



GOV. MSG. NO. 574

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 18, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 18, 2010, the following bill was signed into law:

SB2697 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO INSURANCE.
ACT 116 (10)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on MAY 18 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 116

S.B. NO. 2697
S.D. 1
H.D. 1
C.D. 1

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 amended
2 as follows:

3 1. By adding a new section to article 3 to be
4 appropriately designated and to read:

5 "§431:3- Statement of actuarial opinion; property and
6 casualty insurance; confidentiality. (a) The statement of
7 actuarial opinion shall be provided with the annual statement in
8 accordance with the property and casualty annual statement
9 instruction as adopted by the National Association of Insurance
10 Commissioners and shall be treated as a public document.

11 (b) Documents, materials, or other information related to
12 or provided in connection with an actuarial report, working
13 papers, or actuarial opinion summary that are in possession or
14 control of the commissioner shall be confidential by law and
15 privileged, shall not be made public, subject to subpoena or
16 discovery, and shall not be admissible as evidence in any
17 private civil action; provided that:



1 (1) The commissioner may release the documents to the
2 Actuarial Board for Counseling and Discipline or its
3 successor to the extent that the material is required
4 for the purpose of professional disciplinary
5 proceedings and that the Actuarial Board for
6 Counseling and Discipline or its successor establishes
7 procedures satisfactory to the commissioner for
8 preserving the confidentiality of the documents;

9 (2) This section shall not be construed to limit the
10 commissioner's authority to use the documents,
11 materials, or other information in furtherance of any
12 regulatory or legal action brought as part of the
13 commissioner's official duties; and

14 (3) Neither the commissioner nor any person who received
15 documents, materials, or other information while
16 acting under the authority of the commissioner shall
17 be permitted or required to testify in any private
18 civil action concerning any confidential documents,
19 materials, or information subject to this subsection.

20 (c) The commissioner may share documents, materials, or
21 other information, including the confidential and privileged
22 documents, materials, or information subject to subsections (a)



1 and (b), with other state, federal, and international regulatory
2 agencies, with the National Association of Insurance
3 Commissioners and its affiliates and subsidiaries, and with
4 state, federal, and international law enforcement authorities;
5 provided that the recipient agrees to maintain the
6 confidentiality and privileged status of the document, material,
7 or information and has the legal authority to do so.

8 (d) The commissioner may receive documents, materials, or
9 other information, including otherwise confidential and
10 privileged documents, materials, or information, from the
11 National Association of Insurance Commissioners and its
12 affiliates and subsidiaries, and from regulatory and law
13 enforcement officials of other foreign or domestic
14 jurisdictions. The commissioner shall maintain as confidential
15 or privileged, subject to subsection (b)(3), any document,
16 material, or information received with notice or the
17 understanding that it is confidential or privileged under the
18 laws of the jurisdiction that is the source of the document,
19 material, or information.

20 (e) The commissioner may enter into agreements governing
21 sharing and use of information consistent with subsections (b),
22 (c), and (d).



1 (f) No waiver of any applicable privilege or claim of
2 confidentiality in the documents, materials, or information
3 subject to this section shall occur as a result of disclosure to
4 the commissioner under this section or as a result of sharing as
5 authorized in subsections (b), (c), and (d)."

6 2. By adding a new section to part II of article 9 to be
7 appropriately designated and to read:

8 "431:9- Reporting of actions. (a) A licensee shall
9 report in writing to the commissioner any civil or
10 administrative action taken against the licensee in any
11 jurisdiction or by any governmental agency in the United States
12 within thirty days of the final disposition of the matter.

13 (b) Within thirty days of arraignment, a licensee shall
14 report in writing to the commissioner any criminal prosecution
15 of the licensee being taken in any jurisdiction.

16 (c) A report pursuant to this section shall include a copy
17 of the initial complaint or indictment and any and all other
18 relevant legal documents."

19 3. By amending subsection (c) of section 431:2-208 to
20 read:

21 "(c) An insurer or licensee shall issue a written response
22 with reasonable promptness, in no case more than fifteen working



1 days, to any written inquiry made by the commissioner regarding
2 a claim [~~ex~~], consumer complaint[-], or sales or marketing
3 practice. The response shall be more than an acknowledgment
4 that the commissioner's communication has been received, and
5 shall adequately address the concerns stated in the
6 communication."

7 4. By amending subsection (a) of section 431:4F-103 to
8 read:

9 "(a) An alien insurer may use this [State] state as a
10 state of entry to transact insurance in the United States
11 through a United States branch by:

12 (1) Qualifying as an insurer licensed to do business in
13 this [~~State,~~] state; and

14 (2) Establishing [a] trust [~~account,~~] accounts, pursuant
15 to [a] trust [~~agreement~~] agreements approved by the
16 commissioner with a United States financial
17 institution approved by the commissioner, in an amount
18 at least equal to the minimum capital and surplus or
19 authorized control level risk-based capital, whichever
20 is greater, required to be maintained by a domestic
21 insurer licensed [~~to do~~] for the same kind of
22 insurance."



1 5. By amending subsection (d) of section 431:9-203 to
2 read:

3 "(d) As used in this section, "change of status" includes
4 but shall not be limited to change of legal name, assumed name,
5 trade name, business address, home address, mailing address,
6 business phone number, business fax number, business electronic
7 mail address, business website address, or home phone number."

8 6. By amending subsection (b) of section 431:9-228 to
9 read:

10 "(b) The licensee shall [~~promptly~~] notify the commissioner
11 of any change of business address[-] within thirty days of the
12 change."

13 7. By amending subsection (f) of section 431:9A-107 to
14 read:

15 "(f) A licensee shall:

16 (1) Inform the commissioner by any means acceptable to the
17 commissioner of any change of status within thirty
18 days of the change; and

19 (2) Report any change of status to the business
20 registration division if the licensee is a business
21 entity registered with the department of commerce and
22 consumer affairs pursuant to title 23 or title 23A, or



1 if the licensee has registered a trade name pursuant
2 to part I of chapter 482.

3 Failure to timely inform the commissioner or the business
4 registration division of a change of status may result in a
5 penalty pursuant to section 431:2-203.

6 As used in this subsection, "change of status" includes but
7 shall not be limited to change of legal name, assumed name,
8 trade name, business address, home address, mailing address,
9 business phone number, business fax number, business electronic
10 mail address, or business website address."

11 8. By amending subsection (c) of section 431:9A-122 to
12 read:

13 "(c) The licensee shall [~~promptly~~] notify the commissioner
14 [~~in writing~~] of any change of business address[~~-~~] within thirty
15 days of the change."

16 9. By adding a new definition in section 431:9C-101 to be
17 appropriately inserted and to read:

18 ""Producer" has the same meaning as in section 431:9A-102."

19 10. By amending section 431:9C-102 to read:

20 "**§431:9C-102 Licensure.** (a) No person, firm,
21 association, or corporation shall act as a managing general
22 agent, with respect to risks located in this [~~State~~] state for



1 an insurer licensed in this [State,] state, unless licensed as a
2 producer in this [State.] state.

3 (b) No person, firm, association, or corporation shall act
4 as a managing general agent [,] representing an insurer domiciled
5 in this [State] state with respect to risks located outside
6 this [State,] state unless licensed as a producer in this
7 [State.] state.

