431:2-209, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-209 Records and reports.** (a) The commissioner shall preserve in permanent form records and reports of the commissioner’s proceedings, hearings, investigations, and examinations, and shall file [such] the records in the commissioner’s office.

(b) The records of the commissioner and insurance filings in the commissioner’s office shall be open to public inspection, except as otherwise provided in this code.

(c) [Five years] One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, [claim files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states,] void or obsolete filings relating to rates, foreign or alien insurers’ annual statements and valuation reports, [license applications,] cards, and expired bonds[.]. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings[.] and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner’s possession.

(d) [Five] Three years after the year to which they relate, the commissioner may destroy any foreign or alien insurer’s tax reports, or similar records or reports now or hereafter in the commissioner’s possession.

(e) The commissioner shall concurrently execute and file in a separate, permanent office file a certificate listing and giving a summary description of the records, files, documents and memoranda as they are destroyed.

(f) (e) The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

- (1) Complaints and investigation reports;
- (2) Working papers of examination reports; and
- (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing [said] that information.

[(g)] (f) The commissioner shall not disclose any information that is exempt from disclosure by federal or Hawaii [state] statutes.”

SECTION 3. Section 431:2-214, Hawaii Revised Statutes, is amended 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:

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- (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 customary rate; 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) The commissioner's education and training fund may be used to pay the cost of consumer education and information, including publication of information, brochures, and consumer guides and costs related to conferences, workshops, seminars, and any other events of this nature which the commissioner sponsors or in which the commissioner or insurance division staff participates.'

SECTION 4. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall furnish to the person examined a copy of the examination report by the examiner not less than [sixty] thirty days prior to the filing of the report for public inspection [in the division]. If the person so requests in writing within the [sixty day] thirty-day period, the commissioner shall hold a hearing to consider the person's objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made.”

SECTION 5. Section 431:3-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall act as an insurer and no insurer shall transact insurance business in this State other than as authorized by a certificate of authority granted to it by the commissioner; except as to such transactions as are expressly otherwise provided in this code. [Chapter 418 shall not be applicable to any insurer authorized to do business in this State pursuant to this code.]”

SECTION 6. Section 431:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Annually [before] no later than March [16,] 15, or [such] any day subsequent thereto as the commissioner upon request and for cause may specify, the following documents [are required to] shall 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] may relate only to its transactions and affairs in the United States[. The commissioner shall annually during November fur-

- nish each domestic insurer duplicate copies of annual statement forms required to be filed];
- (B) The tax statement provided for by section 431:7-201; and
 - (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;
- (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] from the proper public official as to any deposit made or held as compliance with this code."

SECTION 7. Section 431:3-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each domestic, foreign, and alien insurer which is authorized to transact insurance in this State shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank along with [such] additional filings as prescribed by the commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the statement filing subsequently filed with the commissioner shall also be filed with the NAIC. In addition to the printed annual statement blank and other reports addressed in this section, the annual filing for 1993 and thereafter shall include diskettes containing annual statement information in the format prescribed by the NAIC annual statement diskette filing specifications, and must be submitted on or before the March 1 due date of the corresponding printed information."

SECTION 8. Section 431:4-110, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The commissioner shall not issue a solicitation permit until the person applying therefor files with the commissioner a corporate surety bond in the penalty sum of [~~\$20,000,~~] \$150,000, in favor of this State and for the use and benefit of this State and of subscribers and creditors of the proposed organization. The bond shall be conditioned upon the payment of costs incurred by this State in the event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in the event a certificate of authority is not granted; upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority; or until the proposed corporation has completed its organization as defined in the solicitation permit.

(b) In lieu of filing [such] the bond[,], described in subsection (a), the person may deposit with the director of finance through the commissioner [~~\$20,000~~] \$150,000 in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond."

SECTION 9. Section 431:4-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:4-201 Other [articles] laws applicable.** [The provisions in chapters 416, 417, and 417E relating to organization, powers, capital stock, meetings, bylaws, rights, duties and liabilities of directors, managers and stockholders, dissolution, consolidation and merger of private corporations shall apply] Domestic stock insurers shall be subject to title 23 and any applicable general laws enacted pertaining to stock corporations except where inconsistent with the express provisions of this article.”

