

ACT 321

H.B. NO. 1730

A Bill for an Act Relating to Accreditation in Insurance Regulation.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 2 to be appropriately designated and to read as follows:

“§431:2- Staff. There are established within the insurance division of the department of commerce and consumer affairs six positions for technical staff, and three positions for clerical staff, necessary to enable the State to meet and maintain National Association of Insurance Commissioners accreditation standards. These positions shall not be subject to chapters 76 and 77. The salaries for these positions shall be funded out of the insurance examiners revolving fund, as provided in section 431:2-307.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding four new sections to part III of article 2 to be appropriately designated and to read as follows:

“§431:2- Examiner defined. For purposes of this part, “examiner” means any individual or firm authorized by the commissioner to conduct an examination under the insurance code.

§431:2- Conflict of interest. (a) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest

or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this part. This section shall not be construed to automatically preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though those persons from time to time may be similarly employed or retained by persons subject to examination under the insurance code.

§431:2- Immunity from liability. (a) No cause of action shall arise nor shall any liability be imposed against any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of the insurance code.

(b) No cause of action shall arise, nor shall any liability be imposed against any person, for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under the insurance code, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate nor modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a).

(d) A person identified in subsection (a) shall be entitled to an award of attorneys' fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the insurance code, and the party bringing action is not substantially justified to do so. For the purposes of this section, a proceeding is substantially justified if it has a reasonable basis in law or fact at the time that it is initiated.

§431:2- Conduct of examinations. (a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiners shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every company or person from whom information is sought, including its officers, directors, and agents, shall provide to the examiners appointed under subsection (a) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination insofar as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any

reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to section 431:3-217.

(c) The commissioner or any authorized examiner shall have the power to issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the subpoena may be enforced pursuant to section 431:2-207.

(d) When conducting an examination, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the company that is the subject of the examination.

(e) Nothing contained in this part shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this part shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, deem appropriate."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 15 to be appropriately designated and to read as follows:

"§431:15- Standards and authority. (a) The following standards, either singly or in a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting insurance business in this State may be deemed to be hazardous to the policyholders, creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports;
- (2) The National Association of Insurance Commissioners' insurance regulatory information system and its related reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;
- (4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- (5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) The insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to share-

holders, is greater than fifty per cent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

- (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;
 - (8) Contingent liabilities, pledges, or guaranties that, either individually or collectively, involve a total amount that, in the opinion of the commissioner, may affect the solvency of the insurer;
 - (9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
 - (10) The age and collectibility of receivables;
 - (11) Whether management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position;
 - (12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
 - (13) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
 - (14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and
 - (15) Whether the company has experienced, or will experience in the foreseeable future, cash flow or liquidity problems or both.
- (b) For the purposes of making a determination of an insurer's financial condition under this part, the commissioner may:
- (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
 - (2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
 - (3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or
 - (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
- (c) If the commissioner determines that the continued operation of the insurer licensed to transact business in this State may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to:
- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (2) Reduce, suspend, or limit the volume of business being accepted or renewed;
 - (3) Reduce general insurance and commission expenses by specified methods;
 - (4) Increase the insurer's capital and surplus;

- (5) Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;
 - (6) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;
 - (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
 - (8) Document the adequacy of premium rates in relation to the risks insured;
 - (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such forms as approved by the commissioner.
- (d) Any insurer subject to an order under subsection (c) may request a hearing to review that order pursuant to chapter 91."

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

"§431K- Purchasing group taxation. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insurers; and
- (2) Paid first by that insurance source, and if not by that source, then by the agent or broker for the purchasing group, and if not by that agent or broker, then by the purchasing group, and if not by that purchasing group, then by each of its members."

SECTION 5. Section 431:2-301, Hawaii Revised Statutes, is amended to read as follows:

"§431:2-301 Purpose [and scope of examination]. [The commissioner shall determine the nature and scope of each examination and in doing so shall take into account all available relevant factors concerning the financial and business affairs, practices, and conditions of the examinee.] The purpose of this part is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this part are intended to enable the commissioner to adopt a flexible system of examinations that directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this State."