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

- 15 ~~(1) Proof of the bond at the time of the initial~~
16 ~~application for licensure;~~
- 17 ~~(2) Appropriate documentation at the time of each renewal~~
18 ~~to show that the bond continues to be in effect or~~
19 ~~that a new bond has been secured; and~~
- 20 ~~(3) Any other report required by the commissioner.~~

21 ~~(d) The commissioner shall require the managing general~~
22 ~~agent to maintain an errors and omissions policy in an amount~~



1 ~~equal to \$1,000,000 or twenty five per cent of annual gross~~
2 ~~direct written premiums, whichever is greater, with an insurance~~
3 ~~company licensed to do business within the State or an insurance~~
4 ~~company approved by the commissioner. Each managing general~~
5 ~~agent shall provide the commissioner with:~~

- 6 ~~(1) Proof of the policy at the time of the initial~~
- 7 ~~application for licensure;~~
- 8 ~~(2) Appropriate documentation at the time of each renewal~~
- 9 ~~to show that the policy continues to be in effect or~~
- 10 ~~that a new policy has been secured; and~~
- 11 ~~(3) Any other report required by the commissioner.] "~~

12 11. By amending section 431:9C-103 to read:

13 "**§431:9C-103 Required contract provisions.** No person,
14 firm, association, or corporation acting as a managing general
15 agent shall place business with an insurer unless there is in
16 force[~~7~~] a written contract between the managing general agent
17 and the insurer which sets forth the responsibilities of each
18 party [~~and~~~~7~~]; where both the managing general agent and the
19 insurer share responsibility for a particular function,
20 specifies the division of those responsibilities[~~7~~] and which
21 contains at least the following additional provisions:



- 1 (1) The insurer may terminate the contract for cause upon
2 written notice to the managing general agent [~~—The~~
3 ~~insurer~~] and may suspend the underwriting authority of
4 the managing general agent during the pendency of any
5 dispute regarding the cause for termination;
- 6 (2) The managing general agent shall render accounts to
7 the insurer detailing all transactions and shall remit
8 all funds due under the contract to the insurer on not
9 less than a monthly basis;
- 10 (3) All funds collected for the account of an insurer
11 shall be held by the managing general agent in a
12 fiduciary capacity and shall be deposited in an
13 account in a bank which is a member of the Federal
14 Reserve System. This account shall be used for all
15 payments on behalf of the insurer by the managing
16 general agent. The managing general agent may retain
17 no more than three months estimated claims payments
18 and allocated loss adjustment expenses;
- 19 (4) Separate records of business written by the managing
20 general agent shall be maintained in the [~~licensee's~~]
21 managing general agent's office. The insurer shall
22 have [~~access to and~~] the right to access and to copy



1 all accounts and records of the managing general agent
2 related to the insurer's business in a form usable by
3 the insurer[~~—and~~]; the commissioner shall have access
4 to all books, bank accounts, and records of the
5 managing general agent in a form usable to the
6 commissioner. Records shall be in an organized form
7 according to each class of insurance and shall include
8 the following information to the extent it is
9 applicable:

10 (A) A record of each insurance contract procured or
11 issued, together with the names of the insurers
12 and insureds, the amount of premium paid or to be
13 paid, or the basis of the premium or
14 consideration paid or to be paid, and a statement
15 of the subject of the insurance;

16 (B) The names of any other licensees from whom
17 business is accepted and the names of persons to
18 whom commissions or allowances of any kind are
19 promised or paid;

20 (C) A record of each investigation or adjustment
21 undertaken or consummated and a statement of any
22 fee, commission, or other compensation received



1 or to be received by [~~the~~] an adjuster on account
2 of [~~the~~] each investigation or adjustment;

3 (D) A record of each bill reviewed and a statement of
4 any fee, commission, or other compensation
5 received or to be received by the independent
6 bill reviewer on account of the bill reviewed;
7 and

8 (E) Any additional information as shall be customary
9 or as may reasonably be required by the
10 commissioner.

11 This paragraph shall not apply to life or accident and
12 health or sickness insurance if the records required
13 of [~~such~~] that insurance are customarily maintained in
14 the offices of the insurer;

15 (5) The contract may not be assigned in whole or in part
16 by the managing general agent;

17 (6) Appropriate underwriting guidelines including:

18 (A) The maximum annual premium volume;

19 (B) The basis of the rates to be charged;

20 (C) The types of risks which may be written;

21 (D) Maximum limits of liability;

22 (E) Applicable exclusions;



- 1 (F) Territorial limitations;
- 2 (G) Policy cancellation provisions; and
- 3 (H) The maximum policy period.

4 The insurer shall have the right to cancel or nonrenew
5 any policy of insurance subject to the applicable laws
6 and rules concerning the cancellation and nonrenewal
7 of insurance policies;

8 (7) The insurer shall require the managing general agent
9 to obtain and maintain a surety bond for the
10 protection of the insurer. The bond amount shall be
11 \$100,000 or ten per cent of the managing general
12 agent's total nationwide annual written premium for
13 the insurer in the prior calendar year, whichever is
14 greater; provided that the amount of the surety bond
15 shall not exceed \$500,000;

16 (8) The insurer shall require the managing general agent
17 to obtain and maintain an errors and omissions policy
18 in the minimum amount of \$1,000,000;

19 ~~[-7-]~~ (9) If the contract permits the managing general
20 agent to settle claims on behalf of the insurer:

21 (A) All claims shall be reported to the insurer in a
22 timely manner;



1 (B) A copy of the claim file shall be sent to the
2 insurer [~~at its~~] upon request or as soon as it
3 becomes known that the claim:

4 (i) Has the potential to exceed [~~an~~] a threshold
5 amount determined by the commissioner or
6 [~~exceeds the~~] a limit set by the insurer,
7 whichever is less;

8 (ii) Involves a coverage dispute;

9 (iii) May exceed the managing general agent's
10 claims settlement authority;

11 (iv) Is open for more than six months; or

12 (v) Is closed by payment of [~~an~~] a threshold
13 amount set by the commissioner or an amount
14 set by the insurer, whichever is less;

15 (C) All claim files shall be the joint property of
16 the insurer and managing general agent. However,
17 upon an order of liquidation of the insurer, the
18 files shall become the sole property of the
19 insurer or its estate; provided that the managing
20 general agent shall have reasonable access to and
21 the right to copy the files on a timely basis;



1 (D) Any settlement authority granted to the managing
 2 general agent may be terminated for cause upon
 3 the insurer's written notice to the managing
 4 general agent or upon the termination of the
 5 contract~~[.—The]~~; provided that the insurer may
 6 suspend the settlement authority during the
 7 pendency of any dispute regarding the cause for
 8 termination; and

9 (E) Where electronic claims files are in existence,
 10 the contract shall address the timely
 11 transmission of the data;

12 [~~(8)~~] (10) If the contract provides for a sharing of
 13 interim profits by the managing general agent~~[,]~~ and
 14 the managing general agent has the authority to
 15 determine the amount of the interim profits by
 16 establishing loss reserves ~~[e]~~, controlling claim
 17 payments, or in any other manner, interim profits
 18 shall not be paid to the managing general agent until
 19 one year after they are earned for property insurance
 20 business and five years after they are earned on
 21 casualty business and, in any event, not until the



1 profits have been verified through examination
2 pursuant to section 431:9C-105; and
3 ~~(+9)~~ (11) The managing general agent shall not:
4 (A) Bind reinsurance or retrocessions on behalf of
5 the insurer, except that the managing general
6 agent may bind facultative reinsurance contracts
7 pursuant to obligatory facultative agreements if
8 the contract with the insurer contains
9 reinsurance underwriting guidelines including,
10 for both reinsurance assumed and ceded, a list of
11 reinsurers with whom those automatic agreements
12 are in effect, the coverages and amounts or
13 percentages that may be reinsured, and commission
14 schedules;
15 (B) Commit the insurer to participate in insurance or
16 reinsurance syndicates;
17 (C) Appoint any producer without assuring that the
18 producer is lawfully licensed to transact the
19 type of insurance for which the producer is
20 appointed;
21 (D) Without prior approval of the insurer, pay or
22 commit the insurer to pay a claim over a



1 specified amount, net of reinsurance, which shall
2 not exceed one per cent of the insurer's
3 policyholder's surplus as of December 31 of the
4 last completed calendar year;

5 (E) Collect any payment from a reinsurer or commit
6 the insurer to any claim settlement with a
7 reinsurer without prior approval of the insurer.
8 If prior approval is given, a report shall be
9 promptly forwarded to the insurer;

10 (F) Permit its subagent to serve on the board of
11 directors of the insurer;

12 (G) Employ an individual who is also employed by the
13 insurer [~~also~~]; or

14 (H) Appoint a sub-managing general agent."

