

ACT 122

H.B. NO. 2411

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, article 10A, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§431:10A- Self-employed persons, exemption. The requirements of this article related to mandated coverages for persons insured under accident and sickness policies shall not apply to accident and sickness policies for self-employed persons in this state; provided that this exemption shall apply only to those portions of the accident and sickness policies that cover self-employed persons in this state.”

SECTION 2. Section 431:2-201.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-201.5 Conformity to federal law. (a) The provisions of title 42 United States Code section 300gg, et seq., as they relate to group and individual health insurance shall apply to title 24, except:

- (1) Where state law provides greater health benefits or coverage than title 42 United States Code section 300gg, et seq., ~~then the~~ state law shall be applicable; and
- (2) This section shall not ~~[be applicable]~~ apply to or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4)~~];~~.

~~[(3)]~~ (b) The following definitions shall be used when applying title 42 United States Code section 300gg, et seq.:

~~[(A)]~~ “Employee” means an employee who works on a full-time basis with a normal workweek of twenty hours or more~~];~~.

~~[(B)]~~ “Group health issuer” means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under sections 732(c) and 733(c) of title I of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act~~]; and~~.

~~[(C)]~~ “Small employer” means an employer who employs between one and no more than fifty employees~~];~~.

~~[(4)]~~ (c) All group health issuers shall offer all small group health plans to all small employers whose employees live, work, or reside in the group health issuer’s service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups~~]; and~~.

~~[(5)]~~ (d) A group health issuer shall be prohibited from imposing any preexisting condition exclusion.

~~[(b)]~~ (e) For the purpose of this subsection, “small group health plans” means the medical plans currently offered, advertised, or marketed by a group health issuer for small employers.

(b) (c) The commissioner may adopt rules to implement, clarify, or conform title 24 to title 42 United States Code section 300gg, et seq.

~~(e)~~ (f) The adoption of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, for the purposes of title 24 is not an adoption for any purposes for income taxes under chapter 235.

~~(d)~~ (g) The State shall have jurisdiction over any matter that title 42 United States Code section 300gg, et seq., permits, including jurisdiction over enforcement.

(h) As used in this section, “small group health plans” means the medical plans currently offered, advertised, or marketed by a group health issuer for small employers.”

SECTION 3. Section 431:2-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Orders and notices of the commissioner shall not be effective unless in writing and signed by the commissioner or [the commissioner’s authority.] by a person acting under authority delegated by the commissioner pursuant to section 431:2-108.”

SECTION 4. Section 431:2-208, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner, ~~[its officers, employees, and representatives]~~ shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in the person’s possession or control relating to the subject of the investigation or examination, and shall otherwise facilitate the investigation or examination.

(b) If the commissioner finds the accounts to be inadequate, improperly kept, or improperly posted, the commissioner may employ experts to rewrite, post, or balance ~~[them]~~ the accounts at the expense of the person being examined, if the person has failed to correct the accounting records after the commissioner has given the person written notice and a reasonable opportunity to do so.”

SECTION 5. Section 431:2-209, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

SECTION 6. Section 431:2-212, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All arrangements made jointly with any one or more of the other states under ~~[items (2) and (3)]~~ subsection (a) shall be in writing executed on behalf of this State by the commissioner. Any such arrangement, as to participation of this State therein, shall be subject to termination by the commissioner at any time upon reasonable notice.”

SECTION 7. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsections (c) through (e) to read as follows:

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

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

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

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner’s consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Any order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders, except that for examinations of producers, adjusters, independent bill reviewers, or surplus lines brokers, serving the copy of the adopted report and related orders by ~~[certified return]~~ certified mail, return receipt requested ~~[mail will]~~, shall satisfy the service requirement and no affidavits shall be required; and
- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner’s review of relevant workpapers or raised by the written submission or rebuttal of the insurer or person. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subsection (c)(1):
 - (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner’s workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner’s representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner’s representative shall be under oath and preserved for the record;

- (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and
 - (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.
- (e) The examination report shall be disseminated as follows:
- (1) Upon the adoption of the examination report under subsection (c)(1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days, except to the extent provided in subsection (b). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication; and
 - (2) Nothing contained in ~~[the insurance]~~ this code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the regulatory agency for insurance of any state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part.”

SECTION 8. Section 431:3-203.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-203.5 Foreign insurer; certification. (a) Notwithstanding section 431:3-203 or any other law to the contrary in this code, the [insurinee] commissioner shall grant a certificate of authority to any applicant, regardless of the number of previous years experience in the business of insurance, that is an insurer licensed under the insurance laws of one of not [less] fewer than three states annually designated, or redesignated, by the [insurinee] commissioner from among the states [which] that are accredited by the National Association of Insurance Commissioners. The loss of accreditation by a state designated by the commissioner shall not in itself affect the validity of a previously issued certificate of authority by the commissioner to a foreign insurer licensed under the insurance laws of the previously accredited state. Nor shall the commissioner’s de-selection of a state affect the validity of a previously issued certificate of authority to a foreign insurer licensed by that state. ~~[Each year, after having designated, or redesignated, the accredited states whose insurers shall be authorized to transact insurance in this State, the commissioner shall cause to be given in this State, and in those of the designated states, public notice of the fact that those states have been so designated.]~~

(b) The commissioner may waive the filing of any document required to be submitted under section 431:3-212.

(c) Nothing in this section shall limit the commissioner’s authority to require a foreign insurer to proceed with the certification process under this article if the commissioner, at the commissioner’s discretion, determines that it would be in the public interest.”

SECTION 9. Section 431:3-212.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-212.5 Redomestication of authorized insurers. (a) The certificate of authority, producer appointments and licenses, rates, and other items allowed by

the commissioner, which are in existence at the time an insurer authorized to transact insurance business in this [State] state transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if the insurer remains qualified to transact insurance business in this [State-] state. For purposes of this section, an insurer transferring its corporate domicile to this [State] state remains qualified to transact insurance business in this [State] state if its¹ meets the organization and licensing requirements applicable to the same type of domestic insurer. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(b) Each transferring insurer shall file new policy forms on or before the effective date of the transfer if such forms are required to be approved by the commissioner. The insurer may use existing policy forms with appropriate endorsements if permitted by, and under such conditions as approved by, the commissioner. Every such transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

(c) The commissioner may apply this section to any domestication occurring in another state by an authorized United States branch of an alien insurer.”

SECTION 10. Section 431:3-215, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Six months prior to withdrawing from this [State-] state, an insurer shall file an affidavit with the commissioner showing that:

- (1) It desires to withdraw from this [State] state and to discontinue business in this [State-] state; and
- (2) All of its outstanding policies have been either reinsured or have expired. If the outstanding policies are reinsured, the withdrawing insurer ~~must~~ shall also submit the reinsurer’s affidavit stating that it has reinsured all the outstanding policies of the withdrawing insurer upon risks in this [State] state or upon business originating in this [State-] state. The reinsurer ~~must~~ shall be an insurer authorized to carry on the business of insurance in this [State-] state.”

2. By amending subsection (e) to read:

“(e) Six months prior to withdrawing from this [State-] state, an insurer shall, in addition to other requirements, publish in this [State] state a notice of withdrawal once each week for the first eight successive weeks, and again in the last four successive weeks in the sixth month in a newspaper of daily circulation[-]; provided that the commissioner shall have the discretion to waive the notice requirement. The notice of withdrawal as published ~~must~~ shall have the prior approval of the commissioner.”

SECTION 11. Section 431:3-218, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-218 Procedure upon revocation; suspension of certificate of authority. Upon revoking, suspending, or refusing to extend an insurer’s authority to transact insurance, the commissioner shall forthwith:

- (1) Give notice thereof to the insurer not [~~less~~] fewer than ten days in advance of the effective date of the revocation or suspension;
- (2) Likewise revoke or suspend all producers’ authority to represent the insurer in this [State] state and give notice thereof to the producers; and

- (3) Give notice thereof to the insurance supervisory official of each other state in which the insurer is authorized to transact insurance~~[-];~~ provided that notice to the National Association of Insurance Commissioners shall satisfy this requirement.”

SECTION 12. Section 431:3-302.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

2. By amending subsections (c) and (d) to read:

“(c) The audit required in subsection (a) and the audited, consolidated, or combined financial statements ~~[required in]~~ as may be approved under subsection (b) shall be prepared in accordance with the National Association of Insurance Commissioners’ annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners’ accounting practices and procedures manuals.

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

SECTION 13. Section 431:3-306, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Reinsurance in ~~[an alien]~~ any reinsurer not qualified under ~~[section 431:3-211]~~ article 4A may not be deducted in determining risk retained for the purposes of this section.”

SECTION 14. Section 431:4-125, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may~~[-, by regulations from time to time,]~~ adopt rules to define and permit additional exceptions to the prohibition in subsection (a), solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer’s business and in the usual private professional or business capacity of such director.”

SECTION 15. Section 431:4-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may decrease its capital stock by:
- (1) Vote of not less than seventy-five per cent of the holders of the shares of stock outstanding and entitled to vote; and

- (2) Filing a certificate executed in the same manner as provided in section [415-58;] 414-11, that such vote occurred, upon which filing the decrease in capital is effective.”

SECTION 16. Section 431:4-247, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:4-247**~~]]~~ **Application of this part to annual report.** Notwithstanding section 431:4-238(b) and (c), two copies of any portion of the annual report referred to in section 431:4-238(b), which comments upon or refers to any solicitation subject to this ~~[section]~~ part or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to this part. The portion of the annual report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the annual report are first sent or given to stockholders.”

