

ACT 63

S.B. NO. 1094

A Bill for an Act Relating to Insurance.

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

**PART I**

SECTION 1. Chapter 431K, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§431K-A Registration fees and service fees of purchasing groups.** (a) A purchasing group that intends to do business in this State shall pay an initial registration fee of \$300 to the commissioner and shall thereafter pay annually a service fee of \$150 on or before August 16 of each year in which the purchasing group intends to do business in this State.

(b) If the service fee is not paid on or before August 16 of the year in which payment is due, a penalty shall be imposed in the amount of fifty per cent of the service fee. The commissioner shall provide written notice of the delinquency of payment and the imposition of the authorized penalty. If the service fee and the penalty are not paid within thirty days immediately following the

date of the notice of delinquency, the commissioner may revoke the registration of the purchasing group and may not reinstate the registration until the service fee and the penalty have been paid.

**§431K-B Registration fees and service fees of risk retention groups not chartered in this State.** (a) A risk retention group chartered in states other than this State and seeking to do business as a risk retention group in this State shall pay an initial registration fee of \$300 to the commissioner and shall thereafter pay annually a service fee of \$150 on or before August 16 of each year in which the risk retention group intends to do business in this State.

(b) If the service fee is not paid on or before August 16 of the year in which payment is due, a penalty shall be imposed in the amount of fifty per cent of the service fee. The commissioner shall provide written notice of the delinquency of payment and the imposition of the authorized penalty. If the service fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the registration of the risk retention group and may not reinstate the registration until the service fee and the penalty have been paid.

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 2, part I, to be appropriately designated and to read as follows:

**“§432:2- Fees.** (a) The commissioner shall collect, in advance, the following fees:

- (1) Certificate of authority:
  - (A) Application for a certificate of authority: \$900;
  - (B) Issuance of certificate of authority: \$600;
- (2) Organization of domestic fraternal benefit societies:
  - (A) Application for a preliminary certificate of authority: \$1,500;
  - (B) Issuance of preliminary certificate of authority: \$150; and
- (3) For all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority: \$600 per year.

(b) No certificate of authority shall contain an expiration date, but all certificates of authority shall be extended by the commissioner from time to time in order to continue to be valid. When the commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority shall be extended and shall so notify the insurer in writing. This date is called the extension date. The extension date shall be any date not less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies, its certificate of authority shall be extended. The commissioner shall provide each holder of a certificate of authority at least thirty days' advance written notice of the applicable extension date. If the fee for the extension of the certificate of authority is not paid before or on the extension date, a penalty shall be imposed in the amount of fifty per cent of the fee. The commissioner shall provide notice in writing of the delinquency of extension and the imposition of the authorized penalty. If the fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the certificate of authority and may not reinstate the certificate of authority until the fee and penalty have been paid.

(c) All fees and penalties collected pursuant to this section shall be deposited to the credit of the compliance resolution fund.”

SECTION 3. Section 431:2D-102, Hawaii Revised Statutes, is amended by amending the definition of “market conduct examination” to read as follows:

““Market conduct examination” means the examination of the insurance operations of an insurer licensed to do business in this State to evaluate compliance with the applicable laws and rules of this State. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination is separate and distinct from a financial examination of an insurer performed pursuant to article [5,] 2, but may be conducted at the same time.”

SECTION 4. Section 431:3-214, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No certificate of authority shall contain an expiration date, but all certificates of authority ~~[must]~~ shall be extended by the commissioner from time to time in order to continue to be valid. When the commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority must be extended and shall so notify the insurer in writing. This date is called the extension date. The extension date shall be any date not less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies, its certificate of authority shall be extended. The commissioner shall provide each holder of a certificate of authority at least thirty days’ advance written notice of the applicable extension date.”

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

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

“(e) Except as otherwise provided in subsections (f), (g), and (n), 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 January 1, 1956.

