

ACT 155

S.B. NO. 2733

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to amend chapters 431 to 435C, Hawaii Revised Statutes (HRS), and the producer licensing act adopted by the 2001 legislature (Act 216, Session Laws of Hawaii 2001, recodified as article 9A of chapter 431, (HRS)) to bring the insurance laws and the Act into conformity with each other. The producer licensing act and the insurance laws contain certain inconsistent terms and provisions. Therefore, to increase consistency and accuracy, this Act amends statutory language in various sections of chapters 431 to 435C, HRS, moves applicable provisions from article 9 of chapter 431, HRS, to new sections in article 9A of chapter 431, HRS, and repeals sections 431:9-214 and 431:9-301 to 431:9-305, HRS.

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

**“ARTICLE
MANAGING GENERAL AGENTS**

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

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

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

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

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

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

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

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

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

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

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

- (1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

- (2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity and deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the managing general agent. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the managing general agent shall be maintained in the licensee's office. The insurer shall have access to and the right to copy all accounts and records of the managing general agent related to the insurer's business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Records shall be in an organized form according to each class of insurance and shall include the following information to the extent it is applicable:
 - (A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance;
 - (B) The names of any other licensees from whom business is accepted and the names of persons to whom commissions or allowances of any kind are promised or paid;
 - (C) A record of each investigation or adjustment undertaken or consummated and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment;
 - (D) A record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and
 - (E) Any additional information as shall be customary or as may reasonably be required by the commissioner.

This section shall not apply to life or disability insurance if the records required of such insurance are customarily maintained in the offices of the insurer;
- (5) The contract may not be assigned in whole or in part by the managing general agent;
- (6) Appropriate underwriting guidelines including:
 - (A) The maximum annual premium volume;
 - (B) The basis of the rates to be charged;
 - (C) The types of risks which may be written;
 - (D) Maximum limits of liability;
 - (E) Applicable exclusions;
 - (F) Territorial limitations;
 - (G) Policy cancellation provisions; and
 - (H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies;

- (7) If the contract permits the managing general agent to settle claims on behalf of the insurer:
 - (A) All claims shall be reported to the insurer in a timely manner;
 - (B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the managing general agent's claims settlement authority;
 - (iv) Is open for more than six months; or
 - (v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
 - (C) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;
 - (D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and
 - (E) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (8) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and, in any event, not until the profits have been verified through examination pursuant to section 431: -105; and
- (9) The managing general agent shall not:
 - (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
 - (B) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
 - (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which

- shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
 - (F) Permit its subagent to serve on the board of directors of the insurer;
 - (G) Employ an individual who is employed by the insurer also; or
 - (H) Appoint a sub-managing general agent.

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

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

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

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

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

(f) An insurer shall review its books and records each quarter to determine if any producer, as defined in section 431:11A-101, has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and producer shall fully comply with this article within thirty days.

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

§431: -105 Examination authority. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined pursuant to article 2 as if the managing general agent was the insurer.

§431: -106 Penalties and liabilities. (a) If after a hearing conducted in accordance with section 431:2-308 and chapter 91, the commissioner finds that any person has violated any provision of this article, the commissioner may order any or all of the following:

- (1) For each separate violation, a fine in an amount not less than \$500 and not more than \$50,000, pursuant to section 431:3-221;
- (2) Revocation or suspension of the managing general agent's license; and

(3) The managing general agent to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter by the managing general agent.

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

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

§431: -107 Rules. The commissioner may adopt rules in accordance with chapter 91 to effectuate the purposes of this article.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 9A four new sections to be appropriately designated and to read as follows:

“**§431:9A-A Limited license.** (a) Notwithstanding any other provision of this article, the commissioner may issue:

(1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of disability insurance or baggage insurance on personal effects;

(2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;

(3) A limited license to any individual who sells policies of disability insurance as a promotional device to improve the circulation of a newspaper in this State;

(4) A limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors; or

(5) A limited credit insurance license to any individual who sells policies of individual or group credit life, credit accident and health, credit involuntary unemployment, or credit property insurance; provided the individual satisfactorily passes a pre-licensing examination that is limited to the kinds of insurance marketed through creditors.

(b) The commissioner may prescribe and furnish forms calling for any information that the commissioner deems proper in connection with the application for or extension of these limited licenses.

(c) The limited license shall not be issued until the license fee has been paid.

§431:9A-B Process against nonresident licensees. (a) Each licensed non-resident producer shall appoint the commissioner as the producer’s agent to receive service of legal process issued against the producer in this State upon causes of action arising within this State. Service upon the commissioner as agent shall constitute effective legal service upon the producer.

(b) The appointment shall be irrevocable for as long as there could be any cause of action against the producer arising out of the producer’s insurance transactions in this State.

(c) Service of process on the commissioner shall be made in accordance with section 431:2-206.

§431:9A-C Reporting and accounting for premiums. (a) Every licensed producer shall have the responsibilities of a trustee for all premium and return premium funds received or collected under this article.

(b) The licensee, upon receipt of the funds, shall either:

- (1) Remit the premiums (less commissions) and return premiums received or held by the licensee to the insurers or the persons entitled to such funds; or
- (2) Maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company situated in Hawaii, separate from the licensee's own funds or funds held by the licensee in any other capacity, in an amount at least equal to the premiums (net of commissions) and return premiums received by such licensee and unpaid to the insurers or persons entitled to such funds. Return premiums shall be returned within thirty days, unless directed otherwise in writing by the person entitled to the funds. The licensee shall not be required to maintain a separate bank account or other account for the funds of each insurer or person entitled to such funds, if and so long as the funds held for the insurer or person entitled to such funds are reasonably ascertainable from the books of account and records of the licensee. Only such additional funds as may be reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with the premium funds. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the licensee may not retain the interest earned on such funds for the licensee's own use or benefit without the prior written consent of the insurers or person entitled to such funds. A premium trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 431:9A-C, Hawaii Revised Statutes", or words of similar import.

(c) Any such licensee who, not being lawfully entitled to such funds, diverts or appropriates such funds or any portion of them to the licensee's own use, shall be subject to any penalties as provided by law.

§431:9A-D Controlled business. (a) The commissioner shall neither grant nor extend a producer's license to any person if the commissioner has reasonable cause to believe that:

- (1) In the case of an application for license extension, during either of the two calendar years immediately preceding the extension date of the license, the aggregate amount of premiums on insurance represented by controlled business exceeded the aggregate amount of premiums on all other insurance business of the licensee; or
- (2) The circumstances of the applicant for license issuance or extension are such as to cause the commissioner reasonably to believe that during the twelve-month period that would immediately follow the issuance or extension of the license, if granted, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant.

(b) "Controlled business" means insurance procured or to be procured by or through a licensee upon:

- (1) The licensee's own life, person, property, or risks, or those of the licensee's immediate family; or
- (2) The life, person, property, or risks of the licensee's employer or partnership, of which the licensee or a member of the licensee's immediate family is an officer, director, substantial stockholder, partner, associate, or employee."

SECTION 4. Section 431:1-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-203 Classes of insurance.** For the purposes of this code, the classes of insurance are: life insurance (including industrial and group life insurance)[;] as defined in section 431:1-204; accident and health or sickness insurance, also referred to as disability insurance (including group disability insurance)[;], as defined in section 431:1-205; property insurance[;] as defined in section 431:1-206; marine and transportation insurance[;] as defined in section 431:1-207; vehicle insurance[;] as defined in section 431:1-208; general casualty insurance[;] as defined in section 431:1-209; surety insurance[;] as defined in section 431:1-210; and such other classes as may be authorized by law.”

SECTION 5. Section 431:1-205, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-205 [Disability] Accident and health or sickness insurance defined.** [~~Disability~~] Accident and health or sickness insurance, also referred to as [~~accident and sickness~~] disability insurance, is insurance against bodily injury, disablement, or death by accident, or accidental means, or the expense thereof; against disablement or expense resulting from sickness; and every insurance appertaining thereto[-], including health and medical insurance.”

SECTION 6. Section 431:1-209, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-209 General casualty insurance defined.** General casualty insurance includes vehicle insurance as defined in section 431:1-208, [~~disability~~] accident and health or sickness insurance as defined in section 431:1-205, and in addition is insurance:

- (1) Against legal liability for the death, injury, or disability of any human being, or from damage to property;
- (2) Of medical, hospital, surgical, and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings;
- (3) Of the obligation accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury to employees;
- (4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt of any of the foregoing; also insurance against loss or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the mail;
- (5) Upon personal effects of individuals, by an all-risk type of policy commonly known as the personal property floater;
- (6) Against loss or damage to glass and its appurtenances resulting from any cause;
- (7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

- (8) Against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire;
- (9) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes, or containers, or by water entering through leaks or openings in buildings;
- (10) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance);
- (11) Against loss of or damage to any domesticated or wild animal resulting from any cause (livestock insurance);
- (12) Against loss of or damage to any property of the insured resulting from collision of any other object with such property, but not including collision to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation (collision insurance);
- (13) Against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability, and including any obligation of the insured to pay medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service (malpractice insurance);
- (14) Against any contract of warranty or guaranty which promises service maintenance, parts replacement, repair, money, or any other indemnity in the event of loss of or damage to a motor vehicle or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who or which as such is doing an insurance business; provided that service contracts, as defined and meeting the requirements of chapter 481X, shall not be subject to chapter 431.

The doing or proposing to do any business in substance equivalent to the business described in this section in a manner designed to evade the provisions of this section is the doing of an insurance business; and

- (15) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other class or classes or type of insurance as defined in section 431:1-204 to ~~[section]~~ 431:1-211, if such insurance is not contrary to law or public policy.”

