

JAN 25 2006

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A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to article 3 a new part to be appropriately  
3 designated and to read as follows:

4   "PART           .

5   **ANNUAL AUDITED FINANCIAL REPORTS**

6           §431:3-A Definitions. As used in this part, unless the  
7 context requires otherwise:

8           "Accountant" or "independent certified public accountant"  
9 means an independent certified public accountant or accounting  
10 firm in good standing with the American Institute of Certified  
11 Public Accountants and in all states in which the independent  
12 certified public accountant is licensed to practice. For  
13 Canadian or British companies, it means a Canadian-chartered or  
14 British-chartered accountant or accounting firm.

15           "Audited financial report" means a report meeting the  
16 requirements of section 431:3-D.

1 "Indemnification" means an agreement of indemnity or a  
2 release from liability where the intent or effect is to shift or  
3 limit in any manner the potential liability of the accountant or  
4 accounting firm for failure to adhere to applicable auditing or  
5 professional standards, whether or not resulting in part from  
6 knowing of misrepresentations made by the insurer or its  
7 representatives.

8 "Insurer" means a domestic insurer as defined in section  
9 431:3-104.

10 **§431:3-B Scope.** (a) Every domestic insurer, as defined  
11 in section 431:3-104, shall be subject to this part. An insurer  
12 having direct written premiums of less than \$1,000,000 in any  
13 calendar year and less than 1,000 policyholders or certificate  
14 holders nationwide at the end of the calendar year may apply to  
15 the commissioner for an exemption from this part for the year.  
16 An insurer having assumed premiums pursuant to contract or  
17 treaties of reinsurance of \$1,000,000 or more shall not be  
18 exempt.

19 (b) This part shall not prohibit, preclude, or in any way  
20 limit the commissioner from ordering, conducting, or performing  
21 examinations of insurers under the rules, practices, and  
22 procedures of the insurance division.

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1           **§431:3-C Filing and extensions for filing of annual**  
2 **audited financial reports.** (a) All domestic insurers shall  
3 have an annual audit performed by an independent certified  
4 public accountant and shall file an audited financial report  
5 with the commissioner on or before June 1 for the year ended on  
6 December 31 immediately preceding. The commissioner may require  
7 an insurer to file an audited financial report earlier than June  
8 1 by giving ninety days' advance notice to the insurer.

9           (b) Extensions of the June 1 filing date may be granted by  
10 the commissioner for good cause for thirty-day periods upon a  
11 showing by the insurer and its independent certified public  
12 accountant of the reasons for requesting the extensions. A  
13 request for an extension shall be submitted in writing not fewer  
14 than ten days prior to the audit due date in sufficient detail  
15 to permit the commissioner to make an informed decision with  
16 respect to the requested extension.

17           **§431:3-D Contents of annual audited financial report.** (a)  
18 The annual audited financial report shall disclose the financial  
19 position of the insurer as of the end of the most recent  
20 calendar year and the results of its operations, cash flows, and  
21 changes in capital and surplus for the year then ended, in

1 conformity with statutory accounting practices prescribed, or  
2 otherwise permitted, by the insurance division.

3 (b) The annual audited financial report shall include the  
4 following:

5 (1) A report by an independent certified public  
6 accountant;

7 (2) A balance sheet disclosing admitted assets,  
8 liabilities, capital, and surplus;

9 (3) A statement of operations;

10 (4) A statement of cash flows;

11 (5) A statement of changes in capital and surplus;

12 (6) Applicable notes to financial statements. These notes  
13 shall be those required by the National Association of  
14 Insurance Commissioners Annual Statement Instructions  
15 and the National Association of Insurance  
16 Commissioners Accounting Practices and Procedures  
17 Manual. The notes shall include a reconciliation of  
18 any differences between the audited financial reports  
19 and the annual statement filed pursuant to section  
20 431:3-301, with a written description of the nature of  
21 these differences; and

1           (7) The financial statements included in the audited  
2           financial report shall be prepared in a form and using  
3           language and groupings substantially the same as the  
4           relevant sections of the annual statement of the  
5           insurer filed with the commissioner, and the financial  
6           statement shall be comparative, presenting the amounts  
7           as of December 31 of the current year and the amounts  
8           as of the immediately preceding December 31. The  
9           comparative data may be omitted in the first year in  
10          which an insurer is required to file an audited  
11          financial report.

12          **§431:3-E Designation of independent certified public**  
13          **accountant.** (a) Each insurer required by this part to file an  
14          annual audited financial report shall within sixty days after  
15          becoming subject to the requirement, register with the  
16          commissioner in writing the name and address of the independent  
17          certified public accountant or accounting firm retained to  
18          conduct the annual audit set forth in this part. The  
19          commissioner may approve or reject any designation of an  
20          accountant or accounting firm. Insurers not retaining an  
21          independent certified public accountant on the effective date of  
22          this part shall register the name and address of their retained

1 certified public accountant not less than six months before the  
2 date when the first audited financial report is to be filed.

3 (b) The insurer shall obtain from the accountant and file  
4 with the commissioner a letter stating that the accountant is  
5 aware of the provisions of the insurance code and regulations of  
6 the insurance division that relate to accounting and financial  
7 matters and affirming that the accountant meets the requirements  
8 of section 431:3-F and will express an opinion on the financial  
9 statements in terms of their conformity to the statutory  
10 accounting practices prescribed or otherwise permitted by the  
11 insurance division, specifying the exceptions the accountant  
12 believes appropriate.

