

ACT 234

S.B. NO. 2821

A Bill for an Act Relating to Insurance.

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

PART I

SECTION 1. Section 431:4A-101, Hawaii Revised Statutes, is amended to read as follows:

**“§431:4A-101 Credit allowed a domestic ceding insurer. (a)** Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a ~~[deduction]~~ reduction from liability on ~~[the domestic ceding insurer's financial statements or]~~ account of reinsurance ceded only when the reinsurer meets the requirements of ~~[paragraph (1), (2), (3), (4), or (5)].~~ The requirements of paragraph (6) must also be met if the reinsurer attempts to meet the requirements of paragraph (3) or (4).] subsection (b), (c), (d), (e), or (f). Credit shall be allowed under subsection (b) or (c) only as respects cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (c) or (d) only if the applicable requirements of subsection (g) have been satisfied.

~~[(1)]~~ (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.

~~(2)~~ Credit shall be allowed when the reinsurance is ceded to an assuming insurer that, or is accredited by the commissioner as a reinsurer in this State. [An accredited reinsurer is one that:] To be eligible for accreditation, a reinsurer shall:

- ~~[(A) Files] (1) File~~ with the commissioner evidence of its submission to this State's jurisdiction;
- ~~[(B) Submits] (2) Submit~~ to this State's authority to examine its books and records;
- ~~[(C) Is] (3) Be~~ licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, ~~[is] be~~ entered through and licensed to transact insurance or reinsurance in at least one state;
- ~~[(D) Files] (4) File~~ annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and ~~[either:~~
  - ~~(i) Maintains a surplus as regards policyholders in an amount that is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety days of its submission; or~~
  - ~~(ii) Maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner.~~

~~No credit shall be allowed a domestic ceding insurer, if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.]~~

- ~~(5) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within ninety days after submission of its application.~~

~~[(3)] (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled [and licensed] in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance equal to or exceeding those applicable under this article and the assuming insurer or United States branch of an alien assuming insurer:~~

- ~~[(A)] (1) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and~~
- ~~[(B)] (2) Submits to the authority of this State to examine its books and records;~~

~~provided that [the requirement of subparagraph (A)] paragraph (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.~~

~~[(4)] (d) Credit shall be allowed as follows:~~

- ~~[(A)] (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in section 431:4A-103(b), for the payment of the valid claims of its United States [policyholders and] ceding insurers, their assigns[,] and successors in interest. [The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of] To enable~~

the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

- (2) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

- (A) The commissioner of the state where the trust is domiciled; or  
 (B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

The form of the trust and any trust amendments shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

- (3) The following requirements shall apply to these categories of assuming insurers:

(A) The trust fund for a single assuming insurer~~[, the trust]~~ shall consist of ~~[a trustee account representing the] funds in trust in an amount not less than the assuming insurer's liabilities attributable to [business written in the United States] reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000[-], except as provided in subparagraph (B):~~

(B) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved.

the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty per cent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

- (C) In the case of a group including incorporated and individual unincorporated underwriters~~], the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition,];~~
- (i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;
  - (ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this article, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
  - (iii) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group~~]; the]~~ for all years of account.

The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of [solvency] regulation and solvency control by the group's domiciliary regulator as are the unincorporated members~~]; and].~~

Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall [make available] provide to the commissioner an annual certification [of the solvency of each underwriter] by the group's domiciliary regulator [and its] of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants~~];. of each underwriter member of the group;~~

- ~~(B)~~ (D) In the case of a group of incorporated [insurers] underwriters under common administration [that complies with the filing requirements contained in subparagraph (A), and that has], the group shall:

- (i) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation~~], and that submits to this State's authority to examine its books and records and bears the expense of the examination, and that has];~~

- (ii) Maintain aggregate policyholders' surplus of at least \$10,000,000,000~~[, the]~~;
  - (iii) Maintain a trust ~~[shall be]~~ fund in an amount ~~[equal to]~~ not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; ~~[and the group shall maintain]~~
  - (iv) Maintain a joint trusted surplus~~[,]~~ of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for ~~[any such]~~ these liabilities~~[, and each member of the group shall]; and~~
  - (v) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of [the] each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant];
- (C) ~~The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and~~
- (D) ~~No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31].~~
- (e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subsection as follows:
- (1) To be eligible for certification, the assuming insurer shall:
    - (A) Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph (3);
    - (B) Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the rules adopted by the commissioner;
    - (C) Maintain financial strength ratings from two or more rating agencies deemed acceptable by the rules adopted by the commissioner;
    - (D) Agree to submit to the jurisdiction of this State, appoint the commissioner as its agent for service of process in this State, and agree to provide security for one hundred per cent of the

- assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment:
- (E) Agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and
  - (F) Satisfy any other requirements for certification deemed relevant by the commissioner;
- (2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. To be eligible for certification, in addition to satisfying the requirements of paragraph (1):
- (A) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;
  - (B) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
  - (C) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association;
- (3) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer. In addition:
- (A) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner;
  - (B) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The commissioner shall consider this list in deter-

- mining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under rules adopted by the commissioner;
- (C) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program shall be recognized as qualified jurisdictions; and
- (D) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation;
- (4) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable pursuant to rules adopted by the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings;
- (5) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules adopted by the commissioner. In addition:
- (A) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with section 431:4A-102, or in a multibeneficiary trust in accordance with subsection (d), except as otherwise provided in this subsection;
- (B) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (d), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (d). It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account;
- (C) The minimum trustee surplus requirements provided in subsection (d) shall not be applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10,000,000;
- (D) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is

a material risk that the certified reinsurer's obligations will not be paid in full when due; and

- (E) For purposes of this subsection:
  - (i) A certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred per cent of its obligations;
  - (ii) "Terminated" means revoked, suspended, voluntarily surrendered, or placed on inactive status; and
  - (iii) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement shall not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended;

(6) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this State; and

(7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

~~(5)~~ (f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of [paragraph (1), (2), (3), or (4),] subsection (b), (c), (d), or (e), but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

~~(6)~~ (g) If the assuming insurer is not licensed [or], accredited, or certified to transact insurance or reinsurance in this State, the credit permitted by [paragraphs (3) and (4)] subsections (c) and (d) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

~~(A)~~ (1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, [will] shall comply with all requirements necessary to give [that] the court jurisdiction, and [will] shall abide by the final decision of that court or of any appellate court in the event of an appeal; and

~~(B)~~ (2) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding [company.] insurer.

This ~~paragraph~~ subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if ~~such an~~ this obligation is created in the agreement.

(h) If the assuming insurer does not meet the requirements of subsection (b) or (c), the credit permitted by subsection (d) or (e) shall not be allowed



unless the assuming insurer agrees in the trust agreements to the following conditions:

- (1) Notwithstanding any other provisions in the trust instrument to the contrary, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (d)(3), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of any court of competent jurisdiction in any state of the United States directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;
- (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;
- (3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and
- (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.
  - (i) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification. In addition:
    - (1) The commissioner shall give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:
      - (A) The reinsurer waives its right to a hearing;
      - (B) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection (e)(6); or
      - (C) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
    - (2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 431:4A-102. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (e)(5) or section 431:4A-102.
  - (j) A ceding insurer shall take steps to:
    - (1) Manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty days after reinsurance recoverables from any single

assuming insurer, or group of affiliated assuming insurers, exceed fifty per cent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, are likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer; and

- (2) Diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty per cent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer."

SECTION 2. Section 431:4A-102, Hawaii Revised Statutes, is amended to read as follows:

~~"[§431:4A-102]—Reduction]~~ **Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.** [A] ~~An asset or~~ reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 431:4A-101 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution[-] as defined in section 431:4A-103(b). This security may be in the form of:

- (1) Cash;
- (2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the securities valuation office, and qualifying as admitted assets;
- (3) Clean, irrevocable, and unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 431:4A-103, effective no later than December [31st in respect] 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding ~~[company]~~ insurer on or before the filing date of its annual statement[-];
- (4) Letters of credit ~~[issued by issuing (or confirming) institutions]~~ meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
- ~~(4)~~ (5) Any other form of security acceptable to the commissioner."

SECTION 3. Section 431:4A-105, Hawaii Revised Statutes, is repealed.

PART II

SECTION 4. Section 431:5-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:5-307 **Standard valuation law; life.** (a) This section shall be known as the standard valuation law.

