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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. Section 431:16-105, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By adding three new definitions to be appropriately  
4 inserted and to read:

5 "Insured" means any named insured, any additional insured,  
6 any vendor, any lessor, or any other party identified as an  
7 insured under the policy.

8 "Receiver" includes liquidator, rehabilitator, conservator,  
9 or ancillary receiver, as applicable.

10 "Self-insurer" means a person that covers its liability  
11 through a qualified individual or group self-insurance program  
12 or any other formal program created for the specific purpose of  
13 covering liabilities typically covered by insurance."

14 2. By amending the definitions of "covered claim" and "net  
15 direct written premiums" to read:

16 "Covered claim":

17 (1) Means an unpaid claim, including one for unearned  
18 premiums, submitted by a claimant, that arises out of



1 and is within the coverage and is subject to the  
2 applicable limits of an insurance policy to which this  
3 part applies issued by an insurer, if the insurer  
4 becomes an insolvent insurer after July 1, 2000, and:

5 (A) The claimant or insured is a resident of this  
6 State at the time of the insured event; provided  
7 that for entities other than an individual, the  
8 residence of a claimant, insured, or policyholder  
9 is the state in which its principal place of  
10 business is located at the time of the insured  
11 event; or

12 (B) The claim is a first party claim for damage to  
13 property with a permanent location in this State;  
14 and

15 (2) Shall not include:

16 (A) Any amount awarded as punitive or exemplary  
17 damages;

18 (B) Any amount sought as a return of premium under  
19 any retrospective rating plan;

20 (C) Any amount due any reinsurer, insurer, insurance  
21 pool, or underwriting association, as subrogation



1 recoveries, reinsurance recoveries, contribution,  
2 indemnification, or otherwise;

3 (D) Any first party claims by an insured whose net  
4 worth exceeds \$25,000,000 on December 31 of the  
5 year prior to the year in which the insurer  
6 becomes an insolvent insurer; provided that an  
7 insured's net worth on that date shall be deemed  
8 to include the aggregate net worth of the insured  
9 and all of its subsidiaries as calculated on a  
10 consolidated basis; [~~or~~]

11 (E) Any first party claims by an insured who is an  
12 affiliate of the insolvent insurer[~~-~~];

13 (F) Any fee or other amount relating to goods or  
14 services sought by or on behalf of any attorney  
15 or other provider of goods or services retained  
16 by the insolvent insurer or an insured prior to  
17 the date it was determined to be insolvent;

18 (G) Any fee or other amount sought by or on behalf of  
19 any attorney or other provider of goods or  
20 services retained by any insured or claimant in  
21 connection with the assertion or prosecution of



1                   any claim, covered or otherwise, against the  
 2                   association;  
 3                   (H) Any claims for interest; or  
 4                   (I) Any claim filed with the association or a  
 5                   liquidator for protection afforded under the  
 6                   insured's policy for incurred but not reported  
 7                   losses.

8                   "Net direct written premiums" means direct gross premiums  
 9 written in this State on insurance policies to which this part  
 10 applies, including policy and membership fees, less [~~return~~] the  
 11 following amounts:

- 12                   (1) Return premiums [~~thereon~~];
- 13                   (2) Premiums on policies not taken; and [~~dividends~~]
- 14                   (3) Dividends paid or credited to policyholders on such
- 15                   direct business.

16 Net direct written premiums [~~de~~] shall not include premiums on  
 17 contracts between insurers or reinsurers."

18                   SECTION 2. Section 431:16-108, Hawaii Revised Statutes, is  
 19 amended to read as follows:

20                   "**§431:16-108 Powers and duties of the association.** (a)  
 21 The association shall:

1 (1) Be obligated to the extent of the covered claims  
2 existing prior to the order of liquidation and arising  
3 within thirty days after the order of liquidation, or  
4 before the policy expiration date if less than thirty  
5 days after the order of liquidation, or before the  
6 insured replaces the policy or causes its  
7 cancellation, if the insured does so within thirty  
8 days of the order of liquidation. The obligation  
9 shall be satisfied by paying to the claimant an amount  
10 as follows:

- 11 (A) The full amount of a covered claim for benefits  
12 under a workers' compensation insurance coverage;
- 13 (B) An amount not exceeding \$10,000 per policy for a  
14 covered claim for the return of unearned premium;  
15 or
- 16 (C) An amount not exceeding \$300,000 per claim for  
17 all other covered claims.

18 In no event shall the association be obligated to a  
19 policyholder or claimant in an amount in excess of the  
20 stated policy limit of the insolvent insurer under the  
21 policy from which the claim arises. Notwithstanding  
22 any other provisions of this part, a covered claim



1 shall not include a claim filed with the association  
2 after the final date set by the court for the filing  
3 of claims against the liquidator or receiver of an  
4 insolvent insurer. Any obligation of the association  
5 to defend an insured shall cease upon the  
6 association's payment or tender of an amount equal to  
7 the lesser of the association's covered claim  
8 obligation limit or the applicable policy limit;

9 (2) Be deemed the insurer, but only to the extent of its  
10 obligation on covered claims and to that extent shall  
11 have all rights, duties, and obligations of the  
12 insolvent insurer as if the insurer had not become  
13 insolvent, including but not limited to the right to  
14 pursue and retain salvage and subrogation recoverable  
15 on covered claim obligations to the extent paid by the  
16 association;

17 (3) Assess insurers amounts necessary to pay the  
18 obligations of the association under paragraph (1)  
19 subsequent to an insolvency, the expenses of handling  
20 covered claims subsequent to an insolvency, and the  
21 cost of examinations under section 431:16-113, and  
22 other expenses authorized by this part. The



1 assessments of each member insurer shall be in the  
2 proportion that the net direct written premiums of the  
3 member insurer for the preceding calendar year bears  
4 to the net direct written premiums of all member  
5 insurers for the preceding calendar year. Each member  
6 insurer shall be notified of the assessment not later  
7 than thirty days before it is due. No member insurer  
8 may be assessed in any year an amount greater than two  
9 per cent of that member insurer's net direct written  
10 premiums for the preceding calendar year. If the  
11 maximum assessment, together with the other assets of  
12 the association, does not provide in any one year an  
13 amount sufficient to make all necessary payments, the  
14 funds available shall be prorated and the unpaid  
15 portion shall be paid as soon thereafter as funds  
16 become available. The association shall pay claims in  
17 any order that it may deem reasonable, including the  
18 payment of claims as they are received from the  
19 claimants or in groups or categories of claims. The  
20 association may exempt or defer, in whole or in part,  
21 the assessment of any member insurer, if the  
22 assessment would cause the member insurer's financial



1 statement to reflect amounts of capital or surplus  
2 less than the minimum amounts required for a  
3 certificate of authority by any jurisdiction in which  
4 the member insurer is authorized to transact  
5 insurance. However, during the period of deferment,  
6 no dividends shall be paid to shareholders or  
7 policyholders. Deferred assessments shall be paid  
8 when the payment will not reduce capital or surplus  
9 below required minimums. Payments shall be refunded  
10 to those companies receiving larger assessments by  
11 virtue of the deferment, or at the election of the  
12 companies, credited against future assessments. Each  
13 member insurer may set off against any assessment  
14 payments authorized by the administrator of the  
15 association to be made on covered claims and expenses  
16 incurred in the payment of the claims by the member  
17 insurer;

18 (4) Investigate claims brought against the association and  
19 adjust, compromise, settle, and pay covered claims to  
20 the extent of the association's obligation and deny  
21 all other claims and may review settlements, releases,  
22 and judgments to which the insolvent insurer or its





1 insureds were parties to determine the extent to which  
2 the settlements, releases, and judgments may be  
3 properly contested. The association may appoint or  
4 substitute and direct legal counsel retained under  
5 liability insurance policies for the defense of  
6 covered claims;

7 (5) Notify the persons as the commissioner directs under  
8 section 431:16-110(b)(1);

9 (6) Handle claims through its employees or through one or  
10 more insurers or other persons designated as servicing  
11 facilities. Designation of a servicing facility is  
12 subject to the approval of the commissioner, but the  
13 designation may be declined by a member insurer;

14 (7) Reimburse each servicing facility for obligations of  
15 the association paid by the facility and for expenses  
16 incurred by the facility while handling claims on  
17 behalf of the association and pay the other expenses  
18 of the association authorized by this part; and

19 (8) Have the authority, notwithstanding sections  
20 431:10C-110 and 431:10C-111, to cancel all policies  
21 issued by an insolvent insurer. Covered claims under  
22 these policies shall be paid by the association in an



1 amount not to exceed the stated policy limit of the  
2 insolvent insurer under the policy from which the  
3 claim arises, or as provided under paragraph (1)(A) to  
4 (C), whichever is less.