SECTION 10. Section 431:6-324, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this article, a domestic insurer also may do one or more of the following:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of [five] ten per cent of the insurer’s assets or fifty per cent of the insurer’s surplus as regards policyholders. However, after the investments, the insurer’s surplus as regards policyholders shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there shall be included:
 - (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities[.]; and
 - (B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (2) If the insurer’s total liabilities, as calculated for National Association of Insurance Commissioners’ annual statement purposes, are less than ten per cent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries. However, after the investment the insurer’s surplus as regards policyholders, considering the investment as if it were a disallowed asset, shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs;
- (3) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in [item] paragraph (1) or in this article applicable to the insurer. For the purpose of this subsection, the total investment of the insurer shall include:
 - (A) Any direct investment by the insurer in an asset[.]; and
 - (B) The insurer’s proportionate share of any investment of an asset by any subsidiary of the insurer, which shall be calculated by

- multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of the subsidiary;
- (4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; or
 - (5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to, or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 11. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall collect in advance the following fees:

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| (1) Certificate of authority: Issuance | [\$300] | <u>\$600</u> |
| (2) Organization of domestic insurers and affiliated corporations: | | |
| (A) Application and all other papers required for issuance of solicitation permit, filing | [\$500] | <u>\$1000</u> |
| (B) Issuance of solicitation permit..... | [\$50] | <u>\$100</u> |
| (3) General agent's license: | | |
| (A) Issuance, regular license | [\$25] | <u>\$50</u> |
| (B) Issuance, temporary license..... | [\$25] | <u>\$50</u> |
| (4) Subagent's license: | | |
| (A) Issuance, regular license | [\$25] | <u>\$50</u> |
| (B) Issuance, temporary license..... | [\$25] | <u>\$50</u> |
| (5) Nonresident agent's or broker's license: Issuance..... | [\$20] | <u>\$40</u> |
| (6) Solicitor's license: Issuance | [\$20] | <u>\$40</u> |
| (7) Independent adjuster's license: Issuance | [\$20] | <u>\$40</u> |
| (8) Public adjuster's license: Issuance | [\$20] | <u>\$40</u> |
| (9) Surplus line broker's license: Issuance | [\$50] | <u>\$100</u> |
| (10) Examination for license: For each examination, a fee to be established by the commissioner by rule adopted in accordance with chapter 91. | | |

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority or a license are as follows:

- (1) [~~\$200~~] \$400 per year for all services (including extension of the certificate of authority) for an authorized insurer.
- (2) [~~\$25~~] \$50 per year for all services (including extension of the license) for a regularly licensed general agent.
- (3) [~~\$25~~] \$50 per year for all services (including extension of the license) for a regularly licensed subagent.
- (4) [~~\$15~~] \$30 per year for all services (including extension of the license) for a regularly licensed nonresident broker.
- (5) [~~\$10~~] \$20 per year for all services (including extension of the license) for a regularly licensed solicitor.
- (6) [~~\$15~~] \$30 per year for all services (including extension of the license) for a regularly licensed independent adjuster.

- (7) [~~\$15~~] \$30 per year for all services (including extension of the license) for a regularly licensed public adjuster.
- (8) [~~\$15~~] \$30 per year for all services (including extension of the license) for a licensed surplus line broker.
- (9) The services referred to in [items] paragraphs (1) to (8) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository¹ other than the department of commerce and consumer affairs."

SECTION 12. Section 431:8-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Prior to] Before placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and:

- (1) In the case of a foreign [insurers,] insurer, shall [deliver to the commissioner] maintain in the broker's office a current certificate, in proper form, [of] from the regulatory authority in the domicile of the unauthorized insurer to the effect that the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction which equals the minimum capital and surplus requirements of this State for that kind of insurer as set out in article 3; or
- (2) In the case of an alien [insurers,] insurer, shall [submit to the commissioner] maintain in the broker's office evidence of the financial responsibility of the insurer. Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system in an amount not less than [~~\$1,500,000~~] \$2,500,000 for the protection of all its policyholders in the United States consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers writing like kinds of insurance in this State, shall constitute prima facie evidence of [such] responsibility.

Upon request by the commissioner, the broker shall immediately submit to the commissioner the items described in this subsection."

SECTION 13. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall issue a surplus lines broker license to any general agent licensed under article 9 when the agent has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7;
- (2) Submitted a completed license application on a form furnished by the commissioner; and
- (3) Filed with the commissioner, and maintains during the term of the license, in force and unimpaired, a bond in favor of this State in the sum of [~~\$25,000~~] \$100,000 with corporate sureties approved by the commissioner. The bond shall be conditioned that the broker will comply with this part and will promptly remit the taxes provided by section 431:8-315. No bond shall be terminated unless not less than sixty days prior written notice is given to the broker and the commissioner."

