

ACT 212

H.B. NO. 1164

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 9A a new section to be appropriately designated and to read as follows:

“§431:9A- Suspension or denial of license for noncompliance with support order. In addition to any other acts or conditions provided by law, the commissioner shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the commissioner has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, following receipt of certification pursuant to this section, the commissioner shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or the family court. Sections 92-17, 431:9A-112, and 431:9A-126 shall not apply to a refusal to renew, reinstate, or restore a license or to a license suspension or denial pursuant to this section.”

SECTION 2. Section 41D-1, Hawaii Revised Statutes, is amended by amending the definition of “casualty insurance” to read as follows:

““Casualty insurance” shall have the same meaning as general casualty insurance has in section 431:1-209[.]; provided that in this chapter “casualty insurance” shall exclude ~~[disability]~~ accident and health or sickness insurance as defined in section 431:1-205, and includes marine and transportation insurance as defined in section 431:1-207, vehicle insurance as defined in section 431:1-208, surety insurance as defined in section 431:1-210, and ocean marine insurance as defined in section 431:1-211.”

SECTION 3. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

“§237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.
 - (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
 - (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
 - (C) If any person liable for the tax on manufacturers ships or transports the person’s product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the

value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;
 - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;
 - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and
 - (iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the

- gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).
- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
- (F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

- (i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and
 - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
 - (B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:
 - (i) Another taxpayer who is a contractor, as defined in section 237-6;
 - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
 - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.
 - (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
 - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and
 - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.
 - (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improve-

ments the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

- (4) Tax upon theaters, amusements, radio broadcasting stations, etc.
- (A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.
- (B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
- (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.
- (6) Tax on service business.
- (A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise

hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

- (B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
- (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
 - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.
- (C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.
- (D) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.
- (E) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed

by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

- (7) Tax on insurance [~~solicitors and agents.~~] producers. Upon every person engaged as a licensed [~~solicitor, general agent, or subagent~~] producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to [-15] 0.15 per cent of the commissions due to that activity.
- (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 4. Section 383-7, Hawaii Revised Statutes, is amended to read as follows:

“§383-7 Excluded service. “Employment” [does] shall not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
 - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor; and
 - (B) Which had, in each of the current and the preceding calendar years:
 - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
 - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;
- (3) Service not in the course of the employing unit’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit’s trade or business during a calendar quarter only if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
 - (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day

- in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
- (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986, as amended;
 - (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
 - (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of the Code), if:
 - (i) The remuneration for the service is less than \$50; or
 - (ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
 - (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
 - (C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines

- academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
 - (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
 - (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
 - (13) Service performed by an individual for an employing unit as an insurance ~~agent or as an insurance solicitor,~~ producer, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
 - (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
 - (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
 - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
 - (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at

least fifty per cent of the shares issued by the corporation[;]; provided that:

- (A) The private corporation elects to be excluded from coverage under this chapter;
 - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
 - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
 - (D) The exclusion shall be irrevocable for five years;
 - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
 - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;
- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986; and
 - (22) Service performed by an election official or election worker as defined in section 3309(b)(3)(F) of the Internal Revenue Code of 1986, as amended.

None of the foregoing exclusions (1) to (22) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 5. Section 386-200, Hawaii Revised Statutes, is amended to read as follows:

“**§386-200 Licensing of [agent.] producer.** Except for a salaried employee of a group, its administrator, or its service company, any person soliciting membership in a workers’ compensation self-insurance group shall be licensed as a [general agent or subagent as provided under sections 431-361 to 431-407.] producer under chapter 431:9A.”

SECTION 6. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

“**§392-5 Excluded services.** “Employment” as defined in section 392-3 [does] shall not include the following [service:] services:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer’s trade or business during a calendar quarter only if:

- (A) ~~[on]~~ On each of some twenty-four days during the quarter the individual performs the service for some portion of the day~~;~~_;; or
 - (B) ~~[the]~~ The individual was regularly employed (as determined under subparagraph (A)) by the employer in the performance of the service during the preceding calendar quarter;
- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
 - (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (A) ~~[the]~~ The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States)~~;~~_; and~~;~~_;
 - (B) ~~[the]~~ The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week~~;~~_; and
 - (C) ~~[service]~~ The service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
 - (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986;
 - (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
 - (9) Service performed in any calendar quarter in the employ of any non-profit organization exempt from income tax under section 501 of the Internal Revenue Code of 1986, if:
 - (A) ~~[the]~~ The remuneration for such service is less than \$50~~;~~_; or~~;~~_;
 - (B) ~~[the]~~ The service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university~~;~~_; or~~;~~_;

- (C) ~~[the]~~ The service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order~~;~~ or
- (D) ~~[the]~~ The service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if:
- (A) ~~[no]~~ No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual~~;~~ and
- (B) ~~[eighty-five]~~ Eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
- (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
- (A) ~~[admission]~~ Admission to membership in the association is limited to individuals who are officers or employees of the United States government~~;~~ and
- (B) ~~[no]~~ No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
- (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1986, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:
- (A) ~~[the]~~ The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
- (B) ~~[the]~~ The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance ~~[agent or as an insurance solicitor,]~~ producer, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including

- delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
 - (18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (19) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
 - (20) Service performed by a vacuum cleaner salesperson for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; or
 - (21) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission."

SECTION 7. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of "employment benefits" to read as follows:

"“Employment benefits” means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, accident and health or sickness insurance, [~~disability insurance,~~] sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).”

SECTION 8. Section 412:5-205.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-205.6 and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to making contracts of insurance and selling insurance as [~~general agent, subagent, broker, or solicitor,~~] a producer, selling insurance through an independent insurance [~~agent or agency~~] producer or a producer under contract, selling annuities, and engaging in any related or incidental activities, within the State; provided that any insurance activities conducted pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431. Administration of chapter 431 and any insurance administrative rules shall be vested with the insurance commissioner.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-205.6 and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to the making of contracts of insurance and the sale of insurance as

~~[general agent, subagent, broker, or solicitor,]~~ a producer, selling insurance through an independent insurance ~~[agent or agency]~~ producer or a producer under contract, selling annuities, and engaging in any related or incidental activities, in any places outside this State, including any other states of the United States, dependencies or insular possessions of the United States, or any foreign countries; provided that any insurance activities conducted in this State pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431; provided further that any insurance activities conducted outside the State pursuant to the authority in this subsection shall be governed by and comply with the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of insurance activities within that jurisdiction.”

SECTION 9. Section 412:5-205.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Pursuant to section 412:5-205.5, a bank may engage in insurance sales through an independent insurance ~~[agent or agency]~~ producer or a producer under contract. In addition, a bank may engage in insurance sales pursuant to section 412:5-205.5, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, subject to chapter 431.”

SECTION 10. Section 412:6-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:6-201, a savings bank shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Own or control the capital stock of any other corporation after July 1, 1994;
- (3) Deal in gold bullion, except a savings bank may buy and sell gold coins minted by the United States Treasury; or
- (4) Engage in any business for which a real estate broker’s license is required, in any business for which an insurance ~~[agent or agency]~~ producer license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.”

SECTION 11. Section 412:7-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:7-201, a savings and loan association shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Own or control the capital stock of any other corporation after July 1, 1994;

- (3) Deal in gold bullion, except a savings and loan association may buy and sell gold coins minted by the United States Treasury; or
- (4) Engage ~~in~~ any business for which a real estate broker's license is required, in any business for which an insurance ~~agent or agency~~ producer license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance."

SECTION 12. Section 412:8-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise expressly authorized by this chapter, a trust company shall not:

- (1) Issue bills of exchange or letters of credit;
- (2) Discount commercial paper;
- (3) Solicit, accept, or hold deposits;
- (4) Engage in a general banking, savings bank, or savings and loan association business;
- (5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance ~~agent or agency~~ producer license is required, or in any business of a securities broker or dealer; and
- (6) Make any loans or extensions of credit to any person; except, a trust company may:
 - (A) Make loans to its affiliates not exceeding in the aggregate amount twenty per cent of the trust company's capital and surplus;
 - (B) Make loans to its clients for the sole purpose of preventing overdrafts in the client's account or accounts or securing repayment of overdrafts in the client's account or accounts. A trust company may charge interest on such advances, subject to chapter 478. A trust company shall have a lien on the assets in the client's account or accounts for the amount of the advance or credit and interest; and
 - (C) Pay or advance premiums due and owing by any person to an insurance company, before the payment by the person; provided that the total amount of the payments and advances at any one time for the benefit of any one person shall not exceed two per cent of the capital and surplus of the trust company, and for the benefit of all such persons shall not exceed fifteen per cent of the capital and surplus of the trust company."

SECTION 13. Section 412:9-400, Hawaii Revised Statutes, is amended to read as follows:

"§412:9-400 Special powers of a depository financial services loan company. In addition to the powers granted in parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power, and privilege to:

- (1) Solicit, accept, and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts; provided that a depository financial services loan company shall not solicit, accept, or hold demand deposits or authorize a

depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;

- (2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is first obtained. The depository financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a [~~general agent, subagent, or solicitor~~] producer licensed pursuant to chapter 431. In approving any request to sell or refer fixed rate annuities pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest; and
- (3) Offer gifts, premiums, other considerations, or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.”

SECTION 14. 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, 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 [{}sections{}] 431:1-204 to 431:1-211, if such insurance is not contrary to law or public policy.”