Except as otherwise provided in subsections (f), (g), and (n), the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1956, shall be the commissioner’s reserve valuation methods defined in subsections (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 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:

(1) For ordinary policies of life insurance issued on the standard basis, excluding any ~~[accident and health]~~ disability income 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)(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 ~~[[431:10D-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):

(A) The Commissioners 1980 Standard Ordinary Mortality Table;

- (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;
  - (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;
- (2) For industrial life insurance policies issued on the standard basis, excluding any ~~[accident and health]~~ disability income 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 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 valuation for the policies;
  - (3) For individual annuity and pure endowment contracts, excluding any ~~[accident and health]~~ disability income and accidental death benefits in the policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;
  - (4) For group annuity and pure endowment contracts, excluding any ~~[accident and health]~~ disability income and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;
  - (5) For total and permanent disability income 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 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 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;
  - (6) For accidental death benefits in or supplementary to 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 those policies, for policies issued after December 31, 1960, and prior to January 1, 1966, either that table or, at the option of the company, the Inter-company Double

Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and

- (7) For group life insurance, life insurance issued on the substandard basis, and other special benefits: tables approved by the commissioner.
- (f) Except as provided in subsection (g), the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this subsection and for annuities and pure 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 (h) and (i) and the following tables and interest rates:
  - (1) For individual annuity and pure endowment contracts issued prior to June 1, 1979, excluding any [~~accident and health~~] disability income 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;
  - (2) For individual single premium immediate annuity contracts issued on or after June 1, 1979, excluding any [~~accident and health~~] disability income 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 valuation for these contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest;
  - (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~~] disability income and accidental death benefits in 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 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;
  - (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~~] disability income 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
  - (5) For annuities and pure endowment contracts purchased on or after June 1, 1979, under group annuity and pure endowment contracts, excluding any [~~accident and health~~] disability income and accidental death benefits 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 an-

nuities and pure 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 company may file with the commissioner a written notice of its election to comply with this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for that company. If a company makes no election, the operative date of this subsection for that company shall be January 1, 1979."

2. By amending subsections (h) through (j) to read:

"(h)(1) Except as otherwise provided in subsections (i), (l), and (n), reserves, according to the commissioner's reserve valuation 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 a policy shall be the uniform percentage of the respective contract premiums for the benefits 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 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;

(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, 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 (1), shall be the greater of the reserve as of the policy anniversary calculated pursuant to this paragraph and the reserve as of the policy anniversary calculated as described, but with:

(A) The value defined in paragraph (1) being reduced by fifteen per cent of the amount of the excess first year premium;

(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;

(C) The policy being assumed to mature on that date as an endowment; and

(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 subsections (e) and (g) shall be used; and

(3) Reserves according to the commissioner's reserve valuation 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 accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

(C) ~~[Accident and health or sickness]~~ Disability income 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.

(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]~~ disability income and accidental death benefits in 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 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 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.

(j) In no event shall a company's aggregate reserves for all life insurance policies, excluding ~~[accident and health]~~ disability income and accidental death benefits, issued on or after January 1, 1956, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (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 appointed actuary to be necessary to render the opinion required by subsections (c) and (d)."

3. By amending subsection (n) to read:

"(n) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valua-

tion 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.”