SECTION 14. Section 431:9-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person in this State shall act as, be appointed as, or hold oneself out to be a general agent, subagent, solicitor, or adjuster unless so licensed by this State.”

SECTION 15. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This requirement shall not apply to:

- (1) Applicants for limited licenses, as travel insurance subagents or solicitors only, under section 431:9-214;
- (2) Applicants who at any time within the [five year] three-year period next preceding date of application held a license in this State which conferred powers comparable to those being applied for;
- (3) Applicants for license as nonresident agent or broker who have fulfilled qualification requirements in their state of residence and who are deemed by the commissioner to be fully qualified and competent;
- (4) Applicants for a general agent’s, subagent’s, or solicitor’s license for life insurance or life disability insurance who hold the designation chartered life underwriter (C.L.U.) from The American College; or
- (5) Applicants for a general agent’s, subagent’s, or solicitor’s license for any class of insurance, except life insurance, who hold the designation chartered property and casualty underwriter (C.P.C.U.) from the American Institute for Property and Liability Underwriters, Incorporated.”

SECTION 16. Section 431:9-211, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each such appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The effective date of the appointment shall be the date on which the last party signs the appointment form. The appointment shall continue in force until:

- (1) The commissioner notifies the insurer that the person so appointed is no longer licensed as a general agent by this State[.]; or
- (2) The commissioner notifies the general agent or domestic insurer that the person so appointed is no longer licensed as a subagent by this State[.]; or
- (3) The appointment as general agent is:
 - (A) Revoked by the insurer by written notice of [such] the revocation to the general agent[.]; or
 - (B) Terminated by the general agent by written notice of [such] the termination to the insurer[.]; or
- (4) The appointment as subagent is:
 - (A) Revoked by the general agent or domestic insurer by written notice of [such] the revocation to the subagent[.]; or
 - (B) Terminated by the subagent by written notice of [such] the termination to the general² or domestic insurer.”

SECTION 17. Section 431:9-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each such appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The effective date of the appointment shall be the date on which the last party signs the notice of appointment form. The appointment shall continue in force until:

- (1) The commissioner notifies the general agent, subagent, or domestic insurer that the person so appointed is no longer licensed as a solicitor by this State; or
- (2) The appointment is revoked by the general agent, subagent, or domestic insurer by written notice of [such] the revocation to the solicitor; or
- (3) The appointment is terminated by the solicitor by written notice of [such] the termination to the general agent, subagent, or domestic insurer.”

SECTION 18. Section 431:9-228, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-228 Place of business. (a) Every licensed general agent, subagent, and adjuster, shall have and maintain in this State, or, if a nonresident agent or broker, in the state of the agent’s or broker’s domicile, a place of business accessible to the public.

(b) The place of business shall be that wherein the licensee principally conducts transactions under the licensee’s licenses.

(c) The licensee shall promptly notify the commissioner of change of business address.

[(d) The place of business of a subagent shall be obviously separate from that of any general agent who appointed the subagent.]”

SECTION 19. Section 431:9-233, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may issue a general agent’s, subagent’s, or solicitor’s temporary license in the following circumstances:

- (1) To the surviving spouse, next of kin, employee, or personal representative of a licensed general agent, subagent, or solicitor upon [such] the agent’s or solicitor’s death;
- (2) To the spouse, next of kin, employee, or legal guardian of a licensed general agent, subagent, or solicitor disabled because of sickness, insanity, or injury;
- (3) To the spouse, next of kin, or employee of a licensed general agent, subagent, or solicitor who is drafted or volunteers for service in the armed services of the United States;
- (4) To a member of a partnership or officer or employee of a corporation licensed as general agent or subagent upon the death [or], disability, or termination of service of an individual designated in the partnership’s or corporation’s license to exercise powers thereunder; or
- (5) To the individual placed in charge of a branch office maintained in this State by a foreign or alien insurer upon the death [or], disability, or termination of its general agent.”

SECTION 20. Section 431:9-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [After hearing and in] In addition to or in lieu of [the] suspension, revocation, or refusal to extend any [such] license, after a hearing, the commis-

sioner may levy a fine upon the licensee in an amount not less than \$100 and not more than \$10,000.”