SECTION 15. Section 431:2-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner may:

- (1) Make reasonable rules for effectuating any provision of this code, except those relating to the commissioner’s appointment, qualifications, or compensation. The commissioner shall adopt rules to effectuate article 10C of chapter 431, subject to the approval of the governor’s office and the requirements of chapter 91[-];
- (2) Conduct examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any provision[-]; and
- (3) Require, upon reasonable notice, that insurers report any claims information the commissioner may deem necessary to protect the public interest.”

SECTION 16. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Beginning with fiscal year 2000-2001, and including fiscal year 2001-2002, each mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer accident and health or sickness insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of \$10,000 for the first¹ seventy thousand private, nongovernment members the entity covers and an additional assessment on a pro rata basis to be determined and imposed by the commissioner for covered members exceeding seventy thousand; provided that in the third year and each year thereafter, assessments shall be borne on a pro rata basis.

The aggregate annual assessment shall not exceed \$1,000,000. The assessment shall be credited to the compliance resolution fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase.

(b) The assessments shall be used to defray any administrative costs, including personnel costs, associated with [health] insurance regulation, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys from assessments to employ, without regard to chapter 76, necessary professional, technical, administrative, and support personnel to implement and carry out the purposes of title 24 as it relates to accident and health or sickness insurance.”

SECTION 17. Section 431:2-304, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§431:2-304 Examination of [the] guaranty associations.”

SECTION 18. Section 431:2-308, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Application for a hearing made to the commissioner pursuant to this code shall be in writing and shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. Where the commissioner has used the authority contained in section 431:9-236 or section 431:9A-112 to suspend, revoke, or refuse to extend a license subject to the right of the licensee to have a hearing and has suspended the license pending the hearing, the commissioner shall hold the hearing within thirty days after the commissioner’s receipt of the application unless postponed by mutual consent.”

SECTION 19. Section 431:3-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-204 Classes of insurance authorized. An insurer which otherwise qualifies therefor may be authorized to transact any one or more classes of insurance as defined in [section] sections 431:1-204 to [section] 431:1-211; provided that:

- (1) A life insurer shall not transact any insurance in addition to life insurance except [~~disability,~~] accident and health or sickness insurance; provided that nothing herein shall limit a life insurer existing and authorized on July 1, 1988, from writing any authorized insurance stated in its charter; and
- (2) A reciprocal insurer shall not transact life or [~~disability~~] accident and health or sickness insurance.”

SECTION 20. Section 431:3-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-205 Funds required of new insurers. Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on July 1, 1988, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if (A) a reciprocal insurer, or (B) a mutual insurer which does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307, in an amount not less than shown in the applicable Schedule “A”;

- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in this State; and
- (3) Secure the approval of the commissioner before making withdrawals from the depository.

Schedule "A"

Class of Insurance	Amount Required
Life	\$ 600,000
<u>[Disability] Accident and Health or Sickness</u>	450,000
Property	750,000
Marine and Transportation Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000"

SECTION 21. 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[-];
 - (E) 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;
 - ~~(F)~~ (F) A copy of the appointment and authority of its United States manager, certified by its proper officer, if an alien insurer;
 - ~~(G)~~ (G) 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;
 - ~~(H)~~ (H) The declaration required by section 431:4-409 if a domestic reciprocal insurer;
 - ~~(I)~~ (I) Certificate of the proper public official as to any deposit made or held in compliance with this code;
 - ~~(J)~~ (J) 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; and

- ~~[(J) Certificate of appointment of producer; and]~~
~~(K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this code[-]; and~~
 (3) Deposit with the commissioner the appropriate fees required by this code.”

SECTION 22. Section 431:3-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-301 Annual and quarterly filings with commissioner. (a) ~~[Annually on or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, the following documents shall be filed with the commissioner:~~

(1) ~~By each insurer:~~

~~(A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, shall be filed using the National Association of Insurance Commissioners’ annual statement blank plus any additional information required by the commissioner.] Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall file annually with the commissioner, on or before March 1 of each year, a copy of its annual statement convention blank, statement of actuarial opinion by a qualified actuary or specialist, and additional filings as prescribed by the commissioner for the preceding year. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement. The [annual statement] statements shall be prepared in accordance with the National Association of Insurance Commissioners’ annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners’ accounting practices and procedures manuals. The [reported information] annual and quarterly statements shall be verified by oaths of at least two of the insurer’s principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer shall relate only to its transactions and affairs in the United States[-]. Foreign and alien insurers that are in compliance with section 431:3-302 are not required to file annual and quarterly statements with this State.~~

~~[(B) The]~~ (b) Each insurer shall file the tax statement provided for by section 431:7-201[-] and

- ~~(C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;~~
 (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
 (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance that it is transacting; and

(4) By each alien insurer, a certificate from the proper public official as to any deposit made or held as compliance with this code].

~~(b)~~ (c) Any insurer failing or refusing to submit the annual or quarterly [filings] filing or any of the documents in accordance with [subsection a] this section shall be liable for a fine in an amount not less than \$100 and not more than \$500 for each day of delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer that fails to file any of the documents required pursuant to [subsection (a)-] this section.”

SECTION 23. Section 431:3-302, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

SECTION 24. Section 431:3-306.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The cost of an examination under this section shall be assessed against the insurer being examined and remitted to the commissioner for deposit into the [insurance regulation fund.] compliance resolution fund.”

SECTION 25. Section 431:3-401, Hawaii Revised Statutes, is amended by amending the definition of “life or health insurer” to read as follows:

““Life or accident and health or sickness insurer” means any insurer that is within the definition of section 431:1-204 or 431:1-205 and is licensed under article 3, or a licensed property and casualty insurer writing only accident and health or sickness insurance.”

SECTION 26. Section 431:3-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A life or accident and health or sickness insurer’s risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) The risk with respect to the insurer’s assets;
- (2) The risk of adverse insurance experience with respect to the insurer’s liabilities and obligations;
- (3) The interest rate risk with respect to the insurer’s business; and
- (4) All other business risks and any other relevant risks that are set forth in the risk-based capital instructions.”

SECTION 27. Section 431:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Company action level event” means any of the following events:

- (1) The filing of a risk-based capital report by an insurer which indicates that:
 - (A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
 - (B) If a life or accident and health or sickness insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5, and has a negative trend;
- (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.”

SECTION 28. Section 431:3-406, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event of a mandatory control level event:

- (1) With respect to a life or accident and health or sickness insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period; or

- (2) With respect to a property and casualty insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15, or, in the case of an insurer that is writing no business and is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.”

SECTION 29. Section 431:3-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The comparison of an insurer’s total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this part, the 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 an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, [~~agent, broker,~~] producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided that if any materially false statement with respect to the comparison regarding an insurer’s total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurer’s risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.”

SECTION 30. Section 431:3A-102, Hawaii Revised Statutes, is amended by amending the definition of “publicly available information” to read as follows:

““Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (1) Federal, state, or local government records;
- (2) Widely distributed media; or
- (3) Disclosures to the general public that are required to be made by federal, state, or local law.

For purpose of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine[~~]~~ that:

- (1) ~~[That the]~~ The information is of the type that is available to the general public; and
- (2) ~~[That the]~~ The licensee's consumer has ~~[not]~~ made the information available to the general public, for information that is of a nature that an individual can direct not be made available to the general public."

SECTION 31. Section 431:3A-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee shall be deemed to satisfy the initial notice requirements of subsection (a) if:

- (1) The licensee provides a revised ~~[policy]~~ privacy notice, under section 431:3A-205, that covers the customer's new insurance product or service; or
- (2) The initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, in which case the licensee does not need to provide a new privacy notice under subsection (a)."

SECTION 32. Section 431:3A-302, Hawaii Revised Statutes, is amended to read as follows:

"~~[H]~~§431:3A-302[H] **Limits on redisclosure and reuse of nonpublic personal financial information.** (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in ~~[sections]~~ section 431:3A-402 ~~[and]~~ or 431:3A-403, the licensee's disclosure and use of that information shall be as follows:

- (1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
- (2) The licensee may disclose the information to its affiliates who may disclose and use the information only to the extent that the licensee may disclose and use the information; and
- (3) The licensee may disclose and use the information pursuant to an exception under ~~[sections]~~ section 431:3A-402 ~~[and]~~ or 431:3A-403, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in ~~[sections 431:3A-201 and 431:3A-202,]~~ section 431:3A-402 or 431:3A-403, the licensee may disclose the information only:

- (1) To the affiliates of the financial institution from which the licensee received the information;
- (2) To its affiliates who may disclose the information only to the extent that the licensee may disclose the information; and
- (3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in ~~[sections 431:3A-201 and 431:3A-202,]~~ section 431:3A-402 or 431:3A-403, the third party may disclose and use that information, as follows:

- (1) Disclose to the licensee's affiliates;

- (2) Disclose to its affiliates, who may disclose and use the information only to the extent that the third party may disclose and use the information; and
 - (3) Disclose and use the information pursuant to an exception under [~~sections 431:3A-201 and 431:3A-202~~] section 431:3A-402 or 431:3A-403 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- (d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception under [~~sections 431:3A-201 and 431:3A-202,~~] section 431:3A-402 or 431:3A-403, the third party may disclose the information only:
- (1) To the licensee's affiliates;
 - (2) To the third party's affiliates who may disclose the information only to the extent the third party can disclose the information; and
 - (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person."

SECTION 33. Section 431:4-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before applying to the commissioner for an initial certificate of authority, [~~an~~] a stock or mutual insurer is required to file with the commissioner an affidavit, sworn to by the president, secretary, and treasurer of the corporation as named in the articles of incorporation."