SECTION 7. Section 431:3-212, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-212 Application for authority.** To apply for an original certificate of authority, an insurer shall:

- (1) File with the commissioner its request showing:
 - (A) Its name, home office location, type of insurer, organization date, and state or country of its domicile; and name and location of principal office of its attorney-in-fact if a reciprocal insurer[-];
 - (B) The classes of insurance it proposes to transact[-]; and
 - (C) Additional information as the commissioner may reasonably require.
- (2) File with the commissioner:

- (A) A copy of its charter as amended; or such copy certified by the proper public officer of the state or country of domicile if a foreign or alien insurer[-];
 - (B) A copy of its bylaws as amended, certified by its proper officer[-];
 - (C) A copy of its annual statement as of December 31 last preceding[-];
 - (D) An appointment of the commissioner as its attorney to receive service of legal process, if a foreign or alien insurer, or a domestic reciprocal insurer. The name and business address of its authorized resident agent upon whom process may be served in all cases, if a foreign or alien insurer[-];
 - (E) A copy of the appointment and authority of its United States manager, certified by its proper officer, if an alien insurer[-];
 - (F) A certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the classes of insurance proposed to be transacted, if a foreign or alien insurer[-];
 - (G) The declaration required by section 431:4-409 if a domestic reciprocal insurer[-];
 - (H) Certificate of the proper public official as to any deposit made or held in compliance with this code[-];
 - (I) Copy of report of the last examination made of the insurer certified by the insurance supervisory official of its state of domicile or entry into the United States, if a foreign or alien insurer[-];
 - (J) Certificate of appointment of [general agent.] producer; and
 - (K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this code.
- (3) Deposit with the commissioner the appropriate fees required by this code.”

SECTION 8. Section 431:3-212.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The certificate of authority, [agent] producer appointments and licenses, rates, and other items allowed by the commissioner, which are in existence at the time an insurer authorized to transact insurance business in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if the insurer remains qualified to transact insurance business in this State. For purposes of this section, an insurer transferring its corporate domicile to this State remains qualified to transact insurance business in this State if it meets the organization and licensing requirements applicable to the same type of domestic insurer. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.”

SECTION 9. Section 431:3-215, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The insurer shall return for cancellation its current certificate of authority and licenses for [general agents] producers issued by the commissioner.”

SECTION 10. Section 431:4-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:4-307 Mutual [disability] accident and health or sickness insurer.

(a) When applying for a certificate of authority, a domestic mutual [disability] accident and health or sickness insurer [must:] shall:

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

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

SECTION 11. Section 431:5-201, Hawaii Revised Statutes, is amended to read as follows:

“§431:5-201 Qualified assets. In any determination of the financial condition of an insurer, only such assets as are owned by the insurer, and which consist of the following may be used:

- (1) Cash in the possession of the insurer or in transit under its control, and the true positive balance of any deposit of the insurer in a solvent bank or trust company;
- (2) Investments, securities, properties, and secured loans acquired or held in accordance with article 6, and in connection therewith the following items:
 - (A) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.
 - (B) Declared and unpaid dividends on stocks and shares unless the amount has otherwise been allowed as an asset.
 - (C) Interest due or accrued upon a collateral loan in an amount not to exceed six months’ interest thereon.
 - (D) Interest due or accrued on:
 - (i) Deposits in solvent banks, trust companies, and financial investment companies; and
 - (ii) Other assets if such interest is in the judgment of the commissioner a collectible asset.
 - (E) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; provided that interest due and unpaid for a period in excess of six months shall not be allowed as an asset.
 - (F) Rent due or accrued on real property if such rent is not in arrears for more than three months, unless the rent is secured by property held in the name of the tenant and conveyed to the insurer as collateral.
- (3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;
- (4) The net amount of uncollected and deferred premiums on an effective date item basis and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held;

- (5) [~~Agents~~] Producer balances or uncollected premiums, other than for life insurance and other receivables, not more than ninety days past due, less commissions payable thereon; provided that the foregoing limitation shall not apply to premiums and other receivables payable directly or indirectly by the United States government or any of its instrumentalities;
- (6) Installment premiums other than life insurance premiums, in accordance with [~~regulations prescribed~~] rules adopted by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;
- (7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by [~~regulation prescribed~~] rules adopted by the commissioner;
- (8) (A) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer not disqualified to take such reinsurance under this code; or
 (B) So much of reinsurance recoverable from such reinsurer as does not exceed the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with such reinsurer as security for the payment of obligations thereunder if such funds are held subject to withdrawal by, and under the control of, the ceding insurer in the case of a reinsurer disqualified under this code;
- (9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;
- (10) Deposits or equities recoverable from underwriting associations and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;
- (11) Electronic data hardware;
- (12) Other assets not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims; and
- (13) All assets, whether or not consistent with the provisions of this code, as may be allowed pursuant to the annual statement form provided for in section 431:3-301.”

SECTION 12. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance \$900
 - (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$1,500
 - (B) Issuance of solicitation permit \$150
 - (3) [~~General agent’s~~] Producer’s license:
 - (A) Issuance, regular license \$75
 - (B) Issuance, temporary license \$75
 - [(4) Subagent’s license:
 - (A) Issuance, regular license \$75
 - (B) Issuance, temporary license \$75
 - (5) (4) Nonresident [~~agent’s or broker’s~~] producer’s license:
 - Issuance [~~\$60~~] \$75

[(6)]	Solicitor's license: Issuance	\$60
(7)]	(5) Independent adjuster's license: Issuance	[\$60] \$75
[(8)]	(6) Public adjuster's license: Issuance	[\$60] \$75
[(9)]	(7) Workers' compensation claims adjuster's limited license: Issuance	[\$60] \$75
[(10)]	(8) Independent bill reviewer's license: Issuance	\$80
[(11)]	(9) Limited producer's license [issued pursuant to section 431:9-214(e)]: Issuance	\$60
[(12)]	(10) Managing general agent's license: Issuance	\$75
[(13)]	(11) Reinsurance intermediary's license: Issuance	\$75
[(14)]	(12) Surplus line broker's license: Issuance	\$150
[(15)]	(13) Service contract provider's registration: Issuance	\$75
[(16)]	(14) Approved course provider certificate: Issuance	\$100
[(17)]	(15) Approved continuing education course certificate: Issuance	\$30
[(18)]	(16) Examination for license: For each examination, a fee to be estab- lished by the commissioner.	

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

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$75 per year for all services (including extension of the license) for a regularly licensed ~~[general agent;]~~ producer;
- ~~[(3)]~~ ~~\$75 per year for all services (including extension of the license) for a regularly licensed subagent;~~
- (4) (3) ~~[\$45]~~ \$75 per year for all services (including extension of the license) for a regularly licensed nonresident ~~[agent or broker;]~~ producer;
- ~~[(5)]~~ ~~\$30 per year for all services (including extension of the license) for a regularly licensed solicitor;]~~
- ~~[(6)]~~ (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- ~~[(7)]~~ (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- ~~[(8)]~~ (6) \$45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
- ~~[(9)]~~ (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- ~~[(10)]~~ (8) \$45 per year for all services (including extension of the license) for a producer's limited license ~~[issued pursuant to section 431:9-214(e)];~~
- ~~[(11)]~~ (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- ~~[(12)]~~ (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- ~~[(13)]~~ (11) \$45 per year for all services (including extension of the license) for a licensed surplus line broker;

- [(14)] (12) \$75 per year for all services (including renewal of registration) for a service contract provider;
- [(15)] (13) \$65 per year for all services (including extension of the certificate) for an approved course provider; and
- [(16)] (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course.

The services referred to in paragraphs (1) to [(16)] (14) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

(c) The commissioner shall notify the holder of a certificate of authority issued under article 3, or [the] a license or other certificate issued under article 9 or 9A, by written notice at least thirty days prior to the extension date of the certificate of authority, license, or other certificate. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority, license, or other certificate, and shall not reissue, remove the suspension of, or reactivate the certificate of authority, license, or other certificate until the fee and penalty have been paid.”

SECTION 13. Section 431:8-102, Hawaii Revised Statutes, is amended by amending the definition of “surplus lines broker” to read as follows:

““Surplus lines broker” means any [~~general agent~~] producer licensed under section 431:8-310 to place insurance on risks resident, located, or to be performed in this State with unauthorized insurers.”

SECTION 14. Section 431:8-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person in this State shall directly or indirectly act as [~~agent~~] producer for, or otherwise represent or aid on behalf of another, any unauthorized insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of an insurance business.”

SECTION 15. Section 431:8-300, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-300 Exemptions from surplus lines law.** This part shall not apply to reinsurance or to the following insurance when placed by a licensed [~~general agent~~] producer of this State:

- (1) Ocean marine insurance;
- (2) Insurance on subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State; or
- (3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workers’ compensation and employer’s liability, arising out of the ownership, maintenance, or use of such aircraft.”

SECTION 16. Section 431:8-307, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-307 Broker’s duty to notify insured.** No contract of insurance placed by a surplus lines broker under this part and no premium charged therefor shall be due and payable until the surplus lines broker, when business is originated by a surplus lines broker, or the ~~[general agent,]~~ producer, when business is referred to a surplus lines broker from a licensed ~~[general agent,]~~ producer, shall have notified the insured in writing that:

- (1) The insurer with which the surplus lines broker placed the insurance is not licensed by this State and is not subject to its supervision; and
- (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by any of the State’s insurance guaranty funds.

A copy of the notice shall be maintained by the broker with the records of the contract and available for possible examination.

Nothing in this section shall nullify any agreement by any insurer to provide insurance.”