SECTION 21. Section 431:10A-103, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-103 Family coverage defined.** As used in this part, family coverage means a policy that insures, originally or upon subsequent amendment, an adult member of a family who shall be deemed the policyholder and any two or more eligible members of that family, including spouse, dependent children or any children under a specified age which shall not exceed [seventeen] nineteen years, and any other person dependent upon the policyholder.”

SECTION 22. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-105 Required provisions.** Except as provided in section 431:10A-107, each policy of accident and sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which [the same] they appear below, provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. [Such] The provisions shall be preceded individually by the specified caption, or by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) “Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions.”
- (2) (A) “Time Limit on Certain Defenses:
 - [1-] (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of [such] the three-year period.
 - [2-] (ii) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.”
- (B) The policy provision set forth in [paragraph 1 in item (2)(A)] subparagraph (A)(i) shall not be [so] construed [as] to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of [items (1) through (4) of section 431:10A-106] section 431:10A-106(1) through (4) in the event of misstatement with respect to age or occupation or other insurance.

- (C) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of [paragraph 1 in item (2)(A)] subparagraph (A)(i) the following provision (from which the clause in parentheses may be omitted at the insurer's option): "Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."
- (3) (A) "Grace period: A grace period of days (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."
- (B) A policy which contains a cancellation provision may add at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision."
- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the above provision: "Unless not less than [five] thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."
- (4) (A) "Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept [such] the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or [such] agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of [such] the application by the insurer or, lacking [such] approval, upon the forty-fifth day following the date of [such] conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of [such] the application. The reinstated policy shall cover only loss resulting from [such] accidental injury as may be sustained after the date of reinstatement and loss due to [such] sickness as may begin more than ten days after [such] that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."
- (B) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at

least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.

- (5) (A) "Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of [such] the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."
- (B) In a policy providing a loss of time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: "Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of [said] the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of [such] the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in [the] giving [of such] notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which [said] notice is actually given."
- (6) "Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant [such] the forms [as], that are usually furnished by it for filing proofs of loss. If [such] the forms are not furnished within fifteen days after the giving of [such] notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."
- (7) "Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of [such] loss. Failure to furnish [such] proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within [such] the time[,] required, provided [such] proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than fifteen months from the time proof is otherwise required."
- (8) "Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of [such] loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination

- of liability will be paid immediately upon receipt of due written proof.”
- (9) (A) “Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting [such] payment which may be prescribed herein and effective at the time of payment. If no [such] designation or provision is then effective, [such] the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured’s death may, at the option of the insurer, be paid either to [such] the designated beneficiary or to [such] the estate[.] of the insured. All other indemnities will be payable to the insured.”
- (B) The following provisions, or either of them, may be included with the above provision at the option of the insurer:
- (i) “If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay [such] the indemnity, up to an amount not exceeding [\$ (insert an amount which shall not exceed) \$2,000[]] to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of [such] the payment.”
- (ii) “Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy an account of hospital, nursing, medical, or surgical services may, at the insurer’s option and unless the insured requests otherwise in writing not later than the time of filing proofs of [such] the services; but it is not required that the service be rendered by a particular hospital or person.”
- (10) “Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.”
- (11) “Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No [such] action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.”
- (12) (A) “Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.”
- (B) The first clause of the above provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer’s option.”

SECTION 23. Section 431:10A-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may adopt from time to time, reasonable rules as are necessary to conform medicare supplement policies and certificates to the requirements of federal law and regulations [promulgated] adopted thereunder, including but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and
- (5) Establishing a policy for holding public hearings prior to approval of premium increases; and
- (6) Establishing standards for medicare select policies and certificates].”

SECTION 24. Section 431:10C-115.5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) This fund shall be used to pay the costs of administering the commissioner’s obligations under this article. The costs shall include but not be limited to costs of peer review of treatment and rehabilitation services for injuries covered by no-fault insurance, costs related to public education and information, costs related to determination of the medical-rehabilitative threshold, [and] costs relating to closed claims studies and other studies and evaluations relating to motor vehicle insurance[.], and costs related to administrative contract with personnel necessary to carry out the purposes of this article.