15 12. By amending section 431:9C-104 to read:

16 "[+]§431:9C-104[+] Duties of insurers. (a) An insurer
17 shall have on file an independent financial examination in a
18 form acceptable to the commissioner of each managing general
19 agent with whom it has done business [~~in a form acceptable to~~
20 ~~the commissioner~~].

21 (b) If a managing general agent establishes loss reserves,
22 the insurer shall annually obtain the opinion of an independent



1 actuary attesting to the adequacy of loss reserves established
2 for losses incurred and outstanding on business produced by the
3 managing general agent. [~~This is~~] The opinion required by this
4 subsection shall be in addition to any other required loss
5 reserve certification required by this chapter.

6 (c) The insurer shall conduct at least semiannually an on-
7 site review of the underwriting and claims processing operations
8 of the managing general agent.

9 (d) Binding authority for all reinsurance contracts or
10 participation in insurance or reinsurance syndicates shall rest
11 with an officer of the insurer, who shall not be affiliated with
12 the managing general agent.

13 (e) The insurer shall notify the commissioner in writing
14 within thirty days of entering into or terminating a contract
15 with a managing general agent. [~~Notices~~] Notice of the
16 appointment of a managing general agent shall include a
17 statement of the duties [~~which~~] that the managing general agent
18 is expected to perform on behalf of the insurer, the lines of
19 insurance for which the managing general agent [~~is to~~] shall be
20 authorized to act, and any other information the commissioner
21 may [~~request.~~] require.



1 (f) An insurer shall review its books and records each
2 quarter to determine if any producer [~~as defined in section~~
3 ~~431:11A-101,~~] has become a managing general agent [~~of the~~
4 insurer]. If the insurer determines that a producer has become a
5 managing general agent [~~of the insurer~~], the insurer shall
6 promptly notify the producer and the commissioner [~~of the~~
7 ~~determination~~] and the insurer and producer shall both fully
8 comply with this article within thirty days.

9 (g) An insurer shall not appoint to its board of directors
10 an officer, director, employee, subagent, or controlling
11 shareholder of any of its managing general agents; provided that
12 this subsection shall not apply to relationships governed by
13 article 11.

14 (h) The insurer shall keep the bond and the errors and
15 omissions policy required by section 431:9C-103 on file for
16 review by the commissioner or other applicable regulatory
17 agency."

18 13. By amending section 431:9N-102 to read:

19 "[+]§431:9N-102[+] License denial, nonrenewal, suspension,
20 or revocation. In addition to [~~causes in~~] the authority granted
21 by section 431:9A-112, the commissioner may deny, place on
22 probation, suspend, revoke, or refuse to issue or renew a bail



1 agent's license and may levy a civil fine or penalty in
2 accordance with articles 2 and 9A, or take any combination of
3 these actions, for any of the following causes:

4 (1) [~~Failing~~] Failure to satisfy, pay, or otherwise
5 discharge a bail forfeiture judgment after [~~having~~]
6 the bail agent's name [~~placed~~] is on the board for
7 more than forty-five consecutive days for the same
8 forfeiture;

9 (2) Failure to satisfy, pay, or otherwise discharge a
10 final, nonappealable bail forfeiture judgment within
11 sixty days following notice of entry of judgment;

12 [~~(2)~~] [~~Failing~~] (3) Failure to report, to preserve without
13 use and retain separately, or to return collateral
14 [~~taken~~] received as security on any bond to the
15 principal or depositor of the collateral;

16 [~~(3)~~] [~~Failing~~] (4) Failure to pay a final, nonappealable
17 judgment award for failure to return or repay
18 collateral received to secure a bond;

19 [~~(4)~~] (5) Continuing [~~to execute~~] execution of bail bonds
20 in any court in this [~~State~~] state while on the board,
21 where the bail forfeiture judgment that resulted in
22 [~~being placed~~] placement on the board has not been



1 paid, stayed, vacated, exonerated, or otherwise
2 discharged; or
3 ~~[-(5) Paying,]~~ (6) Payment, directly or indirectly, of any
4 commission, service fee, brokerage, or other valuable
5 consideration to any person selling, soliciting, or
6 negotiating bail within this [~~State~~] state unless, at
7 the time the services were performed, the person was
8 [a] duly licensed [~~bail-agent~~] for the performance of
9 the services."

10 14. By amending section 431:10-244 to read:

11 "**§431:10-244 Filing procedure for contracts approved by**
12 **commissioner.** Each insurance contract requiring approval by the
13 commissioner pursuant to this code, section 392-48 [~~and~~], or
14 section 386-124 and each contract certified by the insurer to be
15 in conformity with this code shall be accompanied by a \$20 fee
16 payable to the commissioner, which [~~fee~~] shall be deposited [~~in~~]
17 into the commissioner's education and training fund."

18 15. By amending section 431:10A-105 to read:

19 "**§431:10A-105 Required provisions.** Except as provided in
20 section 431:10A-107, each policy of accident and health or
21 sickness insurance delivered or issued for delivery to any
22 person in this [~~State~~] state shall contain the provisions set



1 forth below. These provisions shall be in the words in which
2 they appear below; provided that the insurer may substitute
3 corresponding provisions of different wording [~~approved by the~~
4 ~~commissioner~~] certified by an officer of the insurer to be in
5 substantial conformance with the wording below that are in each
6 instance not less favorable in any respect to the insured or the
7 beneficiary. The provisions shall be preceded individually by
8 the specified caption, or by [~~such~~] appropriate individual or
9 group captions or subcaptions [~~as the commissioner may approve.~~]
10 that are substantially similar to the specified captions. The
11 provisions required by this section are as follows:

12 (1) "Entire Contract; Changes: This policy, including the
13 endorsements and the attached papers, if any,
14 constitutes the entire contract of insurance. No
15 change in this policy shall be valid until approved by
16 an executive officer of the insurer and unless the
17 approval is endorsed on or attached to this policy.
18 No agent has authority to change this policy or to
19 waive any of its provisions[+]" ;

20 (2) (A) "Time Limit on Certain Defenses:

21 (i) After three years from the date of issue of
22 this policy no misstatements, except



1 fraudulent misstatements, made by the
2 applicant in the application for this policy
3 shall be used to void this policy or to deny
4 a claim for loss incurred or disability [+]
5 as defined in the policy[+] commencing after
6 the expiration of the three-year period[-];
7 and