5 (b) The association may:

6 (1) Employ or retain the persons as are necessary to  
7 handle claims and perform other duties of the  
8 association;

9 (2) Borrow funds necessary to effect the purposes of this  
10 part in accord with the plan of operation;

11 (3) Sue or be sued;

12 (4) Negotiate and become a party to the contracts as are  
13 necessary to carry out the purpose of this part; and

14 (5) Perform all other acts as are necessary or proper to  
15 effectuate the purpose of this part.

16 (c) Except for actions by the receiver, all actions  
17 relating to or arising out of this part against the association  
18 shall be brought in the courts in this State. The courts in  
19 this State shall have exclusive jurisdiction over all actions  
20 relating to or arising out of this part against the association.

21 The exclusive venue in any action by or against the  
22 association shall be the circuit court of the first judicial



1 circuit of this State. The association, at its option, may  
2 waive this venue as to specific actions."

3 SECTION 3. Section 431:16-112, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Any person having a claim against an insurer whether  
6 or not the insurer is a member insurer under any provision in an  
7 insurance policy other than a policy of an insolvent insurer  
8 [~~which~~] that is also a covered claim, shall be required to  
9 exhaust first the person's rights under the policy. Any amount  
10 payable on a covered claim under this part shall be reduced by  
11 the amount of any recovery under the insurance policy. If there  
12 are any other policies issued by an insolvent insurer applicable  
13 to the covered claim, then all such policies [~~must first~~] shall  
14 be exhausted before any claim can be deemed a covered claim  
15 subject to being covered by the association.

16 (1) A claim under a policy providing liability coverage to  
17 a person who may be jointly and severally liable as a  
18 joint tortfeasor with a person covered under the  
19 policy of the insolvent insurer that gives rise to the  
20 covered claim shall be considered to be a claim  
21 arising from the same facts, injury, or loss that gave  
22 rise to the covered claim against the association.



1       (2) A claim under an insurance policy other than a life  
2       insurance policy shall include, but is not limited to:

3       (A) A claim against a health maintenance  
4       organization, a hospital plan corporation, a  
5       professional health service corporation, or  
6       disability insurance policy; and

7       (B) Any amount payable by or on behalf of a self-  
8       insurer.

9       (3) The person insured by the insolvent insurer's policy  
10       may not be pursued by a third-party claimant for any  
11       amount paid to the third party by which the  
12       association's obligation is reduced by the application  
13       of this section."

14       SECTION 4. Section 431:16-203, Hawaii Revised Statutes, is  
15 amended to read as follows:

16       **"§431:16-203 Coverage and limitations.** (a) This part  
17 shall provide coverage[7] for the policies and contracts  
18 specified in subsection (b) to:

19       (1) Persons who, regardless of where they reside, except  
20       for nonresident certificate holders under group  
21       policies or contracts, are the beneficiaries,



1 assignees, or payees of the persons covered under  
2 paragraph (2); ~~and]~~

3 (2) Persons who are owners of or certificate holders under  
4 such policies or contracts, except structured  
5 settlement annuities, and who:

6 (A) Are residents ~~[,]~~ of this State; or

7 (B) Are not residents ~~[, but only under all of the~~  
8 ~~following conditions:];~~ provided that:

9 (i) The ~~[insurers which]~~ insurer that issued  
10 ~~[such] the~~ policies or contracts ~~[are]~~ is  
11 domiciled in this State;

12 (ii) ~~[Such insurers never held a license or~~  
13 ~~certificate of authority in the states in~~  
14 ~~which such persons reside;~~

15 ~~(iii) Such states have associations similar to the~~  
16 ~~association created by this part; and~~

17 ~~(iv) Such persons are not eligible for coverage~~  
18 ~~by such associations.]~~ The state in which

19 the persons reside has associations similar  
20 to the association created by this part; and

21 (iii) The persons are not eligible for coverage by  
22 an association in any other state because



1                   the insurer was not licensed in the state at  
2                   the time specified in the state's guaranty  
3                   association law;

4       (3) For structured settlement annuities specified in  
5           subsection (b), paragraphs (1) and (2) of this  
6           subsection shall not apply, and this part, except as  
7           provided in paragraphs (4) and (5) of this subsection,  
8           shall provide coverage to a person who is a payee  
9           under a structured settlement annuity, or beneficiary  
10          of a payee if the payee is deceased, if the payee:

11       (A) Is a resident of this State, regardless of where  
12           the contract owner resides; or

13       (B) Is not a resident; provided that:

14           (i) The contract owner of the structured  
15           settlement annuity is a resident and neither  
16           the payee, beneficiary, nor contract owner  
17           is eligible for coverage by the association  
18           in the state in which the payee or contract  
19           owner resides; or

20           (ii) The contract owner of the structured  
21           settlement annuity is not a resident, but  
22           the insurer that issued the structured



1                   settlement annuity is domiciled in this  
 2                   State and the state in which the contract  
 3                   owner resides has an association similar to  
 4                   the association created by this part, and  
 5                   neither the payee, beneficiary, nor the  
 6                   contract owner is eligible for coverage by  
 7                   the association of the state in which the  
 8                   payee or contract owner resides;

9           (4) This part shall not provide coverage to a person who  
 10           is a payee or beneficiary of a contract owner resident  
 11           of this State, if the payee or beneficiary is afforded  
 12           any coverage by the association of another state; and

13           (5) This part is intended to provide coverage to a person  
 14           who is a resident of this State and, in certain  
 15           circumstances, to a nonresident. To avoid duplicate  
 16           coverage, if a person who would otherwise receive  
 17           coverage under this part is provided coverage under  
 18           the laws of any other state, the person shall not be  
 19           provided coverage under this part. In determining the  
 20           application of the provisions of this paragraph in  
 21           situations where a person could be covered by the  
 22           association of more than one state, whether as an



1 owner, payee, beneficiary, or assignee, this part  
2 shall be construed in conjunction with other state  
3 laws to result in coverage by only one association.

4 (b) (1) This part shall provide coverage to the persons  
5 specified in subsection (a) for direct, nongroup life,  
6 accident and health or sickness, or annuity[~~7~~  
7 ~~supplemental~~] policies or contracts, [~~and~~] for  
8 certificates under direct group life, accident and  
9 health or sickness, or annuity policies [~~and~~] or  
10 contracts, and for supplemental contracts to any of  
11 these, in each case issued by member insurers except  
12 as limited by this part[~~7~~]. Annuity contracts and  
13 certificates under group annuity contracts include  
14 allocated funding agreements, structured settlement  
15 annuities, and any immediate or deferred annuity  
16 contracts.

17 (2) This part shall not provide coverage for:

18 (A) Any portion of a policy or contract not  
19 guaranteed by the insurer, or under which the  
20 risk is borne by the policy or contract [~~holder~~;  
21 owner;





- 1 (B) Any policy or contract of reinsurance, unless
- 2 assumption certificates have been issued[+]
- 3 pursuant to the reinsurance policy or contract;
- 4 (C) Any portion of a policy or contract to the extent
- 5 that the rate of interest on which it is based:
- 6 (i) Averaged over the period of four years prior
- 7 to the date on which the association becomes
- 8 obligated with respect to such policy or
- 9 contract, exceeds a rate of interest
- 10 determined by subtracting two percentage
- 11 points from Moody's Corporate Bond Yield
- 12 Average averaged for that same four-year
- 13 period or for such lesser period if the
- 14 policy or contract was issued less than four
- 15 years before the association became
- 16 obligated; and
- 17 (ii) On or after the date on which the
- 18 association becomes obligated with respect
- 19 to such policy or contract, exceeds the rate
- 20 of interest determined by subtracting three
- 21 percentage points from Moody's Corporate



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Bond Yield Average as most recently  
available;  
(D) Any portion of a policy or contract issued to a  
plan or program of an employer, association, or  
~~[similar entity]~~ other person to provide life,  
accident and health or sickness, or annuity  
benefits to its employees ~~[or]~~, members, or other  
persons to the extent that ~~[such]~~ the plan or  
program is self-funded or uninsured, including  
but not limited to benefits payable by an  
employer, association, or ~~[similar entity]~~ other  
person under:  
(i) A Multiple Employer Welfare Arrangement as  
defined in section 514 of the Employee  
Retirement Income Security Act of 1974, as  
amended;  
(ii) A minimum premium group insurance plan;  
(iii) A stop-loss group insurance plan; or  
(iv) An administrative services only contract;  
(E) Any portion of a policy or contract to the extent  
that it provides dividends ~~[or]~~, experience  
rating credits, or voting rights, or provides



1 that any fees or allowances be paid to any  
2 person, including the policy or contract holder,  
3 in connection with the service to or  
4 administration of such policy or contract;