SECTION 34. Section 431:4-232, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When applicable, information in schedule A shall include, among other things:

- (1) Whether or not the person giving the proxy has the power to revoke it;
- (2) A brief outline of the rights of appraisal of dissenting stockholders;
- (3) A statement as to who is making the solicitation;
- (4) A description of the interest of persons in the matters to be acted upon;
- (5) A statement as to the class of voting stock to be voted at the meeting, the number of shares outstanding, and the number of votes to which each class is entitled;
- (6) Detailed information [~~of~~] on nominees for directors;
- (7) A statement on remuneration and other transactions with management and others;
- (8) Information on the insurer's bonus, profit sharing, and other remuneration plans;
- (9) Information on the insurer's pension or retirement plan;
- (10) Information on the options, warrants, or rights to purchase stock of the insurer;
- (11) Information of the title, amount, and description of stock to be authorized or issued;
- (12) Detailed information on mergers, consolidations, acquisitions, and other similar matters; and
- (13) Detailed information on any asset, capital, or surplus of the insurer."

SECTION 35. Section 431:4-314, Hawaii Revised Statutes, is amended to read as follows:

"**§431:4-314 Limitation on expenses incurred in writing property and casualty.** For any calendar year after its first two full calendar years of operation, no

domestic mutual insurer, other than one issuing nonassessable policies, shall incur any costs or expense in the writing or administration of property, ~~[disability,]~~ accident and health or sickness, and casualty insurances, other than boiler and machinery or elevator, transacted by it which, exclusive of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of:

- (1) Forty per cent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for the year, plus
- (2) All of the reinsurance commissions received on reinsurance ceded by it.”

SECTION 36. Section 431:4-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon complying with the provisions of this part, a reciprocal insurer, as defined in section 431:3-108, may transact any class or classes of insurance defined by this code, other than life or ~~[disability]~~ accident and health or sickness insurance.”

SECTION 37. Section 431:4-405, Hawaii Revised Statutes, is amended to read as follows:

“**§431:4-405 Attorney.** Attorney as used in this part~~[-]~~ refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, partnership, or corporation ~~[whose].~~ The principal office of the attorney for a domestic reciprocal insurer shall be maintained within this State.”

SECTION 38. Section 431:5-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:5-203 Liabilities.** In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

- (1) The amount of its capital stock outstanding, if any;
- (2) The amount, estimated consistent with this article, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof;
- (3) With reference to life and ~~[disability]~~ accident and health or sickness insurance, and annuity contracts:
 - (A) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this article which are applicable thereto;
 - (B) Reserves for ~~[disability]~~ accident and health or sickness benefits, for both active and disabled lives;
 - (C) Reserves for accidental death benefits; and
 - (D) Any additional reserves which may be required by the commissioner, consistent with ~~[practice formulated]~~ practices adopted or approved by the National Association of Insurance Commissioners, on account of such insurances;
- (4) With reference to insurance other than those specified in ~~[item]~~ paragraph (3), the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this article;
- (5) Taxes, expenses, and other obligations accrued at the date of the statement; and

- (6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners.”

SECTION 39. Section 431:5-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer shall maintain an unearned premium reserve on all policies in force for:

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

SECTION 40. Section 431:5-307, Hawaii Revised Statutes, is amended by amending subsections (b) through (f) to read as follows:

“(b) Reserve valuation:

- (1) The commissioner, annually, shall value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance [policies], annuity, and pure endowment contracts of every life insurer doing business in this State. The commissioner may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or others) used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required under this section of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction, when the valuation complies with the minimum standard under this section, and if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certification states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction;
 - (2) The actual cost of making valuations under this section shall be assessed on the insurer, whose policies are so valued, by the commissioner; and
 - (3) Any insurer, at any time, that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided, with the approval of the commissioner, may adopt any lower standard of valuation, but not lower than the minimum provided in this section.
- (c) Computation of minimum standard:
- (1) Old policies: Except as otherwise provided in paragraph (3), the minimum standard for the valuation of all policies and contracts issued prior to the operative date of section 431:10D-104, shall be that provided by the laws in effect immediately prior to January 1, 1956;
 - (2) Except as otherwise provided in paragraph (3), the minimum standard for the valuation of all policies and contracts issued on or after the operative date of section 431:10D-104, shall be the commissioner’s

reserve valuation methods defined in subsections (d), (e), and (h), three and one-half per cent interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1976, four per cent interest; for the policies issued prior to June 1, 1979, five and one-half per cent interest for single premium life insurance policies and four and one-half per cent interest for all other policies issued on or after June 1, 1979; and the following tables:

- (A) For all ordinary policies of life insurance issued on the standard basis, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the Commissioners 1941 Standard Ordinary Mortality Table for the policies issued prior to the operative date of section 431:10D-104(e)(8), and the Commissioners 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date; provided that for any category of the policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for the policies issued on or after the operative date of section 431:10D-104(e)(8), the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for policies;
- (B) For all industrial life insurance policies issued on the standard basis, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the 1941 Standard Industrial Mortality Table for the policies issued prior to the operative date of section 431:10D-104(e)(7), and for the policies issued on or after the operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for those policies;
- (C) For individual annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;
- (D) For group annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the Group Annuity Mortality Table for 1951, any modification of the table approved by the commissioner or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;
- (E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued after December 31, 1965, the tables of period 2 disablement rates

and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners that are approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued after December 31, 1960, and prior to January 1, 1966, either the tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any table, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

- (F) For accidental death benefits in or supplementary to policies—for policies issued after December 31, 1965, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the policies; for policies issued after December 31, 1960, and prior to January 1, 1966, either the table or, at the option of the insurer, the Inter-company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and
 - (G) For group life insurance, life insurance issued on the substandard basis, and other special benefits—any tables that may be approved by the commissioner;
- (3) Except as provided in paragraph (4), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (d) and (e) and the following tables and interest rates:
- (A) For individual annuity and pure endowment contracts issued prior to June 1, 1979, excluding any [~~disability~~] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six per cent interest for single premium immediate annuity contracts, and four per cent interest for all other individual annuity and pure endowment contracts;
 - (B) For individual single premium immediate annuity contracts issued on or after June 1, 1979, excluding any [~~disability~~] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest;

- (C) For individual annuity and pure endowment contracts issued on or after June 1, 1979, other than single premium immediate annuity contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and five and one-half per cent interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent interest for all other individual annuity and pure endowment contracts; and
- (D) For all annuities and pure endowments purchased on or after June 1, 1979, under group annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the contracts—the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure endowments, or any modification of these tables approved by the commissioner and seven and one-half per cent interest.

After June 1, 1976, any insurer may file with the commissioner a written notice of its election to comply with this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for the insurer; provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no election, the operative date of this paragraph for the insurer shall be January 1, 1979; and

(4) Applicability of this section:

- (A) The interest rates used in determining the minimum for the valuation of:
- (i) All life insurance policies issued in a particular calendar year, on or after the operative date of section 431:10D-104(e)(8);
 - (ii) All individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982;
 - (iii) All annuities and pure endowments purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts; and
 - (iv) The net increase, if any, in a particular calendar year after 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation rates as defined in this paragraph;
- (B) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one per cent:
- (i) For life insurance,

$$I = .03 + W (R_1 - .03) + \frac{W}{2}(R_2 - .09);$$

- (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and $.09$, R_2 is the greater of R and $.09$, R is the reference interest rate defined in this section, and W is the weighting factor defined in this section;
 - (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in clause (ii), the formula for life insurance stated in clause (i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in clause (ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;
 - (iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in clause (ii) shall apply; and
 - (v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in clause (ii) shall apply;
- (C) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent, the calendar year statutory valuation interest rate for those life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 431:10D-104(e)(8) becomes operative;
- (D) The weighting factors referred to in the formulas stated above are given in the following tables:
- (i) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or fewer	.50
More than 10, but not more than 20	.45
More than 20	.35

- For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy, or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;
- (ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80; and
 - (iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in clause (ii), shall be as specified in the tables below, according to the rules and definitions stated below:

Table I:

For annuities and guaranteed interest contracts valued on an issue year basis;

Guarantee Duration (Years)	Weighting Factor For Plan Type		
	<u>A</u>	<u>B</u>	<u>C</u>
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Table II:

For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (i) increased by:

Plan Type		
<u>A</u>	<u>B</u>	<u>C</u>
.15	.25	.05

Table III:

For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in Table I or derived in Table II increased by:²

Plan Type		
<u>A</u>	<u>B</u>	<u>C</u>
.05	.05	.05

For other annuities with cash settlement options [~~with~~] and guaranteed interest contracts [~~and~~] with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time the policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; (2) without adjustment but in installments over five years or more; (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; (2) without adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without adjustment in a single sum or in installments over less than five years;

Plan Type C: The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or in installments over less than five years either: (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund;

- (E) The reference interest rate referred to in paragraph (4)(B) shall be defined as follows:

- (i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and
 - (vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in clause (ii), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and
- (F) Alternative method for determining references interest rates: In the event that Moody's Corporate Bond Yield Average-Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate,

which is adopted by the National Association of Insurance Commissioners and approved by rules adopted by the commissioner, may be substituted.

(d) Commissioner's reserve valuation methods:

- (1) Except as otherwise provided in subsections (e) and (h), reserves, according to the commissioner's reserve valuation methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits (excluding extra premiums on a substandard policy) that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subparagraph (A) over subparagraph (B) as follows:
 - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one a year payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided that the net level annual ~~[[premium]]~~ shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of the policy~~[-]; and~~
 - (B) A net one-year term ~~premium~~ for the benefits provided for in the first policy year~~[-. Provided]; provided~~ that for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year, and no comparable additional benefit is provided in the first year for the excess, which provides an endowment benefit, a cash surrender value, or a combination thereof, in an amount greater than the excess premium, the reserve, according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection (h), shall be the greater of the reserve as the policy anniversary calculated as described above and the reserve as of the policy anniversary calculated as described, but with:
 - (i) The value defined in subparagraph (A) being reduced by fifteen per cent of the amount of the excess first year premium;
 - (ii) All present values benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;
 - (iii) The policy being assumed to mature on that date as an endowment; and
 - (iv) The cash surrender value provided on that date being considered as an endowment benefit.