SECTION 6. Section 431:7-101, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
  - “(a) The commissioner shall collect, in advance, the following fees:
    - (1) Certificate of authority: ~~Issuance~~.....\$900
      - (A) Application for a certificate of authority..... \$900
      - (B) Issuance of certificate of authority..... \$600
    - (2) Organization of domestic insurers and affiliated corporations:
      - (A) Application ~~[and all other papers required]~~ for ~~[issuance of]~~ a solicitation permit~~[-, filing]~~..... \$1,500
      - (B) Issuance of solicitation permit..... \$150
    - (3) Producer’s license:
      - (A) Issuance, regular license..... \$50
      - (B) Issuance, temporary license ..... \$50
    - (4) Nonresident producer’s license: Issuance ..... \$75
    - (5) Independent adjuster’s license: Issuance ..... \$75
    - (6) Public adjuster’s license: Issuance ..... \$75
    - (7) Claims adjuster’s limited license: Issuance ..... \$75
    - (8) Independent bill reviewer’s license: Issuance ..... \$80
    - (9) Limited producer’s license: Issuance ..... \$60
    - (10) Managing general agent’s license: Issuance ..... \$75
    - (11) Reinsurance intermediary’s license: Issuance ..... \$75
    - (12) Surplus lines broker’s license: Issuance ..... \$150
    - (13) Service contract provider’s registration: Issuance ..... \$75
    - (14) Approved course provider certificate: Issuance ..... \$100
    - (15) Approved continuing education course certificate: Issuance..... \$30
    - (16) Vehicle protection product warrantor’s registration: Issuance ..... \$75
    - (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
    - (18) Limited line motor vehicle rental company producer’s license: Issuance ..... \$1,000
    - (19) Legal service plan certificate of authority: Issuance before July 1, 2014 ..... \$1,000  
Issuance on or after July 1, 2014 ..... \$500
    - (20) Life settlement provider’s license: Issuance before July 1, 2014 ..... \$150  
Issuance on or after July 1, 2014 ..... \$75
    - (21) Life settlement broker’s license: Issuance before July 1, 2014 ..... \$150  
Issuance on or after July 1, 2014 ..... \$75
    - (22) Examination for license: For each examination, a fee to be established by the commissioner.”



2. By amending subsection (c) to read:

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

SECTION 7. Section 431:10-102, Hawaii Revised Statutes, is amended by amending the definitions of “contract” and “insurer” to read as follows:

““Contract” means any policy of life, ~~[disability,] accident and health or sickness,~~ credit life, credit disability, homeowners ~~[insurance],~~ and motor vehicle insurance covering personally owned or personally leased private passenger motor vehicles prepared for delivery by an insurer.

“Insurer” means any company, corporation, exchange, society, or association organized on the stock, mutual, assessment, or fraternal plan of insurance and authorized under the insurance laws of this State to issue life, disability, credit life, credit disability, homeowners, and motor vehicle insurance, including but not limited to fraternal benefit societies, nonprofit health service corporations, nonprofit hospital service corporations, ~~[and]~~ health maintenance organizations[-], and mutual benefit societies.”

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

“**§431K-3 Risk retention groups not chartered in this State.** Risk retention groups chartered in states other than this State and seeking to do business as a risk retention group in this State shall observe and abide by the laws of this State as follows:

- (1) Before offering insurance in this State, a risk retention group shall submit to the commissioner:
  - (A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this State may require to verify that the risk retention group is qualified as a risk retention group;
  - (B) A copy of its plan of operations or a feasibility study and revisions of this plan or study submitted to its state of domicile; provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was:
    - (i) Defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before October 27, 1986; and

- (ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and
- (C) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process;
- (2) Any risk retention group doing business in this State shall submit to the commissioner:
  - ~~[(A)]~~ ~~A copy of the group's financial statement submitted to the insurance commissioner of its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;~~
  - ~~[(B)]~~ (A) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination in its state of domicile;
  - ~~[(C)]~~ (B) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and
  - ~~[(D)]~~ (C) Information as may be required to verify its continuing qualification as a risk retention group;
- (3) Taxation of risk retention groups shall be as follows:
  - (A) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to risk retention group captives chartered in this State pursuant to chapter 431, article 19;
  - (B) To the extent producers are utilized, the producers shall report and pay the taxes for the premiums for risks which the producers have placed with or on behalf of a risk retention group not chartered in this State; or
  - (C) To the extent producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State; provided that each risk retention group shall report all premiums paid to it for risks insured within the State;
- (4) Any risk retention group shall comply with chapter 431, article 13 regarding deceptive, false, or fraudulent acts or practices, and unfair claims settlement practices; provided that if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction;
- (5) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this State. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' Examiner Handbook;
- (6) The following notice shall be printed in ten point type on the front page of every application for insurance from a risk retention group,

and on the front page and the declaration page of every policy issued by a risk retention group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group;

- (7) The following acts by a risk retention group are prohibited:
  - (A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and
  - (B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired;
- (8) No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies;
- (9) No risk retention group may offer insurance policy coverage prohibited by chapter 431 or declared unlawful by the highest court of this State; and
- (10) A risk retention group not chartered in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (5)."