(b) ~~[Reserve valuation:]~~

(1) For policies and contracts issued prior to the operative date of the valuation manual:

(A) ~~The commissioner[, annually, shall value,] shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance[.] policies and annuity[.] and pure endowment contracts of every life [insurer] insurance company doing business in this State[. The commissioner may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or others) used in the calculation of the reserves.] issued on or after January 1, 1956, and prior to the operative date of the valuation manual.~~ In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required ~~[under this section of any] of a foreign or alien [insurer,] company,~~ the commissioner may accept ~~[any] a~~ valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction, when the valuation complies with the minimum standard under this section~~[, and if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certification states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction;~~

(2) ~~The actual cost of making valuations under this section shall be assessed on the insurer, whose policies are so valued, by the commissioner; and~~

(3) ~~Any insurer, at any time, that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided, with the approval of the commissioner, may adopt any lower standard of valuation, but not lower than the minimum provided in this section.];~~

(B) Subsections (e) to (n) shall apply to all policies and contracts, as appropriate, subject to this section issued on or after January 1, 1956, and prior to the operative date of the valuation manual; provided that subsections (o) and (p) shall not apply to those policies and contracts;

(C) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1956, shall be that provided by the laws in effect immediately prior to that date;

(2) For policies and contracts issued on or after the operative date of the valuation manual:

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all out-

standing life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section; and

(B) Subsections (o) and (p) shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

(c) For an actuarial opinion prior to the operative date of the valuation manual:

(1) Every life insurance company doing business in this State shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rules are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with the applicable laws of this State. The commissioner shall define by rules the specifics of this opinion and add any other items deemed to be necessary to its scope;

(2) For actuarial analysis of reserves and assets supporting the reserves:

(A) Every life insurance company, except as exempted by rules, shall also include annually in the opinion required by paragraph (1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rules, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts; and

(B) The commissioner may provide by rules for a transition period for establishing any higher reserves that the qualified actuary may deem necessary to render the opinion required by this section;

(3) Each opinion required by paragraph (2) shall be governed by the following:

(A) A memorandum, in form and substance acceptable to the commissioner as specified by rules, shall be prepared to support each actuarial opinion; and

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rules, or if the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by rules, or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurance company to review the opinion and the basis for the opinion and

- prepare the supporting memorandum required by the commissioner; and
- (4) Every opinion required by paragraph (1) shall be governed by the following:
- (A) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1995;
  - (B) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rules;
  - (C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on any additional standards as the commissioner may prescribe by rules;
  - (D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State;
  - (E) For the purposes of this subsection, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulations adopted by the American Academy of Actuaries;
  - (F) Except in cases of fraud or wilful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion;
  - (G) Disciplinary action by the commissioner against the company or the qualified actuary shall be as defined by rules;
  - (H) Except as provided in subparagraphs (L), (M), and (N), documents, materials, or other information in the possession or control of the insurance division that are part of a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be disclosable under chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties;
  - (I) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph (H);
  - (J) To assist in the performance of the commissioner's duties, the commissioner:
    - (i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subparagraph (H) with

- other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and
- (ii) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;
- (K) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this subsection or as a result of sharing as authorized in subparagraph (J);
- (L) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this subsection or related rules adopted by the commissioner;
- (M) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material; and
- (N) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.
- (d) For actuarial opinions of reserves after the operative date of the valuation manual:
- (I) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this State. The valuation manual shall prescribe the specifics of this opinion including any items deemed to be necessary to its scope;

- (2) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and subject to regulation by the commissioner, except as exempted in the valuation manual, also shall annually include in the opinion required by paragraph (1), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts including but not limited to the benefits under and expenses associated with the policies and contracts;
- (3) Each opinion required by this subsection shall be governed by the following provisions:
- (A) A memorandum, in form and substance as specified in the valuation manual and acceptable to the commissioner, shall be prepared to support each actuarial opinion; and
- (B) If the company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual, or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual, or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurance company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner; and
- (4) Every opinion subject to this subsection shall be governed by the following provisions:
- (A) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner;
- (B) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual;
- (C) The opinion shall apply to all policies and contracts subject to paragraph (2), plus other actuarial liabilities as may be specified in the valuation manual;
- (D) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on such additional standards as may be prescribed in the valuation manual;
- (E) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State;
- (F) Except in cases of fraud or wilful misconduct, the appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any

act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and

- (G) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined by rules adopted by the commissioner.

~~[(e) Computation of minimum standard:~~

~~(1) Old policies:] (e) Except as otherwise provided in [paragraph (3),] subsections (f), (g), and (n), the minimum standard for the valuation of [all] policies and contracts issued prior to [the operative date of section 431:10D-104,] January 1, 1956, shall be that provided by the laws in effect immediately prior to January 1, 1956[;].~~

~~[(2) Except as otherwise provided in [paragraph (3),] subsections (f), (g), and (n), the minimum standard for the valuation of all policies and contracts issued on or after [the operative date of section 431:10D-104,] January 1, 1956, shall be the commissioner's reserve valuation methods defined in subsections [(d), (e), and] (h), (i), (l), and (n), three and one-half per cent interest[;], or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1976, four per cent interest[;] for [the] policies issued prior to June 1, 1979, five and one-half per cent interest for single premium life insurance policies, and four and one-half per cent interest for all other policies issued on or after June 1, 1979[;], and the following tables:~~

~~[(A) (1) For [all] ordinary policies of life insurance issued on the standard basis, excluding any accident and health [or sickness] and accidental death benefits in the policies[—]: the Commissioners 1941 Standard Ordinary Mortality Table for the policies issued prior to the operative date of section [431:10D-104(e)(8), and] 431:10D-104(e)(6), the Commissioners 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date[;] of section 431:10D-104(e)(6) and prior to the operative date of section 431:104(e)(8); provided that for any category of the policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for the policies issued on or after the operative date of section 431:10D-104(e)(8)[; the]:~~

~~(A) The Commissioners 1980 Standard Ordinary Mortality Table[; or at];~~

~~(B) At the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors[; or any];~~

~~(C) Any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the policies;~~

~~[(B) (2) For [all] industrial life insurance policies issued on the standard basis, excluding any accident and health [or sickness] and accidental death benefits in the policies[—]: the 1941 Standard Industrial Mortality Table for the policies issued prior to the operative date of section 431:10D-104(e)(7), and for [the] policies issued on or after the operative date[;] of section 431:10D-104(e)(7), the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners[;] that is approved by rules adopted by~~



the commissioner for use in determining the minimum standard of valuation for ~~those~~ the policies;

- ~~(C)~~ (3) For individual annuity and pure endowment contracts, excluding any accident and health ~~or sickness~~ and accidental death benefits in the policies~~—~~; the 1937 Standard Annuity Mortality Table, or~~;~~ at the option of the ~~insurer,~~ company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;
- ~~(D)~~ (4) For group annuity and pure endowment contracts, excluding any accident and health ~~or sickness~~ and accidental death benefits in the policies~~—~~; the Group Annuity Mortality Table for 1951, ~~any~~ a modification of the table approved by the commissioner, or~~;~~ at the option of the ~~insurer,~~ company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;
- ~~(E)~~ (5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts~~—~~; for policies or contracts issued after December 31, 1965, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates~~;~~ adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for ~~the~~ those policies; for policies or contracts issued after December 31, 1960, and prior to January 1, 1966, either the tables or, at the option of the ~~insurer,~~ company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any table, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;
- ~~(F)~~ (6) For accidental death benefits in or supplementary to policies~~—~~ ~~for policies~~ issued after December 31, 1965~~;~~ the 1959 Accidental Death Benefits Table or any accidental death benefits table~~;~~ adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for ~~the~~ those policies~~;~~ for policies issued after December 31, 1960, and prior to January 1, 1966, either ~~the~~ that table or, at the option of the ~~insurer,~~ company, the Inter-company Double Indemnity Mortality Table~~;~~ ~~and for policies issued prior to January 1, 1961, the Inter-company Double Indemnity Mortality Table~~. Either table shall be combined with a mortality table ~~permitted~~ for calculating the reserves for life insurance policies; and
- ~~(G)~~ (7) For group life insurance, life insurance issued on the substandard basis, and other special benefits~~—any~~; tables ~~that may be~~ approved by the commissioner~~;~~.