In making the above comparison, the mortality and interest bases stated in subsection (c)(2) and (3) shall be used; and

- (2) Reserve according to the commissioner's reserve valuation methods for:
- (A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;
 - (B) Group annuity and pure endowment contracts 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, as now or hereafter amended;
 - (C) ~~[Disability]~~ Accident and health or sickness and accidental death benefits in all policies and contracts; and
 - (D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts;
- shall be calculated by a method consistent with the principles of this subsection.

(e) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts 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, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any ~~[disability]~~ accident and health or sickness and accidental death benefits in those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(f) Minimum aggregate reserves: In no event shall an insurer's aggregate reserves for all life insurance policies excluding ~~[disability]~~ accident and health or sickness and accidental death benefits, issued on or after the operative date of section 431:10D-104, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (e), (h), and (i), and the mortality tables and rates of interest used in calculating nonforfeiture benefits for those policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (j)."

SECTION 41. Section 431:7-201, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each authorized insurer shall file with the commissioner annually, on or before March 1 in each year, a statement signed by a duly authorized person on its

behalf, setting forth the total business transacted, and the amount of gross premiums [received] reported by the insurer, pursuant to section 431:7-202, during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner [in order] to determine the taxability of premiums. The term [gross premiums] "gross premiums" as used in this part shall not include consideration paid for annuities.

(b) Each authorized insurer shall file with the commissioner quarterly, on or before the last day of the calendar month following the quarter, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums [received] reported by the insurer, pursuant to section 431:7-202, during the quarter from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums."

SECTION 42. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each authorized insurer, except with respect to all life insurance contracts, ocean marine insurance contracts, and real property title insurance contracts, shall pay to the director of finance through the commissioner a tax of 4.265 per cent on the gross premiums [received] written from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31, less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium:

- (1) By showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; or
- (2) By facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium."

SECTION 43. Section 431:8-201, Hawaii Revised Statutes, is amended to read as follows:

"§431:8-201 Transacting insurance business without certificate of authority prohibited. It shall be unlawful for any insurer to transact an insurance business in this State, as defined in section 431:1-215, without a certificate of authority, except that this section shall not apply to:

- (1) The lawful transaction of surplus lines insurance;
- (2) The lawful transaction of reinsurance by insurers;
- (3) Transactions in this State involving a policy lawfully solicited, written, and delivered outside of this State covering only subjects of insurance not resident, located, or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this State involving group life and group accident and health or sickness or blanket accident and health or sickness insurance or group annuities where the master policy of such groups was lawfully

- issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business;
- (6) Transactions in this State involving any policy of insurance or annuity contract issued prior to July 1, 1988; and
 - (7) Transactions in this State involving ocean marine insurance.”

SECTION 44. Section 431:8-205, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) This section shall not apply to life insurance, accident and health or sickness insurance, or annuities.”

SECTION 45. Section 431:8-208, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any unauthorized insurer files or causes to be filed [~~in~~] any pleading in any court action, suit, or proceeding, or [~~in~~] any notice, order, pleading, or process in [~~such~~] an administrative proceeding before the commissioner, instituted against such person or insurer[~~]~~ by [~~services~~] service made as provided in section 431:8-207, such insurer shall either:

- (1) Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner in administrative proceedings, cash or securities, or file a bond with good and sufficient sureties to be approved by the court or commissioner, in an amount fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding, or
- (2) Procure a certificate of authority to transact insurance in this State.”

SECTION 46. 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 producer, when business is referred to a surplus lines broker from a licensed producer, [~~shall have~~] has 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 47. Section 431:8-313, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each surplus lines broker shall file with the commissioner on or before March ~~[16]~~ 15 of each year [~~file with the commissioner~~] a verified statement of all surplus lines insurance transacted during the preceding calendar year.”

SECTION 48. Section 431:8-315, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~Before March 16~~] On or before March 15 of each year each surplus lines broker shall pay to the director of finance, through the commissioner, a

premium tax on surplus lines insurance transacted by such broker during the preceding calendar year. The tax shall be in amount of 4.68 per cent of gross premiums, less return premiums, on taxable surplus lines insurance.”

SECTION 49. Section 431:8-316, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-316 Penalty for failure to file statement or remit tax.** If any surplus lines broker fails to:

- (1) File an annual statement, or
- (2) Pay the premium tax required by section 431:8-315 [after] when the tax is due,

the surplus lines broker shall be liable for a fine of \$25 for each day of delinquency [commencing March 16]. The tax may be collected by distraint, or the tax and fine for failure to pay the tax may be recovered by action instituted by the commissioner in any court of competent jurisdiction. The fine for failure to file the annual statement may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.”

SECTION 50. Section 431:8-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Failure to file the annual statement required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) 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) 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)]~~ ~~Failure to maintain the bond required by section 431:8-310;~~
- ~~[(5)]~~ (4) Any of the causes for which a producer’s license may be suspended or revoked under article 9A;
- ~~[(6)]~~ (5) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- ~~[(7)]~~ (6) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- ~~[(8)]~~ (7) 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)]~~ (8) 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)]~~ (9) 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)]~~ (10) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- ~~[(12)]~~ (11) 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)] (12) 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)] (13) 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 51. Section 431:8-318, Hawaii Revised Statutes, is amended to read as follows:

"§431:8-318 Examination of surplus lines broker's accounts and records. Whenever deemed necessary the commissioner may examine the records and accounts of any surplus lines broker to determine whether the broker is conducting business in accordance with the requirements of this article."

SECTION 52. Article 9, chapter 431, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"ARTICLE 9.
LICENSING OF [AGENTS, BROKERS, SOLICITORS,]
ADJUSTERS[,] AND BILL REVIEWERS"**

SECTION 53. Section 431:9-229, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-229 Records of [general agent, subagent,] adjuster[,] or independent bill reviewer. (a) Every adjuster or independent bill reviewer shall keep a record of all transactions consummated under [their] the licensee's license. This record shall be in organized form according to class of insurance and shall include:

- (1) If an adjuster, 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;
- (2) If an independent bill reviewer, 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
- (3) Any additional information as shall be customary, or as may reasonably be required by the commissioner.

(b) All such records as to any particular transaction shall be kept in the licensee's office, available and open to the inspection of the commissioner during business hours during the five years, and in the case of workers' compensation claims during the eight years, immediately after the date of the completion of such transaction.

(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 54. 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 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; or
- ~~(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) (8) 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 55. Section 431:9A-101, Hawaii Revised Statutes, is amended to read as follows:

"~~[§431:9A-101]~~ **Scope.** This article governs qualifications and procedures for the licensing of insurance producers. It simplifies and organizes statutory language to improve efficiency, to permit the use of new technology, and to reduce costs associated with issuing and renewing insurance licenses.

This article does not apply to excess and surplus lines ~~[agents and]~~ brokers licensed through article 8, except as provided in ~~[section]~~ sections 431:9A-108 and ~~[section]~~ 431:9A-116 ~~[of this article]~~."

SECTION 56. Section 431:9A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 the proper line ~~[or class]~~ of authority or class in accordance with this article."

SECTION 57. 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) 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]~~ regarding group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health or sickness insurance, for the purpose of enrolling individuals ~~[under such plans,]~~ or issuing certificates under such plans, or otherwise assists³ assisting in administering the plans, or who 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,]~~ employer, association, 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 58. Section 431:9A-105, Hawaii Revised Statutes, is amended to read as follows:

"§431:9A-105 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.

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

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

~~(d)~~ (c) 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)]~~ (d) An applicant's examination scores shall be valid for two years from the date of the examination or last renewal, whichever is later."

SECTION 59. Section 431:9A-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(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] all~~ applicable ~~[fee set forth in chapter 431 or 432;] fees;~~
- (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."

2. By amending subsection (d) to read:

"(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each person whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that ~~[may] shall~~ be ~~[approved] subject to approval~~ by the commissioner."

SECTION 60. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (f) as follows:

"(f) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change ~~[in] of~~ legal name or address shall result in a penalty pursuant to section 431:2-203."

SECTION 61. Section 431:9A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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] accident and health or sickness 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] accident and health or sickness 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,~~] disability, 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.”

SECTION 62. Section 431:9A-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other provision of this article, an applicant licensed as a surplus lines producer in the applicant’s home state shall receive a nonresident surplus lines ~~producer~~³ broker license if the applicant complies with subsection (a). Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of article 8.”

SECTION 63. Section 431:9A-109, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~An~~] Subject to section 431:9A-116, an individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was licensed in good standing in that state, or the state’s producer database records, maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.”

SECTION 64. Section 431:9A-112, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~431:9A-112~~] License denial, nonrenewal, suspension, or revocation.~~ (a) The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state’s commissioner;

- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name [tø] on an application or [tø] on any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes.

(b) In the event that the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within twenty days of receipt of the written demand and shall be held pursuant to chapter 91.

(c) The commissioner shall not renew or reinstate any license and shall deny, suspend, or revoke any license or application if the commissioner has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or is in breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, if the commissioner has received such certification, the commissioner shall renew, reinstate, or grant a license only upon receipt of authorization from the administering entity.