SECTION 17. Section 431:5-202, Hawaii Revised Statutes, is amended to read as follows:

“**§431:5-202 Assets not allowed.** In addition to assets excluded under section 431:5-201, the following shall not be allowed as assets in any determination of the financial condition of an insurer:

- (1) ~~[Goodwill, trade]~~ Trade names, agency plants, other like intangible assets, and any receivable without adequate documentation[-];
- (2) Positive goodwill from all sources in excess of ten per cent of capital and surplus adjusted to exclude electronic data processing equipment and operating system software and net deferred tax assets;
- ~~[(2)]~~ (3) Prepaid or deferred charges for expenses and commissions paid by the insurer except the unaccrued portion of taxes paid prior to due date, on real property acquired or used pursuant to section 431:6-311[-];
- ~~[(3)]~~ (4) Advances to officers, employees, agents, and other persons on personal security only[-];
- ~~[(4)]~~ (5) Stock of the insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by the insurer of an interest in another firm, corporation or business unit[-];
- ~~[(5)]~~ (6) Furniture, furnishings, fixtures, electronic data software, safes, vehicles, library, stationery, literature, and supplies; except such personal property:
 - (A) The insurer is permitted to hold pursuant to section [431:6-311(d)(5);] 431:6-311(e)(5);
 - (B) Acquired through enforcement of rights arising from security agreements acquired pursuant to section 431:6-310; or
 - (C) Reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes[-]; and
- ~~[(6)]~~ (7) The amount, if any, by which the aggregate book value of investments, as carried in the ledger assets of the insurer, exceeds the aggregate value thereof as determined under this code.”

SECTION 18. Section 431:5-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An insurer may take credit for reserves on risks ceded to a reinsurer to the extent reinsured, except that:

- (1) No credit shall be taken on account of reinsurance in ~~[an alien]~~ any reinsurer not qualified under ~~[section 431:3-211]~~ article 4A or in any reinsurer ~~[which]~~ that has been disapproved by the commissioner~~[-];~~ and
- (2) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.”

SECTION 19. Section 431:6-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Prior to acquisition of a security agreement, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such security agreement shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion mortgage loan on the real property.”

SECTION 20. Section 431:6-312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Real property acquired by an insurer pursuant to section ~~[431:6-311(d)(1)]~~ 431:6-311(e)(1) shall be disposed of within three years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to such loans, mortgages, liens, judgments, or other debts, or pursuant to ~~[items]~~ paragraphs (2), (3), (4), and (5) of section ~~[431:6-311(d)]~~ 431:6-311(e) shall be disposed of within three years after date of acquisition. The time for any such disposal shall be extended by the commissioner for a definite additional period or periods upon application and reasonable showing that forced sale of the property would be against the best interests of the insurer.”

SECTION 21. Section 431:6-323, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The investments and liabilities of the account shall at all times be clearly identifiable and distinguishable from the other investments and liabilities of the insurer. A sale, transfer, or exchange of investments shall not be made between any of the separate accounts or between any other investment account of the company and one or more of the separate accounts, except for the purpose of:

- (1) Conducting the business of the account in accordance with ~~[subsection (b);]~~ subsections (a) and (c); or
- (2) Making adjustments necessitated by the contract for mortality experience adjustment, and then only if the transfers are made by a transfer of cash or by a transfer of securities having a valuation ~~[which]~~ that can readily be determined in the marketplace. The commissioner may require for domestic life insurers that a transfer of cash or investments from a separate account or accounts to the company be approved in advance of the transfer. The commissioner may prescribe reasonable limitations on charges against and permissible deductions from separate accounts for life insurance contracts on a variable basis.”

SECTION 22. Section 431:6-324, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

tion to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 23. Section 431:6-601, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "money market mutual funds" and "obligation" in subsection (a) to read:

"~~["Money market mutual funds"]~~ "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations [Par.] part 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or renumbered.

"Obligation" means a bond, note, debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation, certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment."

2. By amending subsection (e) to read:

"(e) For an investment in an investment pool to be qualified under this section, the manager of the investment pool shall:

- (1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
- (2) Be the insurer, an affiliated insurer, or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment [Advisors] Advisers Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;
- (3) Compile and maintain detailed accounting records setting forth:
 - (A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 - (B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any), and other appropriate designations); and
 - (C) Other records [~~which,~~] that on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
- (4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 - (A) State and recognize the claims and rights of each participant;
 - (B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and
 - (C) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person."

SECTION 24. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:7-101 Fees. (a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance \$900
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$1,500
 - (B) Issuance of solicitation permit \$150
- (3) Producer’s license:
 - (A) Issuance, regular license [~~\$75~~] \$50
 - (B) Issuance, temporary license [~~\$75~~] \$50
- (4) Nonresident producer’s license: Issuance \$75
- (5) Independent adjuster’s license: Issuance \$75
- (6) Public adjuster’s license: Issuance \$75
- (7) Workers’ compensation claim adjuster’s limited license: Issuance ... \$75
- (8) Independent bill reviewer’s license: Issuance \$80
- (9) Limited producer’s license: Issuance \$60
- (10) Managing general agent’s license: Issuance \$75
- (11) Reinsurance intermediary’s license: Issuance \$75
- (12) Surplus [~~line~~] lines broker’s license: Issuance \$150
- (13) Service contract provider’s registration: Issuance \$75
- (14) Approved course provider certificate: Issuance \$100
- (15) Approved continuing education course certificate: Issuance \$30
- (16) Vehicle protection product warrantor’s registration: Issuance \$75
- (17) Criminal history record check \$20
- [(17)] (18) Examination for license: For each examination, a fee to be established by the commissioner.

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

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) [~~\$75~~] \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$45 per year for all services (including extension of the license) for a [~~regularly limited licensed~~] workers’ compensation claims [~~adjuster’s~~] adjuster’s limited license;
- (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$45 per year for all services (including extension of the license) for a producer’s limited license;
- (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$45 per year for all services (including extension of the license) for a licensed surplus [~~line~~] lines broker;
- (12) \$75 per year for all services (including renewal of registration) for a service contract provider;

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- (13) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course; [and]
- (15) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor[-]; and
- (16) \$20 for a criminal history record check.

The services referred to in paragraphs (1) to ~~[(15)]~~ (16) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

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

(d) Failure to pay the fee before or on the extension date for a license or other certificate issued under article 9 or 9A shall cause the automatic inactivation of the license or certificate effective as of the extension date.

~~[(d)]~~ (e) All fees and penalties shall be deposited to the credit of the compliance resolution fund.”

SECTION 25. Section 431:8-208, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Nothing in subsection (a) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service made in the manner provided in section 431:8-207 on the ground that ~~[such] the unauthorized insurer has not [done any of the acts enumerated in section 431:8-102(d).] transacted any insurance business in this state.~~”

SECTION 26. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Corporations, including foreign corporations, shall be eligible to be ~~[resident]~~ surplus lines brokers, upon the following conditions:

- (1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this part to become surplus lines brokers; and
- (2) Only those individuals listed on the corporate license shall transact surplus lines business.”

SECTION 27. Section 431:9-222.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:9-222.5]]~~ **Workers’ compensation claims adjusters; limited license.** (a) The commissioner may issue a limited license to an adjuster who only adjusts workers’ compensation claims; provided that the adjuster:

- (1) Is domiciled in the State of Hawaii, or in a state that permits residents of the State of Hawaii to act as adjusters in that other state;

- (2) Has had experience, special education, or training in handling loss claims under workers' compensation insurance contracts of sufficiently reasonable duration and extent to enable an individual to fulfill the responsibilities of an adjuster;
- (3) Has a passing grade on the workers' compensation examination pursuant to section 431:9-206; and
- (4) Pays the applicable fees.

(b) An adjuster with a limited license issued under this [§] may extend the license biennially upon successfully passing a reexamination on workers' compensation."

SECTION 28. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~"(c) An insurance producer who allows the producer's license to [lapse, within twenty-four months from the due date of the renewal fee, may reinstate that license without the necessity of passing a written examination. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee.] become inactive for nonpayment of the renewal fee may~~ reinstate that license without the necessity of passing a written examination, if the fee payable and a penalty in the amount of fifty per cent of then unpaid fees are paid within twenty-four months from the inactivation date and the producer is in compliance with all requirements of chapter 431. If the license is not reinstated within the twenty-four-month period, the license shall automatically expire."

SECTION 29. Section 431:9B-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this [State] state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association or~~ as an officer, director, or employee of a corporation:

- (1) In this [State:] state, unless the reinsurance intermediary-broker is a licensed agent in this [State:] state; or
- (2) In another state, unless the reinsurance intermediary-broker is a licensed agent in this [State] state or another state having a law substantially similar to this law, or such reinsurance intermediary-broker is licensed in this [State] state as a nonresident reinsurance intermediary."

SECTION 30. Section 431:10A-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

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

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

SECTION 31. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) “Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions.”
- (2) (A) “Time Limit on Certain Defenses:
 - (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of the three-year period.
 - (ii) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had

- existed prior to the effective date of coverage of this policy.”
- (B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age or occupation or other insurance.
- (C) A policy [~~which~~] that the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of subparagraph (A)(i) the following provision (from which the clause in parentheses may be omitted at the insurer’s option): “Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.”
- (3) (A) “Grace period: A grace period of [~~days~~] (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.”
- (B) A policy [~~which~~] that contains a cancellation provision may add at the end of the above provision: “subject to the right of the insurer to cancel in accordance with the cancellation provision.”
- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the above provision: “Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured’s last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.”
- (4) (A) “Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a

period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.”

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

payment will be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.”

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

- (B) The first clause of ~~[the above provision,]~~ subparagraph (A), relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

SECTION 32. Section 431:10A-106, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-106 Optional provisions. Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this [State] state shall contain the provisions set forth below unless the provisions are in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner [which] that are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions are optional provisions. Any such provision contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

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

is limited to the one such policy elected by the insured, the insured's beneficiary, or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

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

employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(i) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(i), no third party liability coverage shall be included as other valid coverage.

