

H.B. NO. 2271

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 PART I

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

4 "§431:4A-101 Credit allowed a domestic ceding insurer.

5 (a) Credit for reinsurance shall be allowed a domestic
6 ceding insurer as either an asset or a ~~[deduction]~~ reduction
7 from liability on ~~[the domestic ceding insurer's financial~~
8 ~~statements on]~~ account of reinsurance ceded only when the
9 reinsurer meets the requirements of ~~[paragraph (1), (2), (3),~~
10 ~~(4), or (5)]. The requirements of paragraph (6) must also be~~
11 ~~met if the reinsurer attempts to meet the requirements of~~
12 ~~paragraph (3) or (4).]~~ subsection (b), (c), (d), (e), or (f).
13 Credit shall be allowed under subsection (b) or (c) only as
14 respects cessions of those kinds or classes of business that the
15 assuming insurer is licensed or otherwise permitted to write or
16 assume in its state of domicile or, in the case of a United
17 States branch of an alien assuming insurer, in the state through
18 which it is entered and licensed to transact insurance or

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1 reinsurance. Credit shall be allowed under subsection (c) or
2 (d) only if the applicable requirements of subsection (g) have
3 been satisfied.

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

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

12 ~~[(A) Files]~~ (1) File with the commissioner evidence of
13 its submission to this State's jurisdiction;

14 ~~[(B) Submits]~~ (2) Submit to this State's authority to
15 examine its books and records;

16 ~~[(C) Is]~~ (3) Be licensed to transact insurance or
17 reinsurance in at least one state, or in the case of a
18 United States branch of an alien assuming insurer,
19 ~~[is]~~ be entered through and licensed to transact
20 insurance or reinsurance in at least one state;

21 ~~[(D) Files]~~ (4) File annually with the commissioner a
22 copy of its annual statement filed with the insurance

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1 department of its state of domicile and a copy of its
2 most recent audited financial statement; and [~~either:~~

3 ~~(i) Maintains a surplus as regards policyholders in~~
4 ~~an amount that is not less than \$20,000,000 and~~
5 ~~whose accreditation has not been denied by the~~
6 ~~commissioner within ninety days of its~~
7 ~~submission; or~~

8 ~~(ii) Maintains a surplus as regards policyholders in~~
9 ~~an amount less than \$20,000,000 and whose~~
10 ~~accreditation has been approved by the~~
11 ~~commissioner.~~

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

15 (5) Demonstrate to the satisfaction of the commissioner
16 that it has adequate financial capacity to meet its
17 reinsurance obligations and is otherwise qualified to
18 assume reinsurance from domestic insurers. An
19 assuming insurer is deemed to meet this requirement as
20 of the time of its application if it maintains a
21 surplus as regards policyholders in an amount not less
22 than \$20,000,000 and its accreditation has not been

1 denied by the commissioner within ninety days after
2 submission of its application.

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

10 ~~[-A-]~~ (1) Maintains a surplus as regards policyholders in
11 an amount not less than \$20,000,000; and

12 ~~[-B-]~~ (2) Submits to the authority of this State to examine
13 its books and records;

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

18 ~~[-4-]~~ (d) Credit shall be allowed as follows:

19 ~~[-A-]~~ (1) Credit shall be allowed when the reinsurance is
20 ceded to an assuming insurer that maintains a trust
21 fund in a qualified United States financial
22 institution, as defined in section 431:4A-103(b), for
23 the payment of the valid claims of its United States

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1 ~~[policyholders and]~~ ceding insurers, their assigns~~[7]~~
2 and successors in interest. ~~[The assuming insurer~~
3 ~~shall report annually to the commissioner information~~
4 ~~substantially the same as that required to be reported~~
5 ~~on the National Association of Insurance Commissioners~~
6 ~~annual statement form by licensed insurers to enable~~
7 ~~the commissioner to determine the sufficiency of the~~
8 ~~trust fund. In the case of]~~ To enable the commissioner
9 to determine the sufficiency of the trust fund, the
10 assuming insurer shall report annually to the
11 commissioner information substantially the same as
12 that required to be reported on the National
13 Association of Insurance Commissioners' annual
14 statement form by licensed insurers. The assuming
15 insurer shall submit to examination of its books and
16 records by the commissioner and bear the expense of
17 examination;