8 (ii) No claim for loss incurred or disability
9 [+] as defined in the policy[+] commencing
10 after three years from the date of issue of
11 this policy shall be reduced or denied on
12 the ground that a disease or physical
13 condition not excluded on the date of loss
14 from coverage by name or specific
15 description effective [~~on the date of loss~~]
16 had existed prior to the effective date of
17 coverage of this policy[-]";

18 (B) The policy provision set forth in subparagraph
19 (A) (i) shall not be construed to affect any legal
20 requirement for avoidance of a policy or denial
21 of a claim during the initial three-year period,
22 nor to limit the application of section 431:10A-



1 106(1) through (4) in the event of misstatement
2 with respect to age [~~e~~], occupation, or other
3 insurance[~~-~~]; and

4 (C) A policy that the insured has the right to
5 continue in force subject to its terms by the
6 timely payment of premium until at least age
7 fifty or, in the case of a policy issued after
8 age forty-four, for at least five years from its
9 date of issue, may contain in lieu of
10 subparagraph (A) (i) the following provision
11 [~~+~~]from which the clause in parentheses may be
12 omitted at the insurer's option[~~+~~]:

13 "Incontestable: After this policy has been in
14 force for a period of three years during the
15 lifetime of the insured (excluding any period
16 during which the insured is disabled), it shall
17 become incontestable as to the statements
18 contained in the application[~~-~~"];

19 (3) (A) "Grace period: A grace period of (insert a
20 number not less than seven for weekly premium
21 policies, ten for monthly premium policies, and
22 thirty-one for all other policies) days will be



1 granted for the payment of each premium falling
2 due after the first premium, during which grace
3 period the policy shall continue in force[-]";

4 (B) A policy that contains a cancellation provision
5 may add at the end of the [~~above~~] provision[-]
6 required by subparagraph (A): "subject to the
7 right of the insurer to cancel in accordance with
8 the cancellation provision[-]"; and

9 (C) A policy in which the insurer reserves the right
10 to refuse any renewal shall have at the beginning
11 of the [~~above~~] provision[-] required by
12 subparagraph (A): "Unless not less than thirty
13 days prior to the premium due date the insurer
14 has delivered to the insured or has mailed to the
15 insured's last address as shown by the records of
16 the insurer written notice of its intention not
17 to renew this policy beyond the period for which
18 the premium has been accepted[-]";

19 (4) (A) "Reinstatement: If any renewal premium is not
20 paid within the time granted to the insured for
21 payment, a subsequent acceptance of premium by
22 the insurer or by any agent duly authorized by



1 the insurer to accept the premium, without
2 requiring in connection therewith an application
3 for reinstatement, shall reinstate the policy;
4 provided that if the insurer or agent requires an
5 application for reinstatement and issues a
6 conditional receipt for the premium tendered, the
7 policy shall be reinstated upon approval of the
8 application by the insurer or, lacking approval,
9 upon the forty-fifth day following the date of
10 conditional receipt unless the insurer has
11 previously notified the insured in writing of its
12 disapproval of the application. The reinstated
13 policy shall cover only loss resulting from
14 accidental injury as may be sustained after the
15 date of reinstatement and loss due to sickness as
16 may begin more than ten days after that date. In
17 all other respects the insured and insurer shall
18 have the same rights as they had under the policy
19 immediately before the due date of the defaulted
20 premium, subject to any provisions endorsed
21 hereon or attached hereto in connection with the
22 reinstatement. Any premium accepted in



1 connection with the reinstatement shall be
2 applied to a period for which premium has not
3 been previously paid, but not to any period more
4 than sixty days prior to the date of
5 reinstatement [-]"; and

6 (B) The last sentence in subparagraph (A) may be
7 omitted from any policy that the insured has the
8 right to continue in force subject to its terms
9 by the timely payment of premiums until at least
10 age fifty or, in the case of a policy issued
11 after age forty-four, for at least five years
12 from its date of issue [-];

13 (5) (A) "Notice of Claim: Written notice of claim [~~must~~]
14 shall be given to the insurer within twenty days
15 after the occurrence or commencement of any loss
16 covered by the policy, or as soon thereafter as
17 is reasonably possible. Notice given by or on
18 behalf of the insured or the beneficiary to the
19 insurer at (insert the location of the office as
20 the insurer may designate for the purpose) or to
21 any authorized agent of the insurer, with



1 information sufficient to identify the insured,
2 shall be deemed notice to the insurer[-]"; and
3 (B) In a policy providing a loss of time benefit that
4 may be payable for at least two years, an insurer
5 may at its option insert the following between
6 the first and second sentences in subparagraph
7 (A): "Subject to the qualification set forth
8 below, if the insured suffers loss of time on
9 account of disability for which indemnity may be
10 payable for at least two years, the insured
11 shall, at least once in every six months after
12 having given notice of claim, give to the insurer
13 notice of continuance of the disability, except
14 in the event of legal incapacity. The period of
15 six months following any filing of proof by the
16 insured or any payment by the insurer on account
17 of the claim or any denial of liability in whole
18 or in part by the insurer shall be excluded in
19 applying this provision. Delay in giving notice
20 shall not impair the insured's right to any
21 indemnity which would otherwise have accrued



1 during the period of six months preceding the
2 date on which notice is actually given[-]";

3 (6) "Claim Forms: The insurer, upon receipt of a notice
4 of claim, will furnish to the claimant [~~the~~] any
5 forms[-] that are usually furnished by it for filing
6 proofs of loss. If the forms are not furnished within
7 fifteen days after the giving of notice the claimant
8 shall be deemed to have complied with the requirements
9 of this policy as to proof of loss upon submitting,
10 within the time fixed in the policy for filing proofs
11 of loss, written proof covering the occurrence, the
12 character, and the extent of the loss for which claim
13 is made[-]";

14 (7) "Proofs of Loss: In case of claim for loss for which
15 this policy provides any periodic payment contingent
16 upon continuing loss, written proof of loss must be
17 furnished to the insurer at its office within ninety
18 days after the termination of the period for which the
19 insurer is liable, and in case of claim for any other
20 loss within ninety days after the date of loss.
21 Failure to furnish proof of loss within the time
22 required shall not invalidate nor reduce any claim if



1 it was not reasonably possible to give proof within
2 the time required, provided proof is furnished as soon
3 as reasonably possible and in no event, except [~~in~~]
4 the absence of legal capacity, later than fifteen
5 months from the time proof is otherwise required[-]" ;

6 (8) "Time of Payment of Claims: Indemnities payable under
7 this policy for any loss other than loss for which
8 this policy provides any periodic payment [~~will~~] shall
9 be paid immediately upon receipt of due written proof
10 of loss. Subject to due written proof of loss, all
11 accrued indemnities for loss for which this policy
12 provides periodic payment [~~will~~] shall be paid (insert
13 period for payment which must not be less frequently
14 than monthly) and any balance remaining unpaid upon
15 the termination of liability [~~will~~] shall be paid
16 immediately upon receipt of due written proof[-]" ;

17 (9) (A) "Payment of Claims: Indemnity for loss of life
18 [~~will~~] shall be payable in accordance with the
19 beneficiary designation and the provisions
20 respecting payment which may be prescribed herein
21 and effective at the time of payment. If no
22 designation or provision is then effective, the



1 indemnity shall be payable to the estate of the
2 insured. Any other accrued indemnities unpaid at
3 the insured's death may, at the option of the
4 insurer, be paid either to the designated
5 beneficiary or to the estate of the insured. All
6 other indemnities [~~will~~] shall be payable to the
7 insured[-]"; and

8 (B) [~~The~~] Either or both of the following
9 provisions [~~, or either of them,~~] may be included
10 with the provision set forth in subparagraph (A)
11 at the option of the insurer:

12 (i) "If any indemnity of this policy shall be
13 payable to the estate of the insured, or to
14 an insured or beneficiary who is a minor or
15 otherwise not competent to give a valid
16 release, the insurer may pay the indemnity,
17 up to an amount not exceeding \$2,000 to any
18 relative by blood or connection by marriage
19 of the insured or beneficiary who is deemed
20 by the insurer to be equitably entitled
21 thereto. Any payment made by the insurer in
22 good faith pursuant to this provision shall



1 fully discharge the insurer to the extent of
2 the payment [-]"; and

3 (ii) "Subject to any written direction of the
4 insured in the application or otherwise all
5 or a portion of any indemnities provided by
6 this policy on account of hospital, nursing,
7 medical, or surgical services may, at the
8 insurer's option and unless the insured
9 requests otherwise in writing not later than
10 the time of filing proofs of loss, be paid
11 directly to the hospital or person rendering
12 the services; but it is not required that
13 the service be rendered by a particular
14 hospital or person[-]"; i

15 (10) "Physical Examinations and Autopsy: The insurer at
16 its own expense shall have the right and opportunity
17 to examine the person of the insured when and as often
18 as it may reasonably require during the pendency of a
19 claim hereunder and to make an autopsy in case of
20 death where it is not forbidden by law[-]"; i

21 (11) "Legal Actions: No action at law or in equity shall
22 be brought to recover on this policy prior to the



1 expiration of sixty days after written proof of loss
2 has been furnished in accordance with the requirements
3 of this policy. No action at law or in equity shall
4 be brought after the expiration of three years after
5 the time written proof of loss is required to be
6 furnished[-]"; and

7 (12) (A) "Change of Beneficiary: Unless the insured makes
8 an irrevocable designation of beneficiary, the
9 right to change [øf] the beneficiary is reserved
10 to the insured and the consent of the beneficiary
11 or beneficiaries shall not be requisite to
12 surrender or assignment of this policy or to any
13 change of beneficiary or beneficiaries, or to any
14 other changes in this policy[-]"; and

15 (B) The first clause of subparagraph (A), relating to
16 the irrevocable designation of beneficiary, may
17 be omitted at the insurer's option."

18 16. By amending section 431:10A-106 to read:

19 "§431:10A-106 **Optional provisions.** Except as provided in
20 section 431:10A-107, no policy of accident and health or
21 sickness insurance delivered or issued for delivery to any
22 person in this [State] state shall contain the provisions set



1 forth below unless the provisions are in the words in which they
2 appear below; provided that the insurer may substitute
3 corresponding provisions of different wording [~~approved by the~~
4 ~~commissioner~~] certified by an officer of the insurer to be in
5 substantial conformance with the wording below that are in each
6 instance not less favorable in any respect to the insured or the
7 beneficiary. [~~Such~~] The provisions listed in this section are
8 optional provisions. Any [~~such provision~~] of the following
9 provisions contained in the policy shall be preceded
10 individually by the specified caption or, at the option of the
11 insurer, by [~~such~~] appropriate individual or group captions or
12 subcaptions [~~as the commissioner may approve.~~] substantially
13 similar to the specified caption. The provisions are as
14 follows:

15 (1) "Change of Occupation: If the insured is injured or
16 contracts sickness after having changed occupations to
17 one classified by the insurer as more hazardous than
18 that stated in this policy or while doing for
19 compensation anything pertaining to an occupation so
20 classified, the insurer will pay only [~~such~~] the
21 portion of the indemnities provided in this policy
22 [~~as~~] that the premium paid would have purchased at the



1 rates and within the limits fixed by the insurer for
2 the more hazardous occupation. If the insured's
3 occupation changes to one classified by the insurer as
4 less hazardous than that stated in this policy, the
5 insurer, upon receipt of proof of [sueh] the change of
6 occupation, will reduce the premium rate accordingly,
7 and will return the excess pro rata unearned premium
8 from the date of change of occupation or from the
9 policy anniversary date immediately preceding receipt
10 of such proof, whichever is [~~the~~] more recent. In
11 applying this provision, the classification of
12 occupational risk and the premium shall be [sueh]
13 those as have been last filed by the insurer prior to
14 the occurrence of the loss for which the insurer is
15 liable or prior to date of proof of change in
16 occupation with the state official having supervision
17 of insurance in the state where the insured resided at
18 the time this policy was issued; but if [sueh] a
19 filing was not required, then the classification of
20 occupational risk and the premium rates shall be those
21 last made effective by the insurer in [sueh] the state
22 where the insured resided prior to the occurrence of



1 the loss or prior to the date of proof of change in
2 occupation[-]";

3 (2) "Misstatement of Age: If the age of the insured has
4 been misstated, all amounts payable under this policy
5 shall be such as the premium paid would have purchased
6 at the insured's correct age[-]";

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

9 (A) "Other Insurance in This Insurer: If an accident
10 and health or sickness policy or policies
11 previously issued by the insurer to the insured
12 [~~be~~] concurrently in force [~~concurrently~~
13 ~~herewith~~], making the aggregate indemnity for
14 (insert type of coverage or coverages) in excess
15 of \$ (insert maximum limit of indemnity or
16 indemnities) the excess insurance shall be void
17 and all premiums paid for [~~such~~] the excess shall
18 be returned to the insured or to the insured's
19 estate[-]"; or

20 (B) "Other Insurance in This Insurer: Insurance
21 effective at any one time on the insured under a
22 like policy or policies in this insurer is



1 limited to the one [~~such~~] policy elected by the
2 insured, the insured's beneficiary, or the
3 insured's estate, as the case may be, and the
4 insurer [~~will~~] shall return all premiums paid for
5 all other [~~such~~] policies[-]";

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

8 (A) (i) "Insurance with Other Insurers: If there be
9 other valid coverage, not with this insurer,
10 providing benefits for the same loss on a
11 provision of service basis or on an expense
12 incurred basis and of which this insurer has
13 not been given written notice prior to the
14 occurrence or commencement of loss, the only
15 liability under any expense incurred
16 coverage of this policy shall be for [~~such~~]
17 the proportion of the loss [~~as the amount~~
18 ~~which~~] that would otherwise have been
19 payable [~~hereunder~~] plus the total of the
20 like amounts under all [~~such~~] the other
21 valid coverages for the same loss of which
22 this insurer had notice bears to the total



1 like amounts under all valid coverages for
2 [such] the loss, and for the return of
3 [such] the portion of the premiums paid as
4 shall exceed the pro rata portion for the
5 amount so determined. For the purpose of
6 applying this provision when other coverage
7 is on a provision of service basis, the like
8 amount of [such] other coverage shall be
9 taken as the amount which the services
10 rendered would have cost in the absence of
11 [such] the other coverage[-]"; and

12 (ii) "Insurance with Other Insurers: If there be
13 other valid coverage, not with this insurer,
14 providing benefits for the same loss on
15 other than an expense incurred basis and of
16 which this insurer has not been given
17 written notice prior to the occurrence or
18 commencement of loss, the only liability for
19 [such] benefits under this policy shall be
20 for [such] the proportion of the indemnities
21 otherwise provided hereunder for [such] a
22 loss as the like indemnities of which the



1 insurer had notice (including the
 2 indemnities under this policy) bear to the
 3 total amount of all the indemnities for
 4 [~~such~~] the loss, and for the return of
 5 [~~such~~] the portion of the premium paid as
 6 shall exceed the pro rata portion for the
 7 indemnities thus determined[~~-~~"];