~~(e)~~ (d) The license of a business entity may be sanctioned pursuant to subsection (a) if the commissioner finds, after hearing, that any other licensee of the business entity has engaged in misconduct under subsection (a) that was known or should have been known by one or more of the entity's partners, officers, or managers acting on behalf of the entity and the violation was neither reported to the commissioner by the entity nor corrective action taken by the entity.

~~(d)~~ (e) In addition to or in lieu of any applicable sanction under subsection (a), a licensee may, after hearing, be subject to a civil fine according to article 2.

~~(e)~~ (f) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article, chapter 431, ~~chapter~~ 432, or ~~chapter~~ 432D, against any person who is under investigation for or charged with a violation of this article, chapter 431, ~~chapter~~ 432, or ~~chapter~~ 432D, even if that person's license or registration has been surrendered or has lapsed by operation of law."

SECTION 65. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) ~~[In addition to payment of fees required in section 431:7-101, to]~~ 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 lines of insurance in only one of the following groups:
 - (A) Life or 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 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 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]~~ two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held; and
 - (B) Eighteen hours shall relate to paragraph (1)(B) of which ~~[three]~~ two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held.”

SECTION 66. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(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]~~ approved course provider shall electronically submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.”

SECTION 67. Section 431:9A-126, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any fine collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance regulation]~~ compliance resolution fund.”

SECTION 68. Section 431:9A-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.]~~ section 431:2-308.”

SECTION 69. Section 431:9A-142, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may issue a limited lines motor vehicle rental company producer license to a motor vehicle rental company; provided:

- (1) A motor vehicle rental company having a limited lines motor vehicle rental company producer's license shall also authorize employees of the motor vehicle rental company to act individually on behalf of, and under the supervision of, the motor vehicle rental company in solicitation and sale of insurance coverages;
- (2) [A] Except as set forth in this section, a limited lines motor vehicle rental company producer and its employees shall not advertise or otherwise represent themselves as licensed insurers, insurance agents, insurance producers, or insurance brokers;
- (3) A limited lines motor vehicle rental company producer may solicit or sell insurance at the rental office or by preselecting coverages in master, corporate, group rental, or individual agreements on policy forms approved by the commissioner in any of the following general categories:
 - (A) Personal accident insurance covering the risks of travel to the motor vehicle renter and other occupants of the rental vehicle for accident and health or sickness insurance covering accidental death or dismemberment and reimbursement for medical expenses resulting from an occurrence during the rental period;
 - (B) Liability insurance, uninsured motorist insurance, or underinsured motorist insurance covering the motor vehicle renter and other authorized drivers of the rental vehicle for liability and damage arising from the operation of the rental vehicle;
 - (C) Personal effects insurance covering the motor vehicle renter and other vehicle occupants for the loss of or damage to personal effects that occur during the rental period;
 - (D) Roadside assistance and emergency sickness protection programs; and
 - (E) Incidental travel or vehicle related coverages which the motor vehicle rental company solicits or sells in connection with the rental of its vehicles;
- (4) The limited lines motor vehicle rental company producer shall have brochures or other written materials readily available for review and dissemination to prospective motor vehicle renters that:
 - (A) Summarize clearly and correctly the material terms of coverages solicited or sold by the motor vehicle rental company producer, including the identity of the insurer;
 - (B) Discloses that the coverages solicited by the motor vehicle rental company producer may provide a duplication of coverages already provided by a renter's personal motor vehicle insurance policy or other sources of coverage;
 - (C) States that purchases by the motor vehicle renter of the kinds of coverages offered by the motor vehicle rental company producer is not required [~~in order~~] to rent a vehicle; and
 - (D) Describes the process for filing a claim if the renter elects to purchase coverages;
- (5) The motor vehicle rental company producer shall disclose in the motor vehicle rental agreement evidence of insurance coverages elected or declined by the motor vehicle renter;
- (6) The motor vehicle rental company producer shall conduct training programs which shall be approved by the commissioner for its employees who solicit and sell the rental company producer's insurance coverages;

- (7) The motor vehicle rental company producer shall not be required to hold funds collected as payments for insurance in a separate trust account; and
- (8) The motor vehicle rental company producer shall comply with all provisions of chapter 437D.”

SECTION 70. Section 431:9C-102, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The commissioner ~~[may]~~ shall require the managing general agent to furnish a bond in an amount ~~[acceptable to the commissioner with an insurance company acceptable to the commissioner]~~ equal to \$100,000 or ten per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, for the protection of the insurer. Each managing general agent shall provide the commissioner with:

- (1) Proof of the bond at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the bond continues to be in effect or that a new bond has been secured.

(d) The commissioner ~~[may]~~ shall 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.]~~ equal to \$1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company approved by the commissioner. Each managing general agent shall provide the commissioner with:

- (1) Proof of the policy at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the policy continues to be in effect or that a new policy has been secured.”

SECTION 71. Section 431:9C-103, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:9C-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~~ paragraph 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;

- (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 431:9C-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."

SECTION 72. Section 431:10A-116.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~§431:10A-116.5~~[F]~~ **In vitro fertilization procedure coverage.** (a) All individual and group accident and health or sickness insurance policies which provide pregnancy-related benefits shall include in addition to any other benefits for treating infertility, a one-time only benefit for all outpatient expenses arising from in vitro fertilization procedures performed on the insured or the insured’s dependent spouse; provided that:

- (1) Benefits under this section shall be provided to the same extent as the benefits provided for other pregnancy-related benefits;
- (2) The patient is the insured or covered dependent of the insured;
- (3) The patient’s oocytes are fertilized with the patient’s spouse’s sperm;
- (4) The:
 - (A) Patient and the patient’s spouse have a history of infertility of at least five years’ duration; or
 - (B) Infertility is associated with one or more of the following medical conditions:
 - (i) Endometriosis;
 - (ii) Exposure in utero to diethylstilbestrol, commonly known as DES;
 - (iii) Blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or
 - (iv) Abnormal male factors contributing to the infertility[-];
- (5) The patient has been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage is available under the insurance contract; and
- (6) The in vitro fertilization procedures are performed at medical facilities that conform to the American College of Obstetric and Gynecology guidelines for in vitro fertilization clinics or to the American ~~[Fertility]~~ Society for Reproductive Medicine minimal standards for programs of in vitro fertilization.

~~[(7) The]~~ (b) For the purposes of this section, the term “spouse” means a person who is lawfully married to the patient under the laws of the State.

(c) The requirements of this section shall apply to all new policies delivered or issued for delivery in this State after June 26, 1987.”

SECTION 73. Section 431:10A-116.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any provision of law to the contrary, each employer group accident and health or sickness policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 2000, shall cease to exclude contraceptive services or supplies for the subscriber or any dependent of the subscriber who is covered by the policy, subject to the exclusion under section 431:10A-116.7.”

SECTION 74. Section 431:10A-116.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Notwithstanding any other provision of this chapter, any religious employer may request [a] an accident and health or sickness insurance plan without coverage for contraceptive services and supplies that are contrary to the religious employer’s religious tenets. If so requested, the accident and health or sickness insurer, mutual benefit society, or health maintenance organization shall provide a ~~[health insurance]~~ plan without coverage for contraceptive services and supplies.

This subsection shall not be construed to deny an enrollee coverage of, and timely access to, contraceptive services and supplies.”

2. By amending subsections (e) and (f) to read:

“(e) [~~Health~~] Accident and health or sickness insurers, mutual benefit societies, and health maintenance organizations shall allow enrollees in a health plan exempted under this section to directly purchase coverage of contraceptive supplies and outpatient contraceptive services. The enrollee’s cost of purchasing such coverage shall not exceed the enrollee’s pro rata share of the price the group purchaser would have paid for such coverage had the group plan not invoked a religious exemption.

(f) This section shall not be construed as to require [a] an accident and health or sickness insurer, mutual benefit society, health maintenance organization, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee.”

SECTION 75. Section 431:10A-118, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“[~~§~~431:10A-118[~~]~~] **Genetic information nondiscrimination in accident and health or sickness insurance coverage.**”

SECTION 76. 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 accident and health or sickness 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 77. Section 431:10A-206.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All accident and health or sickness insurance policies issued in this State, which provide coverage for the children of the insured shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.”

SECTION 78. Section 431:10A-301, Hawaii Revised Statutes, is amended by amending the definition of “medicare supplement policy” to read as follows:

““Medicare supplement policy” means a group or individual policy of accident and health or sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.), or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare.”

SECTION 79. 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;] 9A, any person licensed to transact 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 80. Section 431:10A-406, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No policy, contract, certificate, or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless its form [~~shall have~~] has been approved by the commissioner or thirty days [~~shall~~] have expired after such filing without written notice from the commissioner of disapproval. The commissioner shall disapprove the forms for such insurance if the commissioner finds:

- (1) That they are unjust, inequitable, misleading, or deceptive; or
- (2) That the rates are by reasonable assumptions excessive in relation to the benefits provided.

In determining whether the rates by reasonable [~~assumption~~] assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this State, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this State, and to all other relevant factors within and outside this State, including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in [~~disability~~] accident and health or sickness policies or forms.”

SECTION 81. Section 431:10A-602, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:10A-602]~~ **Federally funded programs; exemption.** Requirements relating to mandated coverages shall not be applicable to any insurer offering accident and health or sickness insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the insurer’s business under the federally funded program.”

SECTION 82. Section 431:10B-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:10B-104 **Forms of credit life insurance and credit disability insurance.** Credit life insurance and credit disability insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of [~~disability~~] accident and health or sickness insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;
- (3) Group policies of life insurance issued to creditors pursuant to section 431:10D-203 providing insurance upon the lives of debtors on the term plan; and
- (4) Group policies of [~~disability~~] accident and health or sickness insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.”