SECTION 6. Section 431:2-302, Hawaii Revised Statutes, is amended to read as follows:

"§431:2-302 [Examination of insurers.] Authority, scope, and scheduling of examinations. (a) The commissioner [may examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as the commissioner deems prudent. The commissioner shall examine each domestic insurer at least once in every three years. Examination of an alien insurer may be limited to its insurance transactions in the United States.

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(b) The commissioner shall examine fully each insurer applying for authority to do business in this State.

(c) In lieu of making the commissioner's examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of the state, province, or country of domicile or the state of entry into the United States. A certified copy of the annual report of the directors and statement of accounts approved by the British Board of Trade in London in accordance with the British Assurance Companies' Act may be acceptable to the commissioner in the absence of other British insurance supervisory officials' examination.] or any authorized examiner may conduct an examination of any company as often as the commissioner deems appropriate, but, at a minimum, shall conduct an examination of each domestic insurer at least once in every three years, and conduct an examination of every other insurer licensed in this State at least once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiner's handbook adopted by the National Association of Insurance Commissioners and in effect, when the commissioner exercises discretion under this section.

(b) For purposes of completing an examination of any insurer, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the insurer.

(c) In lieu of an examination of any foreign or alien insurer licensed in this State, the commissioner may accept an examination report on the insurer as prepared by the state regulatory agency for insurance for the insurer's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted under the following conditions:

- (1) The State's regulatory agency for insurance was, at the time of the examination, accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or
- (2) The examination was performed:
 - (A) Under the supervision of an accredited state regulatory agency for insurance; or
 - (B) With the participation of one or more examiners who are employed by an accredited state regulatory agency for insurance and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their state regulatory agency for insurance."

SECTION 7. Section 431:2-305, Hawaii Revised Statutes, is amended to read as follows:

"§431:2-305 Examination reports. [(a) The commissioner shall make a full written report of each examination made by the commissioner.

(b) The report shall include:

- (1) A statement of findings of fact ascertained from the books, records, documents,¹ and other evidence obtained by investigation and examination, or ascertained from the sworn testimony of its officers, agents, or other persons examined concerning the financial condition of the

examinee, its assets, obligations, ability to fulfill obligations, and compliance with all the provisions of this code; and

- (2) A summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the examination.

(c) The commissioner shall furnish to the person examined a copy of the examination report by the examiner not less than sixty 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 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.

(d) The report, when filed for public inspection, shall be admissible evidence in action or proceeding brought by the commissioner against the person examined, or its officers or agents; except that the commissioner or the commissioner's examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the division.

(e) If the commissioner or the commissioner's examiners find that any of the information ascertained is flawed, the person examined shall be subject to the penalties provided for in section 710-1060 to section 710-1062.] (a) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the insurer, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the insurance division a verified written report of examination under oath. Upon receipt of the verified report, the insurance division shall transmit the report to the insurer examined, together with a notice that shall afford the insurer examined a reasonable opportunity for not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order to:

- (1) Adopt the examination report as filed, or with modifications or corrections. If the examination report reveals that the insurer is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the insurer to take any action the commissioner considers necessary and appropriate to cure the violation;
- (2) Reject the examination report with directions to the examiners to reopen the examination for the purpose of obtaining additional data, documentation, or information, and refiling pursuant to subsection (a);
or
- (3) Call for an investigatory hearing with no less than twenty days notice to the insurer for purposes of obtaining additional documentation, data, information, or testimony.

(d) Orders shall be issued and hearings conducted as follows:

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner

workpapers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders; and

- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection (c)(1):

- (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;

- (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and

- (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(e) The examination report shall be disseminated as follows:

- (1) Upon the adoption of the examination report under subsection (c)(1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days, except to the extent provided in subsection (b). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication; and

- (2) Nothing contained in the insurance code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the regulatory agency for insurance of any state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part.