5 (F) Any policy or contract issued in this State by a  
6 member insurer at a time when it was not licensed  
7 or did not have a certificate of authority to  
8 issue such policy or contract in this State;

9 [~~and~~]

10 (G) [~~Any annuity contract or group annuity~~  
11 ~~certificate which is not issued to or owned by an~~  
12 ~~individual, except to the extent of any annuity~~  
13 ~~benefits guaranteed to an individual by an~~  
14 ~~insurer under such contract or certificate.] Any  
15 portion of a policy or contract to the extent  
16 that the assessments required by this part with  
17 respect to the policy or contract are preempted  
18 or otherwise not permitted by federal or state  
19 law;~~

20 (H) Any obligation that does not arise under the  
21 express written terms of the policy or contract



- 1           issued by the insurer to the contract owner or
- 2           policy owner, including without limitation:
- 3           (i) Claims based on marketing materials;
- 4           (ii) Claims based on side letters, riders, or
- 5           other documents that were issued by the
- 6           insurer without meeting applicable policy
- 7           form filing or approval requirements;
- 8           (iii) Misrepresentations of or regarding policy
- 9           benefits;
- 10          (iv) Extra-contractual claims; or
- 11          (v) A claim for penalties or consequential or
- 12          incidental damages;
- 13          (I) Any contractual agreement that establishes the
- 14          member insurer's obligations to provide a book
- 15          value accounting guaranty for defined
- 16          contribution benefit plan participants by
- 17          reference to a portfolio of assets that is owned
- 18          by the benefit plan or its trustee, which in each
- 19          case is not an affiliate of the member insurer;
- 20          (J) Any unallocated annuity contract;
- 21          (K) Any portion of a policy or contract to the extent
- 22          it provides for interest or other changes in



1           value to be determined by the use of an index or  
2           other external reference stated in the policy or  
3           contract, but that have not been credited to the  
4           policy or contract, or as to which the policy or  
5           contract owner's rights are subject to  
6           forfeiture, as of the date the member insurer  
7           becomes an impaired or insolvent insurer under  
8           this part. If a policy's or contract's interest  
9           or changes in value are credited less frequently  
10          than annually, then for purposes of determining  
11          the values that have been credited and are not  
12          subject to forfeiture under section  
13          431:16 403(b)(2)(L), the interest or change in  
14          value determined by using the procedures defined  
15          in the policy or contract shall be credited as if  
16          the contractual date of crediting interest or  
17          changing values was the date of impairment or  
18          insolvency and shall not be subject to  
19          forfeiture; or  
20          (L) Any policy or contract providing any hospital,  
21          medical, prescription drug, or other health care  
22          benefits pursuant to Part C or Part D of



1                   subchapter XVIII, chapter 7, Title 42 of the  
2                   United States Code, commonly known as medicare  
3                   part C and D, or any regulations adopted pursuant  
4                   thereto.

5           (c) The benefits for which the association may become  
6 liable shall in no event exceed the lesser of:

7           (1) The contractual obligations for which the insurer is  
8           liable or would have been liable if it were not an  
9           impaired or insolvent insurer, or

10          (2) With respect to any one life, regardless of the number  
11 of policies or contracts:

12           (A) \$300,000 in life insurance death benefits, but  
13           not more than \$100,000 in net cash surrender and  
14           net cash withdrawal values for life insurance;

15           ~~[(B) \$100,000 in accident and health or sickness~~  
16           ~~insurance benefits, including any net cash~~  
17           ~~surrender and net cash withdrawal values;~~

18           ~~-(C) \$100,000 in the present value of annuity~~  
19           ~~benefits, including net cash surrender and net~~  
20           ~~cash withdrawal values;~~

21           ~~provided that in no event shall the association be~~  
22           ~~liable to expend more than \$300,000 in the aggregate~~



1 ~~with respect to any one life under subparagraphs (A),~~  
2 ~~(B), and (C).]~~

3 (B) In accident and health or sickness insurance  
4 benefits:

5 (i) \$100,000 for coverages not defined as  
6 disability insurance or basic hospital,  
7 medical, and surgical insurance, or major  
8 medical insurance or long-term care  
9 insurance, including any net cash surrender  
10 and net cash withdrawal values;

11 (ii) \$300,000 for disability insurance and  
12 \$300,000 for long-term care insurance; or

13 (iii) \$500,000 for basic hospital, medical, and  
14 surgical insurance or major medical  
15 insurance;

16 (C) \$250,000 in the present value of annuity  
17 benefits, including net cash surrender and net  
18 cash withdrawal values; or

19 (D) With respect to each payee of a structured  
20 settlement annuity, or beneficiary or  
21 beneficiaries of the payee if deceased, \$250,000  
22 in present value annuity benefits, in the



1 aggregate, including net cash surrender and net  
2 cash withdrawal values, if any.

3 (d) In no event shall the association be obligated to  
4 cover more than:

5 (1) An aggregate of \$300,000 in benefits with respect to  
6 any one life under subsection (c) except with respect  
7 to benefits for basic hospital, medical, and surgical  
8 insurance and major medical insurance under subsection  
9 (c)(2)(B), in which case the aggregate liability of  
10 the association shall not exceed \$500,000 with respect  
11 to any one individual; or

12 (2) \$5,000,000 in benefits with respect to one owner or  
13 multiple non-group policies of life insurance,  
14 regardless of:

15 (A) The number of policies and contracts held by the  
16 owner;

17 (B) Whether the policy owner is an individual, firm,  
18 corporation, or other person; and

19 (C) Whether the persons insured are officers,  
20 managers, employees, or other persons.

21 (e) The limitations set forth in this section are  
22 limitations on the benefits for which the association is





1 obligated before taking into account its subrogation and  
2 assignment rights or the extent to which those benefits could be  
3 provided out of the assets of the impaired or insolvent insurer  
4 attributable to covered policies. The costs of the  
5 association's obligations under this part may be met by the use  
6 of assets attributable to covered policies or reimbursed to the  
7 association pursuant to its subrogation and assignment rights.

8 (f) In performing its obligations to provide coverage  
9 under section 431:16-208, the association shall not be required  
10 to guarantee, assume, reinsure, or perform, or cause to be  
11 guaranteed, assumed, reinsured, or performed, the contractual  
12 obligations of the insolvent or impaired insurer under a covered  
13 policy or contract that do not materially affect the economic  
14 values or economic benefits of the covered policy or contract."

15 SECTION 5. Section 431:16-205, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By adding seven new definitions to be appropriately  
18 inserted and to read:

19 "Authorized assessment" or "authorized" when used in the  
20 context of assessments means a resolution by the board of  
21 directors that has been passed whereby an assessment will be



1 called immediately or in the future from member insurers for a  
2 specified amount.

3 "Called assessment" or "called" when used in the context of  
4 assessments means a notice that has been issued by the  
5 association to member insurers requiring that an authorized  
6 assessment be paid within the time frame set forth within the  
7 notice.

8 "Extra-contractual claims" shall include, but not be  
9 limited to, claims relating to bad faith in the payment of  
10 claims, punitive or exemplary damages, or attorneys' fees and  
11 costs.

12 "Owner", "policy owner", or "contract owner" means the  
13 person who is identified as the legal owner under the terms of  
14 the policy or contract or who is otherwise vested with legal  
15 title to the policy or contract through a valid assignment  
16 completed in accordance with the terms of the policy or contract  
17 and properly recorded as the owner on the books of the insurer.  
18 The terms "owner", "contract owner", and "policy owner" do not  
19 include persons with a mere beneficial interest in a policy or  
20 contract.



1       "Receivership court" means the court in the insolvent or  
2 impaired insurer's state having jurisdiction over the  
3 conservation, rehabilitation, or liquidation of the insurer.

4       "State" means a state, the District of Columbia, Puerto  
5 Rico, or a United States possession, territory, or protectorate.

6       "Structured settlement annuity" means an annuity purchased  
7 to fund periodic payments for a plaintiff or other claimant in  
8 payment for or with respect to personal injury suffered by the  
9 plaintiff or other claimant."

10       2. By amending the definitions of "covered policy",  
11 "impaired insurer", "member insurer", "person", "premiums",  
12 "resident", and "supplemental contract" to read:

13       "Covered policy" means any policy or contract [within the  
14 scope of this part] or portion of a policy or contract for which  
15 coverage is provided under section 431:16-203.

16       "Impaired insurer" means a member insurer that after  
17 July 1, 1988, is not an insolvent insurer, and[+

18       ~~(1) Is deemed by the commissioner to be potentially unable~~  
19       ~~to fulfill its contractual obligations; or~~

20       ~~(2) Is]~~ is placed under an order of rehabilitation or  
21       conservation by a court of competent jurisdiction.