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

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

SECTION 33. Section 431:10A-117, Hawaii Revised Statutes, is amended to read as follows:

“~~§431:10A-117 Franchise plan. [The term employees as used in this section shall include the]~~ (a) As used in this section, “employees” include:

- (1) ~~The officers, managers, and employees of the employer[, and the]; and~~
- (2) ~~The individual proprietor or partners, if the employer is an individual proprietor or partnership.~~

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

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

SECTION 34. Section 431:10A-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding ~~[anything]~~ any provision in this part to the contrary ~~[contained in this part]~~, this part shall apply to:

- (1) All medicare supplement policies delivered or issued for delivery in this ~~[State on or after the effective date hereof;]~~ state; and
- (2) All certificates issued under group medicare supplement policies, which certificates have been delivered or issued for delivery in this ~~[State.]~~ state.”

SECTION 35. Section 431:10A-309, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No medicare supplement policy or certificate shall be delivered or issued for delivery in this ~~[State]~~ state after the date specified in rules adopted by the commissioner unless the form of ~~[such]~~ the policy or certificate is approved in accordance with this section.”

2. By amending subsection (e) to read:

“(e) A policy or certificate shall be deemed approved if:

- (1) It is in accordance with all applicable laws and rules;
- (2) It has not been disapproved earlier than sixty-one days after the date of ~~[filings;]~~ filing;
- (3) It fully meets all filing requirements; and
- (4) It is received by the commissioner.”

SECTION 36. Section 431:10A-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner finds the advertisement to be in violation of any provision of this chapter or any rule, the commissioner shall order the issuer to cease and desist use of the advertisement pursuant to section [431:2-201 and section 431:2-202.] 431:2-203.”

SECTION 37. Section 431:10A-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) As used in this section, [~~reciprocal beneficiary family coverage~~] “reciprocal beneficiary family coverage” means a policy that insures, originally or upon subsequent amendment, a reciprocal beneficiary who shall be deemed the policyholder, the other party to the policyholder’s reciprocal beneficiary relationship registered pursuant to chapter 572C, and dependent children or any child of any other person dependent upon either reciprocal beneficiary.”

SECTION 38. Section 431:10B-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner, within the waiting period or any extension thereof after the filing of the policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, shall disapprove any form or any premium rates if:

- (1) The benefits provided are not reasonable in relation to the premium charge; or
- (2) The form contains provisions [~~which~~] that are [unjust]:
 - (A) Unjust, unfair, inequitable, misleading, or deceptive[~~, or encourage~~];
 - (B) Encourage misrepresentation of the coverage[;]; or [~~are~~]
 - (C) Are contrary to any provision of [~~the~~] this code or of any rule adopted thereunder.”

SECTION 39. Section 431:10C-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The motor vehicle insurance required by section 431:10C-104 may be satisfied by any owner of a motor vehicle if:

- (1) The owner [~~provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a motor vehicle insurance policy, providing coverage at all times for the entire motor vehicle registration period, as determined and approved by the commissioner under rules;~~] meets the requirements of part VI of this article; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against the owner as the claimant would have had if a motor vehicle insurance policy had been applicable to the vehicle.”

SECTION 40. Section 431:10C-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An insurer may not cancel or refuse to renew a motor vehicle insurance policy, including required optional additional insurance [~~meeting~~] under section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked;
- (2) Premium payments for the policy are not made after reasonable demand therefor; or

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- (3) The nonrenewal or conditional renewal is limited in accordance with section 431:10C-111.5.”

SECTION 41. Section 431:10C-119, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner [~~may,~~] shall, prior to issuing a certificate of self-insurance to any person, require the applicant to provide for a complete claims service office and an officer for the purpose of service of process in this [~~State-~~] state.”

SECTION 42. Section 431:10C-602, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“[~~§~~431:10C-602~~] Surety bond~~], or deposit of security~~]; proof of financial ability.~~”~~~~

SECTION 43. Section 431:10D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any of the provisions or portions of [~~items~~] paragraphs (1) through (9) not applicable to single premium policies shall to that extent not be incorporated therein. This section shall not apply to [~~any~~]:

- (1) Any provision of a life insurance policy relating to disability benefits [~~or to additional~~];
- (2) Additional benefits in the event of death by accident or accidental means [~~, nor to annuities and pure~~];
- (3) Annuities; or
- (4) Pure endowment contracts.”

SECTION 44. Section 431:10D-103, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- “(e) The life insurer shall:
- (1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
 - (2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in [~~item~~] paragraph (3); and
 - (3) Send to policyholders with loans reasonable advance notice of any increase in the rate.”

SECTION 45. Section 431:10D-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Cash surrender value - life:

- (1) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (b), shall be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits [~~which~~] that would have been provided for by the policy including any existing paid-up additions, if there had been no default, over the sum of:

- (A) The then present value of the adjusted premiums as defined in subsection (e) corresponding to premiums ~~[which] that~~ would have fallen due on and after the anniversary~~;~~ and
- (B) The amount of any indebtedness to the insurer on account of or secured by the policy~~[-Provided that for]; provided that:~~
- (i) For any policy issued on or after the operative date of subsection (e)(8) ~~[as defined therein, which] that~~ provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in ~~[item (1)] this paragraph~~ shall be an amount not less than the sum of the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value ~~[as defined in such paragraph]~~ for a policy ~~[which] that~~ provides only the benefits otherwise provided by such rider or supplemental policy provision~~[-]; and~~
 - (ii) ~~[Provided further that for] For~~ any family policy issued on or after the operative date of subsection (e)(8) ~~[as defined therein, which] that~~ defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's ~~[age seventy-one,] seventy-first birthday~~, the cash surrender value referred to in ~~[item (1)] this paragraph~~ shall be an amount not less than the sum of the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value ~~[as defined in such paragraph]~~² ~~[f]for[)]~~ a policy ~~[which] that~~ provides only the benefits otherwise provided by such term insurance on the life of the spouse.
- (2) Any cash surrender value available within thirty days after any policy anniversary, of the future guaranteed benefits provided for by the policy including any existing paid-up additions, shall be decreased by any indebtedness to the insurer on account of or secured by the policy.’’
2. By amending subsections (e) through (g) to read:
- “(e) The adjusted premium - life:
- (1) This paragraph shall not apply to policies issued on or after the operative date of ~~[item] paragraph~~ (8) as defined therein. Except as provided in ~~[subsection (e)(4);] paragraph~~ (4), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:
 - (A) The then present value of the future guaranteed benefits provided for by the policy;
 - (B) Two per cent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

- (C) Forty per cent of the adjusted premium for the first policy year; and
 - (D) Twenty-five per cent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.
- (2) This paragraph shall not apply to policies issued on or after the operative date of ~~[item] paragraph (8) [as described therein. Provided that in].~~ In applying the percentages specified in ~~[[subparagraphs] (C)] paragraph (1)(C)~~ and (D), no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy.
 - (3) This paragraph shall not apply to policies issued on or after the operative date of ~~[item] paragraph (8) [as described therein].~~ In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this paragraph shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy~~]; provided that in].~~ In the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten was the amount provided by the policy at age ten.
 - (4) This paragraph shall not apply to policies issued on or after the operative date of ~~[item] paragraph (8) [as described therein].~~ The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by the adjusted premiums for the term insurance.

The foregoing ~~[(A)] amounts in paragraph (1)(A) and (B) being calculated separately and as specified in [subsection (e)(1),] paragraphs (1), (2), and (3), except that for the purposes of [subsection (e)(1)(B),] paragraph (1)(B), (C), and (D), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in [(B)] paragraph (1)(B) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in [(A),] paragraph (1)(A).~~

- (5) This paragraph shall not apply to policies issued on or after the operative date of ~~[item] paragraph (8) [as described therein].~~ Except as otherwise provided in ~~[items] paragraphs (6) and (7) [of subsection (e)],~~ all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of

the Commissioners 1941 Standard Ordinary Mortality Table~~[;]~~; provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent a year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. ~~[Provided that in]~~

~~In~~ calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent of the rates of mortality according to the applicable table. ~~[Provided further that for]~~

For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

- (6) This paragraph shall not apply to ordinary policies issued on or after the operative date of ~~[item]~~ paragraph (8) ~~[as defined therein]~~. In the case of ordinary policies issued on or after the operative date of this paragraph ~~[as defined herein]~~, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table ~~[and the]~~.

~~The~~ rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits~~[; provided that such rate of interest]~~ shall not exceed three and one-half per cent a year, except that [a]:

- (A) A rate of interest not exceeding four per cent a year may be used for policies issued after June 1, 1976, and prior to June 1, 1979~~[; and a]~~;
- (B) A rate of interest not exceeding five and one-half per cent a year may be used for policies issued on or after June 1, 1979~~[; except that for]; and~~
- (C) For any single premium whole life or endowment insurance policy, a rate of interest not exceeding six and one-half per cent a year may be used~~[; and provided further that for]~~.

For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured~~[; provided that in]~~.

~~In~~ calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table~~[; provided further that for]~~.

For insurance issued on a substandard basis, the calculation of any ~~[such]~~ adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

After June 1, 1959, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this ~~[item]~~ (6) paragraph after a specified date before January 1, 1966. After the

filing of such notice, then upon such specified date (which shall be the operative date of this ~~[item (6)] paragraph~~ for such insurer), this ~~[item (6)] paragraph~~ shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this ~~[item (6)] paragraph~~ for such insurer shall be January 1, 1966.

- (7) This paragraph shall not apply to industrial policies issued on or after the operative date of ~~[item] paragraph (8) [as defined therein]~~. In the case of industrial policies issued on or after the operative date of this paragraph ~~[as defined herein]~~, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table ~~[and the]~~.

The rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits~~;~~ ~~provided that such rate of interest~~ shall not exceed three and one-half per cent a year, except that [a]:

- (A) A rate of interest not exceeding four per cent a year may be used for policies issued on or after June 1, 1976, and prior to June 1, 1979~~;~~ ~~and a~~;
- (B) A rate of interest not exceeding five and one-half per cent a year may be used for policies issued on or after June 1, 1979~~;~~ ~~except that for~~; ~~and~~
- (C) For any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent a year may be used~~;~~ ~~provided further that in~~.

In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table~~;~~ ~~provided further that for~~.

For insurance issued on a substandard basis, the calculation of any ~~[such]~~ adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

After May 8, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such insurer), this paragraph shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1968.

- (8) (A) This paragraph shall apply to all policies issued on or after the operative date of this paragraph ~~[as defined herein]~~. Except as provided in ~~[F]~~ ~~(F)~~; (G), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture

benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

- (i) The then present value of the future guaranteed benefits provided for by the policy;
- (ii) One per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
- (iii) One hundred twenty-five per cent of the nonforfeiture net level premium as hereinafter defined.

~~Provided that in~~ In applying the percentage specified in clause (iii), no nonforfeiture net level premium shall be deemed to exceed four per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of ~~item (8)~~ this paragraph shall be the date as of which the rated age of the insured is determined.

- ~~[(A)]~~ (B) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- ~~[(B)]~~ (C) In the case of policies ~~[which]~~ that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or ~~[which]~~ that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy immediately after the change. At the time of any such change in the benefit or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- ~~[(C)]~~ (D) Except as otherwise provided in ~~[(subparagraph)]~~ ~~(F)~~, (G), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of the sum of:
 - (i) The then present value of the then future guaranteed benefits provided for by the policy; and
 - (ii) The additional expense allowance, if any, over the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

- ~~[(D)]~~ (E) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
- (i) One per cent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
 - (ii) One hundred twenty-five per cent of the increase, if positive, in the nonforfeiture net level premium.
- ~~[(E)]~~ (F) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing the value defined in clause (i) by the value defined in clause (ii):
- (i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the charges on which a premium would have fallen due had the change not occurred, plus the present value of the increase in future guaranteed benefits provided for by the policy[-]; and
 - (ii) The present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of charge on which a premium falls due.
- ~~[(F)]~~ (G) Notwithstanding any other ~~[provisions]~~ provision of this paragraph to the contrary, in the case of a policy issued on a substandard basis ~~[which]~~ that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis ~~[which]~~ that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- ~~[(G)]~~ (H) All adjusted premiums and present values referred to in this section shall; for all policies of ordinary insurance be calculated on the basis of either 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; ~~[shall]~~ for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and ~~[shall]~~ for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this paragraph for ~~[policies]~~ policies issued in that calendar year[-Provided]; provided that:
- (i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding nonforfeiture interest rate, ~~[as defined in this paragraph,]~~ for policies issued in the immediately preceding calendar year[-];
 - (ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (b), shall be

- calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any[-];
- (iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values[-];
 - (iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance[-];
 - (v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables[-];
 - (vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by ~~[regulation promulgated]~~ rule by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table[-]; and
 - (vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by ~~[regulation promulgated]~~ rule by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.
- ~~[(H)]~~ (I) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five per cent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one per cent.
- ~~[(H)]~~ (J) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form ~~[which]~~ that involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.
- ~~[(J)]~~ (K) After the effective date of this ~~[item (8),]~~ paragraph, any company may file with the commissioner a written notice of its election to comply with ~~[the provisions of]~~ this paragraph after a specified date before January 1, 1989, which shall be the operative date of this paragraph for such company. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1989.

~~[(K)]~~ (L) In the case of any plan of life insurance ~~[which]~~ that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance ~~[which]~~ that is of such a nature that minimum values cannot be determined by the methods described in subsections (b), (c), (d), and (e), then:

- (i) The commissioner ~~[must]~~ shall be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (b), (c), (d), and (e);
- (ii) The commissioner ~~[must]~~ shall be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and
- (iii) The cash surrender values and paid-up nonforfeiture benefits provided by such plan ~~[must]~~ shall not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by ~~[regulations promulgated]~~ rules adopted by the commissioner.

(f) Calculation of values - life: Any cash surrender value and any paid-up value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (c), (d), and (e) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding subsection (c), additional benefits payable:

- (1) In the event of death or dismemberment by accident or accidental means;
- (2) In the event of total and permanent disability;
- (3) As reversionary annuity or deferred reversionary annuity benefits;
- (4) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply;
- (5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child; and
- (6) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, ~~[shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.]~~

shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(g) This subsection, in addition to all other applicable subsections of this section, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium

payment due on any policy anniversary shall be in an amount ~~[which]~~ that does not differ by more than two-tenths of one per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of the greater of zero and the basic cash value hereinafter specified, and the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits ~~[which]~~ that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums ~~[which]~~ that would have fallen due on and after such anniversary. ~~[Provided that the]~~ The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (c) or (e)(1), (2), (3), (4), and (5), whichever is applicable, shall be the same as are the effects specified in subsection (c) or (e)(1), (2), (3), (4), and (5), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (e)(1), (2), (3), (4), and (5) or subsection (e)(8), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

- (1) ~~[Must]~~ Shall be the same for each policy year between the second policy anniversary and the later of:
 - (A) The fifth policy anniversary~~;~~ and
 - (B) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
- (2) ~~[Must]~~ Shall be such that no percentage after the later of the two policy anniversaries specified in ~~[item]~~ paragraph (1) may apply to fewer than five consecutive policy years.

~~[Provided, that no]~~ No basic cash value may be less than the value ~~[which]~~ that would be obtained if the adjusted premiums for the policy, as defined in subsection (e)(1), (2), (3), (4), and (5) or subsection (e)(8), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (b), (c), (d), (e)(8), and (f). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as ~~[items]~~ paragraphs (1) through (6) in subsection (f) shall conform with the principles of this subsection.”

SECTION 46. Section 431:10D-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No annuity or pure endowment contract shall be delivered or issued for delivery in this [State] state unless it contains in substance each of the provisions set forth below:

- (1) Grace period. There shall be a grace period of not [less] fewer than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge at a rate to be specified in the contract, but not exceeding six per cent a year, for the number of days elapsing before such payment, during which period of grace the contract shall continue in full force. However, if a claim arises under the contract on account of death prior to the expiration of the grace period and before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.
- (2) Incontestability. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing an annuity or pure endowment contract, subject to [item] paragraph (4), the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer. At the option of the insurer, the contract may also except any provisions relative to benefits in the event of disability and any provisions [which] that grant insurance specifically against death by accident or accidental means.
- (3) Entire contract. The contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.
- (4) Misstatement of age or sex. If the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer makes or has made any overpayment on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six per cent a year, may be charged against the current or next succeeding payment to be made by the insurer under the contract.
- (5) Dividends. In participating contracts the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract except that at the option of the insurer the participation may be deferred to the end of the third contract year.
- (6) Reinstatement. The contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six per cent a year compounded annually. In cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.”

SECTION 47. Section 431:10D-202, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Issuance of group life insurance policies shall be subject to the following requirements:

- (1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term employees shall include:
 - (A) The employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships, or partnerships, if the business of the employer and of such affiliated corporations, proprietorships, or partnerships is under common control;
 - (B) The individual proprietor or partners, if the employer is an individual proprietor or a partnership; and
 - (C) Retired employees.

No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the individual is actively engaged in and devotes a substantial part of the individual’s time to the conduct of the business of the proprietorship or partnership[-];

- (2) The premium for the policy shall be paid either:
 - (A) Wholly from the employer’s fund or funds contributed by the employer[-]; or
 - (B) Partly from such funds and partly from funds contributed by the insured employees.

No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds provided in accordance with ~~[item (2)(B)]~~ subparagraph (B) may be placed in force only if at least seventy-five per cent of the then eligible employees, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. Except as provided in ~~[item]~~ paragraph (3), a policy on which no part of the premium is to be derived from funds contributed by the insured employees ~~[must]~~ shall insure all eligible employees, except those who reject such coverage in writing[-];

- (3) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy ~~[must]~~ shall cover at least ten employees at date of issue[-]; and
- (5) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the employees ~~[or by the]~~, employer, or trustees.”

SECTION 48. Section 431:10D-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-203 Debtor groups.** The lives of a group of individuals may be insured under a policy issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee, trustees, or agent shall be deemed the policy-

holder, to insure debtors of the creditor or creditors, subject to the following requirements:

- (1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors or all of any class or classes thereof. The policy may provide that the term debtors shall include:
 - (A) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction;
 - (B) The debtors of one or more subsidiary corporations; and
 - (C) The debtors of one or more affiliated corporations, proprietorships, or partnerships, if the business of the policyholder and the affiliate is under common control[-];
- (2) The premiums for the policy shall be paid either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premiums is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible from insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five per cent of the then eligible debtors elect to pay the required charges. Except as provided in [item] paragraph (3), a policy on which no part of the premium is to be derived from the collection of such identifiable charges [~~must~~] shall insure all eligible debtors[-];
- (3) An insurer may exclude any debtors as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five per cent of the new entrants become insured[-];
- (5) The amount of the insurance on the life of any debtor shall at no time exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor, except that if the sole purpose of the loan is to provide future advances to the debtor to meet education or education-related expenses of the debtor, the debtor's spouse, children or other dependents, the amount of insurance may equal, but may not exceed, the total amount of the described expenses forecast at the time of entry into the loan agreement with the creditor, less the amount of all repayments by the debtor. In the case of revolving loan or revolving charge accounts, the insurance shall at no time exceed the unpaid indebtedness[-];
- (6) The insurance shall be payable to the creditor or any successor to the right, title, and interest of the creditor. The payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of the payment and, whenever the amount of insurance exceeds the unpaid indebtedness, any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate[-]; and
- (7) Payment by the debtor insured under any such group life insurance contract of an amount not in excess of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any banking or usury law or any law regulating installment sales."