13 (c) If an accountant, who was the accountant for the  
14 audited financial report most recently filed, is dismissed or  
15 resigns, the insurer shall within five business days notify the  
16 commissioner of this event. The insurer shall also furnish the  
17 commissioner with a separate letter, within ten business days of  
18 that notification, stating whether in the twenty-four months  
19 preceding the dismissal or resignation there were any  
20 disagreements with the former accountant on any matter involving  
21 accounting principles or practices, financial statement  
22 disclosures, or auditing scope or procedures, which

1 disagreements, if not resolved to the satisfaction of the former  
2 accountant, would have caused the accountant to make reference  
3 to the subject matter of the disagreement in connection with the  
4 accountant's opinion. The disagreements required to be reported  
5 pursuant to this section include both those resolved to the  
6 former accountant's satisfaction and those not resolved to the  
7 former accountant's satisfaction. Disagreements contemplated by  
8 this section are those that occur at the decision-making level,  
9 such as between personnel of the insurer responsible for  
10 presentation of its financial statements and personnel of the  
11 accounting firm responsible for rendering its report. The  
12 insurer shall also request in writing the former accountant to  
13 furnish a letter addressed to the insurer stating whether the  
14 accountant agrees with the statements contained in the insurer's  
15 letter and, if not, stating the reasons why the accountant does  
16 not agree. The insurer shall furnish the responsive letter from  
17 the former accountant to the commissioner together with the  
18 insurer's position.

19 (d) A qualified independent certified public accountant  
20 may enter into an agreement with an insurer to have disputes  
21 relating to an audit resolved by mediation or arbitration;  
22 provided that the parties provide written notice to the

1 commissioner of the mediation or arbitration. However, in the  
2 event of a delinquency proceeding commenced against the insurer  
3 under article 15, the mediation or arbitration provisions shall  
4 operate at the option of the statutory successor.

5 **§431:3-F Qualifications of the independent certified**  
6 **public accountant.** (a) The commissioner shall not recognize a  
7 person or firm as a qualified independent certified public  
8 accountant if the person or firm:

9 (1) Is not in good standing with the American Institute of  
10 Certified Public Accountants and in all states in  
11 which the accountant is licensed to practice, or, for  
12 a Canadian or British company, is not a chartered  
13 accountant; or

14 (2) Has either directly or indirectly entered into an  
15 agreement of indemnity or release from liability with  
16 respect to the audit of the insurer.

17 (b) Except as otherwise provided in this part, the  
18 commissioner shall recognize an independent certified public  
19 accountant as qualified as long as the accountant conforms to  
20 professional standards, as contained in the Code of Professional  
21 Conduct of the American Institute of Certified Public  
22 Accountants and rules, code of ethics, and the rules of



1 professional conduct of the Hawaii board of public accountancy  
2 or similar code.

3 (c) Effective on July 1, 2008, no partner or principal  
4 responsible for rendering an opinion on an audited financial  
5 report may act in that capacity for more than seven consecutive  
6 years. Following a period of service, the partner or principal  
7 shall be disqualified from acting in that or a similar capacity  
8 for the same insurer or its insurance subsidiaries or affiliates  
9 for a period of two years. An insurer may apply to the  
10 commissioner for relief from the foregoing requirement on the  
11 basis of unusual circumstances. The commissioner may consider  
12 the following factors in determining if relief should be  
13 granted:

- 14 (1) Number of partners, expertise of the partners, or the  
15 number of insurance clients in the currently  
16 registered firm;
- 17 (2) Premium volume of the insurer; or
- 18 (3) Number of jurisdictions in which the insurer transacts  
19 business.

20 (d) The commissioner shall not recognize as a qualified  
21 independent certified public accountant nor accept an annual  
22 audited financial report prepared by any person who:

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1           (1) Has been convicted of fraud, bribery, a violation of  
2           the Racketeer Influenced and Corrupt Organizations  
3           Act, 18 U.S.C. sections 1961 and 1968, or any  
4           dishonest conduct or practice under federal or state  
5           law;

6           (2) Has been found to have violated the insurance laws of  
7           this state or any other state; or

8           (3) Has demonstrated a pattern or practice of failing to  
9           detect or disclose material misstatements in this  
10          state or any other state.

11          (e) The commissioner may hold a hearing pursuant to  
12          section 431:2-308 to determine whether an independent certified  
13          public accountant is qualified. Depending upon the evidence  
14          presented, the commissioner may rule that the accountant is not  
15          qualified to express an opinion on the insurer's financial  
16          statements or the annual audited financial report made pursuant  
17          to this part. The commissioner may require the insurer to  
18          replace the accountant with another accountant who is qualified.

19          §431:3-G Consolidated or combined audits. An insurer may  
20          apply to the commissioner for approval to file audited  
21          consolidated or combined financial statements in lieu of  
22          separate annual audited financial statements, if the insurer is

1 part of a group of insurance companies that uses a pooling or  
2 one hundred per cent reinsurance agreement that affects the  
3 solvency and integrity of the insurer's reserves and the insurer  
4 cedes all of its direct and assumed business to the pool. In  
5 that case, a columnar consolidating or combining worksheet shall  
6 be filed with the report, as follows:

- 7 (1) Amounts shown on the consolidated or combined audited  
8 financial report shall be shown on the worksheet;
- 9 (2) Amounts for each insurer subject to this section shall  
10 be stated separately;
- 11 (3) Noninsurance operations may be shown on the worksheet  
12 on a combined or individual basis;
- 13 (4) Explanations of consolidating and eliminating entries  
14 shall be included; and
- 15 (5) A reconciliation shall be included showing any  
16 differences between the amounts shown in the  
17 individual insurer columns on the worksheet and  
18 comparable amounts shown in the annual statements of  
19 the insurers.