8 (B) If the provision set forth in subparagraph (A) (i)
 9 is included in a policy that also contains the
 10 provision set forth in subparagraph (A) (ii),
 11 there shall be added to the caption of the
 12 subparagraph (A) (i) provision the phrase,
 13 "expense incurred benefits[~~-~~"];

14 (C) The insurer may, at its option, include in the
 15 provision set forth in subparagraph (A) (i) a
 16 definition of other valid coverage, approved as
 17 to form by the commissioner, which [~~definition~~]
 18 shall be limited in subject matter to coverage
 19 provided by organizations subject to regulation
 20 by insurance law or by insurance authorities of
 21 this State or any other state or territory of the
 22 United States or any province of Canada, and by



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



- 1 (D) If the provision set forth in subparagraph
2 (A) (ii) is included in a policy that also
3 contains the provision set forth in subparagraph
4 (A) (i), there shall be added to the caption of
5 the subparagraph (A) (ii) provision the phrase,
6 "other benefits" ~~[]~~; and
- 7 (E) The insurer may, at its option, include in the
8 provision set forth in subparagraph (A) (ii) a
9 definition of other valid coverage, approved as
10 to form by the commissioner, which ~~[definition]~~
11 shall be limited in subject matter to coverage
12 provided by organizations subject to regulation
13 by insurance law or by insurance authorities of
14 this ~~[State]~~ state or any other state or
15 territory of the United States or any province of
16 Canada, and to any other coverage the inclusion
17 of which may be approved by the commissioner. In
18 the absence of ~~[such]~~ a definition the term shall
19 not include group insurance, or benefits provided
20 by union welfare plans or employer or employee
21 benefit organizations. For the purpose of
22 applying the provision set forth in subparagraph



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

12 (5) (A) "Relation of Earnings to Insurance: If the total
13 monthly amount of loss of time benefits promised
14 for the same loss under all valid loss of time
15 coverage upon the insured, whether payable on a
16 weekly or monthly basis, [~~shall exceed~~] exceeds
17 the monthly earnings of the insured at the time
18 disability commenced or the insured's average
19 monthly earnings for the period of two years
20 immediately preceding a disability for which
21 claim is made, whichever is [~~the~~] greater, the
22 insurer [~~will~~] shall be liable only for [~~such~~]



1 the proportionate amount of [~~such~~] benefits under
2 this policy as the amount of [~~such~~] the monthly
3 earnings or [~~such~~] average monthly earnings of
4 the insured bears to the total amount of monthly
5 benefits for the same loss under all [~~such~~]
6 coverage upon the insured at the time [~~such~~]
7 disability commences and for the return of [~~such~~]
8 the part of the premiums paid during [~~such~~] the
9 two preceding years as shall exceed the pro rata
10 amount of the premiums for the benefits actually
11 paid hereunder; but this shall not operate to
12 reduce the total monthly amount of benefits
13 payable under all [~~such~~] coverage upon the
14 insured below the sum of \$200 or the sum of the
15 monthly benefits specified in [~~such~~] the
16 coverages, whichever is the lesser, nor shall it
17 operate to reduce benefits other than those
18 payable for loss of time[-]"i

19 (B) The policy provision in subparagraph (A) may be
20 inserted only in a policy which the insured has
21 the right to continue in force, subject to its
22 terms by the timely payment of premiums until at



1 least age fifty or, in the case of a policy
2 issued after age forty-four, for at least five
3 years from its date of issue[-]; and

4 (C) The insurer may, at its option, include in the
5 provision set forth in subparagraph (A) a
6 definition of valid loss of time coverage
7 approved as to form by the commissioner, which
8 [~~definition~~] shall be limited in subject matter
9 to coverage provided by governmental agencies or
10 by organizations subject to regulation by
11 insurance law or by insurance authorities of this
12 [~~State~~] state or any state, district, or
13 territory of the United States or any province of
14 Canada, or to any other coverage the inclusion of
15 which may be approved by the commissioner or any
16 combination of [~~such~~] approved coverages. In the
17 absence of [~~such~~] a definition [~~such~~] the terms
18 shall not include any coverage provided for
19 [~~such~~] an insured pursuant to any compulsory
20 benefit statute [+]including any workers'
21 compensation or employers' liability statute[+],



1 or benefits provided by union welfare plans or by
2 employer or employee benefit organizations ~~[]~~;

3 (6) "Unpaid Premium: Upon the payment of a claim under
4 this policy, any premium then due and unpaid or
5 covered by any note or written order may be deducted
6 ~~[therefrom.]~~ from the claim";

7 (7) "Cancellation: The insurer may cancel this policy at
8 any time by written notice delivered to the insured,
9 or mailed to the insured's last address as shown by
10 the records of the insurer ~~[, stating]~~. The notice
11 shall state when, not less than five days thereafter,
12 ~~[such]~~ the cancellation shall be effective ~~[, and~~
13 ~~after]~~. After the policy has been continued beyond
14 its original term the insured may cancel this policy
15 at any time by written notice delivered or mailed to
16 the insurer, effective upon receipt or on ~~[such]~~ a
17 later date ~~[as may be]~~ specified in ~~[such]~~ the notice.
18 In the event of cancellation, the insurer ~~[will]~~ shall
19 return promptly the unearned portion of any premium
20 paid. If the insured cancels, the earned premium
21 shall be computed by the use of the short-rate table
22 last filed with the state official having supervision



1 of insurance in the state where the insured resided
2 when the policy was issued. If the insurer cancels,
3 the earned premium shall be computed pro rata.

4 Cancellation shall be without prejudice to any claim
5 originating prior to the effective date of
6 cancellation[-]";

7 (8) "Conformity with State Statutes: Any provision of
8 this policy which, on its effective date, is in
9 conflict with the statutes of the state in which the
10 insured resides on [such] the effective date is hereby
11 amended to conform to the minimum requirements of
12 [such] the applicable statutes[-]";

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

18 (10) "Intoxicants and Narcotics: The insurer shall not be
19 liable for any loss sustained or contracted in
20 consequence of the insured's being intoxicated or
21 under the influence of any narcotic unless
22 administered on the advice of a physician."



1 17. By amending section 431:10A-107 to read:

2 "§431:10A-107 Inapplicable or inconsistent provisions. If
3 any provision of section 431:10A-105 to section 431:10A-111 is
4 in whole or in part inapplicable to or inconsistent with the
5 coverage provided by a particular form of policy, the insurer [~~7~~
6 ~~with the approval of the commissioner,~~] shall omit from [such]
7 the policy any inapplicable provision or part of a provision,
8 and shall modify any inconsistent provision or part of the
9 provision [~~in such manner as~~] to make the provision [as]
10 contained in the policy consistent with the coverage provided by
11 the policy. An officer of the insurer shall certify conformity
12 with the requirements of state statutes in accordance with this
13 section."

14 18. By amending section 431:10C-210 to read:

15 "§431:10C-210 Publication of premium rates. The
16 commissioner shall publish annually, in a newspaper of general
17 circulation in the [~~State,~~] state, notice of availability of a
18 list of all motor vehicle insurers with representative annual
19 premiums for motor vehicle insurance. [~~In addition, the~~] The
20 commissioner shall have information on premiums for motor
21 vehicle insurance which shall be available to the public on
22 request."