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

**"[§431K-9] Administrative and procedural authority regarding risk retention groups and purchasing groups.** The commissioner is authorized to make use of any of the powers established under chapter 431 to enforce the laws of this State as long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., as amended by the Risk Retention Amendments of 1986, P.L. 99-563. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and rules of this State. The injunctive authority of the commissioner in regard to risk retention groups shall be restricted by the requirement that any injunction be issued by a court of competent jurisdiction. All penalties collected under this section and section 431K-A shall be deposited to the credit of the compliance resolution fund."

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

**"[§431K-10] Penalties.** A risk retention group which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license, the right to do business in this State, or both. All penalties collected pursuant to this section and section 431K-B shall be deposited to the credit of the compliance resolution fund."

SECTION 11. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Article 2, article 2D, parts II and IV of article 3, article 6, part III of article 7, article 9A, article 13, article 14G, and article 15 of chapter 431, sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, ~~and~~ 431:3-305, ~~and~~ 431:10-102, and the powers granted by those provisions to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations that are owned or controlled by mutual benefit societies so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 12. Section 432:1-108, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall collect, in advance, the following fees:

(1) Certificate of authority:

(A) Application for a certificate of authority: \$900; and

(B) Issuance of certificate of authority: ~~[\$150;]~~ \$600;

(2) Organization of domestic mutual benefit societies:

(A) ~~Filing of application and documents required~~ Application for ~~issuance of~~ a certificate of registration: ~~[\$150;]~~ \$1,500; and

(B) Issuance of certificate of registration: \$150; and

(3) For ~~renewal~~ all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority: ~~[\$150]~~ \$600 per year.

(b) No certificate of authority shall contain an expiration date, but all certificates of authority shall be extended by the commissioner from time to time in order to continue to be valid. When the commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority shall be extended and shall so notify the insurer in writing. This date is called the extension date. The extension date shall be any date not less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies, its certificate of authority shall be extended. The commissioner shall provide each holder of a certificate of authority at least thirty days' advance written notice of the applicable extension date. If the fee for the ~~renewal~~ extension of the certificate of authority is not paid before or on the ~~renewal~~ extension date, a penalty shall be imposed in the amount of fifty per cent of the fee. The commissioner shall provide notice in writing of the delinquency of ~~renewal~~ extension and the imposition of the authorized penalty. If the fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the certificate of authority and may not reinstate the certificate of authority until the fee and penalty have been paid.”

SECTION 13. Section 432:1-301, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The applicant society that satisfies the requirements of this chapter shall be issued a certificate of authority in accordance with part II of article 3 of chapter 431. Societies that are currently authorized to transact business in this State may continue to transact business until August 16, 2013. The authority of societies and all societies hereafter issued a certificate of authority[;] may thereafter be ~~renewed annually, but in all cases shall terminate on the succeeding August 16.]~~ extended in accordance with section 432:1-108.

The applicant society may appeal a denial of its application pursuant to chapter 91.”

SECTION 14. Section 432:2-602, Hawaii Revised Statutes, is amended to read as follows:

**“§432:2-602 Reports.** (a) Every society transacting business in this State shall annually, on or before March 1, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year ~~and pay a fee of \$7.50 for filing same~~. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(b) As part of the annual statement required, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding~~];~~ provided that the commissioner may, in the commissioner’s discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in section 432:2-601. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(c) A society neglecting to file the annual statement in the form and within the time provided by this section shall be liable for a penalty of \$100 for each day during which the neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this State shall cease while the default continues.