(c) Every insurer making a challenge which is submitted to a peer review organization pursuant to section 431:10C-308.6[,] shall pay to the commissioner a fair and equitable amount to be determined by the commissioner, plus the cost of the peer review. The commissioner may increase the amount from time to time as warranted by increases in the cost of administering the peer review program. All payments collected by the commissioner shall be deposited in the no-fault administration revolving fund. The commissioner or the peer review organization shall not receive or accept any additional emolument on account of any challenge to a peer review organization. The peer review organization shall submit its charges, which shall not exceed [charges permissible under the workers’ compensation schedules for consultation for a complex medical problem,] a fair and reasonable charge to be determined by the commissioner, along with the peer review organization’s recommendation to the commissioner. The commissioner shall pay the peer review organization out of the no-fault administration revolving fund. The commissioner shall transmit copies of the peer review recommendation to the insured, insurer, and provider. The commissioner shall transmit the peer review charges to the insurer, and the insurer shall reimburse the no-fault administration revolving fund for [such] the charges within thirty days.

(d) Each insurer authorized to transact motor vehicle insurance in this State and each self-insurer shall deposit with the commissioner a fair and equitable amount to be determined by the commissioner on [March] April 1 of each year, to be credited to the no-fault administration revolving fund. In addition, each insurer authorized to transact motor vehicle insurance in this State and each self-insurer in this State, shall pay to the commissioner at a time determined by the commissioner,

a one-time deposit in an amount to be determined by the commissioner, to be credited to the no-fault administration revolving fund.”

SECTION 25. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, general agent, subagent, solicitor, or other representative, who violates any provision of this article shall be assessed a civil penalty not to exceed \$5,000 for each violation.

(c) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, general agent, subagent, solicitor, or other representative, who knowingly violates any provision of this article shall be assessed a civil penalty of not less than \$3,000 and not to exceed \$10,000 for each violation.”

SECTION 26. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than \$25,000 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 arising out of ownership, maintenance, use, loading, or unloading of the insured vehicle;
- (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 arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (3) With respect to any motor vehicle registered or principally garaged in this State, liability coverage provided therein or supplemental thereto, in limits for bodily injury or death[,] set forth in paragraph (1), under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; provided, however, that the coverage required under this paragraph shall not be applicable where any named insured in the policy shall reject the coverage in writing; and
- (4) Coverage for loss resulting from bodily injury or death suffered by any person legally entitled to recover damages from owners or operators of underinsured motor vehicles. An insurer may offer the underinsured motorist coverage required by this paragraph in the same manner as uninsured motorist coverage; provided that [such] the offer of both shall:
 - (A) Be conspicuously displayed so as to be readily noticeable by the insured;
 - (B) Set forth the premium for the coverage adjacent to the offer in [such] a manner that the premium is clearly identifiable with the offer and may be easily subtracted from the total premium to determine the premium payment due in the event the insured elects not to purchase the option; and

- (C) Provide for written rejection of the coverage by requiring the insured to affix the insured's signature in a location adjacent to or directly below the offer.

(c) The stacking or aggregating of uninsured motorist coverage or underinsured motorist coverage, whichever is applicable, is prohibited. However, an insurer shall offer an option to stack uninsured motorist coverage and underinsured motorist coverage, as applicable, in each no-fault policy whenever any policy is issued, delivered, or renewed."

SECTION 27. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-304 Obligation to pay no-fault benefits. For purposes of this section, the term "no-fault insurer" includes no-fault self-insurers. Every no-fault [and self-insurer] insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d):
 - (A) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the no-fault benefits payable for wage loss and other expenses to that person under section 431:10C-103(10)(A)(iii) and (iv) as a result of the injury:
 - (i) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
 - (ii) Any pedestrian (including a bicyclist); or
 - (iii) Any user or operator of a moped as defined in section 249-1;
 - (B) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the persons listed in [item (1)(A)] subparagraph (A), charges for services covered under section 431:10C-103(10)(A)(i) and (ii); or
 - (C) In the case of death of any person listed in [item (1)(A),] subparagraph (A), arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the legal representatives of [such] the person who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, for the benefit of the surviving spouse and any [[dependent]], as defined in section 152 of the Internal Revenue Code of 1954, as amended, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of [such] the person, subject to [the provisions of] section 431:10C-103(10); [Provided] provided that subparagraphs (A), (B), and (C) shall not apply in the case of injury to or death of any operator of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident.
- (2) Payment of no-fault benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section 431:10C-103(10)(A)(iii) and (iv) may be made immediately in a lump sum payment, at the option of the beneficiary.

- (3) (A) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof.
- (B) Subject to section 431:10C-308.6, relating to peer review, if the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also mail a copy of the denial to the provider.
- (C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also forward the list to the service provider.
- (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
- (5) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 431:10C-211, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any [such] contract.
- (6) Any insurer who violates [the provisions of] this section shall be subject to [the provisions of] section 431:10C-117(b) and (c)."