SECTION 49. Section 431:10D-204, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-204 Labor union groups.** The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of the union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

- (1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof;
- (2) The premium for the policy shall be paid either wholly from the union’s funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. Except as provided in [item] paragraph (3), 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] shall insure all eligible members, except those who reject such coverage in writing[-];
- (3) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy [must] shall cover at least twenty-five members at date of issue[-]; and
- (5) The amount of insurance under the policy [must] shall be based upon some plan precluding individual selection either by the members or by the union.”

SECTION 50. Section 431:10D-207, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-207 Public employee association groups.** The lives of a group of individuals may be insured under a policy issued to an association of public employees, which shall be deemed the policyholder, to insure members of the association for the benefit of persons other than the association or any of its officials, subject to the following requirements:

- (1) The association [must] shall 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 employees eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the association, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the association’s own funds or from charges collected from the insured members specifically for the insurance, or from both. Any charges collected from the insured members specifically for the insurance, and the dues of the association if they include the cost of insurance, may be collected through deductions by the employer from the salaries of the members.

The deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five per cent of the then eligible members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make the required deductions from salary, or have otherwise assigned pay or arranged for payment of their individual contributions to the association. 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~~ shall insure all eligible members, except those who reject such coverage in writing[-];

- (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 specifically for the insurance, and the dues of the association if they include the cost of insurance, may be determined according to each attained age or in not ~~less~~ fewer than four reasonably spaced attained age groups. This provision, however, shall not preclude an average rate for the whole group with charges to the individual members based on a schedule of insurance graded by rank, salary bracket, or by length of service or seniority[-];
- (6) The policy ~~must~~ shall cover at least twenty-five persons at date of issue[-]; and
- (7) The amounts of insurance under the policy ~~must~~ shall be based upon some plan precluding individual selection either by the members or by the association.

~~{(8)}~~ As used ~~herein, public employees means~~ in this section, “public employees” means employees of the United States government, ~~or of~~ any state, ~~or of~~ any political subdivision ~~or~~, instrumentality ~~or~~, department ~~or~~, bureau ~~or~~, board, or commission of ~~any of them,~~ the United States government or any state, or the national guard as an association in nature under its existing form.”

SECTION 51. Section 431:10D-209, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-209 Professional association groups. The lives of a group of individuals may be insured under a policy issued to an association of professional persons, which shall be deemed the policyholder, to insure members of the association for the benefit of persons other than the association or any of its officials, subject to the following requirements:

- (1) The association ~~must~~ shall 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 professional persons eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the association, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the association’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 association, 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 association. 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]~~ shall 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 specifically for the insurance, and the dues of the association if they include the cost of insurance, may be determined according to each attained age or in not ~~[less]~~ fewer than four reasonably spaced attained age groups[-];
- (6) The policy ~~[must]~~ shall cover at least twenty-five persons at date of issue[-]; and
- (7) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the members or by the association.

~~[(8)]~~ As used ~~[herein professional persons means]~~ in this section, “professional persons” means persons practicing a profession requiring examination and licensing under chapters 448, 453, 464, 466, and 605.”

SECTION 52. Section 431:10D-211, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-211 Credit union groups.** The lives of the members of a credit union may be insured under a policy issued to the credit union ~~[which]~~ that shall be deemed the policyholder to insure members of the credit union for the benefit of persons other than the credit union or any of its officials, subject to the following requirements:

- (1) Except for ~~[item]~~ paragraph (2), the members eligible for insurance under the policy shall be all of the members of the credit union[-];
- (2) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (3) The premiums for the policy shall be paid by the policyholder, either from the credit union’s own funds or from charges collected from the insured members specifically for the insurance, or from both; provided that when the premium is paid by the members, or by the credit union and its members jointly, at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of insurability is not satisfactory to the insurer, ~~[must]~~ shall elect to make the required contributions[-]; and
- (4) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the members or by the credit union.

~~[(5)]~~ As used ~~[herein a credit union]~~ in this section, “credit union” means a credit union chartered under the provisions of the Federal Credit Union Act or article 10 of chapter 412.”

SECTION 53. Section 431:10D-212, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-212 Spouses and dependents of insured individuals.** (a) Except for a policy issued under ~~[section]~~ sections 431:10D-203 and ~~[section]~~ 431:10D-211, insurance under any group life insurance policy issued pursuant to

this article may be extended to insure the employees or members of such groups against loss due to the death of their spouses and dependent children subject to the following:

- (1) The spouse and dependent of the individual insured may be covered in amounts of insurance equivalent to the amount of coverage of the insured individual, provided that in the case of a dependent other than a spouse of the insured individual the amount of insurance for the dependent shall not be in excess of fifty per cent of the coverage of the insured individual or \$5,000, whichever is less, and provided further that in the case of a dependent whose age at death is under six months, the amount shall not be in excess of \$2,000[-];
- (2) The premiums for the insurance of the spouse or dependent shall be paid either from funds contributed by the employer, union, association or other person to whom the policy has been issued, or from funds contributed by the individual insured, or from both[-]; and
- (3) An insurer may exclude or limit the coverage on any spouse or dependent child as to whom evidence of individual insurability is not satisfactory to the insurer.

~~[(4)]~~ (b) For purposes of this section:

~~[(A)]~~ ~~A dependent shall be~~ “Dependent” means a child of the insured individual:

- ~~[(i)]~~ (1) Under eighteen years of age; ~~[or]~~
- ~~[(ii)]~~ (2) Under twenty-three years of age who is attending an educational institution and relying upon the insured individual for financial support; or
- ~~[(iii)]~~ (3) Regardless of age who is incapable of self-sustaining employment by reason of mental retardation or physical handicap and is chiefly dependent upon the insured individual for support and maintenance.

~~[(B)]~~ The term individual shall be deemed to include

“Individual” includes a person or a member of any group provided in section 431:10D-202 and ~~[section]~~ sections 431:10D-204 through ~~[section]~~ 431:10D-210.”

SECTION 54. Section 431:10D-213, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-213 Standard provisions required. (a) No policy of group life insurance shall be delivered or issued for delivery in this ~~[State]~~ state unless it contains in substance the standard provisions set forth below, or provisions ~~[which]~~ that in the opinion of the commissioner are more favorable to the individuals insured. The policy shall provide that:

- (1) Grace period. The policyholder is entitled to a grace period of not ~~[less]~~ fewer than thirty days, for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.
- (2) Incontestability. The validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to the individual’s

insurability shall be used in contesting the validity of the insurance with respect to which the statement was made, after the insurance has been in force prior to the contest for a period of two years during the individual's lifetime, nor unless it is contained in a written instrument signed by the individual.

- (3) The contract, representations. A copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such persons, or, in the event of death or incapacity of the insured person, to the person's beneficiary or personal representative.
- (4) Insurability. The conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
- (5) Misstatement of age. An equitable adjustment of premiums or of benefits or of both shall be made in the event the age of a person insured has been misstated, containing a clear statement of the method of adjustment to be used.
- (6) Beneficiary. Any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by the individual subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of the sum, living at the death of the individual insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding \$2,000 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured.
- (7) Certificates. The insurer will issue to the policyholder for delivery to each individual insured an individual certificate setting forth a statement as to the insurance protection to which the individual is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in ~~[items]~~ paragraphs (8), (9), and (10).
- (8) Conversion on termination of eligibility. If the insurance, or any portion of it, on an individual covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the individual shall be entitled to have issued to the individual by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits~~[-]~~; provided ~~[application]~~ that:
 - (A) Application for the individual policy shall be made, and the first premium paid to the insurer, within not ~~[less]~~ fewer than thirty days, after such termination~~[-and provided further that:-]~~;
 - ~~[(A)]~~ (B) The individual policy shall, at the option of the individual, be on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance~~[-]~~;
 - ~~[(B)]~~ (C) The individual policy shall be in an amount not in excess of the amount of life insurance ~~[which]~~ that ceases because of such termination nor less than \$1,000 unless a smaller amount of

coverage was provided for the individual under the group policy less the amount of any life insurance for which such person becomes eligible under the same or any other group policy within not [less] fewer than thirty days after such termination~~[-and];~~ provided [~~further~~] that any amount of insurance [~~which~~] that shall have matured on or before the date of such termination as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount [~~which~~] that is considered to cease because of such termination; and

~~[(C)]~~ (D) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the individual then belongs, and to the individual's age attained on the effective date of the individual policy.

- (9) Conversion on termination of policy. If the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to the termination date shall be entitled to have issued to the individual by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by [~~item~~] paragraph (8), except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(A) The amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the individual is or becomes eligible under any group policy issued or reinstated by the same or another insurer within not [less] fewer than thirty days of such termination~~[-];~~ or

(B) \$10,000.

- (10) Death pending conversion. If an individual insured under the group policy, or the insured dependent of a covered person, dies during the period within which the individual would have been entitled to have an individual policy issued to the individual in accordance with [~~items~~] paragraphs (8) and (9), and before such an individual policy shall have become effective, the amount of life insurance [~~which~~] that the individual would have been entitled to have issued to the individual under such individual policy shall be payable as a claim under the group policy, regardless of whether [~~or not application for~~] the individual policy or the payment of the first premium therefor has been made.

~~(b) [Provisions set forth in items (6) to (10)] Subsection (a)(6) through (a)(10)~~ shall not apply to policies issued to a credit union to insure its members.

~~(c) [Provisions set forth in items (6) and items (8) to (10)] Subsection (a)(6), and (a)(8) through (a)(10)~~ shall not apply to policies issued to a creditor to insure its debtors.

(d) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions [~~which~~] that in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies."

SECTION 55. Section 431:10D-407, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A copy of the basic illustration and a revised [~~basic~~] illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.”

SECTION 56. Section 431:10D-410, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-410³ Penalties.** In addition to any other penalties provided by the laws of this [~~State,~~] state, an insurer or producer that violates a requirement of this part shall be guilty of [~~an~~] unfair [~~trade~~] or deceptive act or practice in violation of article 13 [~~of this chapter~~].”