20 §431:3-H Scope of examination and report of independent  
21 certified public accountant. Financial statements furnished  
22 pursuant to section 431:3-D shall be examined by an independent

1 certified public accountant. The examination of the insurer's  
2 financial statements shall be conducted in accordance with  
3 generally accepted auditing standards. The accountant shall  
4 adhere to the procedures in the Financial Condition Examiners  
5 Handbook promulgated by the National Association of Insurance  
6 Commissioners.

7 **§431:3-I Notification of adverse financial condition. (a)**

8 The insurer required to furnish the annual audited financial  
9 report shall require the independent certified public accountant  
10 to report, in writing, within five business days to the  
11 insurer's board of directors or its audit committee any  
12 determination by the accountant that the insurer has materially  
13 misstated its financial condition as reported to the  
14 commissioner as of the balance sheet date currently under  
15 examination or that the insurer does not meet the minimum  
16 capital and surplus requirement of the insurance code as of that  
17 date. An insurer that has received a report pursuant to this  
18 subsection shall forward a copy of that report to the  
19 commissioner within five business days of receipt of the report  
20 and shall provide the independent certified public accountant  
21 making the report with evidence that the report has been  
22 furnished to the commissioner. If the independent certified

1 public accountant fails to receive from the insurer evidence  
2 that the report was furnished to the commissioner within the  
3 required five business day period, the independent certified  
4 public accountant shall furnish to the commissioner a copy of  
5 its report within the next five business days.

6 (b) No independent certified public accountant shall be  
7 liable in any manner to any person for any statement made in  
8 connection with subsection (a) if the statement is truthful and  
9 is made in good faith in compliance with subsection (a).

10 (c) If the accountant, subsequent to the date of the  
11 audited financial report filed pursuant to this part, becomes  
12 aware of facts that might have affected that report, the  
13 accountant is obligated to take action as prescribed in volume  
14 1, section AU 561 of the Professional Standards of the American  
15 Institute of Certified Public Accountants.

16 **§431:3-J Report on significant deficiencies in internal**  
17 **controls.** In addition to the annual audited financial  
18 statements, each insurer shall furnish the commissioner with a  
19 written report prepared by the accountant describing significant  
20 deficiencies in the insurer's internal control structure noted  
21 by the accountant during the audit. Statement of Accounting  
22 Standards No. 60, Communication of Internal Control Structure

1 Matters Noted in an Audit (section AU 325 of the Professional  
2 Standards of the American Institute of Certified Public  
3 Accountants) requires an accountant to communicate significant  
4 deficiencies noted during a financial statement audit to the  
5 appropriate parties within an entity. No report shall be issued  
6 if the accountant does not identify significant deficiencies.  
7 If significant deficiencies are noted, the written report shall  
8 be filed annually by the insurer with the insurance division  
9 within sixty days after the filing of the annual audited  
10 financial statements. The insurer is required to provide a  
11 description of remedial actions taken or proposed to correct  
12 significant deficiencies, if the actions are not described in  
13 the accountant's report.

14 **§431:3-K Accountant's letter of qualifications.** In  
15 connection with and for inclusion in the filing of the annual  
16 audited financial report, the accountant shall furnish the  
17 insurer with a letter stating:

18 (1) That the accountant is independent from the insurer  
19 and conforms to the standards of the accounting  
20 profession as contained in the Code of Professional  
21 Conduct and pronouncements of the American Institute  
22 of Certified Public Accountants and rules of

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- 1 professional conduct of the Hawaii board of public  
2 accountancy or similar code;
- 3 (2) The accountant's background and experience in general  
4 and the experience in audits of insurers of the staff  
5 assigned to the engagement and whether each accountant  
6 is an independent certified public accountant.  
7 Nothing in this part shall be construed as prohibiting  
8 the accountant from using the staff the accountant  
9 deems appropriate, where that use is consistent with  
10 the standards prescribed by generally accepted  
11 auditing standards;
- 12 (3) That the accountant understands the annual audited  
13 financial report and the accountant's opinion shall be  
14 filed in compliance with this part. The accountant  
15 shall acknowledge that the commissioner will be  
16 relying on this information in the monitoring and  
17 regulation of the financial position of the insurer;
- 18 (4) That the accountant consents to the requirements of  
19 section 431:3-L and that the accountant consents and  
20 agrees to make available for review by the  
21 commissioner, or the commissioner's designee or

1 appointed agent, the workpapers defined in section  
2 431:3-L;

3 (5) A representation that the accountant is properly  
4 licensed by an appropriate state licensing authority  
5 and is a member in good standing in the American  
6 Institute of Certified Public Accountants; and

7 (6) A representation that the accountant is in compliance  
8 with the requirements of section 431:3-F.

9 **§431:3-L Definition, availability, and maintenance of**  
10 **workpapers.** (a) Workpapers are the records kept by the  
11 independent certified public accountant of the procedures  
12 followed, the tests performed, the information obtained, and the  
13 conclusions reached pertinent to the accountant's examination of  
14 the financial statements of an insurer. Workpapers,  
15 accordingly, may include audit planning documentation, work  
16 programs, analyses, memoranda, letters of confirmation and  
17 representation, abstracts of company documents, and schedules or  
18 commentaries prepared or obtained by the independent certified  
19 public accountant in the course of the accountant's examination  
20 of the financial statements of an insurer and that support the  
21 accountant's opinion.