1 "Member insurer" means any insurer licensed or who holds a  
2 certificate of authority to transact in this State any kind of  
3 insurance for which coverage is provided under section  
4 431:16-203, and includes any insurer whose license or  
5 certificate of authority in this State may have been suspended,  
6 revoked, not renewed, or voluntarily withdrawn, but does not  
7 include:

8 (1) A nonprofit hospital or medical service organization;

9 (2) A health maintenance organization;

10 (3) A fraternal benefit society;

11 (4) A mandatory state pooling plan;

12 (5) A mutual assessment company or any entity that  
13 operates on an assessment basis;

14 (6) An insurance exchange; [~~or~~]

15 (7) An organization that has a certificate or license  
16 limited to the issuance of charitable gift annuities;

17 or

18 [~~(7)~~] (8) Any entity similar to any of the above.

19 "Person" means any individual, corporation, limited  
20 liability company, partnership, association, governmental body  
21 or entity, or voluntary organization.



1 "Premiums" means amounts and considerations received on  
2 covered policies or contracts less premiums, considerations and  
3 deposits returned thereon, and less dividends and experience  
4 credits thereon. Premiums does not include any amounts or  
5 consideration received for any policies or contracts or for the  
6 portions of any policies or contracts for which coverage is not  
7 provided under section 431:16-203(b) except that assessable  
8 premium shall not be reduced on accounts under section  
9 431:16-203(b)(2)(C) relating to interest limitations and section  
10 431:16-203(c)(2) relating to limitations with respect to any one  
11 life and any one contract holder. Premiums shall also not  
12 include:

- 13 (1) Premiums on an unallocated annuity contract; or
- 14 (2) Premiums in excess of \$5,000,000, regardless of:
  - 15 (A) The number of policies or contracts held by the  
16 owner, with respect to multiple non-group  
17 policies of life insurance owned by one owner;
  - 18 (B) Whether the policy owner is an individual, firm,  
19 corporation, or other person; and
  - 20 (C) Whether the persons insured are officers,  
21 managers, employees, or other persons.



1 "Resident" means [~~any~~] a person to whom a contractual  
 2 obligation is owed and who resides in this State [~~at the time a~~  
 3 ~~member insurer is determined to be an impaired or insolvent~~  
 4 ~~insurer and to whom a contractual obligation is owed.~~] on the  
 5 date of entry of a court order that determines a member insurer  
 6 to be an impaired insurer or an insolvent insurer. A person may  
 7 be a resident of only one state, which in the case of a person  
 8 other than a natural person shall be its principal place of  
 9 business. Citizens of the United States who are:

- 10 (1) Residents of foreign countries; or
- 11 (2) Residents of United States possessions, territories,  
 12 or protectorates that do not have an association  
 13 similar to the association created by this part,  
 14 shall be deemed residents of the state of domicile of the  
 15 insurer that issued the policies or contracts.

16 "Supplemental contract" means [~~any~~] a written agreement  
 17 entered into for the distribution of [~~policy or contract~~]  
 18 proceeds[~~-~~] under a life, health, or annuity policy or life,  
 19 health, or annuity contract."

20 SECTION 6. Section 431:16-206, Hawaii Revised Statutes, is  
 21 amended by amending subsection (b) to read as follows:



1           "(b) The association shall come under the immediate  
2 supervision of the commissioner and shall be subject to the  
3 applicable provisions of the insurance laws of this State.  
4 Meetings or records of the association may be opened to the  
5 public upon majority vote of the board of directors of the  
6 association."

7           SECTION 7. Section 431:16-208, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§431:16-208 Powers and duties of the association.** (a)

10 If a member insurer is an impaired [~~domestic~~] insurer, the  
11 association may, in its discretion, and subject to any  
12 conditions imposed by the association that do not impair the  
13 contractual obligations of the impaired insurer, that are  
14 approved by the commissioner, and that are, except in cases of  
15 court ordered conservation or rehabilitation, also approved by  
16 the impaired insurer:

17           (1) Guarantee, assume, or reinsure, or cause to be  
18 guaranteed, assumed, or reinsured, any or all of the  
19 policies or contracts of the impaired insurer;

20           (2) Provide such moneys, pledges, notes, guarantees, or  
21 other means as are proper to effectuate subsection

22           (a) (1) and assure payment of the contractual



1 obligations of the impaired insurer pending action  
2 under subsection (a)(1); or  
3 (3) Loan money to the impaired insurer.  
4 [~~(b)(1) If a member insurer is an impaired insurer, whether~~  
5 ~~domestic, foreign, or alien, and the insurer is not~~  
6 ~~paying claims timely, then subject to the~~  
7 ~~preconditions specified in paragraph (2), the~~  
8 ~~association shall, in its discretion, either:~~  
9 ~~(A) Take any of the actions specified in subsection~~  
10 ~~(a), subject to the conditions therein, or~~  
11 ~~(B) Provide substitute benefits in lieu of the~~  
12 ~~contractual obligations of the impaired insurer~~  
13 ~~solely for: accident and health or sickness~~  
14 ~~claims, periodic annuity benefit payments, death~~  
15 ~~benefits, supplemental benefits, and cash~~  
16 ~~withdrawals for policy or contract owners who~~  
17 ~~petition therefor under claims of emergency or~~  
18 ~~hardship in accordance with standards proposed by~~  
19 ~~the association and approved by the commissioner.~~  
20 ~~(2) The association shall be subject to the requirements~~  
21 ~~of paragraph (1) only if:~~





1           ~~(A) The laws of the impaired insurer's state of~~  
2           ~~domicile provide that until all payments of or on~~  
3           ~~account of the impaired insurer's contractual~~  
4           ~~obligations by all guaranty associations, along~~  
5           ~~with all expenses thereof and interest on all~~  
6           ~~such payments and expenses, shall have been~~  
7           ~~repaid to the guaranty associations or a plan of~~  
8           ~~repayment by the impaired insurer shall have been~~  
9           ~~approved by the guaranty associations;~~  
10          ~~(i) The delinquency proceeding shall not be~~  
11          ~~dismissed;~~  
12          ~~(ii) Neither the impaired insurer nor its assets~~  
13          ~~shall be returned to the control of its~~  
14          ~~shareholders or private management; and~~  
15          ~~(iii) It shall not be permitted to solicit or~~  
16          ~~accept new business or have any suspended or~~  
17          ~~revoked license restored; and~~  
18          ~~(B) (i) If the impaired insurer is a domestic~~  
19          ~~insurer, it has been placed under an order~~  
20          ~~of rehabilitation by a court of competent~~  
21          ~~jurisdiction in this State, or;~~



1           ~~(ii) If the impaired insurer is a foreign or~~  
2           ~~alien insurer.~~

3           ~~(I) It has been prohibited from soliciting~~  
4           ~~or accepting new business in this~~  
5           ~~State,~~

6           ~~(II) Its certificate of authority has been~~  
7           ~~suspended or revoked in this State, and~~

8           ~~(III) A petition for rehabilitation or~~  
9           ~~liquidation has been filed in a court~~  
10           ~~of competent jurisdiction in its state~~  
11           ~~of domicile by the commissioner of the~~  
12           ~~state.~~

13       ~~(e)]~~ (b) If a member insurer is an insolvent insurer, the  
14 association shall, in its discretion~~[, either]~~:

15       (1) (A) Guarantee, assume, or reinsure, or cause to be  
16       guaranteed, assumed, or reinsured, the policies  
17       or contracts of the insolvent insurer; or

18       (B) Assure payment of the contractual obligations of  
19       the insolvent insurer; and

20       (C) Provide such moneys, pledges, guarantees, or  
21       other means as are reasonably necessary to  
22       discharge such duties; or



1 (2) [~~With respect only to life and accident and health or~~  
2 ~~sickness insurance policies, provide~~] Provide benefits  
3 and coverages in accordance with [~~subsection (d)~~].

4 ~~(d) When proceeding under subsection (b) (1) (B) or (c) (2),~~  
5 ~~the association shall, with respect to only life and accident~~  
6 ~~and health or sickness insurance policies:~~

7 ~~(1) Assure~~] the following provisions:

8 (A) With respect to life and accident and health or  
9 sickness insurance policies and annuities, assure  
10 payment of benefits for premiums identical to the  
11 premiums and benefits (except for terms of  
12 conversion and renewability) that would have been  
13 payable under the policies of the insolvent  
14 insurer, for claims incurred:

15 [~~(A)~~] (i) With respect to group policies [~~7~~] and  
16 contracts, not later than the earlier of the  
17 next renewal date under [~~such~~] the policies  
18 or contracts or forty-five days, but in no  
19 event less than thirty days, after the date  
20 on which the association becomes obligated  
21 with respect to [~~such~~] the policies;



1           ~~[(B)]~~ (ii)   With respect to ~~[individual]~~ non-group  
2                                   policies, contracts, and annuities, not  
3                                   later than the earlier of the next renewal  
4                                   date (if any) under ~~[such]~~ the policies or  
5                                   contracts or one year, but in no event less  
6                                   than thirty days, from the date on which the  
7                                   association becomes obligated with respect  
8                                   to ~~[such]~~ the policies~~[.]~~ or contracts.