~~(3)~~ (f) Except as provided in ~~paragraph (4),~~ subsection (g), the minimum standard ~~for the~~ of valuation ~~of all~~ for individual annuity and pure endowment contracts issued on or after the operative date of this ~~paragraph,~~ subsection and for ~~all~~ annuities and pure ~~endowments~~ endowment contracts purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections ~~(d) and (e)~~ (h) and (i) and the following tables and interest rates:

- ~~[(A)]~~ (1) For individual annuity and pure endowment contracts issued prior to June 1, 1979, excluding any accident and health ~~[or sickness]~~ and accidental death benefits in the contracts~~[-]~~; the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six per cent interest for single premium immediate annuity contracts, and four per cent interest for all other individual annuity and pure endowment contracts;
- ~~[(B)]~~ (2) For individual single premium immediate annuity contracts issued on or after June 1, 1979, excluding any accident and health ~~[or sickness]~~ and accidental death benefits in the contracts~~[-]~~; the 1971 Individual Annuity Mortality Table~~[-]~~ or any individual annuity mortality table~~[-]~~ adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for ~~[the]~~ these contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest;
- ~~[(C)]~~ (3) For individual annuity and pure endowment contracts issued on or after June 1, 1979, other than single premium immediate annuity contracts, excluding any accident and health ~~[or sickness]~~ and accidental death benefits in ~~[the]~~ those contracts~~[-]~~; the 1971 Individual Annuity Mortality Table or any individual annuity mortality table~~[-]~~ adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for ~~[the]~~ those contracts, or any modification of these tables approved by the commissioner, and five and one-half per cent interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent interest for all other individual annuity and pure endowment contracts; ~~[and]~~
- (4) For annuities and pure endowment contracts purchased prior to June 1, 1979, under group annuity and pure endowment contracts, excluding any accident and health and accidental death benefits purchased under those contracts; the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and six per cent interest; and
- ~~[(D)]~~ (5) For ~~[all]~~ annuities and pure ~~[endowments]~~ endowment contracts purchased on or after June 1, 1979, under group annuity and pure endowment contracts, excluding any accident and health ~~[or sickness]~~ and accidental death benefits ~~[in the]~~ purchased under those contracts~~[-]~~; the 1971 Group Annuity Mortality Table, or any group annuity mortality table~~[-]~~ adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure ~~[endowments]~~ endowment contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest.

After June 1, 1976, any ~~[insurer]~~ company may file with the commissioner a written notice of its election to comply with this ~~[paragraph]~~ subsection after a specified date before January 1, 1979, which shall be the operative date of this ~~[paragraph]~~ subsection for ~~[the insurer; provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts.]~~ that company. If

~~[an insurer] a company makes no election, the operative date of this [paragraph] subsection for [the insurer] that company shall be January 1, 1979; and~~

~~(4) Applicability of this section:~~

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

~~(g)(1) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:~~

- ~~(A) Life insurance policies issued in a particular calendar year, on or after the operative date of section 431:10D-104(e)(8);~~
- ~~(B) Individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982;~~
- ~~(C) Annuities and pure endowment contracts purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts; and~~
- ~~(D) The net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts.~~

~~(B) (2) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one per cent:~~

~~[(i)] (A) For life insurance,~~

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

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

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

~~where R<sub>1</sub> is the lesser of R and .09, R<sub>2</sub> is the greater of R and .09, R is the reference interest rate defined in this [section;] subsection, and W is the weighting factor defined in this [section;] subsection;~~

~~[(iii)] (C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in [clause (ii);] subparagraph (B), the formula for life insurance stated in [clause (i)] subparagraph (A) shall apply to annuities and guaranteed interest contracts with guarantee durations in~~

excess of ten years[;] and the formula for single premium immediate annuities stated in ~~[clause (ii)]~~ subparagraph (B) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

~~[(iv)]~~ (D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in ~~[clause (ii)]~~ subparagraph (B) shall apply; and

~~[(v)]~~ (E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in ~~[clause (ii)]~~ subparagraph (B) shall apply[;].

~~[(C)]~~ (C) ~~However, if~~ If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this ~~[sentence]~~ subsection differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent, the calendar year statutory valuation interest rate for ~~[those]~~ the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 431:10D-104(e)(8) becomes operative;

~~[(D)]~~ (3) The weighting factors referred to in the formulas stated ~~[above]~~ in paragraph (2) are given in the following tables:

~~[(i)]~~ (A) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or <del>[fewer]</del> <u>(less)</u>	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy[;] or under options to convert to plans of life insurance with premium rates or nonforfeiture values[;] or both, which are guaranteed in the original policy;

~~[(ii)]~~ (B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80; and

~~[(iii)]~~ (C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in ~~[clause (ii)]~~ subparagraph (B), shall be as specified in the tables below, according to the rules and definitions stated below:

**Table I:**

For annuities and guaranteed interest contracts valued on an issue year basis[5]:

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

**Table II:**

For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in [clause (t)] Table I increased by:

	Plan Type		
	A	B	C
	.15	.25	.05

**Table III:**

For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) [which] that do not guarantee interest on considerations received more than one year after issue or purchase[5] and for annuities and guaranteed interest contracts valued on a change in fund basis [which] that do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in Table I or derived in Table II increased by:

	Plan Type		
	A	B	C
	.05	.05	.05

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

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

**Plan Type B:** Before expiration of the interest rate guarantee, the policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; (2) without an adjustment, but in

installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without adjustment in a single sum or in installments over less than five years;

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

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

~~(E)~~ (4) The reference interest rate referred to in paragraph ~~(4)(B)~~ (2) shall be defined as follows:

- ~~(i)~~ (A) For ~~all~~ life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year ~~next~~ preceding the year of issue, of ~~Moody's Corporate Bond Yield Average Monthly Average Corporates,~~ the monthly average of composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;
- ~~(ii)~~ (B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, ~~of Moody's Corporate Bond Yield Average Monthly Average Corporates,~~ of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;
- ~~(iii)~~ (C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on ~~a year of issue~~ an issue year basis, except as stated in ~~clause (ii),~~ subparagraph (B), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, ~~of Moody's Corporate Bond Yield Average Monthly Average Corporates,~~ of the monthly average of the composite yield on

- seasoned corporate bonds, as published by Moody's Investors Service, Inc.;
- [(iv)] (D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on ~~[a year of issue]~~ an issue year basis, except as stated in ~~[clause (ii);]~~ subparagraph (B), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, ~~[of Moody's Corporate Bond Yield Average Monthly Average Corporates;]~~ of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;
  - [(v)] (E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, ~~[of Moody's Corporate Bond Yield Average Monthly Average Corporates;]~~ of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.; and
  - [(vi)] (F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in ~~[clause (ii);]~~ subparagraph (B), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, ~~[of Moody's Corporate Bond Yield Average Monthly Average Corporates;]~~ of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.; and
- [(F) Alternative method for determining reference interest rates:]
- (5) In the event that ~~[Moody's Corporate Bond Yield Average Monthly Average Corporates]~~ the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that ~~[Moody's Corporate Bond Yield Average Monthly Average Corporates as published]~~ the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate~~[- which is]~~ adopted by the National Association of Insurance Commissioners and approved by rules adopted by the commissioner~~[-]~~ may be substituted.
- [(d) Commissioner's reserve valuation methods:]
- [(+) (h)(1) Except as otherwise provided in subsections [(e) and (h);] (i), (l), and (n), reserves, according to the commissioner's reserve valuation ~~[methods;]~~ method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for ~~[any such]~~ a policy shall be the uniform percentage of the respective contract premiums for the benefits ~~[(excluding extra premiums on a substandard policy)]~~ such that the present value,

at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subparagraph (A) over subparagraph (B) as follows:

- (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one ~~[a-year]~~ per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided that the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of the policy; and
  - (B) A net one-year term premium for the benefits provided for in the first policy year; ~~provided that for any~~;
- (2) For a life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year, and for which no comparable additional benefit is provided in the first year for the excess, ~~[which]~~ and that provides an endowment benefit, a cash surrender value, or a combination thereof, in an amount greater than the excess premium, the reserve, according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection ~~[(4);]~~ (1), shall be the greater of the reserve as of the policy anniversary calculated ~~[as described above]~~ pursuant to this paragraph and the reserve as of the policy anniversary calculated as described, but with:
- ~~[(i)]~~ (A) The value defined in ~~[subparagraph (A)]~~ paragraph (1) being reduced by fifteen per cent of the amount of the excess first year premium;
  - ~~[(ii)]~~ (B) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;
  - ~~[(iii)]~~ (C) The policy being assumed to mature on that date as an endowment; and
  - ~~[(iv)]~~ (D) The cash surrender value provided on that date being considered as an endowment benefit.