~~[(d) All fees and penalties collected pursuant to this section and section 432:2-603 and penalties collected pursuant to section 432:2-703 shall be deposited to the credit of the compliance resolution fund.]”~~

SECTION 15. Section 432:2-603, Hawaii Revised Statutes, is amended to read as follows:

**“§432:2-603 Annual license.** ~~[(a)]~~ Societies that are now authorized to transact business in this State may continue to transact business until ~~May 1 next succeeding July 1, 1988. The authority of societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the succeeding May 1. However, a license so issued shall continue in full force and effect until the new license is issued or specifically refused. For each license or renewal subject to this section, the society shall pay the commissioner \$7.50. A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article.~~

~~(b) If the license fee is not paid by May 1, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke the license until the fee and penalty have been paid.]~~  
August 16, 2016. The authority of societies and all societies hereafter issued a certificate of authority, may thereafter be extended in accordance with section 432:2- .”

SECTION 16. Section 432:2-701, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Service shall only be made upon the commissioner, ~~[[or]]~~ if absent, upon the person in charge of the commissioner’s office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process

against a society is served upon the commissioner, the commissioner shall ~~forthwith~~ immediately forward one of the duplicate copies by ~~registered~~ certified mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of ~~[\$7.50.]~~ \$25."

SECTION 17. Section 432:2-703, Hawaii Revised Statutes, is amended to read as follows:

**"§432:2-703 Penalties.** (a) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than \$100 nor more than \$500 or imprisoned for not less than thirty days nor more than one year, or both.

(b) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this article, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.

(c) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this State shall upon conviction be fined not less than \$50 nor more than \$200.

(d) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this article for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding \$200.

(e) All penalties collected pursuant to this section and section 432:2- shall be deposited to the credit of the compliance resolution fund."

SECTION 18. Section 432D-17, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The commissioner shall collect, in advance, the following fees:

- (1) ~~[For filing an application]~~ Certificate of authority:
  - (A) ~~Application~~ Application for a certificate of authority ~~[or amendment thereto, \$600;]~~ \$900; and
  - (B) Issuance of certificate of authority: \$600; and
- (2) For ~~[renewal]~~ all services subsequent to the issuance of certificate of authority, including extension of the certificate of authority~~[-, \$400];~~ \$600 per year.

(b) No certificate of authority shall contain an expiration date, but all certificates of authority shall be extended by the commissioner from time to time in order to continue to be valid. When the commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority shall be extended and shall so notify the insurer in writing. This date is called the extension date. The extension date shall be any date not less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies, its certificate of authority shall be extended. The commissioner shall provide each holder of a certificate of authority at least thirty days' advance written notice of the applicable extension date. If the fee for the extension of the certificate of authority is not paid before or on the extension date, a penalty shall be imposed in the

amount of fifty per cent of the fee. The commissioner shall provide notice in writing of the delinquency of extension and the imposition of the authorized penalty. If the fee and the penalty are not paid within thirty days immediately following the ~~[extension]~~ date[s] of the notice of delinquency, the commissioner may revoke the certificate of authority and ~~[shall]~~ may not reinstate the certificate of authority until the fee and penalty have been paid.”

SECTION 19. Section 432E-36, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Except for a request for an expedited external review made pursuant to subsection (b), within three business days after the date of receipt of the request, the commissioner shall notify the health carrier that the enrollee has requested an expedited external review pursuant to this section. Within five business days following the date of receipt of notice, the health carrier shall determine whether:

- (1) The individual is or was an enrollee in the health benefit plan at the time the health care service or treatment was recommended or requested or, in the case of a retrospective review, was an enrollee in the health benefit plan at the time the health care service or treatment was provided;
- (2) The recommended or requested health care service or treatment that is the subject of the adverse action:
  - (A) Would be a covered benefit under the enrollee’s health benefit plan but for the health carrier’s determination that the service or treatment is experimental or investigational for the enrollee’s particular medical condition; and
  - (B) Is not explicitly listed as an excluded benefit under the enrollee’s health benefit plan;
- (3) The enrollee’s treating physician or treating advanced practice registered nurse has certified in writing that:
  - (A) Standard health care services or treatments have not been effective in improving the condition of the enrollee;
  - (B) Standard health care services or treatments are not medically appropriate for the enrollee; or
  - (C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the health care service or treatment that is the subject of the adverse action;
- (4) The enrollee’s treating physician or treating advanced practice registered nurse:
  - (A) Has recommended a health care service or treatment that the physician or advanced practice registered nurse certifies, in writing, is likely to be more beneficial to the enrollee, in the physician’s or advanced practice registered nurse’s opinion, than any available standard health care services or treatments; or
  - (B) Who is a licensed, board certified or board eligible physician qualified to practice in the area of medicine appropriate to treat the enrollee’s condition, or who is an advanced practice registered nurse qualified to treat the enrollee’s condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment that is the subject of the adverse action is likely to

be more beneficial to the enrollee than any available standard health care services or treatments;