(f) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination, shall be confidential and not subject to

subpoena and shall not be made public by the commissioner or any other person, except to the extent provided in subsection (e). Access may be granted to the National Association of Insurance Commissioners. Any person shall agree in writing, prior to receiving the information, to provide to it the same confidential treatment as required by this part, unless the prior written consent of the insurer to which the information pertains has been obtained.”

SECTION 8. Section 431:2-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-307 Insurance examiners revolving fund[,] and appointment of examiners. (a) The commissioner may establish a separate fund designated as the insurance examiners revolving fund.

(b) The commissioner may appoint staff examiners, not subject to chapters 76 and 77, and contract with independent contractor examiners, who shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer. The commissioner may also appoint administrative support personnel, not subject to chapters 76 and 77, who shall assist and support the examiners. The commissioner may pay the salaries of the staff examiners and administrative support personnel from the insurance examiners revolving fund.

[(b)] (c) The funds shall be used to compensate or reimburse independent contractor examiners[. Independent contractor examiners may be reimbursed or compensated] for:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense [allowance] at a rate of per diem customary for such expenses and approved by the commissioner; and
- (3) [Per diem compensation] Compensation at a rate customary for such compensation as approved by the commissioner.

[(c)] (d) The funds may also be used to reimburse insurance division staff examiners and administrative support personnel for the following expenses necessarily incurred on account of an examination and the examiners’ education and training:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense allowance at a rate customary for such expenses and approved by the commissioner; and
- (3) Any fee or tuition necessary to attend educational and training conferences, workshops, seminars, and any similar [event] events of this nature.

[(d)] (e) The funds may also be used for other expenses relating to examinations of insurance companies.

[(e)] (f) All persons receiving any reimbursement or compensation from the insurance examiners revolving fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred. Persons shall not receive or accept any additional emolument on account of an examination. In the case of an examination, any reimbursement or compensation made by the fund and approved by the commissioner shall be charged to the person being examined by the commissioner and all receipts shall be credited to the fund.

[(f)] (g) Moneys in the insurance examiners revolving fund shall not revert to the general fund.

[(g)] (h) Each authorized insurer shall [deposit at a time determined by the commissioner the sum of \$200 with] pay, on or before August 15, 1993, and each

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year thereafter, on or before July 1, a sum of \$550 to the commissioner to be credited to the insurance examiners revolving fund.

(i) The commissioner shall prepare and submit a quarterly report to the legislature on the use of the insurance examiners revolving fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 9. Section 431:3-301, Hawaii Revised Statutes, in amended by amending subsection (a) to read as follows:

"(a) Annually before March [16,] 1, 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] shall be filed using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner[.]. The annual statement shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. The reported information shall be 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;

(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] that 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."

SECTION 10. Section 431:3-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No insurer shall retain net any [fire or surety] risk on any one subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding ten per cent of its surplus to policyholders[, except that:

- (1) Domestic mutual insurers may insure up to the applicable limits provided by section 431:4-303 to section 431:4-305, if greater; or
- (2) In the case of fire risks adequately protected by automatic sprinklers or fire risks principally of noncombustible construction and occupancy, an insurer may retain fire risks as to any one subject in an amount not exceeding twenty-five per cent of the sum of:
 - (A) Its unearned premium reserve, and
 - (B) Its surplus to policyholders].”

SECTION 11. Section 431:4A-101, Hawaii Revised Statutes, is amended to read as follows:

“**[§431:4A-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] that 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] that is accredited as a reinsurer in this State. An accredited reinsurer is one [which:] that:
 - (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] that 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] that 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] that 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:] Credit shall be allowed as follows:

- (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that maintains a trust fund in a qualified United States financial institution, as defined in section 431:4A-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] that complies with the filing requirements contained in subparagraph (A), and [which] that has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, and [which] that submits to this State's authority to examine its books and records and bears the expense of the examination, and [which] that 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] and the group shall maintain a joint 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 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 mem-

- ber'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 paragraph (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."