1 19. By amending subsection (d) of section 431:10C-215 to
2 read:

3 "(d) (1) Each insurer licensed to transact motor vehicle
4 insurance or optional additional insurance business in
5 this [~~State~~] state shall provide the commissioner with
6 periodic reports on every aspect of the motor vehicle
7 insurance and the optional additional insurance
8 business the insurer transacts in [~~the State,~~] this
9 state, including, but not limited to[~~7~~] reports on the
10 investment, reserve, reinsurance, loss and profit
11 experience, ratemaking and schedules, claims received
12 and paid; and

13 (2) Each insurer subject to this section shall, not less
14 frequently than quarterly, maintain a report [~~to the~~
15 ~~commissioner~~] of the details of each claim received,
16 claim paid, application for and sale of a motor
17 vehicle insurance policy, each termination and renewal
18 refusal notice posted, and each cancellation and
19 refusal to renew effected on both motor vehicle
20 insurance and optional additional insurance policy
21 transactions. The insurer shall make available and



1 submit a report to the commissioner at the
2 commissioner's request."

3 20. By amending subsection (a) of section 431:10D-111 to
4 read:

5 "(a) A life insurer may, under [~~such~~] policy provisions or
6 agreements [~~as have been approved by the commissioner consistent~~
7 ~~with this section~~], contract for and accept premium deposits in
8 addition to the regular premiums specified in the policy, for
9 the purpose of paying future premiums, [~~or~~] to facilitate
10 conversion of the policy, or to increase the benefits [~~thereof~~]
11 of the policy, according to this section."

12 21. By amending subsection (c) of section 431:10D-603 to
13 read:

14 "(c) If the buyer's guide and disclosure document are not
15 provided at or before the time of application, a free-look
16 period of no less than fifteen days shall be provided for the
17 applicant to return the annuity contract without penalty, which
18 period shall run [~~concurrently~~] consecutively with any other
19 free-look period provided by law."

20 22. By amending subsection (b) of section 431:11-101 to
21 read:

22 "(b) The commissioner may exempt:



1 (1) Any insurer or class of insurers from any provision of
2 this article, when the commissioner deems the
3 exemption consistent with the purposes of this article
4 and in the public interest; or

5 (2) Upon request of the person required to supply
6 information or perform an act, that person from any
7 provision of this article, when the commissioner deems
8 the exception consistent with the purposes of this
9 article and in the public interest."

10 23. By amending subsection (a) of section 431:11-106 to
11 read:

12 "(a) (1) Transactions within a holding company system to
13 which an insurer subject to registration is a party
14 shall be subject to the following standards:

15 (A) The terms shall be fair and reasonable;

16 (B) Charges or fees for services performed shall be
17 reasonable;

18 (C) Expenses incurred and payment received shall be
19 allocated to the insurer in conformity with
20 customary insurance accounting practices
21 consistently applied;



1 (D) The books, accounts, and records of each party to
2 all transactions shall be maintained so as to
3 clearly and accurately disclose the nature and
4 details of the transactions including the
5 accounting information necessary to support the
6 reasonableness of the charges or fees to the
7 respective parties; and

8 (E) The insurer's surplus as regards policyholders
9 following any dividends or distributions to
10 shareholder affiliates shall be reasonable in
11 relation to the insurer's outstanding liabilities
12 and adequate to its financial needs[-];

13 (2) The following transactions involving a domestic
14 insurer and any person in its holding company system
15 [may] shall not be entered into unless the insurer has
16 notified the commissioner in writing of its intention
17 to enter into the transaction at least thirty days
18 prior thereto, or a shorter period as the commissioner
19 may permit, and the commissioner has not disapproved
20 it within that period.

21 (A) Sales, purchases, exchanges, loans[-] or
22 extensions of credit, guarantees, or investments;



1 provided that the transactions are equal to or
2 exceed:

- 3 (i) With respect to nonlife insurers, the lesser
4 of three per cent of the insurer's admitted
5 assets or twenty-five per cent of surplus as
6 regards policyholders each as of the thirty-
7 first day of December next preceding; or
8 (ii) With respect to life insurers, three per
9 cent of the insurer's admitted assets as of
10 the thirty-first day of December next
11 preceding;

- 12 (B) Loans or extensions of credit to any person who
13 is not an affiliate, where the insurer makes the
14 loans or extensions of credit with the agreement
15 or understanding that the proceeds of the
16 transactions, in whole or in substantial part,
17 are to be used to make loans or extensions of
18 credit to, to purchase assets of, or to make
19 investments in, any affiliate of the insurer
20 making the loans or extensions of credit;
21 provided that the transactions are equal to or
22 exceed:



1 (i) With respect to nonlife insurers, the lesser
2 of three per cent of the insurer's admitted
3 assets or twenty-five per cent of surplus as
4 regards policyholders each as of the thirty-
5 first day of December next preceding; or

6 (ii) With respect to life insurers, three per
7 cent of the insurer's admitted assets as of
8 the thirty-first day of December next
9 preceding;

10 (C) Reinsurance agreements or modifications thereto
11 in which the reinsurance premium or a change in
12 the insurer's liabilities equals or exceeds five
13 per cent of the insurer's surplus as regards
14 policyholders, as of the thirty-first day of
15 December next preceding, including those
16 agreements which may require as consideration the
17 transfer of assets from an insurer to a
18 nonaffiliate, if an agreement or understanding
19 exists between the insurer and nonaffiliate that
20 any portion of the assets will be transferred to
21 one or more affiliates of the insurer;



1 (D) All management agreements, service contracts, and
2 all cost-sharing arrangements; and

3 (E) Any material transactions, specified by rule,
4 which the commissioner determines may adversely
5 affect the interests of the insurer's
6 policyholders.

7 Nothing in this section shall be deemed to authorize
8 or permit any transactions which, in the case of an
9 insurer not a member of the same holding company
10 system, would be otherwise contrary to law[-];

11 (3) A domestic insurer may not enter into transactions[-]
12 which are part of a plan or series of like
13 transactions with persons within the holding company
14 system[-] if the purpose of those separate
15 transactions is to avoid the statutory threshold
16 amount and thus avoid the review that would otherwise
17 occur. If the commissioner determines that the
18 separate transactions were entered into over any
19 twelve-month period for that purpose, the commissioner
20 may exercise the commissioner's authority under
21 section 431:11-111[-];



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

6 (5) The commissioner shall be notified within thirty days
7 of any investment of the domestic insurer in any one
8 [~~corporation~~] person if the total investment in the
9 [~~corporation~~] person by the insurance holding company
10 system exceeds ten per cent of the corporation's
11 voting securities."

12 24. By amending subsection (f) of section 431:13-103 to
13 read:

14 "(f) An insurer or licensee shall issue a written response
15 with reasonable promptness, in no case more than fifteen working
16 days, to any written inquiry made by the commissioner regarding
17 a claim [~~or~~], consumer complaint[-], or sales or marketing
18 practice. The response shall be more than an acknowledgment
19 that the commissioner's communication has been received, and
20 shall adequately address the concerns stated in the
21 communication."