SECTION 17. Section 431:8-310, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsection (b) to read as follows:

“(b) The commissioner shall issue a surplus lines broker license to any ~~[general agent]~~ producer licensed under article [9] 9A when the ~~[agent]~~ producer has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7; and
- (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 \$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.~~”

- (2) By amending subsection (d) to read as follows:

“(d) Licensing procedure, duration, and related matters are governed by article [9-] 9A.”

SECTION 18. Section 431:8-311, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-311 Compensation.** A licensed surplus lines broker may accept and place surplus lines business from any ~~[general agent]~~ producer licensed in this State for the class of insurance involved, and may compensate the ~~[agent]~~ producer therefor.”

SECTION 19. Section 431:8-312, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For each contract of insurance placed by a surplus lines broker, the broker shall maintain a written statement as to the diligent efforts by the surplus lines broker or the ~~[general agent]~~ producer to place the insurance with authorized insurers.”

SECTION 20. Section 431:8-317, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-317 Suspension or revocation of license. (a) The commissioner may suspend ~~[or]~~, revoke, or refuse to extend any surplus lines broker’s license~~;~~ any cause specified in any other provision of this chapter, or for any of the following causes:

- (1) ~~[For failure]~~ Failure to file the annual statement required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) ~~[For failure]~~ Failure to maintain an office in this State, or to keep records, or to allow the commissioner to examine such surplus lines broker’s records as provided in this article;
- (3) ~~[For removal]~~ Removal of office accounts and records from this State during the period in which such accounts are required to be maintained under this article;
- (4) ~~[For failure]~~ Failure to maintain the bond required by section 431:8-310; ~~[or]~~
- (5) ~~[For any]~~ Any of the causes for which a ~~[general agent’s]~~ producer’s license may be suspended or revoked under article ~~[9.]~~ 9A;
- (6) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (7) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (8) If the licensee has obtained or attempted to obtain the license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9A-105;
- (9) If the licensee has misappropriated, converted to the licensee’s own use, or illegally withheld moneys required to be held in a fiduciary capacity;
- (10) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (11) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (12) If in the conduct of the licensee’s affairs under the license, the licensee has been a source of injury and loss to the public;
- (13) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind;
or
- (14) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee’s licenses.

(b) The license of any partnership or corporation may be suspended, revoked, or refused for any of the causes applicable to any individual designated in the license to exercise the partnership’s or corporation’s powers.

(c) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner’s request.

~~[(b)]~~ (d) The procedures provided in article ~~[9]~~ 9A for the suspension or revocation of ~~[general agents’]~~ producer licenses shall apply to suspension or revocation of a surplus lines broker’s license.

~~[(e)]~~ (e) No broker whose license has been ~~[so]~~ revoked shall again be ~~[so]~~ licensed as a broker within one year thereafter, nor until any fines or delinquent taxes owing by ~~[sueh]~~ the broker have been paid.”

SECTION 21. Section 431:9-105, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) For the purposes of this article, the following individuals are not deemed to be an adjuster:

- (1) An attorney at law who adjusts insurance losses from time to time incidental to the practice of the attorney’s profession;
 - (2) An adjuster of marine losses;
 - (3) A salaried employee of a [~~general agent, a subagent,~~] producer, an insurer, or of an adjusting corporation or association owned and controlled by insurers; and
 - (4) An individual who acts for a self-insurer or for an insured which administers its own group insurance contract.
- (e) Following a catastrophe in this State, a Hawaii license shall not be required of a nonresident independent adjuster for the adjustment of losses; provided[:] that:

- (1) The common losses suffered that are to be adjusted are a direct result of that catastrophe;
- (2) The adjuster provides to the licensing branch of the insurance division a certified copy of the adjuster’s current license in another state. That other state shall have similar licensing requirements to section 431:9-222; and
- (3) [~~That within~~] Within three working days of when the nonresident independent adjuster begins work, the insurance company, independent adjusting company, [~~general agent, or subagent~~] or producer that is utilizing the adjuster shall provide on its letterhead to the licensing branch of the insurance division:
 - (A) The name of the adjuster;
 - (B) The adjuster’s Hawaii mailing and business addresses and phone numbers; and
 - (C) The adjuster’s permanent home and business addresses and phone numbers.

For the purpose of this subsection, a catastrophe exists when due to a sudden, specific, and natural or manmade disaster or phenomenon, there arises property losses in Hawaii that are covered by insurance. These losses must be so severe that resident licensed and independent adjusters will be unable to adjust the losses within a reasonable time as determined by the insurance division.”

SECTION 22. Section 431:9-227, Hawaii Revised Statutes, is amended to read as follows:

~~“§431:9-227 [Producer may adjust without a license. (a) A producer may from time to time, and whether or not on behalf of and as authorized by an insurer, act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.~~

(b) Adjuster; restrictions. An adjuster who is a producer is not permitted to adjust or cause the adjustment of any loss where the adjuster’s remuneration for the sale of insurance is primarily dependent upon the adjustment of the loss. This [~~subsection~~] section shall not be applicable to any producer whose remuneration for the sale of insurance, on December 31, 1955, was primarily dependent upon the adjustment of losses, or to any producer or an insurer who, on December 31, 1955, was transacting insurance business where the producer’s remuneration for the sale of such insurance was primarily dependent upon the adjustment of losses.”

SECTION 23. Section 431:9-232, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Prior to the extension of a license, each licensee shall annually pay the fee required in section 431:7-101 [~~and shall meet the requirements of section 431:9-302~~].

(b) A license shall be inactivated if a licensee fails to[:

- (1) ~~Meet the requirements of section 431:9-302; or~~
- (2) Pay] pay any required fees or penalties.”

SECTION 24. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article [~~or any surplus lines broker’s license~~] for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee’s own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee’s affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;
- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee’s licenses.”

SECTION 25. Section 431:9A-102, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Class” means the general categories of insurance, as set forth in sections 431:1-204 to 431:1-210, in which insurers may be authorized to transact the business of insurance.

““Line of authority” means a category of insurance products, as set forth in section 431:9A-107(a), which an insurance producer may be licensed to sell pursuant to this article.

““Line of insurance” means an insurance product, contract, or policy designed to cover specified risks that fall within one or more of the classes or types of insurance as defined in sections 431:1-204 to 431:1-211, the lines of authority defined in section 431:9A-107(a), or any other section of this code.”

SECTION 26. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definitions of “limited lines insurance”, “person”, and “terminate” to read as follows:

““Limited lines insurance” means those lines of insurance [defined in section 431:9A-108(e) or any other line of insurance coverage to individuals through

~~a master, corporate, group, or individual policy.] a producer may be licensed to sell pursuant to section 431:9A-A or any other line of insurance sold to individuals under state law or rule for which an insurance producer license in one or more of the lines of authority set forth in section 431:9A-107(a)(1) to (5) is not required.~~

~~“Person” [means a natural person or business entity.] is defined in section 431:1-212.~~

~~“Terminate” means [the cancellation of];~~

- ~~(1) To cancel the relationship between [the] an insurance producer and [the] an insurer [or the termination of];~~
- ~~(2) To cancel the relationship between an appointing producer and another producer; or~~
- ~~(3) To terminate a producer’s authority to transact insurance.’’~~

SECTION 27. Section 431:9A-103, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§431:9A-103[.] License required.~~ (a) A person shall not sell, solicit, or negotiate insurance in this State for any line, class, or classes of insurance unless the person is licensed for [that] the proper line or class of authority in accordance with this article.

(b) The proper line of authority for which a producer is required to be licensed relative to sale, solicitation, or negotiation of any class or type of insurance set forth in sections 431:1-204 to 431:1-211 is set forth in the following table:

<u>Class</u>	<u>Required Line of Authority</u>
<u>Life</u>	<u>Life</u>
<u>Accident and Health or Sickness</u>	<u>Accident and Health or Sickness</u>
<u>Property</u>	<u>Property</u>
<u>Marine and Transportation</u>	<u>Casualty and Property</u>
<u>Vehicle</u>	<u>Casualty and Property</u>
<u>General Casualty</u>	<u>Casualty</u>
<u>Surety</u>	<u>Surety</u>
<u>Title</u>	<u>Title</u>

(c) Sale, solicitation, or negotiation of variable life and variable annuity products requires licensing in the variable life and variable annuity products line of authority.

(d) Sale, solicitation, or negotiation of personal lines insurance requires licensing in the personal lines line of authority or the property and casualty lines of authority.

(e) Sale, solicitation, or negotiation of limited lines insurance, including limited line credit and limited line travel insurance, is permitted pursuant to section 431:9A-A.’’

SECTION 28. Section 431:9A-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A license as an insurance producer shall not be required of the following:

- (1) [A] An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission or remuneration on policies written or sold to insure risks residing, located, or to be performed in this State and:**

- (A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance;
 - (B) The officer, director, or employee's functions relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, for the purpose of enrolling individuals under such plans, issuing certificates under plans, or otherwise assists in administering the plans, performs administrative services related to mass marketed property and casualty insurance, or where no commission is paid to the person for the service;
 - (3) An employer or association or its officers, directors, employees, or the trustee of any employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, so long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
 - (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision or the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;
 - (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media, whose distribution is not limited to residents of this State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;
 - (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or
 - (7) A salaried, full-time employee who counsels or advises the person's employer relative to the insurance interests of the employer or of the subsidiaries or

business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive commissions.”