SECTION 57. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of “direct-response solicitation” to read as follows:

““Direct-response solicitation” means a solicitation through a sponsoring or endorsing entity or [~~individually~~] individual solely through mails, telephone, the Internet, or other mass communication media.”

SECTION 58. Section 431:10D-505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy’s or contract’s incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.”

SECTION 59. Section 431:10G-106, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10G-106 Verification of insurance.** Every insurer shall issue to each of its insureds a proof of insurance card for each motorcycle or motor scooter for which a liability policy under this [~~section~~] article is written. The proof of insurance card shall show the following:

- (1) Name, make, year, and factory or serial number of the motorcycle or motor scooter; provided that insurers of five or more motorcycles or motor scooters [~~which~~] that are under common registered ownership and used in the regular course of business shall not be required to indicate the name, make, year, and the factory or serial number of each motorcycle or motor scooter;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.

The proof of insurance card shall be carried on the person operating the insured motorcycle or motor scooter at all times and shall be exhibited to a law enforcement officer upon demand.”

SECTION 60. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the insurer to furnish additional information and, in ~~the~~ that event, the waiting period shall commence as of the date the information is furnished. Until the requested information is provided, the filing shall not be deemed complete or filed nor available for use by the insurer. If the requested information is not provided within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.”

SECTION 61. Section 431:14-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If within thirty days:

- (1) After a specific inland marine rate on a risk specially rated by a rating organization subject to section 431:14-104(k) has become effective; or
- (2) After a special surety or guaranty filing subject to section 431:14-104(k) has become effective;

the commissioner finds that such filing does not meet the requirements of this article, the commissioner shall send to the insurer, rating organization, or advisory organization~~[-which]~~ that made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.”

SECTION 62. Section 431:14-107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) (1) Subject to rules ~~[and regulations which]~~ that have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any class of insurance or subdivision or class of risk, or a part or combination thereof, for which it is authorized to act as a rating organization. Notice of proposed changes in ~~[such]~~ the rules ~~[and regulations]~~ shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers.
- (2) The reasonableness of any rule ~~[or regulation]~~ in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days’ written notice to such rating organization and to the subscriber or insurer. If the commissioner finds that the rule ~~[or regulation]~~ is unreasonable in its application to subscribers, the commissioner shall order that the rule ~~[or regulation]~~ shall not be applicable to subscribers.
 - (3) If the rating organization fails to grant or reject an insurer’s application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner, in accordance with ~~[item]~~ paragraph (2), as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified, the commissioner shall make an order affirming its action.”

SECTION 63. Section 431:14-113, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The commissioner shall furnish the organization examined a copy of the examination report not [~~less~~] fewer than sixty days prior to the filing of the report for public inspection in the insurance division. If the organization so requests in writing during the sixty-day period, the commissioner shall hold a hearing to consider the organization’s objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made. If the organization does not request a hearing on the report, the examination report shall be filed at the end of sixty days.

(c) Once filed, the report shall be available for public inspection and shall be admissible as a public record, except that the commissioner or the commissioner’s examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, regardless of whether [~~or not~~] a written report of the examination has at that time been either made, served, or filed in the insurance division.”

SECTION 64. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) On or after January 1, 1997, the company shall provide workers’ compensation coverage to Hawaii employers otherwise entitled to coverage but not able to or not electing to purchase coverage in the voluntary insurance market, and [~~are~~] not authorized, either individually or as a part of a group, to self-insure. An authorized self-insured is eligible for coverage upon termination of self-insurance.”

SECTION 65. Section 431:14A-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The administrator shall have [~~a~~] proven, successful experience as an executive at the general management level in the insurance business. The administrator shall manage and conduct the business of the company according to the board’s direction and policies. The administrator shall receive compensation authorized by the board.”

SECTION 66. Section 431:15-103⁴, Hawaii Revised Statutes, is amended to read as follows:

“**§431:15-103 Definitions.** (a) For the purposes of this article:

[(1) Ancillary state] “Ancillary state” means any state other than a domiciliary state.

[(2) Creditor is] “Creditor” means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

[(3) Delinquency proceeding] “Delinquency proceeding” means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under section 431:15-201 or [section] 431:15-202. [~~Formal delinquency proceeding means any liquidation or rehabilitation proceeding.~~]

[(4) Doing business includes any of the following acts, whether effected by mail or otherwise:] “Doing business” means transacting the business of insurance as defined in section 431:1-215,

[(A) The issuance or delivery of contracts of insurance to persons resident in this State;

(B) The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

- (C) ~~The collection of premiums, membership fees, assessments, or other consideration for such contracts;~~
- (D) ~~The transaction of matters subsequent to execution of such contracts and arising out of them; or~~
- (E) Operating] or operating, whether by mail or otherwise, as an insurer under a license or certificate of authority ~~[, as an insurer,]~~ issued by the insurance division.

~~[(5) Domiciliary state]~~ “Domiciliary state” means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

~~[(6) Fair consideration is]~~ “Fair consideration” means consideration given for property or obligation:

- ~~[(A)]~~ (1) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
- ~~[(B)]~~ (2) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

~~[(7) Foreign country]~~ “Foreign country” means any other jurisdiction not in any state.

“Formal delinquency proceeding” means any liquidation or rehabilitation proceeding.

~~[(8) General assets]~~ “General assets” means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

~~[(9) Guaranty association]~~ “Guaranty association” means the ~~[Property and Casualty Post-Assessment Guaranty Association]~~ Hawaii insurance guaranty association created by part I of article 16, the Hawaii [Life and Health Guaranty Fund] life and disability insurance association created by part II of article 16, and any other similar entity now or hereafter created by the legislature of this ~~[State]~~ state for the payment of claims of insolvent insurers. Foreign guaranty association means any similar entities created by the legislature of any other state.

~~[(10) Insolvency or insolvent]~~ “Insolvency” or “insolvent” means:

- ~~[(A)]~~ (1) For an insurer issuing only assessable fire insurance policies:
 - ~~[(i)]~~ (A) The inability to pay any obligation within thirty days after it becomes payable~~[-];~~ or
 - ~~[(ii)]~~ (B) If an assessment be made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss pursuant to this code~~[-];~~
- ~~[(B)]~~ (2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
 - ~~[(i)]~~ (A) Any capital and surplus required by law for its organization~~[-];~~ or
 - ~~[(ii)]~~ (B) The total par or stated value of its authorized and issued capital stock~~[-];~~ and

~~[(C)]~~ (3)⁵ As to any insurer licensed to do business in this [State] state⁵ as of July 1, 1988, who does not meet the standard established under ~~[[subparagraph]]~~ (B), the term insolvency or insolvent shall mean, for a period not to exceed three years from July 1, 1988, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of this code.

~~[(D)]~~ For purposes of this section liabilities shall include but not be limited to reserves required by statute or by insurance division general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

~~(11) Insurer]~~ “Insurer” means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. For purposes of this article, any other persons included under section 431:15-102 shall be deemed to be insurers.

“Liabilities” include but are not limited to reserves required by statute, insurance division rules, or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

~~[(12) Preferred claim]~~ “Preferred claim” means any ~~[claims]~~ claim with respect to which the terms of this article accord priority of payment from the general assets of the insurer.

~~[(13) Receiver]~~ “Receiver” means receiver, liquidator, rehabilitator, or conservator as the context requires.

~~[(14) Reciprocal state]~~ “Reciprocal state” means any state other than this [State] state in which in substance and effect ~~[section]~~ sections 431:15-307(a), ~~[section]~~ 431:15-403, ~~[section]~~ 431:15-404, and ~~[section]~~ 431:15-406 through ~~[section]~~ 431:15-408 are in force, and in which provisions are in force requiring the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

~~[(15) Secured claim]~~ “Secured claim” means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims ~~[which]~~ that have become liens upon specific assets by reason of judicial process.

~~[(16) Special deposit claim]~~ “Secured deposit claim” means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

~~[(17) State]~~ “State” means any state, district, or territory of the United States and the Panama Canal Zone.

~~[(18) Transfer includes]~~ “Transfer” means every method, direct or indirect, of disposing of property, of an interest in property, of the possession of property, of fixing a lien upon property, or upon an interest in property, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security interest in or title to property delivered to a debtor is considered a transfer by the debtor.”

SECTION 67. Section 431:15-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b)~~ (1) Three or more judgment creditors holding unrelated judgments against an insurer, which judgments aggregate more than \$5,000 in excess of any security held by those creditors may commence proceedings against the insurer under the conditions and in the manner pre-

scribed in this subsection, by serving notice upon the commissioner and the insurer of intention to file a petition for liquidation under section 431:15-305 or [section] 431:15-402. Each of the judgments:

- (A) Shall have been rendered against the insurer by a court in this [State] state having jurisdiction over the subject matter and the insurer;
 - (B) Shall have been entered more than sixty days before the service of notice under [subsection (b);] this subsection;
 - (C) May not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless that contract has been breached by the insurer;
 - (D) May not have been satisfied in full;
 - (E) May not be a judgment assigned [~~in order~~] to institute proceedings under this subsection; and
 - (F) May not be a judgment on which an appeal or review is pending or may yet be brought.
- (2) If any one of the judgments in favor of a petitioning creditor remains unpaid for thirty days after service of the notice under [subsection (b);] this subsection, and the commissioner has not then filed a petition for liquidation, the creditor may file a verified petition for liquidation of the insurer in the manner prescribed by section 431:15-305 or [section] 431:15-402, alleging the conditions stated in this subsection. The commissioner shall be served and joined in the action.”