In making the above comparison, the mortality and interest bases stated in ~~[subsection (e)(2) and (3)]~~ subsections (e) and (g) shall be used; and

- ~~[(2) Reserve]~~ (3) Reserves according to the commissioner's reserve valuation ~~[methods for:]~~ method shall be calculated by a method consistent with the principles of paragraphs (1) and (2) for:
  - (A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;
  - (B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement ac-



counts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

- (C) Accident and health or sickness and accidental death benefits in all policies and contracts; and
- (D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts[;]

shall be calculated by a method consistent with the principles of this subsection].

~~[(e)]~~ (i) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

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

~~[(f) Minimum aggregate reserves:]~~ (j) In no event shall ~~[an insurer's]~~ a company's aggregate reserves for all life insurance policies, excluding accident and health ~~[or sickness]~~ and accidental death benefits, issued on or after ~~[the operative date of section 431:10D-104,]~~ January 1, 1956, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections ~~[(d), (e), (h), and (i);]~~ (h), (i), (l), and (m), and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for those policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the ~~[qualified]~~ appointed actuary to be necessary to render the opinion required by ~~[subsection (j);]~~ subsections (c) and (d).

~~[(g) Optional reserves bases:]~~ (k) With regard to optional reserve calculation:

- (1) Reserves for ~~[any category of]~~ policies[;] and contracts[;] or benefits as established by the commissioner, ~~issued on or after the operative date of section 431:10D-104,]~~ issued prior to January 1, 1956, may be calculated, at the option of the ~~[insurer;]~~ company, according to any standards ~~[which]~~ that produce greater aggregate reserves for ~~[the category than those calculated according to the minimum standard herein provided. The rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rates of interest used in calculating any nonforfeiture benefits provided for therein. Any]~~ all such

- policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date.
- (2) Reserves for any category of policies, contracts, or benefits established by the commissioner, issued on or after January 1, 1956, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided herein, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts; and
- (3) A company, which adopts at any time [shall have adopted any] a standard valuation producing greater aggregate reserves than those calculated according to the minimum standard [herein] provided[;] under this section, may adopt a lower standard of valuation with the approval of the commissioner, [may adopt any lower standard of valuation;] but not lower than the minimum [herein] provided[;] herein; provided that for the purposes of this section, the holding of additional reserves previously determined by [a qualified] the appointed actuary to be necessary to render the opinion required by [subsection (j)] subsections (c) and (d) shall not be deemed to be the adoption of a higher standard of valuation.

~~(h) Minimum reserve:~~ (l) If in any contract year the gross premium charged by ~~[any life insurer]~~ a company on ~~[any]~~ a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve ~~[thereon]~~ but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for ~~[that]~~ the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract, but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this ~~[section]~~ subsection are those standards stated in ~~[subsection (e)(1), (2), and (4); provided that for any]~~ subsections (e) and (g). For a life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and ~~[which]~~ that provides an endowment benefit or a cash surrender value, or a combination thereof, in an amount greater than the excess premium, this subsection shall be applied as if the method actually used in calculating the reserve for the policy were the method described in subsection ~~[(d);]~~ (h), ignoring ~~[the second paragraph of that]~~ subsection ~~[-]~~ (h)(2). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection ~~[(d);]~~ (h), including subsection ~~[(d)(2)]~~ (h)(2) and the minimum reserve calculated in accordance with this subsection.

~~(i)~~ (m) 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 or annuity ~~[which]~~ that is of such a nature that the minimum reserves cannot be determined by the methods described in

subsections [(d), (e), and] (h), (i), and (l), the reserves [which] that are held under [any such] the plan [must:] shall:

- (1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and
- (2) Be computed by a method [which] that is consistent with the principles of this section, as determined by rules adopted by the commissioner.

~~[(j) The actuarial opinion of reserves and this subsection shall become effective December 31, 1995.~~

- ~~(1) Every life insurance company doing business in this State shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner, by rules, are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with the applicable laws of this State. The commissioner, by rules, shall define the specifics of this opinion and add any other items deemed to be necessary to its scope;~~

(2) Actuarial analysis of reserves and assets supporting the reserves:

- (A) Every life insurance company, except as exempted by or pursuant to rules, also shall include annually in the opinion required by paragraph (1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rules, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under, and expenses associated with, the policies and contracts; and

- (B) The commissioner may provide, by rules, for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section;

(3) Each opinion required by paragraph (2) shall be governed by the following:

- (A) A memorandum, in form and substance acceptable to the commissioner as specified by rules, shall be prepared to support each actuarial opinion; and

- (B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rules or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare any supporting memorandum that is required by the commissioner; and

(4) Every opinion shall be governed by the following:

- (A) The opinion shall be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31, 1995;

- (B) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rules;
- (C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any [additional] standards that the commissioner may prescribe by rules;
- (D) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this State;
- (E) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulations adopted by the American Academy of Actuaries;
- (F) Except in cases of fraud or wilful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion; and
- (G) Any memorandum in support of the opinion, and any other material provided by the insurer to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section, or by rules adopted hereunder; provided that the memorandum or other material may otherwise be released by the commissioner with the written consent of the insurer or be released to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing material or is cited before any governmental agency, other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum shall no longer be confidential.]

(n) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (b) (2). For accident and health or sickness insurance contracts issued on or after January 1, 1956, and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

- (o)(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (b)(2), except as provided under paragraph (5) or (7) of this subsection;
- (2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

- (A) The valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote of at least forty-two members, or three-fourths of the members voting, whichever is greater;
  - (B) The Standard Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five per cent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and
  - (C) The Standard Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions: the fifty states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico;
- (3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when all of the following have occurred:
- (A) The change to the valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote representing:
    - (i) At least three-fourths of the members of the National Association of Insurance Commissioners voting, but not less than a majority of the total membership; and
    - (ii) Members of the National Association of Insurance Commissioners representing jurisdictions totaling greater than seventy-five per cent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in clause (i): life, accident and health annual statements; health annual statements; or fraternal annual statements; and
  - (B) The valuation manual becomes effective pursuant to rules adopted by the commissioner;
- (4) The valuation manual shall specify all of the following:
- (A) Minimum valuation standards for and definitions of the policies or contracts subject to subsection (b)(2). These minimum valuation standards shall be:
    - (i) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (b)(2);
    - (ii) The commissioner's annuity reserve valuation method for annuity contracts subject to subsection (b)(2); and
    - (iii) Minimum reserves for all other policies or contracts subject to subsection (b)(2);
  - (B) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection (p)(1) and the minimum valuation standards consistent with those requirements;
  - (C) For policies and contracts subject to a principle-based valuation under subsection (p):

- (i) Requirements for the format of reports to the commissioner under subsection (p)(2)(C) that shall include information necessary to determine if the valuation is appropriate and in compliance with this section;
- (ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and
- (iii) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;
- (D) For policies not subject to a principle-based valuation under subsection (p), the minimum valuation standard shall either:
  - (i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or
  - (ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;
- (E) Other requirements including but not limited to those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls; and
- (F) The data and form of the data required under subsection (q), with whom the data shall be submitted, and may specify other requirements including data analyses and reporting of analyses;
- (5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to these requirements, comply with minimum valuation standards prescribed by the commissioner by rule;
- (6) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this paragraph, "engage" includes employment and contracting; and
- (7) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to this chapter.
- (p)(1) A company shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

- (A) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the valuation shall reflect conditions appropriately adverse to quantify the tail risk;
  - (B) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those used within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;
  - (C) Incorporate assumptions that are prescribed in the valuation manual, or for assumptions that are not prescribed, the assumptions shall:
    - (i) Be established using the company's available experience, to the extent it is relevant and statistically credible; or
    - (ii) To the extent that company data is not available, relevant, or statistically credible, be established using other relevant, statistically credible experience; and
  - (D) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve;
- (2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:
- (A) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;
  - (B) Provide to the commissioner and to the company's board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. These controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year; and
  - (C) Develop and file with the commissioner, upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual; and
- (3) A principle-based valuation may include a prescribed formulaic reserve component.
- (q) On or after the operative date of the valuation manual, a company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.
- (r)(1) With respect to privilege for, and confidentiality of, confidential information:
- (A) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, and shall not be disclosable under chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action; provided that the commis-