SECTION 29. Section 431:9A-105, Hawaii Revised Statutes, is amended to read as follows:

~~“[§]431:9A-105[H] Insurance producer license examination. (a) A resident applicant applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 431:9A-109. The examination shall test the knowledge of the applicant concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this State. [Examinations required by this section shall be developed and conducted under rules adopted by the commissioner.]~~

~~(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section [431:7-701.] 431:7-101. The fees collected shall be nonrefundable.~~

~~(c) Each person applying for an examination shall remit a fee as set forth in section 431:7-101. The fee shall be nonrefundable.~~

~~(d) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.~~

~~(e) An applicant’s examination scores shall be valid for two years from the date of the examination or last renewal, whichever is later.”~~

SECTION 30. Section 431:9A-106, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant’s knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431:9A-112;
- (3) Has paid the applicable fee set forth in section 431:7-101; and
- (4) Has successfully passed, within the two years immediately preceding the date of the examination or issuance of the license, whichever is later, the applicable examination for each line of authority for which the applicant has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the applicable fee set forth in chapter 431 or 432; ~~and~~
- (2) The business entity has designated a licensed producer who is a natural person responsible for the business entity’s compliance with the insurance laws and rules of this State~~[-]; and~~
- (3) Any licensed producer so designated or empowered by a corporation or partnership may not be so designated or empowered by more than one corporation or partnership, except when the corporations or partnerships are affiliates of each other. As used herein, a corporation or partnership is an affiliate of another corporation or partnership if the same person, directly or indirectly through one or more intermediaries, controls both corporations or partnerships. As used herein, “control” has the same meaning as in section 431:11-102.”

SECTION 31. Section 431:9A-107, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

“(a) Except as provided in section 431:9A-112, a person who has met the requirements of sections 431:9A-105 and 431:9A-106 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

- (1) Life; insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income[-];
- (2) Accident and health or sickness; insurance coverage for sickness, bodily injury, or accidental death and benefits for disability income[-];
- (3) Property; insurance coverage for the direct or consequential loss or damage to property of every kind[-];
- (4) Casualty; insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property[-];
- (5) Variable life and variable annuity products; insurance coverage provided under variable life insurance contracts and variable annuities[-];
- (6) Personal: property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

~~(6)~~ (7) Credit; limited line credit insurance[-]; or

~~(7)~~ (8) Any other line of insurance permitted under state law or rule.”

2. By amending subsection (c) to read as follows:

“(c) An insurance producer who allows the producer’s license to lapse ~~[may], within [twelve] twenty-four~~ months from the due date of the renewal fee, may reinstate that license without the necessity of passing a written examination. ~~[However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.]~~ If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee.”

SECTION 32. Section 431:9A-114, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:9A-114]]~~ **Appointments.** (a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted with and appointed by an insurance producer so appointed.

(b) To appoint a producer as its agent, the appointing insurer or producer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer[-] or producer. If the appointment form is not received by the commissioner within the fifteen-day period, the appointment shall become effective on the date on which the commissioner receives the appointment form. A producer shall disclose to a client if the conditions of subsection (a) have not been met. An insurer or producer may also elect to appoint a producer to all or some insurers within the insurer’s or producer’s holding company system or group by [the] filing with the commissioner [ef] a single appointment notice.

(c) Upon receipt of the notice of appointment and within a reasonable time not to exceed thirty days, the commissioner shall verify that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the appointing insurer or producer within five days of its determination.

(d) An appointing insurer or producer shall pay an appointment fee, in the amount and method of payment set forth in article 7, for each insurance producer appointed by the appointing insurer[-] or producer.

(e) An appointing insurer or producer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in article 7.”

SECTION 33. Section 431:9A-115, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) An insurer [~~or~~], authorized representative of the insurer, or a producer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using the applicable format prescribed by the commissioner. An insurer [~~or insurer~~], an authorized representative of the insurer, or a producer who terminates a producer for one of the reasons set forth in section 431:9A-112 or who has knowledge the producer was found by a court, governmental body, or self-regulatory organization to have engaged in any of the activities in section 431:9A-112, shall use the particular format for that situation as prescribed by the commissioner. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) The insurer [~~or the~~], an authorized representative of the insurer, or a producer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer [~~or~~], an authorized representative of the insurer, or a producer discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) had the insurer, authorized representative of the insurer, or producer then known of its existence.

(c) The insurer [~~and~~], authorized representative of the insurer, and the producer are subject to the following:

- (1) Within fifteen days after making the notification required by subsections (a) and (b), the insurer, authorized representative of the insurer, or the producer shall mail a copy of the notification to the producer at the producer’s last known address. If the producer is terminated for any of the causes listed in section 431:9A-112, the insurer, authorized representative of the insurer, or the producer shall provide a copy of the notification to the producer at the producer’s last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
- (2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer [~~shall~~], by the same means, shall simultaneously send a copy of the comments to the reporting insurer, authorized representative of the insurer, or the producer, and the comments shall become a part of the commissioner’s file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (e).”

SECTION 34. Section 431:9A-123, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply to life or [~~disability~~] accident and health or sickness insurance if the records required of such insurance are customarily maintained in the offices of the insurer.”

SECTION 35. Section 431:9A-124, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:9A-124**~~]]~~ **Prerequisites for license renewal.** (a) In addition to payment of fees required in section 431:7-101, to qualify for a license renewal a licensee shall:

- (1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and
- (2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours shall be as follows:

- (1) For a licensee authorized to sell ~~[~~classes~~]~~ lines of insurance in only one of the following groups:
 - (A) Life or ~~[~~disability~~];~~ accident and health or sickness; or
 - (B) Property, marine and transportation, vehicle, general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the ~~[~~class of insurance~~]~~ line of authority for which the license is held, including three credit hours relating to the insurance laws and the insurance rules;

- (2) For a licensee with a license to sell ~~[~~classes~~]~~ lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:
 - (A) Twelve hours shall relate to paragraph (1)(A) of which three hours shall relate to the insurance laws and the rules relating to the ~~[~~class of insurance~~]~~ line of authority for which the license is held; and
 - (B) Eighteen hours shall relate to paragraph (1)(B) of which three hours shall relate to the insurance laws and the rules relating to the ~~[~~class of insurance~~]~~ line of authority for which the license is held.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carryover credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee’s failure to satisfy all of the continuing education requirements one month prior to the renewal date shall result in that licensee’s license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours have been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431:9A-116.

(g) The commissioner may grant an extension of time to meet the requirements of this section to a licensee on extended active military duty for a period of time equal to the number of days the licensee was on active military duty.”

SECTION 36. Section 431:9A-129, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:9A-129]~~ Penalty. (a) The commissioner may revoke or suspend the certificate of an approved course provider for any violation of the insurance code, subject to the right of the provider to a hearing as provided in chapter 91.

(b) The commissioner shall sanction the license of any licensee who has submitted an invalid, false, or fraudulent certificate of completion, subject to the right of a licensee to have a hearing as provided in chapter 91.

~~[(b)]~~ (c) The commissioner shall revoke the approval of an approved course provider who has issued a certificate of completion to a licensee who has not attended the continuing education course ~~[or]~~ to a licensee who has not met the course requirements, subject to the right of an approved course provider to have a hearing as provided in section 431:2-308.”

SECTION 37. Section 431:9B-101, Hawaii Revised Statutes, is amended to amend the definition of “licensed producer” or “producer” to read as follows:

““Licensed producer” or “producer” means ~~[an agent, solicitor, broker,]~~ a producer or reinsurance intermediary licensed pursuant to this chapter.”

SECTION 38. Section 431:10-201, Hawaii Revised Statutes, is amended to read as follows:

“~~§431:10-201~~ Scope. The provisions of this part shall apply to all classes or lines of insurance except:

- (1) Ocean marine insurance~~[-and]~~ as defined in section 431:1-211,
- (2) Surplus line insurance, as defined in section 431:8-02,¹ and
- (3) Life ~~[or disability insurances,]~~ insurance, or accident and health or sickness insurance; provided the contracts are neither issued for delivery in this State nor delivered in this State.”

SECTION 39. Section 431:10-203, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A minor of the age of fifteen years or more, as determined by the nearest birthday, shall be deemed to be competent to:

- (1) Contract for any form of life~~[-or disability]~~ insurance or accident and health or sickness insurance on the minor’s own life or body, for the minor’s own benefit or for the benefit of the minor’s father, mother, spouse, child, brother, sister, or grandparent;
- (2) Surrender, make loans upon, or assign any insurance issued at any time upon the minor’s life or body, subject to the provisions of the policy;
- (3) Give a valid discharge for any benefit accruing or for any money payable under the contract; and
- (4) Exercise any of the rights or privileges reserved to the insured in and by any such policy of insurance;

except that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by a promissory note or otherwise, any premium on any such insurance contract.

(c) Where any form of life ~~[or disability]~~ insurance or accident and health or sickness insurance is issued at any time upon the life or body of a minor, unless the policy shall otherwise provide, or unless all of the premiums on the policy are paid by the minor, then until the minor has reached the age of eighteen years, either or both parents of the minor, or in the event of the death of one parent or the divorce of

the parents and the custody of the minor being awarded to one parent, then the surviving parent or the custodial parent of the minor shall be authorized to:

- (1) Surrender, make loans upon, or assign such insurance[;];
- (2) Give a valid discharge for any benefit accruing or for money payable under the contract[;]; and
- (3) Exercise any of the rights or privileges reserved to the insured in and by any such policy of insurance without the order or intervention of any court, or the appointment of a legal guardian.

No insurer shall have any responsibility for or be required to see to the application of the proceeds paid in accordance with this section.”

SECTION 40. Section 431:10-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:10-205 Interest of the insured. When the name of a person intended to be insured is specified in the policy, the insurance can be applied only to the person’s own proper interest. This section shall not apply to life [~~or disability insurances.~~] insurance or accident and health or sickness insurance.”

SECTION 41. Section 431:10-206, Hawaii Revised Statutes, is amended to read as follows:

“§431:10-206 Application for insurance: consent of insured required. No life [~~or disability~~] insurance or accident and health or sickness insurance contract upon an individual shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies for or consents to the insurance in writing, except in the following cases:

- (1) A spouse may effectuate such insurance upon the other spouse.
- (2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of or pertaining to the minor.