SECTION 68. Section 431:15-310, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The liquidator shall have the power to:
- (1) Appoint a special deputy to act for the liquidator under this article, and to determine the special deputy’s reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
 - (2) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator deems necessary to assist in the liquidation;
 - (3) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court;
 - (4) Pay reasonable compensation to persons appointed, and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance division. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance division out of the first available moneys of the insurer;
 - (5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents [~~which~~] that the liquidator deems relevant to the inquiry;

- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose to:
 - (A) Institute timely action in other jurisdictions, [~~in order~~] to forestall garnishment and attachment proceedings against such debts; [~~and~~]
 - (B) Do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best; and
 - (C) [~~To pursue~~] Pursue any creditor's remedies available to enforce his claims[~~;~~];
- (7) Conduct public and private sales of the property of the insurer;
- (8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 431:15-332;
- (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- (10) Borrow money on the security of the insurer's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
- (11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party;
- (12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings in this [~~State~~] state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 431:15-309, the liquidator shall have the power to apply to any court in this [~~State~~] state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff;
- (13) Prosecute any action [~~which~~] that may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person;
- (14) Remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;
- (15) Deposit in one or more banks in this [~~State~~] state such sums as are required for meeting current administration expenses and dividend distributions;
- (16) Invest all sums not currently needed, unless the court orders otherwise;
- (17) File any necessary documents for recordation in the bureau of conveyances or other appropriate office or elsewhere where property of the insurer is located;

- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;
- (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with ~~[section]~~ sections 431:15-315 through ~~[section]~~ 431:15-317;
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states; and
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this ~~[State]~~ state not inconsistent with the provisions of this article.”

SECTION 69. Section 431:15-317, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for liquidation under this article, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by ~~[the provision of]~~ subsection (a)(2)(D).”

SECTION 70. Section 431:15-327, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any claim that would have become absolute if there had been no termination of coverage under section 431:15-308, and ~~[which] that~~ was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to the claimant as prescribed by section 431:15-311. If allowed, the claim shall share in distributions under section ~~[431:15-332(g).]~~ 431:15-332(7).”

SECTION 71. Section 431:15-334, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The liquidator shall make distributions to guaranty funds or associations, or foreign guaranty funds or associations pursuant to the priority schedule of section 431:15-332 ~~[under subsection (b)]~~ to satisfy their claims under article 16 or similar laws of other states, if the claims have been filed pursuant to ~~[rules established under section 431:15-325(a) and (d).]~~ section 431:15-325. The liquidator

may protect against inequitable allocations by making payments to funds and associations subject to binding agreements by them to repay any portions of the distributions ~~[which]~~ that are later found to be in excess of an equitable allocation. If assets are available, the liquidator may also lend to guaranty funds and associations, subject to express advance court approval.”

SECTION 72. Section 431:15-410, Hawaii Revised Statutes, is amended to read as follows:

“**§431:15-410 Subordination of claims for noncooperation.** If an ancillary receiver in another state or foreign country, whether called an ancillary receiver or not, fails to transfer to the domiciliary liquidator in this [State] state any assets within the ancillary receiver’s control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, or with the guaranty fund or association in that jurisdiction, other than special deposit claims or secured claims, shall be placed in the class of claims under section ~~[431:15-332(h)]~~ 431:15-332(8).”

SECTION 73. Section 431:16-117, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The liquidator, receiver, or statutory successor of an insolvent insurer covered by this part shall permit access by the board of directors or its authorized representative to the insolvent insurer’s claim records that are necessary for the board in carrying out its functions under this part with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board of directors or its representative with copies of those records upon the request by the board and at the expense of the board.”

SECTION 74. Section 431:16-205, Hawaii Revised Statutes, is amended to read as follows:

“**§431:16-205 Definitions.** As used in this part:

~~[(a) Account]~~ “Account” means any of the three accounts created under section 431:16-206(a).

~~[(b) Association]~~ “Association” means the Hawaii ~~[Life and Disability Insurance Guaranty Association]~~ life and disability insurance guaranty association created under section 431:16-206.

~~[(c) Contractual obligation]~~ “Contractual obligation” means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 431:16-203.

~~[(d) Covered policy]~~ “Covered policy” means any policy or contract within the scope of this part under section 431:16-203.

~~[(e) Impaired insurer]~~ “Impaired insurer” means a member insurer ~~[which]~~ that after July 1, 1988, is not an insolvent insurer, and:

- (1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations~~[-];~~ or
- (2) Is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

~~[(f) Insolvent insurer]~~ “Insolvent insurer” means a member insurer ~~[which]~~ that after July 1, 1988, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

~~[(g) Member insurer]~~ “Member insurer” means any insurer licensed or who holds a certificate of authority to transact in this [State] state any kind of insurance for which coverage is provided under section 431:16-203, and includes any insurer

whose license or certificate of authority in this [State] state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

- (1) A nonprofit hospital or medical service organization;
- (2) A health maintenance organization;
- (3) A fraternal benefit society;
- (4) A mandatory state pooling plan;
- (5) A mutual assessment company or any entity that operates on an assessment basis;
- (6) An insurance exchange; or
- (7) Any entity similar to any of the above.

~~[(h) Moody's Corporate Bond Yield Average]~~ "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

~~[(i) Person]~~ "Person" means any individual, corporation, partnership, association, or voluntary organization.

~~[(j) Premiums]~~ "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 431:16-203(b) except that assessable premium shall not be reduced on accounts under section 431:16-203(b)(2)(C) relating to interest limitations and section 431:16-203(c)(2) relating to limitations with respect to any one life and any one contract holder.

~~[(k) Resident]~~ "Resident" means any person who resides in this [State] state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

~~[(l) Supplemental contract]~~ "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

~~[(m) Unallocated annuity contract]~~ "Unallocated annuity contract" means any annuity contract or group annuity certificate ~~[which]~~ that is not issued to and 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 75. Section 431:16-211, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the final action being appealed. If a member ~~[company]~~ insurer is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member ~~[company-]~~ insurer. Any final action or order of the commissioner shall be subject to judicial review in the circuit ~~[[court]]~~ of the first judicial circuit."

SECTION 76. Section 431:16-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be the duty of the commissioner:

- (1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when the commissioner takes any of the following actions against a member insurer:
 - (A) Revocation of license;
 - (B) Suspension of license; or

- (C) Makes any formal order that such company restricts its premium writing, obtain additional contributions to surplus, withdraw from the [~~State;~~] state, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors.

Such notice shall be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs[-];

- (2) To report to the board of directors when the commissioner has taken any of the actions set forth in [~~item~~] paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner[-];
- (3) To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer[-]; and
- (4) To furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.’’

SECTION 77. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The commissioner [~~shall~~] may establish a list of [~~advisers~~] advisers to assist with the review of captive applications. The commissioner may appoint one [~~advisor~~] adviser from the list to review a specific application. The [~~advisor's~~] adviser's fee, [~~if any, shall~~] to be paid by the captive applicant, [~~and~~] shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.’’

SECTION 78. Section 431:20-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No title insurer, controlled escrow company, [~~nor~~] or underwritten title company shall:

- (1) Pay to the insured or to any other person any commission, any part of its premiums, fees or other charges; or any other consideration as inducement or compensation for the referral of title business, for performance of any escrow, or other service in connection with which a title policy is issued[-];
- (2) Make any rebate of any portion of the fee or charge shown by the schedule required in section 431:20-120. For purposes of this article, the amount by which any fee or charge is less than that called for by the then currently effective schedule of fees and charges of the title insurer is an unlawful rebate[-]; or
- (3) Quote any fee or make any charge for a title policy to any person [~~which~~] that is less than that currently available to others for the same type of title policy in a like amount covering property in the same county and involving the same factors as set forth in its then currently effective schedule of fees and charges. Nothing in this article shall

prohibit bulk rates or special rates for customers of prescribed classes if the bulk or special rates are provided for in the schedule.”

SECTION 79. Section 431:20-123, Hawaii Revised Statutes, is amended to read as follows:

“**§431:20-123 Remedies.** In enforcing this article, the commissioner shall be entitled to the remedies provided for in section 431:20-103(2), (3), and ~~[(14)-]~~ (4).”

SECTION 80. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definition of “risk retention group” to read as follows:

““Risk retention group” means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

- (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
- (2) Which is organized for the primary purpose of conducting the activity described under paragraph (1);
- (3) Which:
 - (A) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (B) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before this date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any group shall be considered to be a risk retention group only if the group has been engaged in business continuously since this date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before the date of the enactment of the Liability Risk Retention Act of 1986, P.L. 99-563;
- (4) Which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person;
- (5) Which has as its:
 - (A) Members only persons who have an ownership interest in the group and ~~[which]~~ that has as its owners only persons who are members who are provided insurance by the risk retention group; or
 - (B) Sole member and sole owner an organization ~~[which]~~ that is owned by persons who are provided insurance by the risk retention group;
- (6) Whose members are engaged in business or activities similar or related to the liability of which these members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
- (7) Whose activities do not include the provision of insurance other than:
 - (A) Liability insurance for assuming and spreading all or any portion of the liability for its group members; and
 - (B) Reinsurance with respect to the liability of any other risk retention group, or any members of another group, which is engaged

in businesses or activities so that this group or member meets the requirement described in paragraph (6) [~~from~~] for membership in the risk retention group [~~which~~] that provides this reinsurance; and

- (8) The name of which includes the phrase “risk retention group”.”

SECTION 81. Section 431L-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family [~~health~~] coverage, as defined in section 431:10A-103, and reciprocal beneficiary family coverage, as defined in section 431:10A-601, the insurer shall be required:

- (1) To permit the parent to enroll, under the family coverage or reciprocal beneficiary family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;
- (2) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage or reciprocal beneficiary family coverage upon application of the child’s other parent, the state agency administering the medicaid program, or the state agency administering the child support enforcement program; and
- (3) Not to disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:
 - (A) The court or administrative order is no longer in effect; or
 - (B) The child is or will be enrolled in comparable health coverage through another insurer [~~which~~] that will take effect not later than the effective date of disenrollment.”