- commissioner may use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties;
- (B) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information;
- (C) To assist in the performance of the commissioner's duties, the commissioner may share confidential information:
- (i) With other state, federal, and international regulatory agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries; and
- (ii) In the case of confidential information specified in paragraph (3)(A)(i) and (iv) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with the state, federal, and international law enforcement officials in the case of this clause and clause (i); provided that the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner;
- (D) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information;
- (E) The commissioner may enter into agreements governing the sharing and use of information consistent with this paragraph;
- (F) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this subsection or as a result of sharing as authorized in subparagraph (C); and
- (G) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this paragraph shall be available and enforced in any proceeding in, and in any court of, this State;
- (2) Notwithstanding paragraph (1), any confidential information specified in paragraph (3)(A)(i) and (iv):
- (A) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsections (c) and (d) or principle-based valuation report developed under subsection (p)(2)(C) by reason of an action required by this section or by rules adopted hereunder;



- (B) May otherwise be released by the commissioner with the written consent of the company; and
  - (C) Once any portion of a memorandum in support of an opinion submitted under subsections (c) and (d) or a principle-based valuation report developed under subsection (p)(2)(C) is cited by the company in its marketing, is publicly volunteered to or before a governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the memorandum or report shall no longer be confidential; and
- (3) For purposes of this section:
- (A) “Confidential information” means:
    - (i) A memorandum in support of an opinion submitted under subsections (c) and (d) and any other documents, materials, and other information, including but not limited to all working papers and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;
    - (ii) All documents, materials, and other information, including but not limited to all working papers and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under subsection (o)(6); provided that if an examination report or other material prepared in connection with an examination made under section 431:2-302 is not held as private and confidential information under section 431:2-305, an examination report or other material prepared in connection with an examination made under subsection (o)(6) shall not be “confidential information” to the same extent as if the examination report or other material had been prepared under section 431:2-305;
    - (iii) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under subsection (p)(2)(B) evaluating the effectiveness of the company’s internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including but not limited to all working papers and copies thereof, created, produced, or obtained by, or disclosed to the commissioner or any other person in connection with such reports, documents, materials, and other information;
    - (iv) Any principle-based valuation report developed under subsection (p)(2)(C) and any other documents, materials, and other information, including but not limited to all working papers and copies thereof, created, produced, or obtained by, or disclosed to the commissioner or any other person in connection with the report; and
    - (v) Any documents, materials, data, and other information submitted by a company under subsection (q) (collectively, “experience data”) and any other documents, materials, data, and other information, including but not limited to all working papers and copies thereof, created or

produced in connection with the experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any "experience data", the "experience materials") and any other documents, materials, data, and other information, including but not limited to all working papers and copies thereof, created, produced, or obtained by, or disclosed to the commissioner or any other person in connection with the experience materials; and

(B) "Regulatory agency", "law enforcement agency", and "National Association of Insurance Commissioners" include but shall not be limited to their employees, agents, consultants, and contractors.

(s) The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this State from the requirements of subsection (o); provided that:

(1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and adopted by rule.

For any company granted an exemption under this subsection, subsections (c) to (n) shall be applicable. With respect to any company applying this exemption, any reference to subsection (o) found in subsections (c) to (n) shall not be applicable.

(t) As used in this section, the following definitions shall apply on or after the operative date of the valuation manual:

"Accident and health insurance" means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

"Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (d).

"Company" means an entity that:

(1) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and has at least one such policy in force or on claim; or

(2) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this State.

"Deposit-type contract" means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

"Life insurance" means a contract that incorporates mortality risk, including an annuity and a pure endowment contract, and as may be specified in the valuation manual.

"Policyholder behavior" means any action that a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including but

not limited to lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract, but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

“Principle-based valuation” means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (p) as specified in the valuation manual.

“Qualified actuary” means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing the statement and who meets the requirements specified in the valuation manual.

“Tail risk” means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

“Valuation manual” means the manual of valuation instructions adopted by the National Association of Insurance Commissioners as specified in this section or as subsequently amended.”

### PART III

SECTION 5. Section 431:10D-104, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10D-104 Standard nonforfeiture law[s] for life insurance [contracts].**

(a) This section shall be known as the Standard Nonforfeiture Law for Life Insurance.

(b) ~~[Nonforfeiture provisions—life:]~~ With regard to nonforfeiture benefits of life insurance:

(1) In the case of policies issued on or after the operative date of this section as defined in subsection (i), no policy of life insurance, except as stated in subsection (h), shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions ~~[which]~~ that in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (g):

(A) That, in the event of default in any premium payment, the ~~[insurer will]~~ company shall grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date, of ~~[such value]~~ an amount as may be hereinafter specified. In lieu of ~~[such]~~ the stipulated paid-up nonforfeiture benefit, the ~~[insurer]~~ company may substitute, upon proper request no later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit ~~[which]~~ that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(B) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the ~~[insurer will]~~ company shall pay, in lieu of any

- paid-up nonforfeiture benefit, a cash surrender value of [such] an amount as may be hereinafter specified.
- (C) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make the election elects another available option not later than sixty days after the due date of the premium in default.
- (D) That, if the policy has been ~~paid-up~~ paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit ~~which~~ that became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the ~~insurer will~~ company shall pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of [such] an amount as may be hereinafter specified.
- (E) 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, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, ~~such~~ the values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the ~~insurer~~ company on the policy.
- (F) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the jurisdiction in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the ~~insurer~~ company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that the method of computation has been filed with the insurance supervisory official of the jurisdiction in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and a paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which ~~such~~ values and benefits are consecutively shown in the policy.
- (2) Any of the ~~foregoing~~ provisions in paragraph (1) or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

- (3) The ~~[insurer]~~ company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.
- (c) ~~[Cash surrender value—life:]~~ With regard to the computation of cash surrender value:
  - (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]~~ regardless of 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 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 that would have fallen due on and after the anniversary; and
    - (B) The amount of any indebtedness to the ~~[insurer]~~ company on ~~[account of or secured by]~~ the policy; ~~provided that:~~  
(~~†~~).
  - (2) For any policy issued on or after the operative date of subsection (e)(8) 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 ~~[this]~~ paragraph (1) shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without ~~[such]~~ the rider or supplemental policy provision and the cash surrender value as defined in paragraph (1) for a policy that provides only the benefits otherwise provided by ~~[such]~~ the rider or supplemental policy provision; and.
  - ~~[(†)]~~ (3) For any family policy issued on or after the operative date of subsection (e)(8) that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's seventy-first birthday, the cash surrender value referred to in ~~[this]~~ paragraph (1) shall be an amount not less than the sum of the cash surrender value 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 ~~[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 paragraph (1) for a policy that provides only the benefits otherwise provided by ~~[such]~~ term insurance on the life of the spouse.
  - ~~[(2)]~~ (4) 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.]~~ under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, regardless of subsection (b), shall be an amount not less than the present value, on the anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.
- (d) ~~[Paid-up nonforfeiture benefit—life: Any]~~ With regard to the computation of paid-up nonforfeiture benefits, for any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on

any policy anniversary shall be such that its present value as of the anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value ~~[which]~~ that would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

~~(e) [The adjusted premium—life:~~

~~(1) This paragraph] With regard to the calculation of adjusted premiums:~~

~~(1) This section shall not apply to policies issued on or after the operative date of paragraph (8) [as defined therein]. Except as provided in paragraph (4), the adjusted premiums for any policy shall be calculated on an annual basis and shall be [such] a 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,] amounts stated in the policy as extra premiums to cover impairments or special hazards of 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 paragraph (8).] In applying the percentages specified in paragraph (1)(C) and (D), no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or [uniform] level 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]. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.~~

~~(3) [This paragraph shall not apply to policies issued on or after the operative date of paragraph (8).] In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent [uniform] level amount [thereof] for the purpose of this [paragraph] subsection shall be deemed to be the [uniform] level 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. 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 paragraph (8).] inception of the insurance as the benefits under the policy.

- (4) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to [the]:

(A) The adjusted premiums for an otherwise similar policy issued at the same age without [such] the term insurance benefits, increased, during the period for which premiums for [such] the term insurance benefits are payable, by [the]

(B) The adjusted premiums for the term insurance.