1           (b) Every insurer required to file an audited financial  
2 report pursuant to this part, shall require the accountant to  
3 make available for review by the commissioner and insurance  
4 division examiners, all workpapers prepared in the conduct of  
5 the accountant's examination and any communications related to  
6 the audit between the accountant and the insurer, at the place  
7 designated by the commissioner. The insurer shall require that  
8 the accountant retain the audit workpapers and communications  
9 until the insurance division has filed a report on examination  
10 covering the period of the audit but, in any event, no longer  
11 than seven years from the date of the audit report.

12           (c) In the conduct of the periodic review by the  
13 commissioner and the insurance division examiners as prescribed  
14 by subsection (b), it shall be agreed that photocopies of  
15 pertinent audit workpapers may be made and retained by the  
16 commissioner and the insurance division. Reviews by the  
17 insurance division examiners shall be considered investigations  
18 and all workpapers and communications obtained during the course  
19 of the investigations shall be afforded the same confidentiality  
20 as other examination workpapers pursuant to section 431:2-305.

21           **§431:3-M Exemptions and effective dates.** (a) Upon  
22 written application by any insurer, the commissioner may grant

1 an exemption from compliance with this part if the commissioner  
2 finds, upon review of the application, that compliance with this  
3 part would constitute a financial or organizational hardship  
4 upon the insurer. An exemption may be granted at a time as  
5 determined by the commissioner. Within ten days from the  
6 commissioner's denial of an insurer's written request for  
7 exemption from this part, the insurer may request in writing a  
8 hearing on its application for an exemption. The hearing shall  
9 be held in accordance with chapter 91.

10 (b) Domestic insurers shall comply with this part for the  
11 year ending December 31, 2006, and each year thereafter unless  
12 the commissioner permits otherwise."

13 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
14 amended by adding to part II of article 10 a new section to be  
15 appropriately designated and to read as follows:

16 "§431:10- Commercial general liability extended  
17 reporting requirements. (a) Any policy for commercial general  
18 liability coverage wherein the insurer shall offer and the  
19 insured may elect to purchase an extended reporting period for  
20 claims arising during the expiring policy period shall provide  
21 that:

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1       (1) In the event of a cancellation, there shall be a  
2       thirty-day period during which the insured may elect  
3       to purchase coverage for the extended reporting  
4       period;

5       (2) The limit of liability in the policy aggregate for the  
6       extended reporting period shall be one hundred per  
7       cent of the expiring policy aggregate; and

8       (3) The insurer shall provide the following loss  
9       information to the first named insured within thirty  
10       days of the insured's request or upon any notice of  
11       cancellation or nonrenewal:

12       (A) All information on closed claims including the  
13       date and description of occurrence and amount of  
14       payments, if any;

15       (B) All information on open claims including the date  
16       and description of occurrence, amount of payment,  
17       if any, and amount of reserves, if any; and

18       (C) All information on notices of occurrence  
19       including the date and description of occurrence  
20       and amount of resources, if any."

21       SECTION 3. Section 431:2-301.8, Hawaii Revised Statutes,  
22       is amended by amending subsection (a) to read as follows:

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1           "(a) No cause of action shall arise nor shall any  
2 liability be imposed against any examiner appointed or otherwise  
3 designated as an examiner by the commissioner for any statements  
4 made or conduct performed in good faith while carrying out the  
5 provisions of the insurance code."

6           SECTION 4. Section 431:2-306, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8           "(c) The commissioner may assess all examination costs of  
9 any person subject to examination under section 431:2-303(1) and  
10 article 16 when there is a premium trust fund shortage due to  
11 substantial noncompliance with section [~~431:9-230.~~ The  
12 ~~commissioner, subject to chapter 91, shall adopt rules to carry~~  
13 ~~out the purposes of this subsection. The rules shall include~~  
14 ~~criteria for the levying of examination assessment costs and~~  
15 ~~specific criteria for appealing assessment costs levied by the~~  
16 ~~commissioner.] 431:9A-123.5."~~

17           SECTION 5. Section 431:3-201, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19           "(c) Every certificate of authority shall [~~specify:~~  
20 include but not be limited to:

1 (1) The name of the insurer [~~, the location of its principal~~  
2 ~~office,~~] and the classes of insurance it is authorized  
3 to transact in this State; or

4 (2) The name of and location of the principal office of its  
5 attorney-in-fact if a reciprocal insurer."

6 SECTION 6. Section 431:9A-122, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) The licensee shall promptly notify the commissioner  
9 in writing of any change of business address."

10 SECTION 7. Section 431:9B-102, Hawaii Revised Statutes, is  
11 amended as follows:

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

13 "(a) No person, firm, association, or corporation shall act  
14 as a reinsurance intermediary-broker in this State if the  
15 reinsurance intermediary-broker maintains an office either  
16 directly or as a member or employee of a firm or association or  
17 as an officer, director, or employee of a corporation:

18 (1) In this State, unless the reinsurance intermediary-  
19 broker is a licensed [~~agent~~] producer in this State; or

20 (2) In another state, unless the reinsurance intermediary-  
21 broker is a licensed [~~agent~~] producer in this State or  
22 another state having a law substantially similar to

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1           this law, or such reinsurance intermediary-broker is  
2           licensed in this State as a nonresident reinsurance  
3           intermediary."