SECTION 28. Section 431:10C-308.6, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) If a peer review organization determines that treatment or rehabilitative services were appropriate and reasonable, the insurer shall pay to the provider the outstanding amount plus interest at a rate of [twelve] one and one-half per cent per [year] month on any amount withheld by the insurer pending the peer review."

SECTION 29. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The plan shall provide all no-fault benefits and services[,] and [tort] bodily injury and property damage liability [coverage] coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this article upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide no-fault benefits and policies for each of the following classes, and each class shall be able to secure a no-fault and

[tort] bodily injury and property damage liability policy through the plan:

- (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk automobile driver.
- (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
- (i) Heedless and careless driving;
 - (ii) Driving while license suspended or revoked;
 - (iii) Leaving the scene of an accident;
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle; or
 - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marijuana, as provided in section 291-7.
- (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity.
- (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes.
- (2) The plan shall provide no-fault benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the [options] option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
- (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of medical services or direct cash payments through the department of human services, or benefits from the supplemental security income program under the social security administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes.
- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation. Each category of driver/owner under subparagraphs
- (A) and (B) may secure no-fault coverage through the plan at the individual's option, provided any previous no-fault policy has expired or has been canceled. Any person becoming eligible for plan coverage

under subparagraph (A) shall first exhaust all paid coverage under any no-fault policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid no-fault insurance identification card pursuant to section 431:10C-107.

- (3) Under the joint underwriting plan, all basic no-fault coverages, including the basic no-fault policy, the mandatory [\$35,000 public] \$25,000 bodily injury liability, and the \$10,000 property damage policies shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered by every insurer in conformance with section 431:10C-301, and optional additional coverages shall be offered [by every insurer] in conformance with section 431:10C-302, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 30. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person eligible for benefits under this part, or who becomes eligible to file a claim or an action against the mandatory [public] bodily injury liability or property damage liability policies, shall, upon the bureau's determination of [such] eligibility, be entitled to:

- (1) The full no-fault benefits as if [such] the victim had been covered as an insured at the time of the accident producing the accidental harm.
- (2) The rights of claim and action against the insurer, assigned under section 431:10C-403, with reference to the mandatory [public] bodily injury liability policy for accidental harm, and with reference to the mandatory property damage liability policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory [public] bodily injury liability or property damage liability policies, or the basic no-fault policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of subparts A and B, except that the date of notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 431:10C-315."

SECTION 31. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each filing shall be accompanied by a [\$20] \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund."

SECTION 32. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) 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 except for those lines of insurance for which the commissioner determines individual insurer rate filings shall be made. Nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.”

SECTION 33. Section 431:14-107, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Cooperation among rating organizations or among rating organizations and insurers [in rate making or] in [other] matters within the scope of this article is authorized, provided the filings resulting from [such] the cooperation are subject to all the provisions of this article which are applicable to filings generally. The commissioner may review [such] the cooperative activities and practices and if, after a hearing, the commissioner finds that any [such] activity or practice is unfair or unreasonable or otherwise inconsistent with this article, the commissioner may issue a written order specifying in what respects [such] the activity or practice is unfair or unreasonable or otherwise inconsistent with this article, and requiring the discontinuance of [such] the activity or practice.”

SECTION 34. Section 431:14-107.2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) [No] Except as permitted in this article, no insurer shall agree with any other insurer or with a rating organization or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection,³ or similar material, except as needed to develop statistical plans permitted by section [[431:14-107.1]]. The fact that two or more insurers, whether or not members or subscribers of a rating organization or advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections, or similar materials is not sufficient in itself to support a finding that an agreement exists. Two or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this article as if they constituted a single insurer.

(c) [No] Except as permitted in this article, no insurer, rating organization, or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.”

SECTION 35. Section 431:14-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Every] Except for those lines of insurance for which the commissioner determines that individual rate filings shall be made, every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by the organization, except that any [such] insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans, or rules respecting any class of insurance, or class of risk within a class of insurance,

or combination thereof. The application shall specify the basis for the deviation and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.”

SECTION 36. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-106 Formation of captive insurance companies in this State.