9           ~~[(2)]~~ (B)   Make diligent efforts to provide all known  
10                                   insureds or ~~[group policyholders]~~ annuitants (for  
11                                   non-group policies and contracts), or group  
12                                   policy owners with respect to group policies and  
13                                   contracts, thirty ~~[days]~~ days notice of the  
14                                   termination of the benefits provided~~[.]~~ and].

15           ~~[(3)]~~ (C)   With respect to ~~[individual]~~ non-group life and  
16                                   accident and health or sickness insurance  
17                                   policies~~[.]~~ and annuities covered by the  
18                                   association, make available to each known  
19                                   insured~~[.]~~ or annuitant, or owner if other than  
20                                   the insured~~[.]~~ or annuitant, and with respect to  
21                                   an individual formerly insured or formerly an  
22                                   annuitant under a group policy who is not



1 eligible for replacement group coverage, make  
 2 available substitute coverage on an individual  
 3 basis in accordance with [~~paragraph (4),~~]  
 4 subparagraph (D), if the insureds or annuitants  
 5 had a right under law or the terminated policy to  
 6 convert coverage to individual coverage or to  
 7 continue an individual policy or annuity in force  
 8 until a specified age or for a specified time,  
 9 during which the insurer had no right  
 10 unilaterally to make changes in any provision of  
 11 the policy or annuity or had a right only to make  
 12 changes in premium by class.

13 [~~(4)-(A)~~] (D) (i) In providing the substitute coverage  
 14 required under [~~paragraph (3),~~] subparagraph  
 15 (C), the association may offer either to  
 16 reissue the terminated coverage or to issue  
 17 an alternative policy.

18 [~~(B)~~] (ii) Alternative or reissued policies shall be  
 19 offered without requiring evidence of  
 20 insurability, and shall not provide for any  
 21 waiting period or exclusion that would not  
 22 have applied under the terminated policy.



1           ~~[(E)]~~ (iii) The association may reinsure any alternative  
2                                   or reissued policy.

3           ~~[(5)-(A)]~~ (E) (i) Alternative policies adopted by the  
4                                   association shall be subject to the approval  
5                                   of the domiciliary commissioner~~[-]~~ or the  
6                                   receivership court. The association may  
7                                   adopt alternative policies of various types  
8                                   for future issuance without regard to any  
9                                   particular impairment or insolvency.

10          ~~[(B)]~~ (ii) Alternative policies shall contain at least  
11                                   the minimum statutory provisions required in  
12                                   this State and provide benefits that shall  
13                                   not be unreasonable in relation to the  
14                                   premium charged. The association shall set  
15                                   the premium in accordance with a table of  
16                                   rates which it shall adopt. The premium  
17                                   shall reflect the amount of insurance to be  
18                                   provided and the age and class of risk of  
19                                   each insured, but shall not reflect any  
20                                   changes in the health of the insured after  
21                                   the original policy was last underwritten.



1           ~~[(C)]~~ (iii) Any alternative policy issued by the  
2    association shall provide coverage of a type  
3    similar to that of the policy issued by the  
4    impaired or insolvent insurer, as determined  
5    by the association.

6           ~~[(6)]~~ (F) If the association elects to reissue terminated  
7    coverage at a premium rate different from that  
8    charged under the terminated policy, the premium  
9    shall be set by the association in accordance  
10   with the amount of insurance provided and the age  
11   and class of risk, subject to approval of the  
12   domiciliary insurance commissioner or by a court  
13   of competent jurisdiction.

14          ~~[(7)]~~ (G) The association's obligations with respect to  
15    coverage under any policy of the impaired or  
16    insolvent insurer or under any reissued or  
17    alternative policy shall cease on the date such  
18    coverage or policy is replaced by another similar  
19    policy by the policyholder, the insured, or the  
20    association.

21          ~~[(e)]~~ (H) When proceeding under ~~[subsections (b)(1)(B) or~~  
22    ~~(e)]~~ subsection (b)(2) with respect to any policy

1 or contract carrying guaranteed minimum interest  
2 rates, the association shall assure the payment  
3 or crediting of a rate of interest consistent  
4 with section 431:16-203(b)(2)(C).

5 ~~[(f)]~~ (c) Nonpayment of premiums within thirty-one days  
6 after the date required under the terms of any guaranteed,  
7 assumed, alternative, or reissued policy or contract or  
8 substitute coverage shall terminate the association's  
9 obligations under ~~[such]~~ the policy or coverage under this part  
10 with respect to ~~[such]~~ the policy or coverage, except with  
11 respect to any claims incurred or any net cash surrender value  
12 which may be due in accordance with the provisions of this part.

13 ~~[(g)]~~ (d) Premiums due for coverage after entry of an order  
14 of liquidation of an insolvent insurer shall belong to and be  
15 payable at the direction of the association, and the association  
16 shall be liable for unearned premiums due to policy or contract  
17 owners arising after the entry of such order.

18 ~~[(h)]~~ (e) The protection provided by this part shall not  
19 apply where any guaranty protection is provided to residents of  
20 this State by the laws of the domiciliary state or jurisdiction  
21 of the impaired or insolvent insurer other than this State.





1       ~~[(i)]~~ (f) In carrying out its duties under ~~[subsections (b)~~  
2 ~~and (c)]~~, subsection (b), the association may, subject to  
3 approval by ~~[the]~~ a court~~[+]~~ in this State:

4       (1) Impose permanent policy or contract liens in  
5 connection with any guarantee, assumption, or  
6 reinsurance agreement, if the association finds that  
7 the amounts which can be assessed under this part are  
8 less than the amounts needed to assure full and prompt  
9 performance of the association's duties under this  
10 part, or that the economic or financial conditions as  
11 they affect member insurers are sufficiently adverse  
12 to render the imposition of such permanent policy or  
13 contract liens, to be in the public interest; and

14       (2) Impose temporary moratoriums or liens on payments of  
15 cash values and policy loans, or any other right to  
16 withdraw funds held in conjunction with policies or  
17 contracts, in addition to any contractual provisions  
18 for deferral of cash or policy loan value. In  
19 addition, the association may defer the payment of  
20 cash values, policy loans, or other rights by the  
21 association for the period of any moratorium or  
22 moratorium charge imposed by the receivership court on



1           the payment of cash values or policy loans, or on any  
 2           other right to withdraw funds held in conjunction with  
 3           policies or contracts, out of the assets of the  
 4           impaired or insolvent insurer, except that the  
 5           association may not defer the payment for claims  
 6           covered by the association to be paid in accordance  
 7           with a hardship procedure established by the  
 8           liquidator or rehabilitator and approved by the  
 9           receivership court.

10           ~~[(j)]~~ (g) If the association fails to act within a  
 11 reasonable period of time as provided in ~~[subsections (b)(1)(B),~~  
 12 ~~(c) and (d),]~~ subsection (b), the commissioner shall have the  
 13 powers and duties of the association under this part with  
 14 respect to ~~[impaired or]~~ the insolvent [insurers.] insurer.

15           ~~[(k)]~~ (h) The association may render assistance and advice  
 16 to the commissioner, upon the commissioner's request, concerning  
 17 rehabilitation, payment of claims, continuance of coverage, or  
 18 the performance of other contractual obligations of any impaired  
 19 or insolvent insurer.

20           ~~[(l)]~~ (i) The association shall have standing to appear or  
 21 intervene before any court or agency in this State with  
 22 jurisdiction over an impaired or insolvent insurer concerning



1 which the association is or may become obligated under this  
 2 part[-] or with jurisdiction over any person or property against  
 3 which the association may have rights through subrogation or  
 4 otherwise. Such standing shall extend to all matters germane to  
 5 the powers and duties of the association, including, but not  
 6 limited to, proposals for reinsuring, modifying, or guaranteeing  
 7 the policies or contracts of the impaired or insolvent insurer  
 8 and the determination of the policies or contracts and  
 9 contractual obligations. The association shall also have the  
 10 right to appear or intervene before [a] any court or agency in  
 11 another state with jurisdiction over an impaired or insolvent  
 12 insurer for which the association is or may become obligated or  
 13 with jurisdiction over [~~a third party~~] any person or property  
 14 against whom the association may have rights through subrogation  
 15 [~~of the insurer's policyholders.~~] or otherwise.