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

5           "(c) The commissioner shall require a reinsurance  
6 intermediary-manager subject to subsection (b) to:

7           (1) File a bond from an insurance company licensed to do  
8           business within the State or with an insurance company  
9           approved by the commissioner in an amount equal to  
10           \$500,000 or ten per cent of the annual reinsurance  
11           premiums managed by the reinsurance intermediary-  
12           manager, whichever is greater, except that the bond  
13           amount under this paragraph shall not exceed  
14           \$10,000,000, for the protection of the reinsurer; [~~and~~]

15           (2) Maintain an errors and omissions policy, with an  
16           insurance company licensed to do business within the  
17           State or with an insurance company approved by the  
18           commissioner, in an amount equal to \$250,000 or twenty-  
19           five per cent of the annual reinsurance premiums  
20           managed by the reinsurance intermediary-manager,  
21           whichever is greater, except that the policy limits

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1 under this paragraph shall not exceed \$10,000,000[-];

2 and

3 (3) Provide any other report required by the commissioner.

4 At the time of application for licensure and each renewal, each

5 reinsurance intermediary-manager shall provide the commissioner

6 with proof of the bond and the policy, and appropriate

7 documentation to show that the bond and the policy [~~continues~~]

8 continue to be in effect or that a new bond and a new policy

9 [~~has~~] have been secured."

10 SECTION 8. Section 431:9C-102, Hawaii Revised Statutes, is

11 amended by amending subsections (c) and (d) to read as follows:

12 "(c) The commissioner shall require the managing general

13 agent to furnish a bond in an amount equal to \$100,000 or ten per

14 cent of annual gross direct written premiums, whichever is

15 greater, with an insurance company licensed to do business within

16 the State or with an insurance company approved by the

17 commissioner, for the protection of the insurer. Each managing

18 general agent shall provide the commissioner with:

19 (1) Proof of the bond at the time of the initial

20 application for licensure; [~~and~~]

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1           (2) Appropriate documentation at the time of each renewal  
2           to show that the bond continues to be in effect or that  
3           a new bond has been secured[-]; and

4           (3) Any other report required by the commissioner.

5           (d) The commissioner shall require the managing general  
6 agent to maintain an errors and omissions policy in an amount  
7 equal to \$1,000,000 or twenty-five per cent of annual gross  
8 direct written premiums, whichever is greater, with an insurance  
9 company licensed to do business within the State or an insurance  
10 company approved by the commissioner. Each managing general  
11 agent shall provide the commissioner with:

12           (1) Proof of the policy at the time of the initial  
13           application for licensure; [and]

14           (2) Appropriate documentation at the time of each renewal  
15           to show that the policy continues to be in effect or  
16           that a new policy has been secured[-]; and

17           (3) Any other report required by the commissioner."

18           SECTION 9. Section 431:10A-106, Hawaii Revised Statutes,  
19 is amended to read as follows:

20           "**§431:10A-106 Optional provisions.** Except as provided in  
21 section 431:10A-107, no policy of accident and health or sickness  
22 insurance delivered or issued for delivery to any person in this



1 State shall contain the provisions set forth below unless the  
2 provisions are in the words in which they appear below; provided  
3 that the insurer may substitute corresponding provisions of  
4 different wording approved by the commissioner that are in each  
5 instance not less favorable in any respect to the insured or the  
6 beneficiary. Such provisions are optional provisions. Any such  
7 provision contained in the policy shall be preceded individually  
8 by the specified caption or, at the option of the insurer, by  
9 such appropriate individual or group captions or subcaptions as  
10 the commissioner may approve. The provisions are as follows:

11 (1) "Change of Occupation: If the insured is injured or  
12 contracts sickness after having changed occupations to  
13 one classified by the insurer as more hazardous than  
14 that stated in this policy or while doing for  
15 compensation anything pertaining to an occupation so  
16 classified, the insurer will pay only such portion of  
17 the indemnities provided in this policy as the premium  
18 paid would have purchased at the rates and within the  
19 limits fixed by the insurer for the more hazardous  
20 occupation. If the insured's occupation changes to one  
21 classified by the insurer as less hazardous than that  
22 stated in this policy, the insurer, upon receipt of

1 proof of such change of occupation, will reduce the  
2 premium rate accordingly, and will return the excess  
3 pro rata unearned premium from the date of change of  
4 occupation or from the policy anniversary date  
5 immediately preceding receipt of such proof, whichever  
6 is the more recent. In applying this provision, the  
7 classification of occupational risk and the premium  
8 shall be such as have been last filed by the insurer  
9 prior to the occurrence of the loss for which the  
10 insurer is liable or prior to date of proof of change  
11 in occupation with the state official having  
12 supervision of insurance in the state where the insured  
13 resided at the time this policy was issued; but if such  
14 filing was not required, then the classification of  
15 occupational risk and the premium rates shall be those  
16 last made effective by the insurer in such state prior  
17 to the occurrence of the loss or prior to the date of  
18 proof of change in occupation."

- 19 (2) "Misstatement of Age: If the age of the insured has  
20 been misstated, all amounts payable under this policy  
21 shall be such as the premium paid would have purchased  
22 at the correct age."

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1 (3) Other insurance in this insurer shall be in one of the  
2 following forms:

3 (A) "Other Insurance in This Insurer: If an accident  
4 and health or sickness policy or policies  
5 previously issued by the insurer to the insured be  
6 in force concurrently herewith, making the  
7 aggregate indemnity for (insert type of coverage  
8 or coverages) in excess of \$ (insert maximum limit  
9 of indemnity or indemnities) the excess insurance  
10 shall be void and all premiums paid for such  
11 excess shall be returned to the insured or to the  
12 insured's estate."; or

13 (B) "Other Insurance in This Insurer: Insurance  
14 effective at any one time on the insured under a  
15 like policy or policies in this insurer is limited  
16 to the one such policy elected by the insured, the  
17 insured's beneficiary, or the insured's estate, as  
18 the case may be, and the insurer will return all  
19 premiums paid for all other such policies."