- (a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (b) An association captive insurance company may be incorporated:
- (1) As a stock insurer with its capital divided into shares and held by the stockholders; or
 - (2) As a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association.
- (c) A captive insurance company shall have not less than three incorporators of whom not less than two shall be residents of this State.
- (d) Before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner’s finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:
- (1) The character, reputation, financial standing, and purposes of the incorporators;
 - (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
 - (3) [Such other] Other aspects as the commissioner deems advisable.
- (e) The articles of incorporation, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation and the certificate.
- (f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.
- (g) At least one of the members of the board of directors of a captive insurance company incorporated in this State shall be a resident of this State.
- (h) Captive insurance companies formed under this article, except for pure nonprofit captive insurance companies, shall have the privileges and be subject to the general corporation law as well as this article. In the event of conflict between the general corporation law and this article, the latter shall control.
- (i) Pure nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law as well as this article. In the event of conflict between the nonprofit corporation law and this article, the latter shall control.
- (j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no member shall own more than ten per cent of the risk retention captive insurance company’s outstanding stock; provided that as an alternative, the commissioner, if the commissioner deems it in the best interest of the risk retention captive, the policyholders, and the public, may permit the articles of incorporation to state that no member shall vote more than ten per cent of the outstanding stock.”

SECTION 37. Section 431:19-116, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:19-116]]~~ **Taxation.** (a) Each pure captive insurance company licensed to do business in this State shall pay to the director of finance through the commissioner a tax of .25 per cent on gross premiums [received from] for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(b) Each association captive insurance company licensed to do business in this State and each risk retention captive insurance company chartered in this State shall pay a tax of one per cent on gross premiums [received from] for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(c) The tax imposed by this section when paid shall be in settlement of and in lieu of all demands for taxes of every character imposed by the laws of this State, the ordinances or other laws, or rules[, or regulations] of any [county or any city and] county of this State, except taxes on real property[,] and taxes on the purchase, use, or ownership of tangible personal property.”

SECTION 38. Section 431K-3, Hawaii Revised Statutes, is amended to read as follows:

“**§431K-3 Risk retention groups not chartered in this State.** Risk retention groups chartered in states other than this State and seeking to do business as a risk retention group in this State shall observe and abide by the laws of this State as follows:

- (1) Before offering insurance in this State, a risk retention group shall submit to the commissioner:
 - (A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and [such] other information, including information on its membership, as the commissioner of this State may require to verify that the risk retention group is qualified as a risk retention group;
 - (B) A copy of its plan of operations or a feasibility study and revisions of this plan or study submitted to its state of domicile; provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was:
 - (i) Defined in the Product Liability Risk Retention Act of 1981, 15 United States Code 3901 et seq., before October 27, 1986; and
 - (ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and
 - (C) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process;
- (2) Any risk retention group doing business in this State shall submit to the commissioner:

- (A) A copy of the group's financial statement submitted to the insurance commissioner of its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
 - (B) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination in its state of domicile;
 - (C) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and
 - (D) Information as may be required to verify its continuing qualification as a risk retention group;
- (3) Taxation of risk retention groups shall be as follows:
- (A) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to [foreign admitted insurers;] risk retention group captives chartered in this State pursuant to chapter 431, article 19;
 - (B) To the extent agents or brokers are utilized, the agents or brokers shall report and pay the taxes for the premiums for risks which the agents or brokers have placed with or on behalf of a risk retention group not chartered in this State; or
 - (C) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State; provided that each risk retention group shall report all premiums paid to it for risks insured within the State;
- (4) Any risk retention group shall comply with chapter 431, article 13 regarding deceptive, false, or fraudulent acts or practices, and unfair claims settlement practices; provided that if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction;
- (5) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this State. Any [such] examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook;
- (6) The following notice shall be printed in ten point type on the front page of every application for insurance from a risk retention group, and on the front page and the declaration page of every policy issued by a risk retention group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group;

- (7) The following acts by a risk retention group are prohibited:

- (A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in [such] the group; and
- (B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired;
- (8) No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies;
- (9) No risk retention group may offer insurance policy coverage prohibited by chapter 431 or declared unlawful by the highest court of this State; and
- (10) A risk retention group not chartered in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (5).⁷

SECTION 39. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 40. This Act shall take effect upon its approval.

(Approved June 10, 1993.)

Notes

- 1. Prior to amendment "depository" appeared here.
- 2. Prior to amendment "agent" appeared here.
- 3. Comma should be underscored.
- 4. Edited pursuant to HRS §23G-16.5.