16 [~~(m)-(1)~~] (j)(1) Any person receiving benefits under this part  
 17 shall be deemed to have assigned the rights under; and  
 18 any causes of action [~~relating to,~~] against any person  
 19 for losses arising under, resulting from, or otherwise  
 20 relating to, the covered policy or contract to the  
 21 association to the extent of the benefits received  
 22 because of this part, whether the benefits are



1           payments of or on account of contractual obligations,  
2           continuation of coverage, or provision of substitute  
3           or alternative coverages. The association may require  
4           an assignment to it of such rights and causes of  
5           action by any payee, policy or contract owner,  
6           beneficiary, insured, or annuitant as a condition  
7           precedent to the receipt of any right or benefits  
8           conferred by this part upon such person.

9           (2) The subrogation rights of the association under this  
10          section shall have the same priority against the  
11          assets of the impaired or insolvent insurer as that  
12          possessed by the person entitled to receive benefits  
13          under this part.

14          (3) In addition to ~~[items]~~ paragraphs (1) and (2), the  
15          association shall have all common law rights of  
16          subrogation and any other equitable or legal remedy  
17          ~~[which]~~ that would have been available to the impaired  
18          or insolvent insurer ~~[or holder of a policy or~~  
19          ~~contract with respect to such policy or contracts.]~~,  
20          or owner, beneficiary, or payee of a policy or  
21          contract with respect to the policy or contracts.



1       (4) If the preceding provisions of this subsection are  
2       invalid or ineffective with respect to any person or  
3       claim for any reason, the amount payable by the  
4       association with respect to the related covered  
5       obligations shall be reduced by the amount realized by  
6       any other person with respect to the person or claim  
7       that is attributable to the policies, or portion  
8       thereof, covered by the association.

9       (5) If the association has provided benefits with respect  
10       to a covered obligation and a person recovers amounts  
11       to which the association has rights as described in  
12       the preceding paragraphs of this subsection, the  
13       person shall pay to the association the portion of the  
14       recovery attributable to the policies, or portion  
15       thereof, covered by the association.

16       ~~[(n)]~~ (k) The association may:

17       (1) Enter into such contracts as are necessary or proper  
18       to carry out the provisions and purposes of this part;

19       (2) Sue or be sued, including taking any legal actions  
20       necessary or proper to recover any unpaid assessments  
21       under section 431:16-209 and to settle claims or  
22       potential claims against it;



- 1           (3) Borrow money to effect the purposes of this part; any  
2           notes or other evidence of indebtedness of the  
3           association not in default shall be legal investments  
4           for domestic insurers and may be carried as admitted  
5           assets;
- 6           (4) Employ or retain such persons as are necessary to  
7           handle the financial transactions of the association,  
8           and to perform such other functions as become  
9           necessary or proper under this part;
- 10          (5) Take such legal action as may be necessary to avoid  
11          payment of improper claims[~~+~~and] or recover payment  
12          of improper claims;
- 13          (6) Exercise, for the purposes of this part and to the  
14          extent approved by the commissioner, the powers of a  
15          domestic life or accident and health or sickness  
16          insurer, but in no case may the association issue  
17          insurance policies or annuity contracts other than  
18          those issued to perform its obligations under this  
19          part[~~+~~];
- 20          (7) Organize itself as a corporation or in other legal  
21          form permitted by the laws of the State;



1       (8) Request information from a person seeking coverage  
2       from the association in order to aid the association  
3       in determining its obligations under this part with  
4       respect to the person, and the person shall promptly  
5       comply with the request; and

6       (9) Take other necessary or appropriate action to  
7       discharge its duties and obligations under this part  
8       or to exercise its powers under this part.

9       ~~(10)~~ (1) The association may join an organization of one or  
10      more other state associations of similar purposes, to further  
11      the purposes and administer the powers and duties of the  
12      association.

13       (m) With respect to covered policies for which the  
14      association becomes obligated after an entry of an order of  
15      liquidation or rehabilitation, the association may elect to  
16      succeed to the rights of the insolvent insurer arising after the  
17      date of the order of liquidation or rehabilitation under any  
18      contract of reinsurance to which the insolvent insurer was a  
19      party, to the extent that the contract provides coverage for  
20      losses occurring after the date of the order of liquidation or  
21      rehabilitation. As a condition to making this election, the  
22      association shall pay all unpaid premiums due under the contract



1 for coverage relating to periods before and after the date of  
2 the order of liquidation or rehabilitation.

3 (n) The board of directors of the association shall have  
4 discretion and shall exercise reasonable business judgment to  
5 determine the means by which the association is to provide the  
6 benefits of this part in an economical and efficient manner.

7 (o) Where the association has arranged or offered to  
8 provide the benefits of this part to a covered person under a  
9 plan or arrangement that fulfills the association's obligations  
10 under this part, the person shall not be entitled to benefits  
11 from the association in addition to or other than those provided  
12 under the plan or arrangement.

13 (p) Venue in a suit against the association arising under  
14 this part shall be in the circuit court of the first circuit.  
15 The association shall not be required to give an appeal bond in  
16 an appeal that relates to a cause of action arising under this  
17 part.

18 (q) In carrying out its duties in connection with  
19 guaranteeing, assuming, or reinsuring policies or contracts  
20 under subsection (a) or (b), the association may, subject to  
21 approval of the receivership court, issue substitute coverage  
22 for a policy or contract that provides an interest rate,





1 crediting rate, or similar factor determined by use of an index  
2 or other external reference stated in the policy or contract  
3 employed in calculating returns or changes in value by issuing  
4 an alternative policy or contract in accordance with the  
5 following provisions:

6 (1) In lieu of the index or other external reference  
7 provided for in the original policy or contract, the  
8 alternative policy or contract provides for a fixed  
9 interest rate, payment of dividends with minimum  
10 guarantees, or a different method for calculating  
11 interest or changes in value;

12 (2) There is no requirement for evidence of insurability,  
13 waiting period, or other exclusion that would not have  
14 applied under the replaced policy or contract; and

15 (3) The alternative policy or contract is substantially  
16 similar to the replaced policy or contract in all  
17 other material terms."

18 SECTION 8. Section 431:16-209, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§431:16-209 Assessments.** (a) For the purpose of  
21 providing the funds necessary to carry out the powers and duties  
22 of the association, the board of directors shall assess the



1 member insurers, separately for each account, at such time and  
2 for such amounts as the board finds necessary. Assessments  
3 shall be due not less than thirty days after prior written  
4 notice to the member insurers and shall accrue interest at  
5 eighteen per cent per annum on and after the due date.

6 (b) There shall be two assessments, as follows:

7 (1) Class A assessments shall be [~~made~~] authorized and  
8 called for the purpose of meeting administrative and  
9 legal costs, and other expenses and examinations  
10 conducted under the authority of section  
11 431:16-212(e). Class A assessments may be [~~made~~]  
12 authorized and called whether or not related to a  
13 particular impaired or insolvent insurer.

14 (2) Class B assessments shall be [~~made~~] authorized and  
15 called to the extent necessary to carry out the powers  
16 and duties of the association under section 431:16-208  
17 with regard to an impaired or an insolvent insurer.

18 (c) (1) The amount of any Class A assessment shall be  
19 determined by the board of directors and may be [~~made~~]  
20 authorized and called on a pro rata or non-pro rata  
21 basis. If pro rata, the board of directors may  
22 provide that it be credited against future Class B



1 assessments. A non-pro rata assessment shall not  
 2 exceed [~~\$150~~] \$300 per member insurer in any one  
 3 calendar year. The amount of any Class B assessment  
 4 shall be allocated for assessment purposes among the  
 5 accounts pursuant to an allocation formula which may  
 6 be based on the premiums or reserves of the impaired  
 7 or insolvent insurer or any other standard deemed by  
 8 the board of directors in its sole discretion as being  
 9 fair and reasonable under the circumstances.

10 (2) Class B assessments against member insurers for each  
 11 account shall be in the proportion that the premiums  
 12 received on business in this State by each assessed  
 13 member insurer [~~+~~]on[~~+~~] policies or contracts covered  
 14 by each account for the three most recent calendar  
 15 years for which information is available preceding the  
 16 year in which the insurer became impaired or  
 17 insolvent, as the case may be, bears to [~~such~~] the  
 18 premiums received on business in this State for [~~such~~]  
 19 the calendar years by all assessed member insurers.

20 (3) Assessments for funds to meet the requirements of the  
 21 association with respect to an impaired or insolvent  
 22 insurer shall not be [~~made~~] authorized or called until



1           necessary to implement the purposes of this part.  
2           Classification of assessments under subsection (b) and  
3           computation of assessments under this subsection shall  
4           be made with a reasonable degree of accuracy,  
5           recognizing that exact determinations may not always  
6           be possible. The association shall notify each member  
7           insurer of its anticipated pro rata share of an  
8           authorized assessment not yet called within one  
9           hundred eighty days after the assessment is  
10           authorized.