20 (4) Insurance with other insurers. Either or both of the  
21 following forms shall be used:

1 (A) (i) "Insurance with Other Insurers: If there be  
2 other valid coverage, not with this insurer,  
3 providing benefits for the same loss on a  
4 provision of service basis or on an expense  
5 incurred basis and of which this insurer has  
6 not been given written notice prior to the  
7 occurrence or commencement of loss, the only  
8 liability under any expense incurred coverage  
9 of this policy shall be for such proportion  
10 of the loss as the amount which would  
11 otherwise have been payable hereunder plus  
12 the total of the like amounts under all such  
13 other valid coverages for the same loss of  
14 which this insurer had notice bears to the  
15 total like amounts under all valid coverages  
16 for such loss, and for the return of such  
17 portion of the premiums paid as shall exceed  
18 the pro rata portion for the amount so  
19 determined. For the purpose of applying this  
20 provision when other coverage is on a  
21 provision of service basis, the like amount  
22 of such other coverage shall be taken as the

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1 amount which the services rendered would have  
2 cost in the absence of such coverage."

3 (ii) "Insurance with Other Insurers: If there be  
4 other valid coverage, not with this insurer,  
5 providing benefits for the same loss on other  
6 than an expense incurred basis and of which  
7 this insurer has not been given written  
8 notice prior to the occurrence or  
9 commencement of loss, the only liability for  
10 such benefits under this policy shall be for  
11 such proportion of the indemnities otherwise  
12 provided hereunder for such loss as the like  
13 indemnities of which the insurer had notice  
14 (including the indemnities under this policy)  
15 bear to the total amount of all the  
16 indemnities for such loss, and for the return  
17 of such portion of the premium paid as shall  
18 exceed the pro rata portion for the  
19 indemnities thus determined."

20 (B) If the provision set forth in subparagraph (A) (i)  
21 is included in a policy that also contains the  
22 provision set forth in subparagraph (A) (ii), there

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1 shall be added to the caption of the subparagraph

2 (A) (i) provision the phrase, "expense incurred  
3 benefits".

4 (C) The insurer may, at its option, include in the  
5 provision set forth in subparagraph (A) (i) a  
6 definition of other valid coverage, approved as to  
7 form by the commissioner, which definition shall  
8 be limited in subject matter to coverage provided  
9 by organizations subject to regulation by  
10 insurance law or by insurance authorities of this  
11 State or any other state or territory of the  
12 United States or any province of Canada, and by  
13 hospital or medical service organizations, and to  
14 any other coverage the inclusion of which may be  
15 approved by the commissioner. In the absence of  
16 such definition the term shall not include group  
17 insurance, automobile medical payment insurance,  
18 or coverage provided by hospital or medical  
19 service organizations, union welfare plans, or  
20 employer or employee benefit organizations. For  
21 the purpose of applying the provision set forth in  
22 subparagraph (A) (i) with respect to any insured,

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1 any amount of benefit provided for such insured  
2 pursuant to any compulsory benefit statute  
3 (including any workers' compensation or employers'  
4 liability statute), whether provided by a  
5 governmental agency or otherwise, shall in all  
6 cases be deemed to be other valid coverage of  
7 which the insurer has had notice. In applying the  
8 provision set forth in subparagraph (A) (i), no  
9 third party liability coverage shall be included  
10 as other valid coverage.

11 (D) If the provision set forth in subparagraph (A) (ii)  
12 is included in a policy that also contains the  
13 provision set forth in subparagraph (A) (i), there  
14 shall be added to the caption of the subparagraph  
15 (A) (ii) provision the phrase, "other benefits".

16 (E) The insurer may, at its option, include in the  
17 provision set forth in subparagraph (A) (ii) a  
18 definition of other valid coverage, approved as to  
19 form by the commissioner, which definition shall  
20 be limited in subject matter to coverage provided  
21 by organizations subject to regulation by  
22 insurance law or by insurance authorities of this

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1 State or any other state or territory of the  
2 United States or any province of Canada, and to  
3 any other coverage the inclusion of which may be  
4 approved by the commissioner. In the absence of  
5 such definition the term shall not include group  
6 insurance, or benefits provided by union welfare  
7 plans or employer or employee benefit  
8 organizations. For the purpose of applying the  
9 provision set forth in subparagraph (A)(ii) with  
10 respect to any insured, any amount of benefit  
11 provided for such insured pursuant to any  
12 compulsory benefit statute (including any workers'  
13 compensation or employers' liability statute),  
14 whether provided by a governmental agency or  
15 otherwise, shall in all cases be deemed to be  
16 other valid coverage of which the insurer has had  
17 notice. In applying the provision set forth in  
18 subparagraph (A)(ii), no third party liability  
19 coverage shall be included as other valid  
20 coverage.