- (5) The enrollee has exhausted the health carrier's internal appeals process or the enrollee is not required to exhaust the health carrier's internal appeals process pursuant to section 432E-33(b); and
- (6) The enrollee has provided all the information and forms required by the commissioner that are necessary to process an external review, including the release form and disclosure of conflict of interest information as provided under section ~~[432E-5.]~~ 432E-33(a)."

SECTION 20. Section 432G-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) The commissioner shall collect, in advance, the following fees:
- (1) ~~[For filing an application]~~ Certificate of authority:
    - (A) Application for a certificate of authority ~~[or amendment thereto, \$600;]; \$900;~~ and
    - (B) Issuance of certificate of authority: \$600; and
  - (2) For all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority, ~~including extension of the certificate of authority, \$400;]; \$600 per year.~~"

SECTION 21. Section 432G-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No certificate of authority shall contain an expiration date, but all certificates of authority shall be extended by the commissioner from time to time in order to continue to be valid. When the commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority ~~[is next required to]~~ shall be extended, ~~[the extension date,]~~ and shall so notify the insurer ~~[holding the certificate of authority]~~ in writing. This date is called the extension date. The extension date shall be any date not less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies, its certificate of authority shall be extended. The commissioner shall provide each holder of a certificate of authority at least thirty days' advance written notice of the applicable extension date. If the fee for the extension of the certificate of authority is not paid before or on the extension date, a penalty shall be imposed in the amount of fifty per cent of the fee. The commissioner shall provide notice in writing of the delinquency of extension and the imposition of the authorized penalty. If the fee and the penalty are not paid within thirty days immediately following the [extension] date, of the notice of delinquency, the commissioner may [suspend] revoke the certificate of authority and [shall] may not reinstate the certificate of authority until the fee and penalty have been paid."

## PART II

SECTION 22. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 14G to be appropriately designated and to read as follows:

"**§431:14G- Rerating.** No person, business, or entity may change or rerate any rate approved by the commissioner in any subsequent transfer, sale, resale, or pass through of health insurance issued by a managed care plan."



SECTION 23. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

**“§432:1- Suspension, revocation, or denial of certificate of authority.**

(a) Any certificate of authority issued under this chapter may be suspended or revoked and any application for a certificate of authority may be denied if the commissioner finds that any of the conditions listed below exists:

- (1) The mutual benefit society is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 432:1-301, unless amendments to the submissions have been filed with and approved by the commissioner;
- (2) The mutual benefit society is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to its members and beneficiaries or prospective members;
- (3) The mutual benefit society has failed to correct, within the time prescribed by subsection (c), any deficiency occurring due to the mutual benefit society's prescribed minimum net worth being impaired;
- (4) The mutual benefit society, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
- (5) The continued operation of the mutual benefit society would be hazardous to its members; or
- (6) The mutual benefit society has otherwise failed to substantially comply with this chapter.

(b) In addition to, or in lieu of, suspension or revocation of a certificate of authority pursuant to this section, the commissioner may levy an administrative fine upon the mutual benefit society in an amount not less than \$500 and not more than \$50,000 pursuant to section 431:3-221.