This section shall not apply to contracts of group life insurance or of group or blanket disability insurance as defined in this code.”

SECTION 42. Section 431:10-207, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any insurer issuing an insurance contract upon an application which has been unlawfully altered by its officer, employee, producer, or agent shall not have available, in any action arising out of the contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered.”

SECTION 43. Section 431:10-208, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) No application for the issuance of any life insurance contract shall be admissible in evidence in any action relative to such contract, unless a true copy of the application was attached to or made a part of the policy when issued and delivered. A [~~photostatic or other process~~] copy or [~~reduction~~] reproduction of the application or medical examination, if any, may be used if clearly legible. This subsection shall not apply to contracts of industrial life insurance.

(b) If any policy of life [~~or disability~~] insurance or accident and health or sickness insurance delivered in this State is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application for reinstatement or renewal, within thirty days of receipt of such request at any of its offices, the insurer shall deliver or mail a copy of the

application to the person making the request. If the copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal.”

SECTION 44. Section 431:10-214, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be printed on or attached to every individual life insurance policy and every individual [~~disability~~] accident and health or sickness insurance policy issued for delivery in this State a notice in ten-point bold type stating in substance that the person to whom the policy is issued is entitled to return the policy or contract within ten days of its receipt by [~~said~~] the purchaser and to have the premium paid refunded if the purchaser is not satisfied with it for any reason. If, pursuant to such notice, a purchaser mails or delivers the policy to the company or association at its home or branch office or to the [~~agent~~] producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. When an individual life insurance policy is mailed or delivered by the purchaser within the ten-day period, the insurer may be reimbursed for the actual medical examination expenses incurred in processing the policy or contract, provided the foregoing notice includes a statement to this effect.”

SECTION 45. Section 431:10-218, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No insurer or its officer, employee, [~~agent, solicitor,~~] producer, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.”

SECTION 46. Section 431:10-230, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-230 Payment discharges insurer.** Whenever the proceeds of, or payments under, a policy or contract [~~issued by a life or disability insurer~~] for life insurance, or accident and health or sickness insurance become payable in accordance with the terms of the policy or the exercise of any right or privilege under the policy, and the insurer makes payments in accordance with the terms of the policy or with a written assignment pursuant to section 431:10-229, the person designated in the policy or by the assignment as being entitled to the proceeds or payments, shall be entitled to receive them and to give full acquittance for such payment. Such payment by the insurer shall fully discharge the insurer from all claims under the policy unless before the payment is made, the insurer has received at its home office written notice, by or on behalf of some other person, that such other person claims to be entitled to such payment or some interest in the policy.”

SECTION 47. Section 431:10-231, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-231 Exemption of proceeds; [~~disability~~] accident and health or sickness.** The proceeds of all contracts of [~~disability~~] accident and health or sickness insurance and of provisions providing benefits on account of the insured’s disability which are supplemental to life insurance or annuity contracts shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for the beneficiary’s use.”

SECTION 48. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of article 10A and the title of part I to read as follows:

**“ARTICLE 10A
ACCIDENT AND HEALTH OR SICKNESS INSURANCE CONTRACTS
PART I. INDIVIDUAL ACCIDENT AND HEALTH OR SICKNESS
POLICIES”**

SECTION 49. Section 431:10A-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-101 Applications and exceptions. This part shall apply to all policies of accident and health or sickness insurance delivered or issued for delivery in this State, except that nothing in this part shall apply to or affect:

- (1) Any policy of workers' compensation insurance or any policy of vehicle or liability insurance with or without supplementary coverage therein;
- (2) Any policy or contract of reinsurance;
- (3) Any blanket or group policy of insurance; or
- (4) Life insurance, endowment, or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and health or sickness insurance as:
 - (A) Provide additional benefits in case of death, dismemberment, or loss of sight by accident^[7]; or
 - (B) Operate to safeguard such contracts against lapse, or to give a special surrender value, special benefit, or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.”

SECTION 50. Section 431:10A-102, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-102 Accident and health or sickness insurance policy defined. The term, policy of accident and health or sickness insurance, includes any policy or contract covering the class of insurance described in section 431:1-205.”

SECTION 51. Section 431:10A-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A policy of accident and health or sickness insurance shall neither be delivered nor issued for delivery to any person in this State unless:

- (1) The entire monetary and other considerations are expressed in the policy;
- (2) The time at which the insurance takes effect and terminates is expressed in or determinable from the policy;
- (3) It purports to insure only one person, except that a policy may provide family coverage as defined in section 431:10A-103 or reciprocal beneficiary family coverage as defined in section 431:10A-601;
- (4) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower

case unspaced alphabet length not less than one hundred [and] twenty point. The text shall include all printed matter except the name and address of the insurer, name or title of the policy, [the] a brief description, if any, and captions and subcaptions;

- (5) The exceptions and reductions of indemnity are set forth in the policy and, except the required and optional provisions set forth in section 431:10A-105 and section 431:10A-106, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as exceptions, or exceptions and reductions; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each policy form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
- (7) It does not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

SECTION 52. 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 health or 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 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. 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:
 - (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 the three-year period.
 - (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 subparagraph (A)(i) shall not be construed 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 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 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 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 the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided [~~however,~~] that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after 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 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 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 the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving 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 notice is actually given.”
- (6) “Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant the forms, that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of 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 loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided 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 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 payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, 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 the designated beneficiary or to 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 the indemnity, up to an amount not exceeding \$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 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 on 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 loss, be paid directly to the hospital or person rendering 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 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 53. Section 431:10A-106, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-106 Optional provisions. Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below unless the provisions are in the words in which 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 provisions are optional provisions. Any such provision contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) “Change of Occupation: If the insured is injured or contracts sickness after having changed occupations to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured’s occupation changes to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.”
- (2) “Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.”
- (3) Other insurance in this insurer shall be in one of the following forms:
 - (A) “Other Insurance in This Insurer: If an accident and health or sickness [~~or accident and sickness~~] policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured’s estate.”; or
 - (B) “Other Insurance in This Insurer: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, the insured’s beneficiary, or the insured’s estate, as the case may be,

and the insurer will return all premiums paid for all other such policies.”

- (4) Insurance with other insurers. Either or both of the following forms shall be used:
- (A) (i) “Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.”
 - (ii) “Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all the indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.”
 - (B) If the provision set forth in [~~item (4)~~] subparagraph (A)(i) is included in a policy which also contains the provision set forth in [~~item (4)~~] subparagraph (A)(ii), there shall be added to the caption of the [~~item (4)~~] subparagraph (A)(i) provision the phrase, “expense incurred benefits”.
 - (C) The insurer may, at its option, include in the provision set forth in [~~item (4)~~] subparagraph (A)(i) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, automobile medical payment insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in [~~item (4)~~]

- subparagraph (A)(i) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(i), no third party liability coverage shall be included as other valid coverage.
- (D) If the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) is included in a policy which also contains the provision set forth in ~~[item (4)]~~ subparagraph (A)(i), there shall be added to the caption of the ~~[item (4)]~~ subparagraph (A)(ii) provision the phrase, "other benefits".
- (E) The insurer may, at its option, include in the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, or benefits provided by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii), no third party liability coverage shall be included as other valid coverage.
- (5) (A) "Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

- (B) The above policy provision may be inserted only in a 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.
 - (C) The insurer may, at its option, include in [{}subparagraph{}] (B) a definition of valid loss of time coverage approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this State or any state, district, or territory of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such terms shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.
- (6) "Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."
 - (7) "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."
 - (8) "Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."
 - (9) "Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."
 - (10) "Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

SECTION 54. Section 431:10A-114, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-114 **Age limit.** If any policy of accident and health or sickness insurance contains a provision establishing as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.”

SECTION 55. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-116 **Coverage for specific services.** Every person insured under a policy of accident and health or sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

- (1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service, which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of ophthalmic materials, lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto;
- (2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures, which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under such policy, contract, plan, or agreement shall not be denied when such services are performed by a dentist acting within the lawful scope of the dentist’s license;
- (3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service, which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist;
- (4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies that only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:
 - (A) For women forty years of age and older, an annual mammogram; and

(B) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coin-surance provisions that may be in force in these policies, contracts, plans, or agreements.

For the purpose of this paragraph, the term "low-dose mammog-raphy" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast. An insurer may provide the services required by this paragraph through contracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health;

- (5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract{[,]}, plan, or agreement of the insured, whichever period is longer; provided further that if the adoption proceedings are not successful, the insured shall reimburse the insurer for any expenses paid for the child; and
- (ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notification of the insured's ability to consent for treatment of the infant for whom coverage is sought; and
- (B) When the insured is a member of a health maintenance organiza-tion (HMO), coverage of an adopted newborn is effective:
 - (i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the health maintenance organization, and written notice of enrollment in accord with the health maintenance organi-zation's usual enrollment process is provided within thirty days of the date the insured notifies the health maintenance organization of the insured's intent to adopt the infant for whom coverage is sought; or
 - (ii) From the first day following receipt by the health mainte-nance organization of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the health maintenance organization's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the health mainte-nance organization; and

- (6) Notwithstanding any provision to the contrary, any policy, contract, plan, or agreement issued or renewed in this State shall provide reimbursement for services provided by advanced practice registered nurses recognized pursuant to chapter 457. Services rendered by advanced practice registered nurses are subject to the same policy limitations generally applicable to health care providers within the policy, contract, plan, or agreement.”

SECTION 56. Section 431:10A-116.3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) From July 1, 1998, no accident and health or sickness insurance plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the insurer, and the provider.”