21 (5) (A) "Relation of Earnings to Insurance: If the total  
22 monthly amount of loss of time benefits promised



1           for the same loss under all valid loss of time  
2           coverage upon the insured, whether payable on a  
3           weekly or monthly basis, shall exceed the monthly  
4           earnings of the insured at the time disability  
5           commenced or the insured's average monthly  
6           earnings for the period of two years immediately  
7           preceding a disability for which claim is made,  
8           whichever is the greater, the insurer will be  
9           liable only for such proportionate amount of such  
10          benefits under this policy as the amount of such  
11          monthly earnings or such average monthly earnings  
12          of the insured bears to the total amount of  
13          monthly benefits for the same loss under all such  
14          coverage upon the insured at the time such  
15          disability commences and for the return of such  
16          part of the premiums paid during such two years as  
17          shall exceed the pro rata amount of the premiums  
18          for the benefits actually paid hereunder; but this  
19          shall not operate to reduce the total monthly  
20          amount of benefits payable under all such coverage  
21          upon the insured below the sum of \$200 or the sum  
22          of the monthly benefits specified in such

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1 coverages, whichever is the lesser, nor shall it  
2 operate to reduce benefits other than those  
3 payable for loss of time."

4 (B) The policy provision in subparagraph (A) may be  
5 inserted only in a policy which the insured has  
6 the right to continue in force, subject to its  
7 terms by the timely payment of premiums until at  
8 least age fifty or, in the case of a policy issued  
9 after age forty-four, for at least five years from  
10 its date of issue.

11 (C) The insurer may, at its option, include in the  
12 provision set forth in subparagraph (A) a  
13 definition of valid loss of time coverage approved  
14 as to form by the commissioner, which definition  
15 shall be limited in subject matter to coverage  
16 provided by governmental agencies or by  
17 organizations subject to regulation by insurance  
18 law or by insurance authorities of this State or  
19 any state, district, or territory of the United  
20 States or any province of Canada, or to any other  
21 coverage the inclusion of which may be approved by  
22 the commissioner or any combination of such

1 coverages. In the absence of such definition such  
2 terms shall not include any coverage provided for  
3 such insured pursuant to any compulsory benefit  
4 statute (including any workers' compensation or  
5 employers' liability statute), or benefits  
6 provided by union welfare plans or by employer or  
7 employee benefit organizations.

8 (6) "Unpaid Premium: Upon the payment of a claim under  
9 this policy, any premium then due and unpaid or covered  
10 by any note or written order may be deducted  
11 therefrom."

12 (7) "Cancellation: The insurer may cancel this policy at  
13 any time by written notice delivered to the insured, or  
14 mailed to the insured's last address as shown by the  
15 records of the insurer, stating when, not less than  
16 five days thereafter, such cancellation shall be  
17 effective; and after the policy has been continued  
18 beyond its original term the insured may cancel this  
19 policy at any time by written notice delivered or  
20 mailed to the insurer, effective upon receipt or on  
21 such later date as may be specified in such notice. In  
22 the event of cancellation, the insurer will return

1 promptly the unearned portion of any premium paid. If  
2 the insured cancels, the earned premium shall be  
3 computed by the use of the short-rate table last filed  
4 with the state official having supervision of insurance  
5 in the state where the insured resided when the policy  
6 was issued. If the insurer cancels, the earned premium  
7 shall be computed pro rata. Cancellation shall be  
8 without prejudice to any claim originating prior to the  
9 effective date of cancellation."

10 (8) "Conformity with State Statutes: Any provision of this  
11 policy which, on its effective date, is in conflict  
12 with the statutes of the state in which the insured  
13 resides on such date is hereby amended to conform to  
14 the minimum requirements of such statutes."

15 (9) "Illegal Occupation: The insurer shall not be liable  
16 for any loss to which a contributing cause was the  
17 insured's commission of or attempt to commit a felony  
18 or to which a contributing cause was the insured's  
19 being engaged in an illegal occupation."

20 [~~(10)~~] ~~"Intoxicants and Narcotics: The insurer shall not be~~  
21 ~~liable for any loss sustained or contracted in~~  
22 ~~consequence of the insured's being intoxicated or under~~

1           ~~the influence of any narcotic unless administered on~~  
2           ~~the advice of a physician."] "~~

3           SECTION 10. Section 431:11-104.3, Hawaii Revised Statutes,  
4 is amended by amending subsection (b) to read as follows:

5           "(b) The preacquisition notification shall be in such form  
6 and contain such information as prescribed by the National  
7 Association of Insurance Commissioners including information  
8 relating to those markets in which the acquisition would not be  
9 exempted pursuant to section 431:11-104.2(b)(5). The  
10 commissioner may require such additional material and information  
11 as the commissioner deems necessary to determine whether the  
12 proposed acquisition, if consummated, would violate the  
13 competitive standard of section 431:11-104.4. The required  
14 information may include an opinion of an economist as to the  
15 competitive impact of the acquisition in this State accompanied  
16 by a summary of the education and experience indicating that  
17 economist's ability to render an informed opinion."

18           SECTION 11. Section 431:14-116, Hawaii Revised Statutes,  
19 is amended to read as follows:

20           "**§431:14-116 Assigned risks.** (a) Agreements may be made  
21 among insurers with respect to the equitable apportionment among  
22 them of insurance ~~[which]~~ that may be afforded applicants who

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1 are in good faith entitled to, but who are unable to procure,  
2 such insurance through ordinary methods and the insurers may  
3 agree among themselves on the use of reasonable rate  
4 modifications for such insurance, the agreements and rate  
5 modifications to be subject to the approval of the  
6 commissioner [~~; provided that this~~].

7 (b) This section shall not apply to workers' compensation  
8 insurance after [December 31, 1996, or the date the domestic  
9 mutual insurance company established pursuant to section  
10 431:14A-103 writes its first policy, whichever is later.] July  
11 20, 1997; provided that the Hawaii employers' mutual insurance  
12 company maintains a certificate of authority in the State.  
13 Workers' compensation insurance may become subject to assigned  
14 risk coverage under this section in the event Hawaii employers'  
15 mutual insurance company's certificate of authority is revoked  
16 by the insurance commissioner, pursuant to section 10 of Act  
17 261, Session Laws of Hawaii 1996."