SECTION 83. Section 431:10C-119, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall [~~promulgate~~] adopt rules to permit any licensed accident and health or sickness insurer to secure a license to engage in the business of motor vehicle insurance to provide only those personal injury protection benefits defined in section 431:10C-103.5(a) and optional major medical coverages.”

SECTION 84. Section 431:10C-215, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall assess and collect from each insurer, self-insurer, and from every applicant for a certificate of self-insurance or a license to transact [~~the~~] a motor vehicle insurance and optional additional insurance business in this State, such portion of the full cost of every audit, inspection, examination, visitation, and other services related to motor vehicle insurance required by this or any other article, or performed by the commissioner in the commissioner’s discretion under this article or this code, as the commissioner deems equitable in the⁴ rendering of the service. [~~The charges for audits, inspections, examinations and visitations shall be collected and paid into the insurance examiners revolving fund when moneys from this fund are expended for the purposes of carrying out this section. All other charges~~] Assessments collected shall be [~~collected and~~] paid into the [~~general~~] compliance resolution fund [~~of this State~~].”

SECTION 85. Section 431:10C-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner shall establish within the bureau, a board of governors for the purpose of providing expertise and consultation on all matters pertaining to the operation of the bureau and the joint underwriting plan. The board shall be composed of:

- (1) Five persons from, and members or representatives of, nationally organized insurers or their domestic insurer affiliates;
- (2) One person to represent insurance [~~agents;~~] producers;
- (3) Two members, each a self-insurer under this article, and nominated by all the certified self-insurers in the State;
- (4) Two members, not affiliated with the foregoing organizations, nominated by such nonaffiliated insurers; and
- (5) Two members each, to be selected by the commissioner or nominated by each of the classifications provided for in section 431:10C-407(b).”

SECTION 86. Section 431:10D-104, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Exceptions. This section shall not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) Pure endowment;
- (4) Annuity or reversionary annuity contract;
- (5) Term policy uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one for which uniform premiums are payable during the entire term of the policy;
- (6) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
- (7) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year calculated as specified in subsections (c), (d), and (e), exceeds two and one-half per cent of the amount on insurance at the beginning of the policy year; ~~and~~ and
- (8) Policy which shall be delivered outside this State through ~~[an agent]~~ a producer or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.”

SECTION 87. Section 431:10D-208, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-208 Mutual benefit society groups.** The lives of a group of individuals may be insured under a policy issued to a mutual benefit society, which shall be deemed the policyholder, to insure members of the society for the benefit of persons other than the society or any of its officials, subject to the following requirements:

- (1) The society must have been formed for purposes other than obtaining insurance and have, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five per cent of the number of persons eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the society, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the society’s own funds or from charges collected from the insured members specifically for the insurance, or from both. No policy may be placed in force unless and until at least seventy-five per cent of the then eligible members of the society, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have arranged for payment of their individual contributions to the society. Except as provided in ~~[item]~~ paragraph (4), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members[-];

- (4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (5) Charges collected from the insured members specially for the insurance, and the dues of the society if they include the cost of insurance, may be determined according to each attained age or in not less than four reasonably spaced attained age groups[-];
- (6) The policy must cover at least twenty-five persons at date of issue[-];
and
- (7) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the society.

[(8)] As used in this section, the term “mutual benefit society” has the same meaning as that ascribed to it in section [432:1-103-] 432:1-104. Any mutual benefit society participating in an insurance program under this section shall be exempted from the requirements of chapter 432 relative to the management or operation of its death or [disability] accident and health or sickness benefit funds with respect to the insurance program.”

SECTION 88. Section 431:10D-305, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-305 Standard provisions required.** No policy of industrial life insurance shall be issued or delivered unless it contains in substance the provisions as required by this part, or provisions which in the opinion of the commissioner are at least as favorable to the policyholder. There shall be a provision that:

- (1) Grace period. The insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the grace period shall be not less than thirty days; and that during such period the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy[-];
- (2) Entire contract. The policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in the application shall, in the absence of fraud, be deemed to be representations and not warranties[-];
- (3) Incontestability. The policy shall be incontestable after it has been in force during the lifetime of the insured for a specific period not more than two years from its date of issue, except for nonpayment of premiums and except for provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident or accidental means[-];
- (4) Misstatement of age. If it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages[-];
- (5) Participation. If a participating policy, the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy[-];

- (6) Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by section 431:10D-104[-];
- (7) Cash surrender value. There shall be a provision for a cash surrender value as required by section 431:10D-104[-];
- (8) Reinstatement. The policy be reinstated at any time within two years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value or the period of any extended insurance provided by the policy has expired, upon evidence of insurability, including good health, satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding six per cent a year compounded annually[-];
- (9) Payment of claims. When the policy becomes a claim by the death of the insured, settlement shall be made upon surrender of the policy and receipt of due proof of death, or after a specified period not exceeding two months after the surrender and receipt of proof; provided, however, an insurer is also permitted to require that the premium receipt book be delivered to it prior to settlement[-];
- (10) Authority to alter contract. There shall be a provision that no [agent] producer shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer[-];
- (11) Conversion; weekly premium policies. In the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting the insured's weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making the conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of the insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired[-]; and
- (12) Conversion; monthly premium policies. In the case of monthly premium industrial policies, granting, upon written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting the insured's monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making the conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insured at the age of the insured on the plan of ordinary insurance desired."

SECTION 89. Section 431:10D-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently:

“IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer’s phone number), writing to (insurer’s name) at (insurer’s address), or contacting your agent[-] or producer. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department.””

SECTION 90. Section 431:10D-409 Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

- (1) That the illustration formats meet the requirements of this part and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
- (2) That the company has provided its [agents] producers or other representatives with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6).”

SECTION 91. Section 431:10D-507, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice in a form approved by the commissioner, which shall state the following:

**“NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract’s benefits.

Make sure you understand the facts. You should ask the company or [agent] producer that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.””

SECTION 92. Section 431:10D-508, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any failure to comply with this part shall be considered a violation of article 13 of this chapter. ~~[Examples of violations]~~ Violations shall include[:] but are not limited to:

- (1) Any deceptive or misleading information set forth in sales material;
- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;
- (4) Advising an applicant to respond negatively to any question regarding replacement ~~[in order]~~ to prevent notice to the existing insurer; or
- (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.”

SECTION 93. Section 431:10H-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage. In the case of ~~[agent]~~ producer solicitations, ~~[an agent]~~ a producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitation, the outline of coverage shall be presented in conjunction with any application or enrollment form. In the case of a policy issued to a group defined in paragraph (1) of the definition of “group long-term care insurance” in section 431:10H-104, an outline of coverage shall not be required to be delivered; provided that the information described ~~[in]~~ subsection (b) is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.”

SECTION 94. Section 431:10H-115, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection, “field issued” means a policy or certificate issued by ~~[an agent]~~ a producer or a third-party administrator pursuant to the underwriting authority granted to the ~~[agent]~~ producer or third party administrator by an insurer.”

SECTION 95. Section 431:10H-117, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:10H-117]~~ Authority to [promulgate regulations.] adopt rules. The commissioner may ~~[issue]~~ adopt reasonable ~~[regulations]~~ rules to promote premium adequacy and to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, ~~[agent]~~ producer compensation, ~~[agent]~~ producer testing, penalties, and reporting practices for long-term care insurance.”

SECTION 96. Section 431:10H-220, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The offer in subsection ~~[(a)(2)]~~ (a) shall not be required of life insurance policies or riders containing accelerated long-term care benefits.”

SECTION 97. Section 431:10H-221, Hawaii Revised Statutes, is amended by amending subsections (a) through (d) to read:

“(a) Application forms shall include questions designed to elicit information as to whether, as of the date of application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and health or sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by paragraph (1) under the definition of “group long-term care insurance” in section 431:10H-104, the following questions may be modified only to the extent necessary to elicit information about accident and health or sickness and long-term care insurance policies other than the group policy being replaced; provided that the certificate holder has been notified of the replacement:

- (1) Do you have another long-term care insurance policy or certificate in force (including a health care service contract or health maintenance organization contract)?
- (2) Did you have another long-term care insurance policy or certificate in force during the last twelve months?
 - (A) If so, with which company?
 - (B) If that policy lapsed, when did it lapse?
- (3) Are you covered by medicaid?
- (4) Do you intend to replace any of your medical or accident and health or sickness insurance coverage with this policy (certificate)?

(b) Producers shall list any other accident and health or sickness insurance policies they have sold to the applicant, and the producer shall list policies sold that are still in force and list policies sold in the past five years that are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and health or sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the same manner as shown in Section 12(C) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.

(d) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the same manner as shown in Section 12(D) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.”

SECTION 98. 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 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;~~] producers, 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 99. Section 431:11A-101, Hawaii Revised Statutes, is amended by amending the definition of “producer” to read as follows:

““Producer” means any person, firm, association, or corporation licensed pursuant to article 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 [~~insurane broker or brokers;~~] person, firm, association, or corporation.”

SECTION 100. Section 431:12-101, Hawaii Revised Statutes, is amended by amending the definition of “employer” to read as follows:

““Employer” includes any firm, corporation, partnership, sole proprietorship, trust, estate, and unincorporated association or nonprofit organization; it also includes the State, any county, [~~and~~] any municipal corporation, and any governmental unit, agency, or department thereof.”