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

21 (A) The commissioner of the state where the trust is
22 domiciled; or

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1 (B) The commissioner of another state who, pursuant
2 to the terms of the trust instrument, has
3 accepted principal regulatory oversight of the
4 trust.

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

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

18 The trust shall remain in effect for as long as
19 the assuming insurer has outstanding obligations due
20 under the reinsurance agreements subject to the trust.
21 No later than February 28 of each year, the trustee of
22 the trust shall report to the commissioner in writing
23 the balance of the trust and listing the trust's

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1 investments at the preceding year-end and shall
2 certify the date of termination of the trust, if so
3 planned, or certify that the trust will not expire
4 prior to the following December 31;

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

7 (A) The trust fund for a single assuming insurer[~~7~~
8 ~~the trust]~~ shall consist of [~~a trustee account~~
9 ~~representing the]~~ funds in trust in an amount not
10 less than the assuming insurer's liabilities
11 attributable to [~~business written in the United~~
12 ~~States]~~ reinsurance ceded by United States ceding
13 insurers, and, in addition, the assuming insurer
14 shall maintain a trustee surplus of not less
15 than \$20,000,000[~~-~~], except as provided in
16 subparagraph (B);

17 (B) At any time after the assuming insurer has
18 permanently discontinued underwriting new
19 business secured by the trust for at least three
20 full years, the commissioner with principal
21 regulatory oversight of the trust may authorize a
22 reduction in the required trustee surplus, but
23 only after finding, based on an assessment of the

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1 risk, that the new required surplus level is
2 adequate for the protection of United States
3 ceding insurers, policyholders, and claimants in
4 light of reasonably foreseeable adverse loss
5 development. The risk assessment may involve an
6 actuarial review, including an independent
7 analysis of reserves and cash flows, and shall
8 consider all material risk factors, including
9 when applicable the lines of business involved,
10 the stability of the incurred loss estimates, and
11 the effect of the surplus requirements on the
12 assuming insurer's liquidity or solvency. The
13 minimum required trusteed surplus may not be
14 reduced to an amount less than thirty per cent of
15 the assuming insurer's liabilities attributable
16 to reinsurance ceded by United States ceding
17 insurers covered by the trust;

18 (C) In the case of a group including incorporated and
19 individual unincorporated underwriters [~~the~~
20 ~~trust shall consist of a trusteed account~~
21 ~~representing the group's liabilities attributable~~
22 ~~to business written in the United States and, in~~
23 ~~addition,~~]:

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1 (i) For reinsurance ceded under reinsurance
2 agreements with an inception, amendment, or
3 renewal date on or after January 1, 1993,
4 the trust shall consist of a trusteeed
5 account in an amount not less than the
6 respective underwriters' several liabilities
7 attributable to business ceded by United
8 States domiciled ceding insurers to any
9 underwriter of the group;

10 (ii) For reinsurance ceded under reinsurance
11 agreements with an inception date on or
12 before December 31, 1992, and not amended or
13 renewed after that date, notwithstanding the
14 other provisions of this article, the trust
15 shall consist of a trusteeed account in an
16 amount not less than the respective
17 underwriters' several insurance and
18 reinsurance liabilities attributable to
19 business written in the United States; and

20 (iii) In addition to these trusts, the group shall
21 maintain in trust a trusteeed surplus of
22 which \$100,000,000 shall be held jointly for
23 the benefit of United States domiciled

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1 ceding insurers of any member of the group[+
2 the] for all years of account.