18 SECTION 12. Section 431:14A-118, Hawaii Revised Statutes,  
19 is amended to read as follows:

20 "[+]§431:14A-118[+] **Discontinuation of residual market**  
21 **plan.** (a) The residual market plan, as authorized by section  
22 431:14-116.6, is discontinued effective December 31, 1996, or

1 the date the company writes its first policy, whichever date is  
2 later, except for dissolution of any obligations for claims  
3 arising out of any policies written pursuant to the plan with  
4 inception dates of or before December 31, 1996, or the date the  
5 company writes its first policy, whichever date is later. It is  
6 the intent of this section to provide for an orderly transfer of  
7 policies from the residual market plan as authorized by section  
8 431:14-116.6 to the company.

9 (b) The residual market plan shall continue its operation  
10 for all policies with inception dates of or before December 31,  
11 1996, or the date the company writes its first policy, whichever  
12 date is later. All policies written thereunder shall be for  
13 one-year terms, and shall not be terminated prior to expiration  
14 except for cause. In no case shall policies with inception  
15 dates of January 1, 1997, or the date the company writes its  
16 first policy, whichever date is later, be provided under the  
17 residual market plan authorized by section 431:14-116.6.

18 (c) A residual market plan for workers' compensation  
19 insurance may be authorized by section 431:14-116.6 in the event  
20 Hawaii employers' mutual insurance company's certificate of  
21 authority is revoked by the insurance commissioner, pursuant to  
22 section 10 of Act 261, Session Laws of Hawaii 1996."

1 SECTION 13. Section 431:14A-119, Hawaii Revised Statutes,  
2 is amended to read as follows:

3 "[+] §431:14A-119 [+] Discontinuation of assigned risks.

4 (a) Assigned risk coverage, as authorized by section 431:14-  
5 116, is discontinued effective December 31, 1996, or the date  
6 the company writes its first policy, whichever date is later,  
7 except for dissolution of any obligations for claims arising out  
8 of any policies written pursuant to section 431:14-116 with  
9 inception dates on or before December 31, 1996, or the date the  
10 company writes its first policy, whichever date is later. It is  
11 the intent of this section to provide for an orderly transfer of  
12 assigned risks as authorized by section 431:14-116 to the  
13 company.

14 (b) Assigned risk coverage, as authorized under section  
15 431:14-116 shall continue operation for all policies with  
16 inception dates of or before December 31, 1996, or the date the  
17 company writes its first policy, whichever date is later. All  
18 policies written thereunder shall be for one-year terms, and  
19 shall not be terminated prior to expiration except for cause.  
20 In no case shall policies with inception dates of January 1,  
21 1997, or the date the company writes its first policy, whichever



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1 date is later, be provided for assigned risks authorized by  
2 section 431:14-116.

3 (c) Assigned risk coverage for workers' compensation  
4 insurance may be authorized by section 431:14-116.6 in the event  
5 Hawaii employers' mutual insurance company's certificate of  
6 authority is revoked by the insurance commissioner, pursuant to  
7 section 10 of Act 261, Session Laws of Hawaii 1996."

8 SECTION 14. In codifying the new sections added by section  
9 1 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12 SECTION 15. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 16. This Act shall take effect on July 1, 2006.

15  
16 INTRODUCED BY:   
17 BY REQUEST

JUSTIFICATION SHEET

**SB. NO. 2283**

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update and conform current statutes governing insurer examinations and commercial general liability extended reporting requirements with the changes and revisions in the most current National Association of Insurance Commissioners (NAIC) Model Acts and Model Regulations.

MEANS: Add a new part to article 3 and a new section to article 10 of the Insurance Code, chapter 431, and amend sections 431:2-301.8(a), 431:2-306(c), 431:3-201(c), 431:9A-122(c), 431:9B-102(a) and (c), 431:9C-102(c) and (d), 431:10A-106, 431:11-104.3(b), 431:14-116, 431:14A-118, and 431:14A-119, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department of Commerce and Consumer Affairs is continuing its efforts to modernize Hawaii's insurance laws, while protecting consumer interests and bringing Hawaii's insurance laws into conformity with federal law and national standards.

This bill:

1. Adopts the NAIC model regulation requiring annual audited financial reports by adding a new part to article 3;
2. Adopts NAIC model law on commercial general liability extended reporting requirements by adding a new section to article 10, part II;
3. Clarifies provisions on immunity from liability (section 431:2-301.8(a));
4. Provides proper reference applicable to

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producer's premium trust account by substituting section 431:9A-123.5 for section 431:9-230, (section 431:2-306(a));

- 5. Removes the provision prohibiting health insurers from providing coverage for treatment of alcohol and drugs (section 431:10A-106(10));
- 6. Provides express reference to section 10 of Act 261, Session Laws of Hawaii 1996, where a residual market plan for workers' compensation insurance under section 431:14-116.6 may be authorized upon revocation of the Hawaii Employers' Mutual Insurance Company's certificate of authority (sections 431:14-116, 431:14A-118, and 431:14A-119);
- 7. Makes technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

Impact on the public: There should be a positive impact on the public as the appropriate amendments are being incorporated into the insurance laws. Insurers will have statutes that reflect the national modernization of insurance laws.

Impact on the department and other agencies: The Department of Commerce and Consumer Affairs will be able to better able to protect and to serve the public.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2006.