11           (d) The association may abate or defer, in whole or in  
12 part, the assessment of a member insurer if, in the opinion of  
13 the board of directors, payment of the assessment would endanger  
14 the ability of the member insurer to fulfill its contractual  
15 obligations. In the event an assessment against a member  
16 insurer is abated, or deferred in whole or in part, the amount  
17 by which [~~such~~] the assessment is abated or deferred may be  
18 assessed against the other member insurers in a manner  
19 consistent with the basis for assessments set forth in this  
20 section. Once the conditions that caused the deferral have been  
21 removed or rectified, the member shall pay all assessments that



1 were deferred pursuant to a repayment plan approved by the  
2 association.

3 ~~[-e] The~~ (e) (1) Subject to the provisions of paragraph  
4 (2), the total of all assessments ~~[upon]~~ authorized by  
5 the association with respect to a member insurer for  
6 each account shall not in any one calendar year exceed  
7 two per cent of ~~[such]~~ the insurer's average premiums  
8 received in this State on the policies and contracts  
9 covered by the account during the three calendar years  
10 preceding the year in which the insurer became an  
11 impaired or insolvent insurer.

12 (2) If two or more assessments are authorized in one  
13 calendar year with respect to insurers that become  
14 impaired or insolvent in different calendar years, the  
15 average annual premiums for purposes of the aggregate  
16 assessment percentage limitation referenced in this  
17 section shall be equal and limited to the higher of  
18 the three-year average annual premiums for the  
19 applicable account as calculated pursuant to this  
20 section.

21 (3) If the maximum assessment, together with the other  
22 assets of the association in any account, does not



1 provide in any one year in either account an amount  
2 sufficient to carry out the responsibilities of the  
3 association, the necessary additional funds shall be  
4 assessed as soon thereafter as permitted by this part.

5 The board of directors may provide in the plan of operation  
6 a method of allocating funds among claims, whether relating to  
7 one or more impaired or insolvent insurers, when the maximum  
8 assessment will be insufficient to cover anticipated claims.

9 (f) The board may, by an equitable method as established  
10 in the plan of operation, refund to member insurers, in  
11 proportion to the contribution of each insurer to that account,  
12 the amount by which the assets of the account exceed the amount  
13 the board finds is necessary to carry out during the coming year  
14 the obligations of the association with regard to that account,  
15 including assets accruing from assignment, subrogation, net  
16 realized gains, and income from investments. A reasonable  
17 amount may be retained in any account to provide funds for the  
18 continuing expenses of the association and for future losses[-]  
19 and claims.

20 (g) It shall be proper for any member insurer, in  
21 determining its premium rates and policy owner dividends as to  
22 any kind of insurance within the scope of this part, to consider



1 the amount reasonably necessary to meet its assessment  
2 obligations under this part.

3 (h) The association shall issue to each insurer paying an  
4 assessment under this part, other than a Class A assessment, a  
5 certificate of contribution, in a form prescribed by the  
6 commissioner, for the amount of the assessment so paid. All  
7 outstanding certificates shall be of equal dignity and priority  
8 without reference to amounts or dates of issue. A certificate  
9 of contribution may be shown by the insurer in its financial  
10 statement as an asset in such form and for such amount, if any,  
11 and period of time as the commissioner may approve.

12 (i)(1) A member insurer that wishes to protest all or part of  
13 an assessment shall pay when due the full amount of  
14 the assessment as set forth in the notice provided by  
15 the association. The payment shall be available to  
16 meet association obligations during the pendency of  
17 the protest or any subsequent appeal. Payment shall  
18 be accompanied by a statement in writing that the  
19 payment is made under protest and setting forth a  
20 brief statement of the grounds for the protest.

21 (2) Within sixty days following the payment of an  
22 assessment under protest by a member insurer, the



1 association shall notify the member insurer in writing  
2 of its determination with respect to the protest,  
3 unless the association notifies the member insurer  
4 that additional time is required to resolve the issues  
5 raised by the protest.

6 (3) Within thirty days after a final decision has been  
7 made, the association shall notify the protesting  
8 member insurer in writing of the final decision.

9 Within sixty days of receipt of notice of the final  
10 decision, the protesting member insurer may appeal the  
11 final decision to the commissioner.

12 (4) In the alternative to rendering a final decision with  
13 respect to a protest based on a question regarding the  
14 assessment base, the association may refer protests to  
15 the commissioner for a final decision with or without  
16 a recommendation from the association.

17 (5) If the protest or appeal on the assessment is upheld,  
18 the amount paid in error or excess shall be returned  
19 to the member company. Interest on a refund due a  
20 protesting member shall be paid at the rate actually  
21 earned by the association.





1       (j) The association may request information of member  
2 insurers to aid in the exercise of its powers under this section  
3 and member insurers shall promptly comply with any request."

4       SECTION 9. Section 431:16-210, Hawaii Revised Statutes, is  
5 amended by amending subsections (c) and (d) to read as follows:

6       "(c) The plan of operation shall, in addition to  
7 requirements enumerated elsewhere in this part:

8       (1) Establish procedures for handling the assets of the  
9 association;

10       (2) Establish the amount and method of reimbursing members  
11 of the board of directors under section 431:16-207(c);

12       (3) Establish regular places and times for meetings  
13 including telephone conference calls of the board of  
14 directors;

15       (4) Establish procedures for records to be kept of all  
16 financial transactions of the association, its agents,  
17 and the board of directors;

18       (5) Establish the procedures whereby selections for the  
19 board of directors will be made and submitted to the  
20 commissioner;

21       (6) Establish any additional procedures for assessments  
22 under section 431:16-209;



1 (7) Contain additional provisions necessary or proper for  
2 the execution of the powers and duties of the  
3 association[~~-~~];

4 (8) Establish procedures to remove a director for cause,  
5 including the case in which a director is affiliated  
6 with a member insurer that becomes an impaired or  
7 insolvent insurer; and

8 (9) Require the board of directors to establish a policy  
9 and procedure for addressing conflicts of interests.

10 (d) The plan of operation may provide that any or all  
11 powers and duties of the association, except those under  
12 [~~section 431:16-208(n)(3)~~] sections 431:16-208(k)(3) and  
13 [~~section~~] 431:16-209, are delegated to a corporation,  
14 association, or other organization which performs or will  
15 perform functions similar to those of this association, or its  
16 equivalent, in two or more states. [~~Such a~~] The corporation,  
17 association, or organization shall be reimbursed for any  
18 payments made on behalf of the association and shall be paid for  
19 its performance of any function of the association. A  
20 delegation under this subsection shall take effect only with the  
21 approval of both the board of directors and the commissioner,  
22 and may be made only to a corporation, association, or



1 organization which extends protection not substantially less  
2 favorable and effective than that provided by this part."

3 SECTION 10. Section 431:16-212, Hawaii Revised Statutes,  
4 is amended as follows:

5 1. By amending subsection (a) to read:

6 "[+] (a) [+] To aid in the detection and prevention of  
7 insurer insolvencies or impairments, it shall be the duty of the  
8 commissioner:

9 (1) To notify the commissioners of all the other states,  
10 territories of the United States, and the District of  
11 Columbia when the commissioner takes any of the  
12 following actions against a member insurer:

13 (A) Revocation of license;

14 (B) Suspension of license; or

15 (C) Makes any formal order that [~~such~~] the company  
16 [~~restricts~~] restrict its premium writing, obtain  
17 additional contributions to surplus, withdraw  
18 from the State, reinsure all or any part of its  
19 business, or increase capital, surplus, or any  
20 other account for the security of policyholders  
21 or creditors.



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

4           (2) To report to the board of directors when the  
5           commissioner has taken any of the actions set forth in  
6           paragraph (1) or has received a report from any other  
7           commissioner indicating that any such action has been  
8           taken in another state. [~~Such~~] The report to the  
9           board of directors shall contain all significant  
10          details of the action taken or the report received  
11          from another commissioner;

12          (3) To report to the board of directors when the  
13          commissioner has reasonable cause to believe from any  
14          examination, whether completed or in process, of any  
15          member company that [~~such~~] the company may be an  
16          impaired or insolvent insurer; and

17          (4) To furnish to the board of directors the National  
18          Association of Insurance Commissioners Insurance  
19          Regulatory Information System (IRIS) ratios and  
20          listings of companies not included in the ratios  
21          developed by the National Association of Insurance  
22          Commissioners, and the board may use the information



1 contained therein in carrying out its duties and  
2 responsibilities under this section. [~~Such~~] The  
3 report and the information contained therein shall be  
4 kept confidential by the board of directors until such  
5 time as made public by the commissioner or other  
6 lawful authority."