SECTION 12. Section 431:9B-103, Hawaii Revised Statutes, is amended to read as follows:

"[§431:9B-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;

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- (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] that is a qualified United States financial institution;
- (4) The RB shall comply with section [431:9B-105;] 431:9B-104;
- (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."

SECTION 13. Section 431:9B-106, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~431:9B-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] that 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] that 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 [431:9B-108(a),] 431:9B-108(d), 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] that 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 431:9B-108(c);
- (11) The RM shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

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- (12) The reinsurer shall at [least] a minimum 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.”

SECTION 14. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person other than the issuer shall make a tender offer or a request or invitation for tenders [of], or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person, directly or indirectly (by conversion or by exercise of any right to acquire), would be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement containing the information required by subsection (b) and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless the commissioner determines that the person, directly or through its affiliates, is primarily engaged in business other than the business of insurance. Such a person shall file a preacquisition notification with the commissioner containing the information set forth in section 431:11-104.3(b) thirty days prior to the proposed effective date of the acquisition. Failure to file is subject to section 431:11-104.5(f). This section does not apply to any securities broker holding, in the usual and customary broker’s function, less than twenty per cent of the voting securities of an insurance company or of any person who controls an insurance company.”

SECTION 15. Section 431:11-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer who is authorized to do business in this State and who is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile [which] that are substantially similar to those contained in this section and section [431:11-106(a)(1).] 431:11-106(a)(1), (b), and (d). The insurer shall file a copy of the registration statement and summary of its registration statement as required by subsections (b) and (c) with the National Association of Insurance Commissioners. The insurer also shall file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer is authorized to do business if requested by the commissioner of that state. Any insurer who is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March 15 of each year for the

previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer who is a member of a holding company system who is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.”

SECTION 16. Section 431:11-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:
- (A) Thirty days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment[.]; or
- (B) The commissioner shall have approved the payment within the [thirty day] thirty-day period.
- (2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds[:] the lessor¹ of:
- (A) Ten per cent of such insurer’s surplus as regards policyholders as of the [31st] thirty-first day of December next preceding; or
- (B) The net gain from operations of a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the [twelve month] twelve-month period ending the [31st] thirty-first day of December next preceding.

Extraordinary dividend or distribution shall not include pro rata distributions of any class of the insurer’s own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution [which] that is conditional upon the commissioner’s approval thereof, and the declaration shall confer no rights upon shareholders until[:

- (i) The] the² commissioner has either approved the payment of the dividend or distribution[;] or
- [(ii) The commissioner] has not disapproved the payment within the [thirty day] thirty-day period referred to above.”

SECTION 17. Section 431K-7, Hawaii Revised Statutes, is amended to read as follows:

“**§431K-7 Notice and registration requirements of purchasing groups.**

(a) A purchasing group [which] that intends to do business in this State shall furnish, on forms prescribed by the National Association of Insurance Commissioners, notice to the commissioner [which] that shall include the following:

- (1) Identification of the state in which the group is domiciled;
- (2) Specification of the lines and classifications of liability insurance [which] that the purchasing group intends to purchase;

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- (3) Identification of the insurance company or risk retention group from which the group intends to purchase its insurance and the domicile of such company or risk retention group;
- (4) Identification of the principal place of business of the group;
- (5) Provision of other information as may be required by the commissioner to verify that the purchasing group qualifies as such under section 431K-1; [and]
- (6) The method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in this State.]; and
- (7) Identify all other states in which the group intends to do business.

(b) The purchasing group shall register with and designate the commissioner or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process, except that these requirements shall not apply in the case of a purchasing group [which:] that:

- (1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
- (2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
- (3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981, 15 United States Code 3901 et seq., before October 27, 1986; and
- (4) Does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

(c) A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection (a)."

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 19. This Act shall take effect upon its approval.

(Approved June 22, 1993.)

Notes

- 1. So in original.
- 2. Should be underscored.
- 3. Edited pursuant to HRS §23G-16.5.