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

10 Within ninety days after its financial
11 statements are due to be filed with the group's
12 domiciliary regulator, the group shall [~~make~~
13 ~~available~~] provide to the commissioner an annual
14 certification [~~of the solvency of each~~
15 ~~underwriter~~] by the group's domiciliary regulator
16 [~~and its~~] of the solvency of each underwriter
17 member; or if a certification is unavailable,
18 financial statements, prepared by independent
19 public accountants[+], of each underwriter member
20 of the group;

21 [~~(B)~~] (D) In the case of a group of incorporated
22 [~~insurers~~] underwriters under common
23 administration [~~that complies with the filing~~

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1 ~~requirements contained in subparagraph (A), and~~
2 ~~that has]~~, the group shall:

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

10 (ii) Maintain aggregate policyholders' surplus of
11 at least \$10,000,000,000~~[, the]~~;

12 (iii) Maintain a trust ~~[shall be]~~ fund in an
13 amount ~~[equal to]~~ not less than the group's
14 several liabilities attributable to business
15 ceded by United States domiciled ceding
16 insurers to any member of the group pursuant
17 to reinsurance contracts issued in the name
18 of such group; ~~[and the group shall~~
19 ~~maintain]~~

20 (iv) Maintain a joint trusteed surplus~~[,]~~ of
21 which \$100,000,000 shall be held jointly for
22 the benefit of United States domiciled
23 ceding insurers of any member of the group

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1 as additional security for ~~[any such]~~ these
2 liabilities~~[, and each member of the group~~
3 ~~shall]~~; and

4 (v) Within ninety days after its financial
5 statements are due to be filed with the
6 group's domiciliary regulator, make
7 available to the commissioner an annual
8 certification of ~~[the]~~ each underwriter
9 member's solvency by the member's
10 domiciliary regulator and financial
11 statements of each underwriter member of the
12 group prepared by its independent public
13 accountant [~~+~~

14 ~~(C) The trust shall be established in a form approved~~
15 ~~by the commissioner. The trust instrument shall~~
16 ~~provide that contested claims shall be valid and~~
17 ~~enforceable upon the final order of any court of~~
18 ~~competent jurisdiction in the United States. The~~
19 ~~trust shall vest legal title to its assets in the~~
20 ~~trustees of the trust for its United States~~
21 ~~policyholders and ceding insurers, their assigns,~~
22 ~~and successors in interest. The trust and the~~
23 ~~assuming insurer shall be subject to examination~~

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1 ~~as determined by the commissioner. The trust~~
2 ~~must remain in effect for as long as the assuming~~
3 ~~insurer shall have outstanding obligations due~~
4 ~~under the reinsurance agreements subject to the~~
5 ~~trust; and~~

6 ~~(D) No later than February 28 of each year, the~~
7 ~~trustees of the trust shall report to the~~
8 ~~commissioner in writing setting forth the balance~~
9 ~~of the trust and listing the trust's investments~~
10 ~~at the preceding year end and shall certify the~~
11 ~~date of termination of the trust, if so planned,~~
12 ~~or certify that the trust shall not expire prior~~
13 ~~to the next following December 31].~~

14 (e) Credit shall be allowed when the reinsurance is ceded
15 to an assuming insurer that has been certified by the
16 commissioner as a reinsurer in this State and secures its
17 obligations in accordance with the requirements of this
18 subsection as follows:

19 (1) To be eligible for certification, the assuming insurer
20 shall:

21 (A) Be domiciled and licensed to transact insurance
22 or reinsurance in a qualified jurisdiction, as