SECTION 57. Section 431:10A-117, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-117 Franchise plan.** The term employees as used in this section shall include the officers, managers, and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership.

Insurance may be issued pursuant to this part on a franchise plan under the terms of which accident and health or sickness insurance is issued to:

- (1) Five or more employees of any corporation, co-partnership, or individual employer, or any governmental corporation, agency, or department thereof; or
- (2) Ten or more members, employees, or employees of members of any trade or professional association, of a labor union, or of any other association having had an active existence for at least two years provided:
 - (A) Such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;
 - (B) Such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for; and
 - (C) There is under an arrangement whereby the premiums on the policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of the employer or association.”

SECTION 58. Section 431:10A-120, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each policy of accident and health or sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all health insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-

103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

SECTION 59. Section 431:10A-121, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:10A-121]~~ **Coverage for diabetes.** Each policy of accident and health or sickness insurance providing coverage for health care, other than an accident-only, specified disease, hospital indemnity, medicare supplement, long-term care, or other limited benefit health insurance policy, that is issued or renewed in this State, shall provide coverage for outpatient diabetes self-management training, education, equipment, and supplies, if:

- (1) The equipment, supplies, training, and education are medically necessary; and
- (2) The equipment, supplies, training, and education are prescribed by a health care professional authorized to prescribe.”

SECTION 60. Section 431:10A-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-201 Definitions.** For the purposes of this article:

- (1) (A) Blanket disability insurance policy means any policy or contract of ~~[disability] accident and health or sickness~~ insurance which conforms with the description and complies with one of the following requirements:
 - (i) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.
 - (ii) A policy issued in the name of any volunteer fire department, first aid or ambulance squad, or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.
 - (iii) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while

- engaged in the actual performance of duties on behalf of such organization or in the activities thereof.
- (iv) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.
 - (v) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.
 - (vi) A policy issued to a substantially similar group who, in the discretion of the commissioner, may be properly eligible for blanket disability insurance.
- (B) Nothing in this section shall be deemed to affect the liability of policyholders for the death of or injury to, any such member of such group.
 - (C) Individual applications shall not be required from individuals covered under a blanket disability insurance contract.
- (2) The term employees shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is under common control through stock ownership, contract, or otherwise. The policy may provide that the term employees shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The term employee may be deemed to include retired employees.
 - (3) The term employer shall be deemed to include any municipal corporation or governmental unit, agency, or department thereof as well as private individuals, firms, corporations, and other persons.
 - (4) Group disability insurance means that form of [disability] accident and health or sickness insurance covering groups of persons, with or without their dependents and family members, and issued under a master policy to:
 - (A) Such groups as qualify for group life insurance under section 431:10D-201 to ~~[section]~~ 431:10D-211 of this code; or
 - (B) An automobile club formed for purposes other than obtaining group insurance, covering the members of the club.”

SECTION 61. Section 431:10A-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-203 Standard provisions.** Every policy of group or blanket disability insurance shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be

permitted by the standard provisions required for individual [~~disability~~] accident and health or sickness insurance policies.

- (1) Representations. There shall be a provision that:
 - (A) All statements, made by the policyholder or by the individuals insured, shall be deemed to be representations and not warranties;
 - (B) No statement, made in the application by the policyholder, shall be used in any contest unless a copy of the application, if any, of the policyholder shall be attached to the policy when issued;
 - (C) No statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to the individual's beneficiary, if any; and
 - (D) A misrepresentation, unless it is made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer, shall not prevent a recovery on the policy.
- (2) Certificates. There shall be a provision that the insurer shall issue to the policyholder for delivery to each insured employee or member, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits are payable. If family members are insured, only one certificate need be issued for each family. This [~~section~~] paragraph shall not apply to blanket disability insurance policies.
- (3) Additional insureds. There shall be a provision that to the group originally insured may be added, from time to time, eligible new employees, members, or dependents, as the case may be, in accordance with the terms of the policy.
- (4) Age limitations. There shall be a provision specifying:
 - (A) The ages, if any, to which the insurance provided shall be limited;
 - (B) The ages, if any, for which additional restrictions are placed on benefits; and
 - (C) The additional restrictions placed on the benefits at such ages.
- (5) Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof within such grace period as may be specified therein."

SECTION 62. Section 431:10A-206, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-206 Coverage of newborn children. All group or blanket disability policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-601, on an expense incurred basis shall provide coverage for newborn children in compliance with section 431:10A-115."

SECTION 63. Section 431:10A-207, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-207 Coverage for specific services. Every person insured under a group or blanket disability insurance policy [~~of disability insurance~~] shall be entitled to the reimbursements and coverages specified in section 431:10A-116."

SECTION 64. Section 431:10A-307, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and health or sickness insurance policies sold to persons eligible for medicare, other than:

- (1) Medicare supplement policies; or
- (2) Disability income policies.

(e) The commissioner may adopt reasonable rules to govern the full and fair disclosure of information in connection with the replacement of accident and health or sickness insurance policies, subscriber contracts, or certificates by persons eligible for medicare.”

SECTION 65. Section 431:10A-402, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-402 Definitions.** Unless the context otherwise requires, for the purposes of this part:

- (1) Association means a voluntary unincorporated association formed for the purpose of enabling cooperative action to provide [~~disability~~] accident and health or sickness insurance as defined in section 431:1-205, in accordance with this part in this or any other state having legislation enabling the issuance of insurance of the type provided in this part.
- (2) Insurer means any insurance company authorized to transact [~~disability~~] accident and health or sickness insurance in this State.
- (3) Extended health insurance means hospital, surgical, and medical expense insurance provided by a policy issued as provided by this part.”

SECTION 66. Section 431:10A-404, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-404 Persons authorized to transact insurance.** Notwithstanding the provisions of article 9, any person licensed to transact [~~disability~~] accident and health or sickness insurance as a producer may transact extended health insurance and may be paid a commission in accordance with commission schedules filed with the commissioner as required by section 431:10A-406.”

SECTION 67. Section 431:10B-102, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10B-102 Scope.** All life insurance and all [~~disability~~] accident and health or sickness insurance in connection with loans or other credit transactions shall be subject to [~~the provisions of~~] this article, except such insurance in connection with a loan or other credit transaction of more than ten years’ duration; nor shall insurance be subject to [~~the provisions of~~] this article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. Nothing in this article shall be construed to relieve any person from compliance with any other applicable law.”

SECTION 68. Section 431:10B-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The enrolling of debtors under a group creditor policy and the issuance of certificates of insurance pursuant thereto or the issuing of individual policies by a creditor shall not be considered a sale or solicitation of insurance or the transaction of an insurance business. A limited license issued under section [431:9-214] ~~431:9A-A~~ shall be required for such acts. A producer’s [~~or broker’s~~] license shall not be required.”

SECTION 69. 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,~~] producer, 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,~~] producer, 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 70. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section shall not apply to:

- (1) Any reinsurance;
- (2) Group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code;
- (3) Any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity; or
- (4) Any contract which shall be delivered outside this State through [~~an agent~~] a producer or other representative of the insurer issuing the contract.”

SECTION 71. Section 431:10D-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-115 Dealing in dividends.** No life insurer nor any of its representatives, [~~general agents, subagents, solicitors,~~] producers, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer.”

SECTION 72. Section 431:10D-206, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-206 Agent groups.** The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal covering when issued not less than twenty-five agents of the principal, subject to the following requirements:

- (1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

- (2) The policy must insure either all of the agents or all of any class or classes thereof, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five per cent are covered and extended to other classes as seventy-five per cent thereof express the desire to be covered.
- (3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five per cent of the agents.
- (4) The amounts of insurance shall be based upon some plan which will preclude individual selection.
- (5) The insurance shall be for the benefit of persons other than the principal.
- (6) The policy shall terminate if, subsequent to issue the number of agents insured falls below twenty-five lives or seventy-five per cent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed \$1 per month per \$1,000 of insurance coverage plus any additional premium per \$1,000 of insurance coverage charged to cover one or more hazardous occupations.
- (7) For the purpose of this section the term agents shall be deemed to include ~~[general agents, subagents, solicitors,]~~ producers and salespersons.”

SECTION 73. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of “producer” to read as follows:

““Producer” includes ~~[general agent, subagent, agent, solicitor, insurance broker or brokers or any other]~~ any person, firm, association, or corporation licensed pursuant to article [9.] 9A.”

SECTION 74. Section 431:10E-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person shall knowingly ~~[issue, place, procure, or accept any insurance contract]~~ sell, solicit, negotiate, or make any contract for insurance which would result in over-insurance of the property or interest therein proposed to be insured, except as is provided in section 431:10E-103.”

SECTION 75. Section 431:10H-229, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§431:10H-229[.]~~ **Standards for marketing.** (a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this State, directly or through producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its ~~[agents or other]~~ producers will be fair and accurate;
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued;
- (3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:
 “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”;

- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance currently has long-term care insurance and the types and amounts of any such insurance;
- (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with subsection (a);
- (6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer, at solicitation, shall provide written notice to the prospective policyholder or certificate holder of a state senior insurance counseling program including the name, address, and telephone number of the program; and
- (7) For long-term care health insurance policies and certificates, use the terms “noncancellable” or “level premium” only when the policy or certificate conforms to section 431:10H-202.

(b) In addition to the acts or practices prohibited in article 13 of this chapter, all of the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend purchase of insurance.
- (3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance [agent] producer or insurance company.”

SECTION 76. Section 431:10H-230, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) The association shall also:
- (1) At the time of the association’s decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including benefits, features, and rates, and update the examination thereafter in the event of material change;
 - (2) Actively monitor the marketing efforts of the insurer and its [agents;] producers; and
 - (3) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.”