1 25. By amending subsection (b) of section 431:19-107 to
2 read:

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

5 (1) Annual statement and audit:

6 (A) On or before March 1, or such day subsequent
7 thereto as the commissioner upon request and for
8 cause may specify, an annual statement using the
9 National Association of Insurance Commissioners'
10 annual statement blank plus any additional
11 information required by the commissioner, which
12 shall be a true statement of its financial
13 condition, transactions, and affairs as of the
14 immediately preceding December 31. The reported
15 information shall be verified by oaths of at
16 least two of the captive's principal officers;

17 (B) On or before June 1, or such day subsequent
18 thereto as the commissioner upon request and for
19 cause may specify, an audit by a designated
20 independent certified public accountant or
21 accounting firm of the financial statements



1 reporting the financial condition and results of
2 the operation of the captive; and

3 (C) The annual statement and audit shall be prepared
4 in accordance with the National Association of
5 Insurance Commissioners' annual statement
6 instructions, accounting practices and procedures
7 manual, and rules adopted by the commissioner
8 following the [~~practice~~] practices and procedures
9 prescribed by the National Association of
10 Insurance [~~Commissioners' practices and~~
11 ~~procedures manuals,~~] Commissioners; and

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

19 26. By amending the definition of "member" in section
20 431:30-102 to read:

1 "Member" means the [~~person chosen by~~] commissioner of a
2 compacting state, as its representative to the commission, or
3 the [~~person's~~] commissioner's designee."

4 27. By amending subsection (d) of section 431:30-112 to
5 read:

6 "(d) A compacting state may opt out of a uniform standard,
7 either by legislation or by rule adopted by the insurance
8 commissioner. If a compacting state elects to opt out of a
9 uniform standard by rule, it shall:

- 10 (1) Give written notice to the commission no later than
11 ten business days after the later of the adoption of
12 the uniform standard or the state becoming a
13 compacting state; [~~and~~]
- 14 (2) Find that the uniform standard does not provide
15 reasonable protections to the citizens of the state,
16 given the conditions in the state. The commissioner
17 shall make specific findings of fact and conclusions
18 of law, based on a preponderance of the evidence,
19 detailing the conditions in the state that warrant a
20 departure from the uniform standard and determining
21 that the uniform standard would not reasonably protect
22 the citizens of the state. The commissioner shall



1 consider and balance the following factors and find
2 that the conditions in the state and needs of the
3 citizens of the state outweigh:

4 (A) The intent of the legislature to participate in,
5 and reap the benefits of, an interstate agreement
6 to establish national uniform consumer
7 protections for the products subject to this
8 ~~[Act,]~~ article; and

9 (B) The presumption that a uniform standard adopted
10 by the commission provides reasonable protections
11 to consumers of the relevant product.

12 Notwithstanding the foregoing, a compacting state may,
13 at the time of its enactment of this compact,
14 prospectively opt out of all uniform standards
15 involving long-term care insurance products by
16 expressly providing for such opt out in the enacted
17 compact, and such an opt out shall not be treated as a
18 material variance in the offer or acceptance of any
19 state to participate in this compact. ~~[Such an]~~ An
20 opt out pursuant to this section shall be effective at
21 the time of enactment of this compact by the
22 compacting state and shall apply to all existing



1 uniform standards involving long-term care insurance
2 products and those subsequently adopted[-]; and

3 (3) In accordance with the provisions of paragraph (2),
4 this State does prospectively opt out of all uniform
5 standards involving long-term care insurance products
6 promulgated by the commission, as this State has
7 previously enacted article 10H providing additional
8 standards for federal conformity and universal
9 availability for reciprocal beneficiary and multi-
10 generation populace which facilitates flexibility and
11 innovation in the development of long-term care
12 insurance coverage."

13 SECTION 2. Section 432:1-404, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Each society shall file with the commissioner
16 annually, on or before March 1 in each year, a statement under
17 oath, and in such form and detail as the commissioner shall
18 prescribe; provided that any association or society organized
19 and operating as a nonprofit medical indemnity or hospital
20 service association shall file a report with the commissioner
21 covering the preceding calendar year and verified by at least
22 two principal officers. Each mutual benefit society shall file



1 quarterly with the commissioner, on or before the forty-fifth
2 day after each quarter, a copy of its quarterly report verified
3 by at least two principal officers. The report shall comply
4 with sections 431:3-301 and 431:3-302. The commissioner may
5 prescribe the forms on which the report is to be filed.

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

- 10 (1) An audit, by an independent certified public
11 accountant or an accounting firm designated by the
12 association or society, of the financial statements,
13 reporting the financial condition and results of
14 operations of the association or society on or before
15 June 1, or a later date as the commissioner upon
16 request or for cause may specify. The association or
17 society, on an annual basis and prior to the
18 commencement of the audit, shall notify the
19 commissioner in writing of the name and address of the
20 person or firm retained to conduct the annual audit.
21 The commissioner may disapprove the association's or
22 society's designation within fifteen days of receipt



1 of the association's or society's notice, and the
2 association or society shall be required to designate
3 another independent certified public accountant or
4 accounting firm. The audit required ~~[in]~~ by this
5 paragraph shall be prepared in accordance with the
6 National Association of Insurance Commissioners'
7 ~~[annual statement instructions,]~~ accounting practices
8 and procedures manual and rules adopted by the
9 commissioner following the practices and procedures
10 prescribed by the National Association of Insurance
11 ~~[Commissioners' accounting practices and procedures~~
12 ~~manuals,]~~ Commissioners; and

- 13 (2) A description of the available grievance procedures,
14 the total number of grievances handled through those
15 procedures, a compilation of the causes underlying
16 those grievances, and a summary of the final
17 disposition of those grievances on or before March 1."

18 SECTION 3. Section 432D-5, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Every health maintenance organization shall file
21 annually, on or before March 1, a report verified by at least
22 two principal officers covering the preceding calendar year.



1 Each health maintenance organization shall file quarterly with
2 the commissioner, on or before the forty-fifth day after each
3 quarter, a copy of its quarterly report verified by at least two
4 principal officers. These reports shall comply with sections
5 431:3-301 and 431:3-302. The commissioner may prescribe the
6 forms on which the reports are to be filed. In addition, the
7 health maintenance organization annually shall file with the
8 commissioner the following by the dates specified:

9 (1) An audit, by an independent certified public
10 accountant or an accounting firm designated by the
11 health maintenance organization of the financial
12 statements, reporting the financial condition and
13 results of operations of the health maintenance
14 organization on or before June 1, or a later date as
15 the commissioner upon request or for cause may
16 specify. The health maintenance organization, on an
17 annual basis and prior to the commencement of the
18 audit, shall notify the commissioner in writing of the
19 name and address of the person or firm retained to
20 conduct the annual audit. The commissioner may
21 disapprove the health maintenance organization's
22 designation within fifteen days of receipt of the



1 health maintenance organization's notice, and the
2 health maintenance organization shall be required to
3 designate another independent certified public
4 accountant or accounting firm. The audit required
5 ~~[in]~~ by this paragraph shall be prepared in accordance
6 with the National Association of Insurance
7 Commissioners' ~~[annual statement instructions,]~~
8 accounting practices and procedures manual and rules
9 adopted by the commissioner following the practices
10 and procedures prescribed by the National Association
11 of Insurance ~~[Commissioners' accounting practices and~~
12 ~~procedures manuals,]~~ Commissioners;

13 (2) A list of the providers who have executed a contract
14 that complies with section 432D-8(d) on or before
15 March 1; and

16 (3) A description of the available grievance procedures,
17 the total number of grievances handled through those
18 procedures, a compilation of the causes underlying
19 those grievances, and a summary of the final
20 disposition of those grievances on or before March 1."

21 SECTION 4. Section 431:30-105, Hawaii Revised Statutes, is
22 repealed.



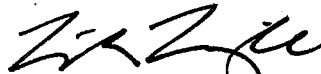
1 ~~["§431:30-105] Appointment to commission. The governor,~~
2 ~~with the advice and consent of the senate, shall appoint the~~
3 ~~member of the commission that represents the State."]~~

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2010.

7

APPROVED this 18 day of MAY, 2010



GOVERNOR OF THE STATE OF HAWAII