SECTION 101. Section 431:12-102, Hawaii Revised Statutes, is amended to read as follows:

“**§431:12-102 Applicability.** This article shall apply to motor vehicle insurance and to property and casualty insurance as defined in [~~section~~] sections 431:1-206 and [~~section~~] 431:1-209. The provisions of this article are in addition to, and not in substitution for, other applicable requirements of law relating to motor vehicle[;] and property and casualty insurance and the rules [~~and regulations~~] of the commissioner adopted pursuant thereto. The requirements of this article do not apply to methods of merchandising other than mass merchandising as defined in section 431:12-101.”

SECTION 102. Section 431:12-107, Hawaii Revised Statutes, is amended to read as follows:

“§431:12-107 Payroll deductions and premium collections. A mass merchandising agreement may provide for the collection of premiums from employees by payroll deductions, assessments, or otherwise, and the remittance of the same to the insurer by the employer; provided that:

- (1) No such collection and remittance of premiums by the employer shall constitute collection of premium within the meaning of this code;
- (2) No act of furnishing information about such collection method by the employer to its employees shall constitute solicitation of applications for insurance; and
- (3) The employer shall not be considered an [~~agent, subagent or solicitor of~~] insurance producer for purposes of this code by virtue of the employer's collection and remittance of premiums or the furnishing of information about such collection method.”

SECTION 103. Section 431:12-109, Hawaii Revised Statutes, is amended to read as follows:

“§431:12-109 Cancellation and nonrenewal. Except as provided [~~by~~] section 431:12-108, no policy of an individual employee or participation of an employee in a group policy shall be cancelled or its renewal denied unless a thirty-day written notice of cancellation or renewal is given the employee. All such notices shall set forth the reasons for the cancellation or nonrenewal. The insurer [~~will~~], prior to the expiration of the thirty-day period, shall afford the employer a reasonable opportunity to consult with the insured and to present facts in opposition to cancellation or nonrenewal.”

SECTION 104. 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 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]~~ Terminating or modifying coverage, or ~~[refuse]~~ refusing 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]~~ subparagraph shall not apply to ~~[disability]~~ accident and health or sickness insurance sold by a casualty insurer; provided further that this 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 [fœr] in 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;
- (B) This paragraph shall not apply to entities licensed under chapter 386 or 431:10C; and
- (C) For entities licensed under chapter 432 or 432D:
 - (i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and
 - (ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity[,] and providing information reasonably related to the entity's investigation of its liability for coverage.

Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages[,] and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party claim" for purposes of this paragraph means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 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[-]; and
- (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, producer, or individual."

SECTION 105. Section 431:13-108, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§431:13-108 Reimbursement for accident and health or sickness insurance benefits. (a) This section applies to accident and health or sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.”

2. By amending subsection (j) to read:

“(j) As used in this section:

“Claim” means any claim, bill, or request for payment for all or any portion of health care services provided by a health care provider of services submitted by an individual or pursuant to a contract or agreement with an entity, using the entity’s standard claim form with all required fields completed with correct and complete information.

“Clean claim” means a claim in which the information in the possession of an entity adequately indicates that:

- (1) The claim is for a covered health care service provided by an eligible health care provider to a covered person under the contract;
- (2) The claim has no material defect or impropriety;
- (3) There is no dispute regarding the amount claimed; and
- (4) The payer has no reason to believe that the claim was submitted fraudulently.

The term does not include:

- (1) Claims for payment of expenses incurred during a period of time when premiums were delinquent;
- (2) Claims that are submitted fraudulently or that are based upon material misrepresentations;
- (3) Medicaid or Medigap claims; and
- (4) Claims that require a coordination of benefits, subrogation, or preexisting condition investigations, or that involve third-party liability.

“Contest”, “contesting”, or “contested” means the circumstances under which an entity was not provided with, or did not have reasonable access to, sufficient information needed to determine payment liability or basis for payment of the claim.

“Deny”, “denying”, or “denied” means the assertion by an entity that it has no liability to pay a claim based upon eligibility of the patient, coverage of a service, medical necessity of a service, liability of another payer, or other grounds.

“Entity” means accident and health or sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

“Health care facility” shall have the same meaning as in section 327D-2.

“Health care provider” means a Hawaii health care facility, physician, nurse, or any other provider of health care services covered by an entity.”

SECTION 106. Section 431:13-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person aggrieved by an order of the commissioner under this section [431:13-201] may obtain judicial review of the order in the manner provided for by chapter 91.”

SECTION 107. Section 431:13-203, Hawaii Revised Statutes, is amended to read as follows:

“§431:13-203 [Regulations.] Rules. The commissioner may [promulgate] adopt reasonable rules [~~and regulations~~] in accordance with chapter 91, as are

necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 431:13-103 or [section] 431:13-104, but the [regulations] rules shall not enlarge upon or extend the provisions of section 431:13-103 or [section] 431:13-104.”

SECTION 108. Section 431:15-308, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All policies, other than life or accident and health or sickness insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

- (1) A period of thirty days from the date of entry of the liquidation orders;
- (2) The expiration of the policy coverage;
- (3) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or
- (4) The liquidator has effected a transfer of the policy obligation pursuant to section 431:15-310(a)(8).”

2. By amending subsection (c) to read:

“(c) Policies of life or accident and health or sickness insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty fund or association, or foreign guaranty fund or association. Policies of life or accident and health or sickness insurance or annuities or any period or coverage of such policies not covered by a guaranty fund or association or foreign guaranty fund or association shall terminate under subsections (a) and (b).”

SECTION 109. 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, or other electronic communication 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 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 110. Section 431:15-324, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The liquidator’s proposal, with respect to an insolvent insurer writing life or accident and health or sickness insurance or annuities, shall provide for disbursements of assets to any guaranty fund or association, or any foreign guaranty fund or association covering life or accident and health or sickness insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such funds or associations.”

SECTION 111. 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, or 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 112. Section 431:16-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The amount of and reason for any surcharge shall be separately stated on any billing sent 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’] producer commissions.”

SECTION 113. Section 431:16-203, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) This part shall provide coverage, for the policies and contracts specified in subsection (b) to:

- (1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under [item] paragraph (2)[;]; and
- (2) Persons who are owners of or certificate holders under such policies or contracts and who:
 - (A) Are residents[;]; or
 - (B) Are not residents, but only under all of the following conditions:
 - (i) The insurers which issued such policies or contracts are domiciled in this State[;];
 - (ii) Such insurers never held a license or certificate of authority in the states in which such persons reside[;];
 - (iii) Such states have associations similar to the association created by this part[;]; and
 - (iv) Such persons are not eligible for coverage by such associations.

- (b)(1) This part shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, accident and health or sickness, annuity, ~~and~~ supplemental policies or contracts, and 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, 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."

SECTION 114. Section 431:16-218, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person, including an insurer, and ~~[an agent]~~ a producer or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or

placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the Hawaii Life and Disability Insurance Guaranty Association of this State for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Hawaii Life and Disability Insurance Guaranty Association Act. This section shall not apply to the Hawaii Life and Disability Insurance Guaranty Association or any other entity which does not sell or solicit insurance.”

SECTION 115. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Where a stock or mutual insurer converts to a reciprocal insurer or merges with a reciprocal insurer in which the reciprocal insurer will be the surviving company, the stock or mutual insurer shall include in its articles of amendment the fact of the conversion to, or merger with, a reciprocal insurer and that the resulting or surviving entity shall be a reciprocal insurer under the continued jurisdiction of the commissioner, the effective date of the conversion [of] or merger, and the name of the agent for service of process of the converted or surviving reciprocal insurer.”

SECTION 116. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each captive insurance company other than a class 3 captive insurance company shall submit to the commissioner [~~a statement of~~] financial statements reporting the financial condition and the results of operations of the insurer written according to generally accepted accounting principles, or other comprehensive basis of accounting as may be deemed appropriate by the commissioner, and audited by an independent certified public accountant, or other qualified professional as deemed appropriate by the commissioner, on or before the last day of the sixth month following the end of the company’s fiscal year.

(b) Each class 3 captive insurance company shall annually file with the commissioner the following:

(1) Annual statement and audit:

- (A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners’ annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive’s principal officers;
- (B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive; and
- (C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners’ annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners’ practices and procedures manuals. Each risk retention [~~group~~] captive insurance company shall also comply with section 431:3-302; and

- (2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402; provided that a class 3 association captive insurance company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners.”

SECTION 117. 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] Sections 431:1-103 and [section] 431:1-105;
- (2) [Section] Sections 431:1-212, [section] 431:1-213, and [section] 431:1-214;
- (3) [Section] Sections 431:2-101 to [section] 431:2-106, and section³ sections 431:2-108 to [section] 431:2-110;
- (4) [Section] Sections 431:2-201 to [section] 431:2-204, and section³ sections 431:2-207 to [section] 431:2-212;
- (5) [Section] Sections 431:2-302, [section] 431:2-303, [section] 431:2-305, and [section] 431:2-306;
- (6) [Section] Sections 431:3-101 to [section] 431:3-105;
- (7) [Section] Sections 431:3-201 to [section] 431:3-203, [section] 431:3-205, [section] and 431:3-206, and section³ sections 431:3-209 to [section] 431:3-220;
- (8) [Section] Sections 431:3-301, [section] 431:3-305, [section] 431:3-307, and [section] 431:3-308;
- (9) [Section] Sections 431:4-102 to [section] 431:4-127;
- (10) [Section] Sections 431:4-202 to [section] 431:4-207;
- (11) Section 431:5-101;
- (12) [Section] Sections 431:5-201 to [section] 431:5-203;
- (13) [Section] Sections 431:5-305[-] and [section] 431:5-306, and section³ sections 431:5-308 to [section] 431:5-311;
- (14) Article 6;
- (15) Article 7;
- (16) Article 9;
- (17) (16) Article 9A;
- (18) (17) [Section] Sections 431:10-211, [section] 431:10-216 to [section] 431:10-218, [section] and 431:10-220, [section] 431:10-221, [section] and 431:10-224, [section] 431:10-225, and section³ sections 431:10-235 to [section] 431:10-238;
- (19) (18) Article 13; and
- (20) (19) Article 15.”