SECTION 77. Section 431:11-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

- (2) Acting as an insurance [~~broker or as an insurance agent~~] producer for its parent or for any of its parent's insurer subsidiaries;
- (3) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- (4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) Acting as a broker/dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
- (6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
- (7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
- (8) Ownership and management of assets which the parent corporation could itself own or manage; provided that the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer;
- (9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
- (10) Financing of insurance premiums, agents, and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section."

SECTION 78. Section 431:11A-101, Hawaii Revised Statutes, is amended by amending the definition of "producer" to read as follows:

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

SECTION 79. Section 431:12-114, Hawaii Revised Statutes, is amended to read as follows:

"**§431:12-114 Licenses.** No person shall act as an insurance [~~agent, subagent or solicitor,~~] producer in connection with mass merchandising of insurance, unless the person is licensed as such under [~~the provisions of~~] article [9.] 9A."

SECTION 80. Section 431:12-115, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Establishment and maintenance of an office by any licensed [~~general agent~~] producer of an insurer shall meet the requirements of this section."

SECTION 81. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
 - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
 - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
 - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
 - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
 - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
 - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
 - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
 - (H) Misrepresents any insurance policy as being shares of stock;
 - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
 - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation.
 - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
 - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.

- (5) False financial statements.
 - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
 - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination.
 - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
 - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the ~~term~~ terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
 - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
 - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

- (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
- (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;
 - (F) To terminate, modify coverage, or refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this [subsection] subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
 - (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
 - (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
- (8) Rebates. Except as otherwise expressly provided by law:
 - (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or
 - (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.
 - (9) Nothing in paragraph (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;
 - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
 - (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; and
 - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article.
- (10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:
- (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; and
 - (B) This paragraph shall not apply to entities licensed under chapter 386, 431:10C, 432, or 432D.
- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
 - (i) The insurer's policyholder;
 - (ii) Any other persons, including the commissioner; or
 - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.

The response shall be more than an acknowledgment that such person's communication has been received, and shall adequately address the concerns stated in the communication;
 - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
 - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
 - (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
 - (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;

- (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
 - (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
 - (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
 - (K) Attempting to settle claims on the basis of an application which was altered without notice, knowledge, or consent of the insured;
 - (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
 - (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
 - (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
 - (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
 - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
 - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is "final" or is "a release" of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy.
- (12) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, "complaint" means any written communication primarily expressing a grievance.
- (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, ~~[agent, broker,]~~ producer, or individual."

SECTION 82. Section 431:14-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This article shall not apply to:

- (1) Reinsurance, other than joint reinsurance to the extent stated in section 431:14-112;
- (2) ~~[Disability insurance;]~~ Accident and health or sickness insurance;
- (3) Insurance against loss or damage to aircraft or against liability, other than workers’ compensation and employers’ liability, arising out of the ownership, maintenance, or use of aircraft;
- (4) Insurance of vessels or craft, their cargoes, marine builder’s risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; and
- (5) Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance, or use of aircraft.”

SECTION 83. Section 431:15-104, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In addition to other grounds for jurisdiction provided by the law of this State, a court of this State having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Hawaii Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this State:

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the ~~[agent or broker,]~~ producer, in any action on or incident to the obligation; ~~[or]~~
- (2) If the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is ~~[an agent or broker]~~ a producer of or for the reinsurer, in any action on or incident to the reinsurance contract; or
- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer.”

SECTION 84. Section 431:15-303, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, ~~[broker,]~~ producer, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.”

SECTION 85. Section 431:15-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible by:

- (1) First class mail and either by telegram or telephone to the commissioner of each jurisdiction in which the insurer is doing business;
- (2) First class mail to any guaranty association or foreign guaranty association who is or may become obligated as a result of the liquidation;
- (3) First class mail to all insurance ~~[agents]~~ producers of the insurer;

- (4) First class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and
- (5) Publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.”

SECTION 86. Section 431:15-312, Hawaii Revised Statutes, is amended by amending the title and subsections (a) and (b) to read as follows:

“**§431:15-312 Duties of [agents,] producers.** (a) Every person who receives notice in the form prescribed in section 431:15-311 that an insurer whom the [agent] producer represents is the subject of a liquidation order, shall within fifteen days of such notice give notice of the liquidation order. The notice shall be sent by first class mail to the last address contained in the [agent’s] producer’s records to each policyholder or other person named in any policy issued through the [agent] producer by the insurer, if the [agent] producer has a record of the address of the policyholder or other person. A policy shall be deemed issued through [an agent] a producer if the [agent] producer has a property interest in the expiration of the policy, or if the [agent] producer has had possession of a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the [agent,] producer, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section 431:15-308. Notice by a [general agent] producer satisfies the notice requirement for any [agents] producers under contract to it. Each [agent] producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(b) Any [agent] producer failing to give notice or file a report of compliance as required in subsection (a) may be subject to payment of a penalty of not more than \$1,000 and such [agent’s] producer’s license may be suspended, [said] the penalty to be imposed after a hearing held by the commissioner.”

SECTION 87. Section 431:15-323, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~An agent, broker,~~] A producer premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid collected premium held by such person at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. [~~An agent, broker,~~] A producer premium finance company, or any other person shall have no obligation to pay an uncollected, unpaid, unearned premium to the liquidator. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission actually paid or credited to such person. Credits or setoffs or both shall not be allowed to [~~an agent, broker,~~] a producer or premium finance company for any amounts advanced to the insurer by the [~~agent, broker,~~] producer or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured shall be obligated to pay any unpaid, earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer.”

SECTION 88. Section 431:15-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under section

431:15-404(c), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, [~~agents'~~ producers' balances, and all of the books, accounts, and other records of the insurer located in this State. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from [~~agents~~] producers and to obtain possession of the books, accounts, and other records of the insurer located in this State. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this State, subject to section 431:15-404."

SECTION 89. Section 431:16-103, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-103 Scope. This part shall apply to all types of direct insurance, but shall not apply to the following:

- (1) Life, annuity, [~~health, or disability~~] accident and health or sickness insurance;
- (2) Mortgage guaranty, financial guaranty, or any other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, for indemnification for the repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, artisanship, or normal wear and tear, or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide those benefits;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person (including affiliates of the person) and an insurer (including affiliates of the insurer) that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
- (9) Any insurance provided by or guaranteed by government."

SECTION 90. Section 431:16-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each member insurer shall annually recoup the assessments paid in the preceding years by the insurer under this part. The recoupment shall be recovered by means of a surcharge on premiums charged for policies for all kinds of insurance, except life, title, surety, [~~disability,~~] accident and health or sickness, credit mortgage guaranty, and ocean marine. Prior to recoupment, each member insurer shall submit its plan for recoupment to the commissioner for approval. The surcharge shall be at a uniform percentage rate reasonably calculated to recoup the assessment paid by the member insurer. Any excess recovery by a member insurer shall be credited pro rata to that member insurer's policyholders' premiums in the succeeding year unless there has been a subsequent assessment, in which case the excess will be used to pay the amount of the subsequent assessment. If a member insurer fails to recoup the entire amount of its assessment in the first year under the procedure provided in this

section, it may repeat the procedure in succeeding years until the full assessment is recouped.”

SECTION 91. Section 431:16-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The purpose of this part is to protect, subject to certain limitations, the persons specified in section 431:16-203 against failure in the performance of contractual obligations, under life and ~~[disability]~~ accident and health or sickness insurance policies and annuity contracts specified in section 431:16-203(b), because of the impairment or insolvency of the member insurer that issued the policies or contracts.”

SECTION 92. Section 431:16-203, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

- “(b) (1) This part shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, ~~[disability;]~~ accident and health or sickness, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, except as limited by this part.
- (2) This part shall not provide coverage for:
- (A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;
 - (B) Any policy or contract of reinsurance, unless assumption certificates have been issued;
 - (C) Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - (i) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody’s Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (ii) On or after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody’s Corporate Bond Yield Average as most recently available;
 - (D) Any plan or program of an employer, association, or similar entity to provide life, ~~[disability;]~~ accident and health or sickness, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:
 - (i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
 - (ii) A minimum premium group insurance plan;
 - (iii) A stop-loss group insurance plan; or
 - (iv) An administrative services only contract;
 - (E) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or

contract holder, in connection with the service to or administration of such policy or contract;

- (F) Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this State; and
- (G) Any annuity contract or group annuity certificate which is not issued to or owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of:

- (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer, or
- (2) With respect to any one life, regardless of the number of policies or contracts:
 - (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;
 - (B) \$100,000 in [~~disability~~] accident and health or sickness insurance benefits, including any net cash surrender and net cash withdrawal values;
 - (C) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

[~~Provided, however,~~] provided that in no event shall the association be liable to expend more than \$300,000 in the aggregate with respect to any one life under subparagraphs (A), (B), and (C).”

SECTION 93. Section 431:16-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a nonprofit legal entity to be known as the Hawaii Life and Disability Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved under section 431:16-210 and shall exercise its powers through a board of directors established under section 431:16-207. For purposes of administration and assessment the association shall maintain three accounts:

- (1) The life insurance account;
- (2) The [~~disability~~] accident and health or sickness insurance account; and
- (3) The annuity account.”

SECTION 94. Section 431:16-208, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsections (b), (c), and (d) to read as follows:
 - “(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in [~~subsection (b)(2);~~] paragraph (2), the association shall, in its discretion, either:
 - (A) Take any of the actions specified in subsection (a), subject to the conditions therein, or
 - (B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for: [~~disability~~] accident and health or sickness claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy

or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of ~~[subsection (b)(1)]~~ paragraph (1) only if:

(A) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations;

(i) The delinquency proceeding shall not be dismissed[-];

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management[-]; and

(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored[-]; and

(B) (i) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this State, or;

(ii) If the impaired insurer is a foreign or alien insurer:

(I) It has been prohibited from soliciting or accepting new business in this State,

(II) Its certificate of authority has been suspended or revoked in this State, and

(III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide such moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

(2) With respect only to life and ~~[disability]~~ accident and health or sickness insurance policies, provide benefits and coverages in accordance with subsection (d).

