

ACT 368

S.B. NO. 1535

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:2-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person competent to serve a summons shall serve upon the commissioner triplicate copies of legal process against an insurer for whom the commissioner is attorney. In the absence of the commissioner, the process may be served

upon the chief deputy or the deputy in charge of the insurance function. At the time of service the plaintiff shall pay to the commissioner [\$7.50,] \$12, taxable as costs in the action.”

SECTION 2. Section 431:3-302, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-302 Annual and quarterly filings with the National Association of Insurance Commissioners. (a) Each domestic, foreign, and alien insurer [which] that is authorized to transact insurance in this State shall [file annual and quarterly statements with the National Association of Insurance Commissioners. Each insurer,] annually on or before March 1 of each year, [shall] file a copy of its annual statement convention blank along with additional filings as prescribed by the commissioner for the preceding year[.] with the National Association of Insurance Commissioners. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement with the commissioner and the National Association of Insurance Commissioners. The information filed with the National Association of Insurance Commissioners 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 addenda to the statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners. In addition to the printed annual statement blank, quarterly statements, and other reports addressed in this section, the annual filing [for 1993 and thereafter] and the quarterly filings [for 1994 and thereafter] shall include diskettes containing annual and quarterly statement information in the format prescribed by the National Association of Insurance Commissioners annual and quarterly statement diskette filing specifications. The annual and quarterly diskette filings shall be due on the same dates as the corresponding printed information.

(b) In respect to quarterly filings, foreign insurers that are domiciled in a state [which] that has a law substantially similar to subsection (a) shall be deemed to be in compliance with this section and are not required to file [such] the statements with this State. [However, all] All other filings are required to be filed in accordance with this section.

(c) Any insurer failing or refusing to submit the annual or quarterly filings in accordance with this section shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-302.5 Annual audit. (a) Annually on or before June 1, or such later date as the commissioner upon request or for cause may specify, each domestic insurer shall file an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and the results of operations of the insurer. The insurer shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit within sixty days [after May 7, 1991]. The commissioner may disapprove the insurer’s designation within fifteen days of receipt of the insurer’s notice, and the insurer shall be required to designate another independent certified public accountant or accounting firm.

(b) An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of

insurance companies [which] that utilizes a pooling or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and [such] the insurer cedes all of its direct and assumed business to the pool.

(c) The audit required in subsection (a) and the audited consolidated or combined financial statements required in subsection (b) 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' accounting practices and procedures manuals.

[(c)] (d) Any insurer failing or refusing to submit the annual audit or any of the documents required under subsection (a) on or before June 1, or a later date as the commissioner upon request or for cause may specify, shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer who fails to file any of the documents required in subsection (a)."

SECTION 4. Section 431:5-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:5-301 Unearned premium reserve. (a) Every insurer shall maintain an unearned premium reserve on all policies in force for:

- (1) Insurance against loss or damage to property, except as provided in section 431:5-302;
- (2) General casualty insurance;
- (3) Disability insurance, except as provided in section 431:5-303 and section 431:5-307; and
- (4) Surety insurance.

(b) For purposes of this article, [unearned premium reserve] **“unearned premium reserve”** means the portions of the gross premiums in force, less authorized reinsurance.

[(c)] Such reserve shall be computed according to the following table:

<u>Terms for which policy was written</u>	<u>Reserve for unearned premium</u>
One year or less	1/2
Two years	3/4
	First year
	Second year
Three years	1/4
	First year
	Second year
	Third year
Four years	5/6
	First year
	Second year
	Third year
Five years	1/6
	First year
	Second year
	Third year
	Fourth year
Five years	7/8
	First year
	Second year
	Third year
	Fourth year
Five years	5/8
	First year
	Second year
	Third year
	Fourth year
Over five years	3/8
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	1/8
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	9/10
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	7/10
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	1/2
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	3/10
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	1/10
	First year
	Second year
	Third year
	Fourth year
	Fifth year
Over five years	Pro rata

(d) In lieu of computation according to the table in subsection (c), all of the (c) All reserves may be computed, at the insurer's option, on a monthly or more frequent, pro rata basis.

[(e)] (d) After adopting any one of the methods for computing such reserve, an insurer shall not change methods without the commissioner's approval."

SECTION 5. Section 431:5-302, Hawaii Revised Statutes, is amended to read as follows:

“§431:5-302 Unearned premium reserve for marine and transportation.

Marine and transportation insurance policy premiums on trip risks not terminated shall be deemed unearned. The commissioner may require the insurer to carry a reserve [thereon] equal to one hundred per cent on trip risks written during the month ended as of the date of statement, and:

- (1) Computed upon a pro rata basis[.]; or
- (2) With the commissioner's consent, in accordance with the alternative methods provided in section [431:5-301(d)] 431:5-301(c) and section [431:5-301(e)] 431:5-301(d).”

SECTION 6. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable on [a quarterly] an annual basis by means and at a time to be determined by the commissioner.”

SECTION 7. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each pure captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and audited by an independent certified public accountant on or before the last day of the sixth month following the end of the company's fiscal year.

(b) [In addition, each] Each association captive and risk retention captive shall file with the commissioner an annual statement on or before March 1 each year, using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. In addition to the annual statement, annually on or before June 1, or such later date as the commissioner upon request or for cause may specify, each association captive and risk retention captive shall file an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive. The annual statement and audit 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] captive's principal officers. Each risk retention group shall also comply with section 431:3-302.”

SECTION 8. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definitions of “liability” and “personal risk liability” to read as follows:

““Liability” means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to those other persons resulting from or arising out of:

- (1) Any business, whether for profit or nonprofit, trade, product, services, including professional services, premises, or operations; or
- (2) Any activity of any state or county government, or any agency or political subdivision [thereof];

but does not include personal risk liability and an employer’s liability with respect to its employees other than legal liability under the Federal Employers’ Liability Act, 45 U.S.C. §51 et seq.

“Personal risk liability” means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (1) and (2) in the definition of “liability”.”

SECTION 9. 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 that intends to do business in this State shall furnish, on forms prescribed by the National Association of Insurance Commissioners, notice to the commissioner 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 that the purchasing group intends to purchase;
- (3) Identification of the insurance company or risk retention group from which the group intends to purchase its insurance and the domicile of [such] the company or risk retention group; and
- (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;
- (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 commissioner may require a purchasing group to provide the following information:

- (1) 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;
- (2) Identify all other states in which the group intends to do business; and
- (3) Provision of other information to verify that the purchasing group qualifies as such under section 431K-1.

(b) (c) 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 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 U.S.C. §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] (d) Within ten days a purchasing group shall[, within ten days,] notify the commissioner of any changes in any of the items set forth in [subsection (a).] subsections (a) and (b)."

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval, except section 6 shall take effect on July 1, 1998.

(Approved July 3, 1997.)