The foregoing amounts in [paragraph (1)(A)] subparagraphs (A) and (B) being calculated separately and as specified in paragraphs (1) [-(2)], and (3), except that, for the purposes of 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 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 [para-

- (5) [This paragraph shall not apply to policies issued on or after the operative date of paragraph (8).] subparagraph (A).  
 Except as otherwise provided in paragraphs (6) and (7), 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] any age not more than three years younger than the actual age of the insured[,] and [such] the 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.

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.

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

- (6) This paragraph shall not apply to ordinary policies issued on or after the operative date of paragraph (8). In the case of ordinary policies issued on or after the operative date of this paragraph, 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[-

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

- (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;
- (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; 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.

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.

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.

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

After June 1, 1959, any [insurer] 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, 1966. After the filing of such notice, ~~[then]~~ upon ~~[such]~~ the specified date (which shall be the operative date of this paragraph for ~~[such insurer];~~ that company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by ~~[such insurer.]~~ the company. If ~~[an insurer]~~ a company makes no such election, the operative date of this paragraph for ~~[such insurer]~~ the company shall be January 1, 1966.

- (7) This paragraph shall not apply to industrial policies issued on or after the operative date of paragraph (8). In the case of industrial policies issued on or after the operative date of this paragraph, 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[-

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

- (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;
- (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; 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.

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.

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

After May 8, 1965, any ~~[insurer]~~ 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, 1968. After the filing of ~~[such]~~ the notice, ~~[then]~~ upon ~~[such]~~ the specified date (which shall be the operative date of this paragraph for ~~[such insurer];~~ that company), this paragraph shall become operative with respect to the industrial policies thereafter issued by ~~[such insurer:]~~ the company. If ~~[an insurer]~~ a company makes no such election, the operative date of this paragraph for ~~[such insurer]~~ the company shall be January 1, 1968.

- (8) (A) This paragraph shall apply to all policies issued on or after the operative date of this paragraph. Except as provided in subparagraph (G), the adjusted premiums for any policy shall be calculated on an annual basis and shall be ~~[such]~~ a 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.

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 this paragraph shall be the date as of which the rated age of the insured is determined.

- (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 an-

- num payable on the date of issue of the policy and on each anniversary of ~~[such] the~~ policy on which a premium falls due.
- (C) In the case of policies that cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or 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.
- (D) Except as otherwise provided in subparagraph (G), the recalculated future adjusted premiums for any ~~[such] the~~ policy shall be ~~[such] the~~ 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] the~~ 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.
- (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.
- (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 charge 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.
- (G) Notwithstanding any other provision of this paragraph to the contrary, in the case of a policy issued on a substandard basis 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 that provides higher uniform amounts of insurance, adjusted premiums and present values for ~~such~~ the substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- (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<sup>;</sup> 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; for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and 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 issued in that calendar year; 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]~~ regardless of 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] For policies issued prior to the operative date of the valuation manual, any commissioners standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by 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].

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that 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. If the commissioner approves by rule any commissioners standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual; and

- (vii) [Any] For policies issued prior to the operative date of the valuation manual, any commissioners standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by 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.

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the commissioner approves by rule any commissioners standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

- (I) [The nonforfeiture interest rate per annum for any policy issued in a particular calendar year] As used in this paragraph, "nonforfeiture interest rate" means:

- (i) For policies issued prior to the operative date of the valuation manual, 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[-]; provided that the nonforfeiture interest rate shall not be less than four per cent; and
  - (ii) For policies issued on or after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be as provided by the valuation manual.
- (J) Notwithstanding any other provision in this ~~code~~ chapter to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form 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.
- (K) After the effective date of this paragraph, any company may file with the commissioner a written notice of its election to comply with this paragraph after a specified date before January 1, 1989, which shall be the operative date of this paragraph for ~~such~~ the company. If a company makes no ~~such~~ election, the operative date of this paragraph for ~~such~~ the company shall be January 1, 1989.
- (L) In the case of any plan of life insurance 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 that is of such a nature that minimum values cannot be determined by the methods described in this subsection and subsections (b)~~[-(e)]~~ to (d)~~[- and (e)]~~, then:
- (i) The commissioner 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)~~[-(e)]~~ to (d)~~[- and (e)]~~ and ~~(e)~~; this subsection;
  - (ii) The commissioner 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~~ the plan 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 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)[;] to the contrary, 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] the 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.

(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 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] the anniversary, of the future guaranteed benefits 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 that would have fallen due on and after [such] the anniversary. 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] the percentage:

- (1) 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 aver-

age amount of insurance at the beginning of each of the first ten policy years; and

- (2) Shall be such that no percentage after the later of the two policy anniversaries specified in paragraph (1) may apply to fewer than five consecutive policy years.

No basic cash value may be less than the value 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 paragraphs (1) through (6)]~~ in subsection ~~[(f)] (f)(1) to (6)~~ shall conform with the principles of this subsection.

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

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

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

(i) ~~[Operative date.]~~ After January 1, 1956, any ~~[insurer]~~ company may file with the commissioner a written notice of its election to comply with ~~[the provisions of]~~ this section after a specified date within six months from January 1, 1956. After the filing of ~~[such]~~ the notice, then upon ~~[such]~~ the specified date (which shall be the operative date for ~~[such insurer];~~ the company), this section shall become operative with respect to the policies thereafter issued by ~~[such insurer.]~~ the company. If ~~[an insurer]~~ a company makes no ~~[such]~~ election, the operative date of this section for ~~[such insurer]~~ the company shall be six months from January 1, 1956.

(j) As used in this section, "operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual, as defined in section 431:5-307(t), is effective."

#### PART IV

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 11 to be appropriately designated and to read as follows:

**"§431:11- Supervisory colleges.** (a) With respect to any insurer registered under section 431:11-105, and in accordance with subsection (c), the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this article. The powers of the commissioner with respect to supervisory colleges shall include but not be limited to:

- (1) Initiating the establishment of a supervisory college;
- (2) Clarifying the membership and participation of other supervisors in the supervisory college;
- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (5) Establishing a crisis management plan.

(b) Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection (c), including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(c) To assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with section 431:11-107, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with section 431:11-108 providing the basis for cooperation between the commissioner and the other regulatory agen-



cies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within the commissioner's jurisdiction."

SECTION 7. Section 431:11-102, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Domestic insurance holding company system" means an insurance holding company system that consists of an ultimate controlling person formed in this State prior to January 1, 2000, and its insurer affiliates, all of which are domestic insurers authorized to transact insurance business only in this State.

"Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including but not limited to anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 431:3-403 or would cause the insurer to be in hazardous financial condition as pursuant to section 431:15-103.5."

2. By amending the definition of "person" to read:

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, and any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property, or a securities broker performing only the usual and customary broker's function."

SECTION 8. Section 431:11-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) The following are filing requirements for the acquisition of control of or merger with a domestic insurer:

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

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to

the insurer, a confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph (1) is otherwise filed, this paragraph shall not apply.

- (3) With respect to a transaction subject to this section, the acquiring person shall also file a preacquisition notification with the commissioner containing the information set forth in section 431:11-104.3(b). Failure to file the notification may subject the acquiring person to penalties specified in section 431:11-104.5(f).
- (4) For purposes of this section~~[- a domestic insurer]~~:  
"Domestic insurer" includes any person controlling a domestic insurer unless the commissioner determines that the person, directly or through its affiliates, is primarily engaged in business other than the business of insurance. [Such a person shall file a preacquisition notification with the commissioner containing the information set forth in section 431:11-104.3(b) thirty days prior to the proposed effective date of the acquisition. Failure to file is subject to section 431:11-104.5(f). This section does]  
"Person" shall not [apply to] include any securities broker holding, in the usual and customary broker's function, less than twenty per cent of the voting securities of an insurance company or of any person who controls an insurance company.
- (b) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:
- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party"), and:
- (A) If the person is an individual, the principal occupation and all offices and positions held by the individual during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or
- (B) If the person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of ~~[such]~~ the person, or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by ~~[[subparagraph]]~~ (A);
- (2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing the consideration; provided that where a source of the consideration is a loan made in the lender's or-