SECTION 82. 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,~~] state, individual or group hospital or medical service plan contracts, and nonprofit mutual benefit [~~association~~] society 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 83. Section 431M-6, Hawaii Revised Statutes, is amended to read as follows:

“**§431M-6 Rules.** The insurance commissioner, after consultation with all interested parties including the director of health, the board of medical examiners, the board of psychology, and representatives of insurance carriers, nonprofit mutual benefit [~~associations;~~] societies, health maintenance organizations, public and private providers, consumers, employers, and labor organizations shall adopt rules pursuant to chapter 91 as are deemed necessary for the effective implementation and operation of this chapter. The rules shall include criteria and guidelines to be used in determining the appropriateness and medical or psychological necessity of services covered under this chapter, including the appropriate level of care or place of treatment and the number or quantity of services, and the objective and quantifiable criteria for determining when a health maintenance organization meets the conditions and requirements of section 431M-5, and shall include an appeals process.

The director of health shall also adopt rules pursuant to chapter 91 as are deemed necessary for the implementation and operation of this chapter. [Said] The rules shall provide certification standards [~~which;~~] that:

- (1) Reflect quality of care; and
- (2) Do not compromise the quality of care.”

SECTION 84. Section 432:1-101.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a mutual benefit society from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section[;] or any other law, regulation, or rule.”

SECTION 85. Section 432:1-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Where an action has been brought against an officer, or a counterclaim has been made, in an action brought by an officer, as prescribed in this section, another action, for the same cause, shall not be brought against the members of the society, or any of them, until after final judgment in the first action, and the return, wholly or partly unsatisfied or unexecuted, of an execution issued thereupon. After the return, the party in whose favor the execution was issued, may maintain an action, as follows:

- (1) Where such party was the plaintiff, or a defendant recovering upon a counterclaim, such party may maintain an action against the members of the society, or, in a proper case, against any of them, as if the first action had not been brought, or the counterclaim had not been made, as the case requires; and such party may recover, as part of such party’s damages, the costs of the first action, or so much thereof, as the sum, collected by virtue of the execution, was insufficient to satisfy; and
- (2) Where such party was a defendant, and the case is not within ~~item~~ paragraph (1), such party may maintain an action, to recover the sum remaining uncollected, against the persons who composed the society, when the action against such party was commenced, or the survivors of them.”

SECTION 86. Section 432:1-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before doing business or engaging in any act, any society as defined in section 432:1-104(2) shall file with the commissioner:

- (1) Copies of its constitution or organic instrument under which it purports to operate, and the bylaws, and rules and regulations, if any;
- (2) If a society promising or offering to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25:
 - (A) Copies of all proposed forms of benefit certificates, applications and circulars to be issued by the society[;] and
 - (B) A bond in the sum of \$25,000 with sureties approved by the commissioner. The bond shall be conditioned upon the return of the advance payments referred to [~~below;~~] in section 432:1-304, if the organization is not completed within one year; and
- (3) Any additional information as the commissioner may require.”

SECTION 87. Section 432:1-304, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-304 Authority to offer death, sick, disability, or other benefits; special deposit and control of certain funds. Except as provided in this section and section 432:1-305, all regular payments received for account of death benefit, [disability] accident and health or sickness, or other benefit funds, during the period of organization of a society, shall not be used for the payment of any expenses of the society, but shall be placed on deposit or in trust in some bank or trust company approved by the commissioner, payable to the society but under the joint control with the commissioner. In case the organization of the society is not completed within one year, the funds shall be returned to the applicants or members who made payments of the respective amounts. If, however, the organization is completed and the commissioner issues a certificate of compliance with the law, the funds so deposited in trust, together with interest, if any, shall be released by the commissioner in favor of the society.”

SECTION 88. Section 432:2-103.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a fraternal benefit society from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section[,] or any other law, regulation, or rule.”

SECTION 89. Section 432:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization [which] that the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed:

- (1) In relation to any matter in such action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society[;]; or
 - (2) In relation to any matter in such action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement;
- unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that the person’s conduct was unlawful.

The determination whether the conduct of such person met the standard required [in order] to justify indemnification and reimbursement in relation to any matter described in [items] paragraph (1) or (2) may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to such action, suit, or proceeding, or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest, as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required [in order] to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of the person’s heirs and personal representatives.”

SECTION 90. Section 432:2-404, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner’s equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made either:

- (1) It shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or
- (2) In lieu of or in combination with ~~item~~ paragraph (1), the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made.”

SECTION 91. Section 432D-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The cost of examinations under this section shall be assessed against the health maintenance organization being examined and remitted to the commissioner for deposit into the ~~[insurance examiners revolving]~~ compliance resolution fund.”

SECTION 92. Section 432D-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a health maintenance organization from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section[;] or any other law, regulation, or rule.”

SECTION 93. Section 432E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) After exhausting all internal complaint and appeal procedures available, an enrollee, or the enrollee’s treating provider or appointed representative, may file a request for external review of a managed care plan’s final internal determination to a three-member review panel appointed by the commissioner composed of a representative from a managed care plan not involved in the complaint, a provider licensed to practice and practicing medicine in Hawaii not involved in the complaint, and the commissioner or the commissioner’s designee in the following manner:

- (1) The enrollee shall submit a request for external review to the commissioner within sixty days from the date of the final internal determination by the managed care plan;
- (2) The commissioner may retain:
 - (A) Without regard to chapter 76, an independent medical expert trained in the field of medicine most appropriately related to the matter under review. Presentation of evidence for this purpose shall be exempt from section 91-9(g); and
 - (B) The services of an independent review organization from an approved list maintained by the commissioner;
- (3) Within seven days after receipt of the request for external review, a managed care plan or its designee utilization review organization shall provide to the commissioner or the assigned independent review organization:
 - (A) Any documents or information used in making the final internal determination including the enrollee’s medical records;

- (B) Any documentation or written information submitted to the managed care plan in support of the enrollee's initial complaint; and
- (C) A list of the names, addresses, and telephone numbers of each licensed health care provider who cared for the enrollee and who may have medical records relevant to the external review; provided that where an expedited [review] appeal is involved, the managed care plan or its designee utilization review organization shall provide the documents and information within forty-eight hours of receipt of the request for external review.

Failure by the managed care plan or its designee utilization review organization to provide the documents and information within the prescribed time periods shall not delay the conduct of the external review. Where the plan or its designee utilization review organization fails to provide the documents and information within the prescribed time periods, the commissioner may issue a decision to reverse the final internal determination, in whole or part, and shall promptly notify the independent review organization, the enrollee, the enrollee's appointed representative, if applicable, the enrollee's treating provider, and the managed care plan of the decision;

- (4) Upon receipt of the request for external review and upon a showing of good cause, the commissioner shall appoint the members of the external review panel and shall conduct a review hearing pursuant to chapter 91. If the amount in controversy is less than \$500, the commissioner may conduct a review hearing without appointing a review panel;
- (5) The review hearing shall be conducted as soon as practicable, taking into consideration the medical exigencies of the case; provided that:
 - (A) The hearing shall be held no later than sixty days from the date of the request for the hearing; and
 - (B) An external review conducted as an expedited appeal shall be determined no later than seventy-two hours after receipt of the request for external review;
- (6) After considering the enrollee's complaint, the managed care plan's response, and any affidavits filed by the parties, the commissioner may dismiss the request for external review if it is determined that the request is frivolous or without merit; and
- (7) The review panel shall review every final internal determination to determine whether the managed care plan involved acted reasonably. The review panel and the commissioner or the commissioner's designee shall consider:
 - (A) The terms of the agreement of the enrollee's insurance policy, evidence of coverage, or similar document;
 - (B) Whether the medical director properly applied the medical necessity criteria in section 432E-1.4 in making the final internal determination;
 - (C) All relevant medical records;
 - (D) The clinical standards of the plan;
 - (E) The information provided;
 - (F) The attending physician's recommendations; and
 - (G) Generally accepted practice guidelines.

The commissioner, upon a majority vote of the panel, shall issue an order affirming, modifying, or reversing the decision within thirty days of the hearing."

SECTION 94. Section 435C-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) The rates, rating plan, rating classifications, territory, and policy forms applicable to the insurance written by the plan and statistics relating thereto shall be subject to sections 431:14-101 to 431:14-117 unless otherwise provided hereto, giving due consideration to the past and prospective loss and expense experience within and outside this [State] state for medical malpractice insurance of all of the member companies of the plan, trends in the frequency and severity of losses, the investment income of the plan, and such other information as the insurance commissioner may require;
- (2) Any deficit sustained by the plan in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:
- (A) An assessment upon the policyholders; or
- (B) A rate increase applicable prospectively;
- (3) Effective after the initial year of operation, rating plans and rating rules, and any provisions of recoupment through policyholder assessment or premium rate increase, [~~should~~] shall be based upon the plan’s loss and expense experience, together with such other information based upon such experience as the insurance commissioner may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting;
- (4) In the event that sufficient funds are not available for the sound financial operation of the plan, pending recoupment as provided in paragraph (3) of this subsection, all members shall, on a temporary basis contribute to the financial requirements of the plan in the manner provided for in section 435C-5. Any such contribution shall be reimbursed to the members following recoupment as provided in paragraph (3) of this subsection; and
- (5) The commissioner shall consider requiring the plan to offer policies on a claims made or occurrence basis; provided that the premium rate charged for the policies shall be at rates established on an actuarially sound basis and [~~which~~] that are calculated to be self-supporting.”

SECTION 95. Section 431:9-220, Hawaii Revised Statutes, is repealed.

SECTION 96. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁶

SECTION 97. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

Notes

1. Prior to amendment “it” appeared here.
2. End bracket missing.
3. Should be bracketed.
4. So in original.
5. Should be underscored.
6. Edited pursuant to HRS §23G-16.5.