7 2. By amending subsection (c) to read:

8 "(c) The board of directors may, upon majority vote, make  
9 reports and recommendations to the commissioner upon any matter  
10 germane to the solvency, liquidation, rehabilitation, or  
11 conservation of any member insurer or germane to the solvency of  
12 any company seeking to do an insurance business in this State.  
13 [~~Such~~] The reports and recommendations shall not be considered  
14 public documents."

15 3. By amending subsection (e) to read:

16 "(e) The board of directors may, upon majority vote,  
17 request that the commissioner order an examination of any member  
18 insurer which the board in good faith believes may be an  
19 impaired or insolvent insurer. Within thirty days of the  
20 receipt of such request, the commissioner shall begin [~~such~~] the  
21 examination. The examination may be conducted as a National  
22 Association of Insurance Commissioners' examination or may be



1 conducted by such persons as the commissioner designates. The  
2 cost of [such] the examination shall be paid by the association  
3 and the examination report shall be treated as are other  
4 examination reports. In no event shall [such] the examination  
5 report be released to the board of directors prior to its  
6 release to the public, but this shall not excuse the  
7 commissioner from complying with subsection (a). The  
8 commissioner shall notify the board of directors when the  
9 examination is completed. The request for an examination shall  
10 be kept on file by the commissioner but it shall not be open to  
11 public inspection prior to the release of the examination report  
12 to the public."

13 SECTION 11. Section 431:16-214, Hawaii Revised Statutes,  
14 is amended to read as follows:

15 **"§431:16-214 Miscellaneous provisions.** (a) Nothing in  
16 this part shall be construed to reduce the liability for unpaid  
17 assessments of the insureds of an impaired or insolvent insurer  
18 operating under a plan with assessment liability.

19 (b) ~~[All meetings and records of the board of directors~~  
20 ~~shall be open to all member insurers except for those meetings~~  
21 ~~and records pertaining to the solvency, liquidation,~~  
22 ~~rehabilitation, or conservation of any member insurer deemed~~



1 ~~confidential. A member insurer shall provide written~~  
2 ~~designation of its representative or representatives to the~~  
3 ~~board meetings.~~

4 ~~(c) Records shall be kept of all negotiations and meetings~~  
5 ~~in which the association or its representatives are involved to~~  
6 ~~discuss the activities of the association in carrying out its~~  
7 ~~powers and duties under section 431:16-208.] Records shall be~~  
8 ~~kept of all meetings of the board of directors to discuss the~~  
9 ~~activities of the association in carrying out its powers and~~  
10 ~~duties under section 431:16-208. The records of the association~~  
11 ~~with respect to an impaired or insolvent insurer shall not be~~  
12 ~~disclosed prior to the termination of a liquidation,~~  
13 ~~rehabilitation, or conservation proceeding involving the~~  
14 ~~impaired or insolvent insurer, except:~~

- 15 (1) Upon the termination of the impairment or insolvency
- 16 of the insurer; or
- 17 (2) Upon the order of a court of competent jurisdiction.

18 Nothing in this subsection [~~(b)~~] shall limit the duty of the  
19 association to render a report of its activities under section  
20 431:2-304(b).

21 [~~(d)~~] (c) For the purpose of carrying out its obligations  
22 under this part, the association shall be deemed to be a



1 creditor of the impaired or insolvent insurer to the extent of  
 2 assets attributable to covered policies reduced by any amounts  
 3 to which the association is entitled as subrogee pursuant to  
 4 section [~~431:16-208(m)-.] 431:16-208(j)]. Assets of the impaired  
 5 or insolvent insurer attributable to covered policies shall be  
 6 used to continue all covered policies and pay all contractual  
 7 obligations of the impaired or insolvent insurer as required by  
 8 this part. Assets attributable to covered policies, as used in  
 9 this subsection, are that proportion of the assets which the  
 10 reserves that should have been established for such policies  
 11 bear to the reserves that should have been established for all  
 12 policies of insurance written by the impaired or insolvent  
 13 insurer.~~

14 (d) As a creditor of the impaired or insolvent insurer as  
 15 established in subsection (c) and consistent with section  
 16 431:15-324, the association and other similar associations shall  
 17 be entitled to receive a disbursement of assets out of the  
 18 marshaled assets, from time to time as the assets become  
 19 available to reimburse it, as a credit against contractual  
 20 obligations under this part. If the liquidator has not, within  
 21 one hundred twenty days of a final determination of insolvency  
 22 of an insurer by the receivership court, made an application to





1 the court for the approval of a proposal to disburse assets out  
2 of marshaled assets to guaranty associations having obligations  
3 because of the insolvency, the association shall be entitled to  
4 make application to the receivership court for approval of its  
5 own proposal to disburse these assets.

6 (e) (1) Prior to the termination of any liquidation,  
7 rehabilitation, or conservation proceeding, the court  
8 may take into consideration the contributions of the  
9 respective parties, including the association, the  
10 shareholders, and policy owners of the insolvent  
11 insurer, and any other party with a bona fide  
12 interest, in making an equitable distribution of the  
13 ownership rights of such insolvent insurer. In such a  
14 determination consideration shall be given to the  
15 welfare of the policyholders of the continuing or  
16 successor insurer.

17 (2) No distribution to stockholders, if any, of an  
18 impaired or insolvent insurer shall be made until and  
19 unless the total amount of valid claims of the  
20 association with interest thereon for funds expended  
21 in carrying out its powers and duties under section



1 431:16-208 with respect to such insurer have been  
2 fully recovered by the association.

3 (f) (1) If an order for liquidation or rehabilitation of an  
4 insurer domiciled in this State has been entered, the  
5 receiver appointed under such order shall have a right  
6 to recover on behalf of the insurer, from any  
7 affiliate that controlled it, the amount of  
8 distributions, other than stock dividends paid by the  
9 insurer on its capital stock, made at any time during  
10 the five years preceding the petition for liquidation  
11 or rehabilitation subject to the limitations of  
12 [†]paragraphs (2) to (4)[†].

13 (2) No such distribution shall be recoverable if the  
14 insurer shows that when paid the distribution was  
15 lawful and reasonable, and that the insurer did not  
16 know and could not reasonably have known that the  
17 distribution might adversely affect the ability of the  
18 insurer to fulfill its contractual obligations.

19 (3) Any person who was an affiliate that controlled the  
20 insurer at the time the distributions were paid shall  
21 be liable up to the amount of distributions the person  
22 received. Any person who was an affiliate that



1 controlled the insurer at the time the distributions  
2 were declared, shall be liable up to the amount of  
3 distributions the person would have received if they  
4 had been paid immediately. If two or more persons are  
5 liable with respect to the same distributions, they  
6 shall be jointly and severally liable.

7 (4) The maximum amount recoverable under this  
8 [‡]subsection[‡] shall be the amount needed in excess  
9 of all other available assets of the insolvent insurer  
10 to pay the contractual obligations of the insolvent  
11 insurer.

12 (5) If any person liable under [‡]paragraph (3)[‡] is  
13 insolvent, all its affiliates that controlled it at  
14 the time the distribution was paid, shall be jointly  
15 and severally liable for any resulting deficiency in  
16 the amount recovered from the insolvent affiliate."

17 SECTION 12. Section 431:16-217, Hawaii Revised Statutes,  
18 is amended to read as follows:

19 **"§431:16-217 Stay of proceedings; reopening default**  
20 **judgments.** All proceedings in which the insolvent insurer is a  
21 party in any court in this State shall be stayed [~~sixty~~] one-  
22 hundred eighty days from the date an order of liquidation,



1 rehabilitation, or conservation is final to permit proper legal  
2 action by the association on any matters germane to its powers  
3 or duties. As to judgment under any decision, order, verdict,  
4 or finding based on default the association may apply to have  
5 such judgment set aside by the same court that made such  
6 judgment and shall be permitted to defend against such suit on  
7 the merits."

8 SECTION 13. Section 431:16-219, Hawaii Revised Statutes,  
9 is repealed.

10 [~~"§431:16-219 Prospective application. This part shall  
11 not apply to any insurer which is insolvent or unable to fulfill  
12 its contractual obligations on July 1, 1988."~~]

13 SECTION 14. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act shall take effect on July 1, 2012;  
16 provided that sections 4 to 13 of this Act shall not apply to  
17 any proceedings in which a member insurer is placed under an  
18 order of liquidation prior to July 1, 2012.



**Report Title:**

Insurance; Insurance Guaranty Association

**Description:**

Updates provisions of the insurance code governing guaranty associations in conformity with the National Association of Insurance Commissioners' Property and Casualty Insurance Guaranty Model Act and the Life and Health Insurance Guaranty Association Model Act. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