- dinary course of business, the identity of the lender shall remain confidential, if the person filing the statement requests confidentiality;
- (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years (or for the lesser period as the acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;
  - (4) Any plans or proposals ~~[which]~~ that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
  - (5) The number of shares of any security referred to in subsection (a) ~~[which]~~ that each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at;
  - (6) The amount of each class of any security referred to in subsection (a) ~~[which]~~ that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
  - (7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved~~;~~ including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;
  - (8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement~~;~~ by any acquiring party, including the dates of purchase, names of the purchasers, and considerations paid or agreed to be paid therefore;
  - (9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement~~;~~ by any acquiring party, or by anyone based upon interviews or at the suggestion of ~~[such]~~ the acquiring party;
  - (10) Copies of all tender offers~~;~~ for, requests~~;~~ or invitation for tenders~~;~~ ~~of~~, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto;
  - (11) The term of any agreement, contract, or understanding made with or proposed to be made with any ~~[broker/dealer]~~ broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation to be paid to ~~[broker/dealers]~~ broker-dealers with regard thereto; ~~[and]~~
  - (12) An agreement by the person required to file the statement referred to in subsection (a) that the person will provide the annual report, specified in section 431:11-105(l), for so long as control exists;
  - (13) An acknowledgement by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within the person's control in the insurance holding company sys-

- tem will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- [(12)] (14) Any additional information as the commissioner may by rule ~~[or regulation]~~ prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, or other group, the commissioner may require that the information called for by ~~[items]~~ paragraphs (1) through [(12)] (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the group, and each person who controls such partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by ~~[items]~~ paragraphs (1) through [(12)] (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten per cent of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.”

2. By amending subsection (d) to read:

- “(d) (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, the commissioner finds that:
- (A) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein[;]. In applying the competitive standard in this subparagraph:
- (i) The informational requirements of section 431:11-104.3(b) and the standards of section 431:11-104.4(b) shall apply;
- (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by section 431:11-104.4(c) exist; and
- (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the grounds for disapproval within a specified period of time;
- (C) The financial condition of any acquiring party might jeopardize the financial stability of the insurer[;] or prejudice the interest of its policyholders;
- (D) The plans or proposals ~~[which]~~ that the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer ~~[and]~~ or not in the public interest;

- (E) The competence, experience, and integrity of those persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer ~~and~~ or not in the public interest; or
  - (F) The acquisition is likely to be hazardous or prejudicial to the ~~insurance-buying~~ insurance-buying public.
- (2) The public hearing referred to in paragraph (1) shall commence within ~~sixty~~ thirty days after the statement required by subsection (a) is filed, except that the hearing may commence within such additional time as agreed to by the commissioner, the acquiring party, and the person to be acquired, and at least twenty days notice of the scheduled public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The insurer shall give notice to its security holders. The commissioner shall make a determination within ~~thirty days after the conclusion of the hearing;~~ the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in chapter 91. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control requires the approval of more than one commissioner, the public hearing referred to in paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). The person shall file the statement referred to in subsection (a) with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.
- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and rules of this State shall be made not later than sixty days after the date of notification of the change in control submitted pursuant to subsection (a)(1).
- [(3)] (5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."
3. By amending subsection (g) to read:  
 "(g) The following shall be violations of this article:

- (1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsections (a) or (b); or
- (2) The effectuation or any attempt to effectuate an acquisition of, control of, ~~divestiture of,~~ or merger with, a domestic insurer unless [~~approval is given by~~] the commissioner[~~;~~] has given approval.”

SECTION 9. Section 431:11-104.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section and sections 431:11-104.3 through 431:11-104.6 shall not apply to the following:

- ~~[(1)]~~ ~~An acquisition subject to approval by the commissioner pursuant to section 431:11-104;~~
- ~~[(2)]~~ (1) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control as defined in section 431:11-102, it is not solely for investment purposes unless the commissioner of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner;
- ~~[(3)]~~ (2) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with section 431:11-104.3 thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section and sections 431:11-104.3 through 431:11-104.6 if the acquisition would otherwise be excluded by any other paragraph of this subsection;
- ~~[(4)]~~ (3) The acquisition of affiliated persons;
- ~~[(5)]~~ (4) An acquisition if, as an immediate result of the acquisition:
  - (A) In no market would the combined market share of the involved insurers exceed five per cent of the total market;
  - (B) There would be no increase in any market share; or
  - (C) In no market would:
    - (i) The combined market share of the involved insurers exceed twelve per cent of the total market; and
    - (ii) The market share increase by more than two per cent of the total market.

For the purpose of this paragraph, [~~a market~~] “market” means direct written insurance premiums in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State;

- ~~[(6)]~~ (5) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
- ~~[(7)]~~ (6) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer’s condition through the acquisition exceed the public benefits that would arise from not lessening

competition; and those findings are communicated by the domiciliary commissioner to the commissioner[-] of this State.”

SECTION 10. Section 431:11-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:11-105 Registration of insurers.** (a) Every insurer [~~who~~] that is authorized to do business in this State and [~~who~~] is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and section 431:11-106(a)(1), (b), and (d). The insurer shall file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer is authorized to do business if requested by the commissioner of that state. Any insurer [~~who~~] that is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer [~~who~~] authorized to do business in the state that is a member of [~~a~~] an insurance holding company system [~~who~~], and that is not subject to registration under this section, to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

- (1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;
- (2) The identity and relationship of every member of the insurance holding company system;
- (3) The following agreements in force, and transactions currently outstanding or [~~which~~] that have occurred during the last calendar year between [~~such~~] the insurer and its affiliates:
  - (A) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
  - (B) Purchases, sales, or exchange of assets;
  - (C) Transactions not in the ordinary course of business;
  - (D) Guarantees or undertakings for the benefit of an affiliate [~~which~~] that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
  - (E) All management agreements, all service contracts, and all cost-sharing arrangements;
  - (F) Reinsurance agreements;
  - (G) Dividends and other distributions to shareholders; and
  - (H) Consolidated tax allocation agreements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; [~~and~~]
- (5) If requested by the commissioner, financial statements of an insurance holding company system. Financial statements may include

but are not limited to annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed financial statements of the parent corporation that have been filed with the Securities and Exchange Commission;

- (5) (6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner[-]; and
- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one per cent or less of an insurer's admitted assets as of the ~~[thirty-first day of]~~ December 31 next preceding shall not be deemed material for purposes of this section.

(e) Subject to section 431:11-106(b), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(g) The commissioner shall terminate the registration of any insurer ~~[which] that~~ demonstrates that it no longer is a member of an insurance holding company system.

(h) The commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement.

(i) The commissioner may allow an insurer ~~[who] that~~ is authorized to do business in this State and ~~[who] is~~ part of an insurance holding company system to register on behalf of any affiliated insurer ~~[who] that~~ is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. ~~[After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commis-~~



commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.] A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(l) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The ultimate controlling person of a domestic insurance holding company system shall be exempt from this requirement. The report shall identify, to the best of the ultimate controlling person's knowledge and belief, the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

~~[(h)]~~ (m) The failure to file a registration statement [or], any summary of the registration statement, or enterprise risk filing required by this section within the time specified for [such] the filing shall be a violation of this section."

SECTION 11. Section 431:11-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
  - ~~“(a)~~ (1) Transactions within ~~[a]~~ an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
    - ~~(A)~~ (A) The terms shall be fair and reasonable;
    - ~~(B)~~ (B) Agreements for cost sharing services and management shall include provisions as required by rule adopted by the commissioner;
    - ~~[(B)]~~ (C) Charges or fees for services performed shall be reasonable;
    - ~~[(C)]~~ (D) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
    - ~~[(D)]~~ (E) The books, accounts, and records of each party to all transactions shall be maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and
    - ~~[(E)]~~ (F) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
  - (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards found in subparagraphs (A) through (G), shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved the transaction within

that period[:]; provided that the notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer; provided further that informal notice shall be reported within thirty days after a termination of a previously filed agreement to the commissioner for determination of the type of filing required, if any:

- (A) Sales, purchases, exchanges, loans ~~[or]~~, extensions of credit, ~~[guarantees,]~~ or investments; provided that the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders ~~[each]~~ as of the ~~[thirty-first day of]~~ December 31 next preceding; or
  - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the ~~[thirty-first day of]~~ December 31 next preceding;
- (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit; provided that the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders ~~[each]~~ as of the ~~[thirty-first day of]~~ December 31 next preceding; or
  - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the ~~[thirty-first day of]~~ December 31 next preceding;
- (C) Reinsurance agreements or modifications to reinsurance agreements, including:
- (i) All reinsurance pooling agreements;
  - (ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five per cent of the insurer's surplus as regards policyholders, as of the ~~[thirty-first day of]~~ December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (D) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements; ~~[and]~~
- (E) Guarantees when made by a domestic insurer; provided that a guarantee that is quantifiable as to amount shall not be subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one per cent of the insurer's admitted assets or ten per cent of surplus as regards policyholders as of the December 31 next preceding. All guarantees that are

not quantifiable as to amount are subject to the notice requirements of this paragraph:

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half per cent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 431:11-103, or in nonsubsidiary insurance affiliates that are subject to this article, are exempt from this requirement; and

~~[(E)]~~ (G) Any material transactions, specified by rule, ~~[which]~~ that the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this ~~[section]~~ paragraph shall be deemed to authorize or permit any transactions ~~[which,]~~ that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law;

(3) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur; provided that the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111;

(4) The commissioner, in reviewing transactions pursuant to ~~[subsection (a)(2),]~~ paragraph (2), shall consider whether the transactions comply with the standards set forth in ~~[subsection (a)(1)]~~ paragraph (1) and whether the transactions may adversely affect the interests of policyholders; and

(5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one ~~[person]~~ corporation if the total investment in the ~~[person]~~ corporation by the insurance holding company system exceeds ten per cent of the ~~[person's]~~ corporation's voting securities ~~[or the domestic insurer possesses control of the person as the term "control" is defined in section 431:11-102].~~

2. By amending subsection (c) to read:

"(c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law. The insurer shall be managed so as to assure its separate operating identity consistent with this article.

(2) Nothing ~~[herein]~~ in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (a)(1).

(3) At least one-third of the directors of a domestic insurer, and at least one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person shall be included in any

- quorum for the transaction of business at any meeting of the board of directors or any committee thereof.
- (4) The board of directors of a domestic insurer shall establish one or more committees composed solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.
- (5) Paragraphs (3) and (4) shall not apply to:
- (A) A domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of paragraphs (3) and (4) with respect to the controlling entity; or
- (B) A domestic insurance holding company system.
- (6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including but not limited to the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity."

SECTION 12. Section 431:11-107, Hawaii Revised Statutes, is amended to read as follows:

**"§431:11-107 Examination.** (a) Subject to the limitation contained in this section and in addition to the powers [~~which~~] that the commissioner has under article 2 relating to the examination of insurers, the commissioner [~~shall also have the power to order~~] may examine any insurer registered under section 431:11-105 [~~to produce records, books, or other information papers in the possession of the insurer or its affiliates~~] as [are] reasonably necessary to ascertain the financial condition of the insurer [~~or to determine compliance with this article. In the event the insurer fails to comply with the order, the commissioner shall have the power to examine the insurer's affiliates to obtain the information.~~], including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) To evaluate whether the operations of an ultimate controlling person, affiliate, or any combination of entities within the insurance holding company system may adversely and materially affect the operations, management, or financial condition of an insurer, the commissioner may order any insurer registered under section 431:11-105 to:

- (1) Produce the records, books, or other information in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with this article; and
- (2) Determine compliance with this article, produce information not in the possession of the insurer if the insurer can obtain access to that information pursuant to contractual relationships, statutory obligations, or other methods. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of not less than \$100 and not more than \$500 for each day's delay, or may suspend or revoke the insurer's license.

~~[(b)]~~ (c) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under ~~[subsection (a).]~~ subsections (a) and (e). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

~~[(e)]~~ (d) Each registered insurer producing for examination records, books, and papers pursuant to ~~[subsection (a).]~~ subsections (a) and (e) shall be liable for and shall pay the expense of the examination in accordance with article 2.

(e) In the event that:

(1) An insurer fails to comply with an order pursuant to subsection (b);  
or

(2) The commissioner, upon evaluating whether the operations of an ultimate controlling person, affiliate, or any combination of entities within the insurance holding company system pursuant to subsection (b), has reasonable cause to believe that:

(A) The operations of the ultimate controlling person, affiliate, or any combination of entities within the insurance holding company system may adversely and materially affect the operations, management, or financial condition of an insurer; or

(B) The commissioner is unable to obtain relevant information from the controlled insurer,

the commissioner may examine the ultimate controlling person, affiliate, or any combination of entities within the insurance holding company system.

The commissioner may also issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the State. Every person shall be entitled to the same fees and mileage, if claimed, as a witness in a court of record, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

(f) An examination of affiliates by the commissioner under subsection (e) shall specify the grounds for the examination and shall be confined to those specified grounds.

SECTION 13. Section 431:11-108, Hawaii Revised Statutes, is amended to read as follows:

**“§431:11-108 Confidential treatment.** ~~[All information, documents, and copies thereof]~~ (a) Documents, materials, or other information in the possession or control of the insurance division that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 431:11-107 and all information reported pursuant to [section] sections 431:11-104(b)(12) and (13), 431:11-105, and [section] 431:11-106, shall be [given] confidential [treatment,] by law and privileged, shall not be disclosable under chapter 92F, shall not be subject to subpoena, and shall not be [made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.] subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner’s official duties. The commissioner shall not otherwise make the documents, materials, or other information public without prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to this article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a).

(c) To assist in the performance of the commissioner’s duties, the commissioner:

- (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 431:11- ; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;
- (2) Notwithstanding paragraph (1) to the contrary, may only share confidential and privileged documents, material, or information report-

ed pursuant to section 431:11-105(l) with commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information;

- (3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
- (4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article and consistent with this subsection that shall:
  - (A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;
  - (B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with and for use by the commissioner and the National Association of Insurance Commissioners and is subject to the direction of the commissioner;
  - (C) Require that prompt notice be given to an insurer whose confidential information is in the possession of the National Association of Insurance Commissioners pursuant to this article and require that the insurer is subject to a request or subpoena from the National Association of Insurance Commissioners for disclosure or production; and
  - (D) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared pursuant to this article.

(d) The sharing of information by the commissioner pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner shall be solely responsible for the administration, execution, and enforcement of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c).

(f) Documents, materials, or information in the possession or control of the National Association of Insurance Commissioners pursuant to this article shall be confidential by law and privileged, shall not be disclosable under

chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action."

SECTION 14. Section 431:11-111, Hawaii Revised Statutes, is amended to read as follows:

**"§431:11-111 Sanctions.** (a) Any insurer failing, without just cause, to file any registration statement as required in this article shall be ~~[liable for]~~ required, after notice and hearing, to pay a fine in an amount of not less than \$100 and not more than \$500 for each [day of delinquency,] day's delay, to be recovered by the commissioner, and the penalty so recovered shall be paid into the compliance resolution fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in any transactions or make investments that have not been properly reported or submitted pursuant to ~~[sections]~~ section 431:11-105(a), 431:11-106(a)(2), or 431:11-106(b), or [who] that violates this article, shall [be subject to a fine] pay, in their individual capacity, a civil forfeiture of not less than \$100 and not more than \$10,000 per violation[-], after notice and hearing before the commissioner. In determining the amount of the ~~[fine,]~~ civil forfeiture, the commissioner shall take into account the appropriateness of the ~~[fine]~~ civil forfeiture with respect to the gravity of the violation, the history of previous violations, and ~~[such]~~ other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this article or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract ~~[which] that~~ is subject to section 431:11-106 and ~~[which] that~~ would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any of the contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the commissioner may cause criminal proceedings to be instituted against the insurer or the responsible director, officer, employee, or agent thereof. Any insurer ~~[who] that~~ wilfully violates this article ~~[shall be subject to a fine of]~~ may be fined not less than \$100 and not more than \$10,000 per violation. Any individual who wilfully violates this article ~~[shall be subject to a fine in the individual's capacity of]~~ may be fined in the person's individual capacity not less than \$100 and not more than \$10,000 per violation[;] or be imprisoned for not more than one year[-], or both.

(e) Any officer, director, or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes, or causes to be made, any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this article, upon conviction thereof, shall be imprisoned for not more than one year[;] or fined \$5,000, or both. Any fines imposed shall be paid by the officer, director, or employee in the person's individual capacity.

(f) Whenever it appears to the commissioner that any person has committed a violation of section 431:11-104 and that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding com-



## ACT 234

pany system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part 2 of article 15.”

### PART V

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect on July 1, 2014; provided that Part I shall take effect on January 1, 2015; provided further that Part IV shall take effect on January 1, 2016.

(Became law on July 8, 2014, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Note

1. Edited pursuant to HRS §23G-16.5.