(c) The following shall pertain when insufficient net worth is maintained:

- (1) Whenever the commissioner finds that the net worth maintained by any mutual benefit society subject to this chapter is less than the minimum net worth required, the commissioner shall give written notice to the mutual benefit society of the amount of the deficiency and require the mutual benefit society to:
  - (A) File with the commissioner a plan for correction of the deficiency acceptable to the commissioner; and
  - (B) Correct the deficiency within a reasonable time, not to exceed sixty days, unless an extension of time, not to exceed sixty additional days, is granted by the commissioner. The deficiency shall be deemed an impairment, and failure to correct the impairment in the prescribed time shall be grounds for suspension or revocation of the certificate of authority or for placing the mutual benefit society in conservation, rehabilitation, or liquidation; and
- (2) Unless allowed by the commissioner, no mutual benefit society or person acting on its behalf, directly or indirectly, may renew, issue, or deliver any certificate, agreement, or contract of coverage in this State for which a premium is charged or collected, when the mutual benefit society writing the coverage is impaired and the fact of the impairment is known to the mutual benefit society or to the person; provided that the existence of an impairment shall not prevent the issuance or renewal of a certificate, agreement, or contract when the

member exercises an option granted under the plan to obtain a new, renewed, or converted coverage.

(d) A certificate of authority shall be suspended or revoked, an application for a certificate of authority denied, or an administrative fine imposed, only after compliance with the requirements of this section, including the following:

- (1) Suspension or revocation of a certificate of authority, denial of an application, or imposition of an administrative fine pursuant to this section shall be by written order and shall be sent to the mutual benefit society or applicant by certified or registered mail. The written order shall state the grounds, charges, or conduct on which suspension, revocation, denial, or administrative penalty is based. The mutual benefit society or applicant, in writing, may request a hearing pursuant to section 431:2-308; and
- (2) If the mutual benefit society or applicant requests a hearing pursuant to this section, the commissioner shall issue a written notice of hearing and send it to the mutual benefit society or applicant by certified or registered mail and to the director of labor and industrial relations stating:
  - (A) A specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and
  - (B) A specific place for the hearing.

(e) When the certificate of authority of a mutual benefit society is suspended, the mutual benefit society shall not, during the period of the suspension, enroll any additional members except newborn children or other newly acquired dependents of existing members and shall not engage in any advertising or solicitation whatsoever.

(f) When the certificate of authority of a mutual benefit society is revoked, the society, immediately following the effective date of the order of revocation, shall proceed to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the society. The mutual benefit society shall engage in no further advertising or solicitation whatsoever. The commissioner, by written order, may permit further operation of the society as the commissioner may find to be in the best interest of the members, to the end that members will be afforded the greatest practical opportunity to obtain continuing coverage and benefits.”

SECTION 24. Chapter 431M, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“MENTAL HEALTH AND ALCOHOL AND ~~DRUG ABUSE~~  
SUBSTANCE USE DISORDER TREATMENT INSURANCE BENEFITS”**

SECTION 25. Section 431M-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “partial hospitalization services” to read:

““Partial hospitalization [~~services~~” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization [~~services~~] shall be prescribed by a physician or psychologist, and may be prescribed by a licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse in consultation with a physician or psychologist.

Partial hospitalization [~~services require~~] requires less than twenty-four hours of care and a minimum of three hours in any one day.”

2. By repealing the definition of “serious mental illness”.

[~~““Serious mental illness” means a mental disorder consisting of at least one of the following: schizophrenia, schizo-affective disorder, bipolar types I and II, obsessive compulsive disorder, dissociative disorder, delusional disorder, and major depression, as defined in the most recent version of the Diagnostic and Statistical Manual of the American Psychiatric Association and which is of sufficient severity to result in substantial interference with the activities of daily living.”~~]

SECTION 26. Section 432E-1, Hawaii Revised Statutes, is amended by amending the definition of “emergency services” to read as follows:

““Emergency services” means services provided to an enrollee when the enrollee has symptoms of sufficient severity, including severe pain, such that a layperson could reasonably expect, in the absence of medical treatment, to result in placing the enrollee’s health or condition in serious jeopardy, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, or death.”

### PART III

SECTION 27. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 28. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 29. This Act shall take effect upon its approval.

(Approved May 28, 2015.)

#### Note

1. Edited pursuant to HRS §23G-16.5.