(d) When proceeding under ~~[subsections]~~ subsection (b)(1)(B) or (c)(2), the association shall, with respect to only life and ~~[disability]~~ accident and health or sickness insurance policies:

(1) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;

(B) With respect to individual policies, not later than the earlier of the next renewal date (if any) under such policies or one year, but in

- no event less than thirty days, from the date on which the association becomes obligated with respect to such policies.
- (2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days' notice of the termination of the benefits provided; and
 - (3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with ~~[the provisions of subsection (d)(4),]~~ paragraph (4), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.
 - (4) (A) In providing the substitute coverage required under ~~[subsection (d)(3),]~~ paragraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy.
 - (B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
 - (C) The association may reinsure any alternative or reissued policy.
 - (5) (A) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
 - (B) Alternative policies shall contain at least the minimum statutory provisions required in this State and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
 - (C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
 - (6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.
 - (7) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association."
- (2) By amending subsection (n) to read as follows:
- "(n) The association may:
- (1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

- (2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 431:16-209 and to settle claims or potential claims against it;
- (3) Borrow money to effect the purposes of this part; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
- (4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this part;
- (5) Take such legal action as may be necessary to avoid payment of improper claims; and
- (6) Exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or [disability] accident and health or sickness insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this part.”

SECTION 95. Section 431:16-218, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The document prepared under subsection (b) shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

- (1) State the name and address of the Hawaii Life and Disability Insurance Guaranty Association and the insurance division;
- (2) Prominently warn the policy or contract holder that the Hawaii Life and Disability Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations[;] and exclusions and be conditioned on continued residence in this State;
- (3) State that the insurer and its [agents] producers are prohibited by law from using the existence of the Hawaii Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;
- (4) Emphasize that the policy or contract holder should not rely on coverage under the Hawaii Life and Disability Insurance Guaranty Association when selecting an insurer; and
- (5) Provide other information as directed by the commissioner.

(d) No insurer or [agent] producer may deliver a policy or contract described in section 431:16-203(b)(1) and excluded under section 431:16-203(b)(2)(A) from coverage under this part unless the insurer or [agent;] producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Hawaii Life and Disability Insurance Guaranty Association. The commissioner shall by rule specify the form and content of the notice.”

SECTION 96. Section 431:20-103, Hawaii Revised Statutes, is amended to read as follows:

“**§431:20-103 General insurance law applicable.** The following provisions shall apply to title insurance and to title insurers:

- (1) Section 431:1-103 and section 431:1-105;
- (2) Section 431:1-212, section 431:1-213, and section 431:1-214;
- (3) Section 431:2-101 to section 431:2-106, and section 431:2-108 to section 431:2-110;

- (4) Section 431:2-201 to section 431:2-204, and section 431:2-207 to section 431:2-212;
- (5) Section 431:2-302, section 431:2-303, section 431:2-305, and section 431:2-306;
- (6) Section 431:3-101 to section 431:3-105;
- (7) Section 431:3-201 to section 431:3-203, section 431:3-205, section 431:3-206, and section 431:3-209 to section 431:3-220;
- (8) Section 431:3-301, section 431:3-305, section 431:3-307, and section 431:3-308;
- (9) Section 431:4-102 to section 431:4-127;
- (10) Section 431:4-202 to section 431:4-207;
- (11) Section 431:5-101;
- (12) Section 431:5-201 to section 431:5-203;
- (13) Section 431:5-305, section 431:5-306, and section 431:5-308 to section 431:5-311;
- (14) Article 6;
- (15) Article 7;
- (16) Article 9;
- (17) Article 9A;
- [~~(17)~~] (18) Section 431:10-211, section 431:10-216 to section 431:10-218, section 431:10-220, section 431:10-221, section 431:10-224, section 431:10-225, and section 431:10-235 to section 431:10-238;
- [~~(18)~~] (19) Article 13; and
- [~~(19)~~] (20) Article 15.”

SECTION 97. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The plan of operation shall:

- (1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;
- (2) Establish maximum limits of liability to be placed through the association;
- (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
- (4) Establish a schedule of deductibles, if appropriate;
- (5) Establish the commission to be paid to licensed [agents;] producers;
- (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;
- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner for the commissioner’s information;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its agents, and its board of directors;

- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association.’’

SECTION 98. 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 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 U.S.C. §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 risk retention group captives chartered in this State pursuant to chapter 431, article 19;
- (B) To the extent [~~agents or brokers~~] producers are utilized, the [~~agents or brokers~~] producers shall report and pay the taxes for the premiums for risks which the [~~agents or brokers~~] producers have placed with or on behalf of a risk retention group not chartered in this State; or
 - (C) To the extent [~~agents or brokers~~] producers 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 examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' 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 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).”

SECTION 99. Section 431K-7.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§431K-7.5~~]]~~ **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]~~ producer for the purchasing group, and if not by that ~~[agent or broker,]~~ producer, then by the purchasing group, and if not by that purchasing group, then by each of its members.”

SECTION 100. Section 431K-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A purchasing group located in this State may not purchase insurance from a risk retention group that is not chartered in this State or from an insurer not authorized in this State, unless the purchase is effected through a licensed ~~[agent or broker]~~ producer acting pursuant to the surplus lines laws of the licensed ~~[agent’s or broker’s]~~ producer’s state of domicile.”

SECTION 101. Section 431P-14, Hawaii Revised Statutes, is amended to read as follows:

“**§431P-14 Immunity and limitation on liability.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility or its authorized insurance ~~[agents,]~~ producers; the fund or its agents, employees, or board; the State; the commissioner; or the commissioner’s representatives for any action taken by them in the performance of their powers and duties under this chapter; provided that this section shall not be construed to prohibit any exercise of the commissioner’s power pursuant to this chapter or any other law or rule adopted pursuant to law or chapters 661 and 662, any other law to the contrary notwithstanding. Nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this chapter, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the fund pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the State whatsoever, nor shall this chapter be construed as authorizing any claim against the fund in excess of any note, loan, liability, or other obligation incurred by the fund. Nothing in this section shall be construed to alter any obligation to pay assessments or charges authorized to be imposed or levied by the board pursuant to this chapter. The fund shall be subject to chapter 431 only as provided for in this chapter.”

SECTION 102. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After each covered event, if the board shall determine that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following that covered event, will be insufficient to pay claims and other obligations of the fund arising out of that covered event, the

Hawaii hurricane relief fund is authorized to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for all property and casualty insurance policies issued for risks insured in this State. These moneys may be deposited into the hurricane reserve trust fund or into trust or custodial accounts, created for the benefit of the fund's secured parties, that are held inside or outside the hurricane reserve trust fund. The formula to calculate the amount and period of the surcharge for each covered event and the procedures and methodology for payment of claims and other obligations of the fund shall be provided in the plan of operation and the surcharge may remain in effect until all claims and other obligations of the fund, including but not limited to claims financing transactions, bonds, notes, and other obligations arising out of that covered event, shall have been fully discharged. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose, including the computation of gross premium tax or the determination of [~~agents~~'] producers' commissions."

SECTION 103. Section 432:1-105, Hawaii Revised Statutes, is amended to read as follows:

"**§432:1-105 Penalty.** There shall be a fine of not more than \$1,000 or imprisonment of not more than one year, or both, for:

- (1) Any person who is found in the State as officer, member, principal, agent, [~~solicitor~~], or in any other capacity, soliciting or conducting or operating the business of a mutual benefit society, as defined in section 432:1-104, not qualified and licensed to operate the business in conformity with this article, or
- (2) Any trustee, officer, or other person in charge of the affairs of any such society, who authorizes, sanctions, or permits the issuance of any certificate, policy, or contract, for the payment of benefits in violation of this article, or
- (3) Any person who violates any other provision of this article relating to mutual benefit societies."

SECTION 104. Section 432:2-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Fraternal benefit society producers shall be licensed in accordance with the provisions governing producers in article 9A of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society producers are not prohibited from obtaining additional licenses provided for in article [9-] 9A. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988."

SECTION 105. Section 435C-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) (1) Any licensed physician or hospital shall, on or after the effective date of the plan of operation, apply to the plan for such coverage. Such application may be made on behalf of an applicant by a [~~solicitor, subagent or general agent~~] producer authorized by the applicant.
- (2) If the plan determines that the applicant meets the underwriting standards of the plan as provided in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance (as shown by the insured having failed to make written objection to the premium charges within thirty days after billing), then the plan, upon receipt of the premium, or such portion thereof as is prescribed in

the plan of operation, shall cause to be issued a policy of medical malpractice insurance for a term of one year.”

SECTION 106. Section 435C-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[§435C-8]~~ **Privileged communications.** There shall be no liability on the part of, and no cause of action of any nature shall arise against the plan, its agents or employees, an insurer, any ~~[licensed agent,]~~ producer, or the insurance commissioner or the commissioner’s authorized representatives, for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the plan, or at any administrative hearing conducted in connection therewith.”

SECTION 107. Section 431:9-214, Hawaii Revised Statutes, is repealed.

SECTION 108. Part III of article 9 of chapter 431, Hawaii Revised Statutes, is repealed.

SECTION 109. In codifying the new sections added to chapter 431, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated and referred to in this Act.

SECTION 110. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.²

SECTION 111. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

Notes

1. Prior to amendment 431:8-102 appeared here.
2. Edited pursuant to HRS §23G-16.5.