SECTION 118. Section 431:21-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Eight voting members selected by the member insurers;
- (2) One voting member appointed by the commissioner to represent insurance [agents;] producers; and

- (3) Three voting members appointed by the commissioner to represent the public.”

SECTION 119. 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 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,] producers, 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 120. Section 431M-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431M-2]~~ **Policy coverage.** All individual and group accident and health or sickness insurance policies issued in this State, individual or group hospital or medical service plan contracts, and nonprofit mutual benefit association and health maintenance organization health plan contracts shall include within their hospital and medical coverage the benefits of alcohol dependence, drug dependence, and mental illness treatment services provided in section 431M-4 except that this section shall not apply to insurance policies that are issued solely for single diseases, or otherwise limited, specialized coverage.”

SECTION 121. Section 432:1-404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each society shall file with the commissioner annually, on or before ~~April 30~~ March 1 in each year, a statement under oath, and in such form and detail as the commissioner shall prescribe; provided that any association or society orga-

nized and operating as a nonprofit medical indemnity or hospital service association shall file a report with the commissioner covering the preceding calendar year and verified by at least two principal officers. Each mutual benefit society shall file quarterly with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers. The report shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the report is to be filed.

In addition, any association or society organized and operating as a nonprofit medical indemnity or hospital service association annually shall file with the commissioner the following by the dates specified:

- (1) An audit, by an independent certified public accountant or an accounting firm designated by the association or society, of the financial statements, reporting the financial condition and results of operations of the association or society on or before June 1, or a later date as the commissioner upon request or for cause may specify. The association or society, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the association's or society's designation within fifteen days of receipt of the association's or society's notice, and the association or society shall be required to designate another independent certified public accountant or accounting firm. The audit required in this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals; and
- (2) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before [April 30.] March 1.'

SECTION 122. Section 432:1-604, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§432:1-604~~ **In vitro fertilization procedure coverage.** (a) All individual and group hospital or medical service plan contracts which provide pregnancy-related benefits shall include in addition to any other benefits for treating infertility, a one-time only benefit for all outpatient expenses arising from in vitro fertilization procedures performed on the subscriber or member or the subscriber's or member's dependent spouse; provided that:

- (1) Benefits under this section shall be provided to the same extent as the benefits provided for other pregnancy-related benefits;
- (2) The patient is a subscriber or member or covered dependent of the subscriber or member;
- (3) The patient's oocytes are fertilized with the patient's spouse's sperm;
- (4) The:
 - (A) Patient and the patient's spouse have a history of infertility of at least five years' duration; or
 - (B) Infertility is associated with one or more of the following medical conditions:
 - (i) Endometriosis;
 - (ii) Exposure in utero to diethylstilbestrol, commonly known as DES;

- (iii) Blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or
- (iv) Abnormal male factors contributing to the infertility[-];
- (5) The patient has been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage is available under the contract; and
- (6) The in vitro fertilization procedures are performed at medical facilities that conform to the American College of Obstetric and Gynecology guidelines for in vitro fertilization clinics or to the American [Fertility] Society for Reproductive Medicine minimal standards for programs of in vitro fertilization.

[~~(7) The~~] (b) For the purposes of this section, the term "spouse" means a person who is lawfully married to the patient under the laws of the State.

(c) The requirements of this section shall apply to all hospital or medical service plan contracts delivered or issued for delivery in this State after June 26, 1987."

SECTION 123. Section 432:2-609, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(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 [9A.] 9. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988."

2. By amending subsection (c) to read:

"(c) Any producer, representative, or member of a society who devotes, or intends to devote, less than fifty per cent of [~~such~~⁵ person's] one's time to the solicitation and procurement of insurance contracts for such⁶ society shall be exempt from the requirements of subsection (a). Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty per cent of the person's time to the solicitation or procurement of insurance contracts for such society."

SECTION 124. Section 432C-1, Hawaii Revised Statutes, is amended by amending the definition of "nonprofit entity" to read as follows:

"~~"Nonprofit entity"~~ means any charitable organization operating pursuant to Title 26 United States Code section 501(c)(3), (4), (8), (9), (26), or [~~(e)~~] 501(e), and whose primary purpose is to provide accident and health or sickness insurance coverage or any type of accident and health or sickness insurance benefits to its members or the public."

SECTION 125. Section 432D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every health maintenance organization shall file annually, on or before [~~April 30,~~] March 1, a report verified by at least two principal officers covering the preceding calendar year. Each health maintenance organization shall file quarterly with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers. These reports shall

comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the reports are to be filed. In addition, the health maintenance organization annually shall file with the commissioner the following by the dates specified:

- (1) An audit, by an independent certified public accountant or an accounting firm designated by the health maintenance organization of the financial statements, reporting the financial condition and results of operations of the health maintenance organization on or before June 1, or a later date as the commissioner upon request or for cause may specify. The health maintenance organization, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the health maintenance organization's designation within fifteen days of receipt of the health maintenance organization's notice, and the health maintenance organization shall be required to designate another independent certified public accountant or accounting firm. The audit required in this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals;
- (2) A list of the providers who have executed a contract that complies with section 432D-8(d) on or before ~~April 30;~~ March 1; and
- (3) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before ~~April 30;~~ March 1."

SECTION 126. Section 432D-7, Hawaii Revised Statutes, is amended to read as follows:

"§432D-7 Investments. All investments permitted under ~~[this section or]~~ section 432D-3(a)(1) ~~[can]~~ may be considered ~~[as]~~ admitted assets in determination of net worth; provided that these investments are in compliance with article 6 of chapter 431."

SECTION 127. Section 432D-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The deposit required under this section is in addition to the deposit required under section 432D-8 and is an admitted asset of the health maintenance organization in the determination of net worth. All income from the deposits or trust accounts shall be assets of the health maintenance organization and may be withdrawn from the deposit or trust account quarterly with the approval of the commissioner."

SECTION 128. Section 432E-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer accident and health or sickness insurance under article 10A of chapter 431, shall deposit with the commissioner a fee to provide for the actual costs of the survey and educational

program to be determined by the commissioner on July 1 of each year, to be credited to the compliance resolution fund.”

SECTION 129. Section 476-8, Hawaii Revised Statutes, is amended to read as follows:

“**§476-8 Insurance provisions.** The amount, if any, charged for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the commissioner of insurance for similar insurance. The seller or holder, if dual interest insurance on the goods is included in a credit sale contract, and a separate charge is made therefor, shall within thirty days after execution of the credit sale contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. The buyer of goods under a credit sale contract may purchase such insurance from ~~[an agent or broker]~~ a producer of the buyer’s own selection, and in an insurance company of the buyer’s own selection authorized to do business in this State; provided that the seller or holder shall have the right for reasonable cause to disapprove of the insurance company selected by the buyer to underwrite the insurance.

In any credit sale contract for the sale of a motor vehicle where insurance is contracted for as a part of the sale, and the insurance does not include public liability insurance for bodily injury and property damages, the contract shall contain, on the same page as the disclosures therein concerning insurance, a notice substantially similar to the following:

“THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. IT DOES NOT MEET THE REQUIREMENTS FOR PROOF OF FINANCIAL RESPONSIBILITY UNDER HAWAII LAW.”

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall at the option of the holder either be credited to the final maturing installments of the credit sale contract or paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.”

SECTION 130. Section 485-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding the requirements of section 485-14, no issuer, dealer, or salesperson shall be required to be registered under this chapter ~~[in order]~~ to be qualified to sell variable annuities; provided the following requirements are met:

- (1) The salesperson is:
 - (A) Appointed by a ~~[general agent]~~ producer who is appointed by a life insurance company admitted to do life insurance and annuity business in this State;
 - (B) Properly licensed by the insurance commissioner to sell life insurance;
 - (C) Properly registered with the National Association of Securities Dealers, Inc. in a category of registration that authorizes the salesperson to sell variable annuities; and
 - (D) Associated with a dealer that is a registered broker/dealer with the Securities and Exchange Commission and a member of the National Association of Securities Dealers, Inc.;

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- (2) The dealer is a registered broker/dealer with the Securities and Exchange Commission and a member of the National Association of Securities Dealers, Inc. authorized to sell only variable annuities and other insurance products, and must sell only through a salesperson who satisfies the criteria of paragraph (1);
- (3) The issuer is a life insurance company admitted to do life insurance and annuity business in this State; and
- (4) The issuer and dealer are parent, subsidiary, or related companies through common ownership.”

SECTION 131. Act 39, Session Laws of Hawaii 2002, is amended by amending section 22 to read as follows:

“SECTION 22. This Act shall take effect on July 1, 2002[-]; provided that the amendments made to section 431:2-216 by this Act shall not be repealed when that section is reenacted on June 30, 2003, pursuant to section 11 of Act 243, Session Laws of Hawaii, 2000.”

SECTION 132. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁷

SECTION 133. This Act shall take effect on July 1, 2003.

(Approved June 26, 2003.)

Notes

1. Prior to amendment “zero to” appeared here.
2. Colon should be underscored.
3. Missing brackets.
4. “The” should be underscored.
5. Prior to amendment “that” appeared here.
6. Prior to amendment “the” appeared here. “Such” should be underscored
7. Edited pursuant to HRS §23G-16.5.