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- 1 determined by the commissioner pursuant to
2 paragraph (3);
- 3 (B) Maintain minimum capital and surplus, or its
4 equivalent, in an amount to be determined by the
5 rules adopted by the commissioner;
- 6 (C) Maintain financial strength ratings from two or
7 more rating agencies deemed acceptable by the
8 rules adopted by the commissioner;
- 9 (D) Agree to submit to the jurisdiction of this
10 State, appoint the commissioner as its agent for
11 service of process in this State, and agree to
12 provide security for one hundred per cent of the
13 assuming insurer's liabilities attributable to
14 reinsurance ceded by United States ceding
15 insurers if it resists enforcement of a final
16 United States judgment;
- 17 (E) Agree to meet applicable information filing
18 requirements as determined by the commissioner,
19 both with respect to an initial application for
20 certification and on an ongoing basis; and
- 21 (F) Satisfy any other requirements for certification
22 deemed relevant by the commissioner;

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- 1 (2) An association including incorporated and individual
2 unincorporated underwriters may be a certified
3 reinsurer. To be eligible for certification, in
4 addition to satisfying the requirements of paragraph
5 (1):
- 6 (A) The association shall satisfy its minimum capital
7 and surplus requirements through the capital and
8 surplus equivalents (net of liabilities) of the
9 association and its members, which shall include
10 a joint central fund that may be applied to any
11 unsatisfied obligation of the association or any
12 of its members, in an amount determined by the
13 commissioner to provide adequate protection;
- 14 (B) The incorporated members of the association shall
15 not be engaged in any business other than
16 underwriting as a member of the association and
17 shall be subject to the same level of regulation
18 and solvency control by the association's
19 domiciliary regulator as are the unincorporated
20 members; and
- 21 (C) Within ninety days after its financial statements
22 are due to be filed with the association's
23 domiciliary regulator, the association shall

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1 provide to the commissioner an annual
2 certification by the association's domiciliary
3 regulator of the solvency of each underwriter
4 member; or if a certification is unavailable,
5 financial statements, prepared by independent
6 public accountants, of each underwriter member of
7 the association;

8 (3) The commissioner shall create and publish a list of
9 qualified jurisdictions under which an assuming
10 insurer licensed and domiciled in such jurisdiction is
11 eligible to be considered for certification by the
12 commissioner as a certified reinsurer. In addition:

13 (A) To determine whether the domiciliary jurisdiction
14 of a non-United States assuming insurer is
15 eligible to be recognized as a qualified
16 jurisdiction, the commissioner shall evaluate the
17 appropriateness and effectiveness of the
18 reinsurance supervisory system of the
19 jurisdiction, both initially and on an ongoing
20 basis, and consider the rights, benefits, and the
21 extent of reciprocal recognition afforded by the
22 non-United States jurisdiction to reinsurers
23 licensed and domiciled in the United States. A

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1 qualified jurisdiction shall agree to share
2 information and cooperate with the commissioner
3 with respect to all certified reinsurers
4 domiciled within that jurisdiction. A
5 jurisdiction may not be recognized as a qualified
6 jurisdiction if the commissioner has determined
7 that the jurisdiction does not adequately and
8 promptly enforce final United States judgments
9 and arbitration awards. Additional factors may
10 be considered in the discretion of the
11 commissioner;

12 (B) A list of qualified jurisdictions shall be
13 published through the National Association of
14 Insurance Commissioners committee process. The
15 commissioner shall consider this list in
16 determining qualified jurisdictions. If the
17 commissioner approves a jurisdiction as qualified
18 that does not appear on the list of qualified
19 jurisdictions, the commissioner shall provide
20 thoroughly documented justification in accordance
21 with criteria to be developed under rules adopted
22 by the commissioner;

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- 1 (C) United States jurisdictions that meet the
2 requirement for accreditation under the National
3 Association of Insurance Commissioners financial
4 standards and accreditation program shall be
5 recognized as qualified jurisdictions; and
- 6 (D) If a certified reinsurer's domiciliary
7 jurisdiction ceases to be a qualified
8 jurisdiction, the commissioner has the discretion
9 to suspend the reinsurer's certification
10 indefinitely, in lieu of revocation;
- 11 (4) The commissioner shall assign a rating to each
12 certified reinsurer, giving due consideration to the
13 financial strength ratings that have been assigned by
14 rating agencies deemed acceptable pursuant to rules
15 adopted by the commissioner. The commissioner shall
16 publish a list of all certified reinsurers and their
17 ratings;
- 18 (5) A certified reinsurer shall secure obligations assumed
19 from United States ceding insurers under this
20 subsection at a level consistent with its rating, as
21 specified in rules adopted by the commissioner. In
22 addition:

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- 1 (A) In order for a domestic ceding insurer to qualify
2 for full financial statement credit for
3 reinsurance ceded to a certified reinsurer, the
4 certified reinsurer shall maintain security in a
5 form acceptable to the commissioner and
6 consistent with section 431:4A-102, or in a
7 multibeneficiary trust in accordance with
8 subsection (d), except as otherwise provided in
9 this subsection;
- 10 (B) If a certified reinsurer maintains a trust to
11 fully secure its obligations subject to
12 subsection (d), and chooses to secure its
13 obligations incurred as a certified reinsurer in
14 the form of a multibeneficiary trust, the
15 certified reinsurer shall maintain separate trust
16 accounts for its obligations incurred under
17 reinsurance agreements issued or renewed as a
18 certified reinsurer with reduced security as
19 permitted by this subsection or comparable laws
20 of other United States jurisdictions and for its
21 obligations subject to subsection (d). It shall
22 be a condition to the grant of certification
23 under this subsection that the certified

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1 reinsurer shall have bound itself, by the
2 language of the trust and agreement with the
3 commissioner with principal regulatory oversight
4 of each such trust account, to fund, upon
5 termination of any such trust account, out of the
6 remaining surplus of such trust any deficiency of
7 any other such trust account;

8 (C) The minimum trustee surplus requirements
9 provided in subsection (d) shall not be
10 applicable with respect to a multibeneficiary
11 trust maintained by a certified reinsurer for the
12 purpose of securing obligations incurred under
13 this subsection, except that such trust shall
14 maintain a minimum trustee surplus of
15 \$10,000,000;

16 (D) With respect to obligations incurred by a
17 certified reinsurer under this subsection, if the
18 security is insufficient, the commissioner shall
19 reduce the allowable credit by an amount
20 proportionate to the deficiency, and has the
21 discretion to impose further reductions in
22 allowable credit upon finding that there is a

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

3 (E) For purposes of this subsection:

4 (i) A certified reinsurer whose certification
5 has been terminated for any reason shall be
6 treated as a certified reinsurer required to
7 secure one hundred per cent of its
8 obligations;

9 (ii) "Terminated" means revoked, suspended,
10 voluntary surrendered, or placed on inactive
11 status; and

12 (iii) If the commissioner continues to assign a
13 higher rating as permitted by other
14 provisions of this section, this requirement
15 shall not apply to a certified reinsurer in
16 inactive status or to a reinsurer whose
17 certification has been suspended;

18 (6) If an applicant for certification has been certified
19 as a reinsurer in an National Association of Insurance
20 Commissioners accredited jurisdiction, the
21 commissioner has the discretion to defer to that
22 jurisdiction's certification, and has the discretion
23 to defer to the rating assigned by that jurisdiction,

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1 and such assuming insurer shall be considered to be a
2 certified reinsurer in this State; and

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

13 [~~5~~] (f) Credit shall be allowed when the reinsurance is
14 ceded to an assuming insurer not meeting the requirements of
15 [~~paragraph (1), (2), (3), or (4),~~] subsection (b), (c), (d), or
16 (e), but only with respect to the insurance of risks located in
17 jurisdictions where the reinsurance is required by applicable
18 law or regulation of that jurisdiction.

19 [~~6~~] (g) If the assuming insurer is not licensed, or
20 accredited, or certified to transact insurance or reinsurance in
21 this State, the credit permitted by [~~paragraphs (3) and (4)~~]
22 subsections (c) and (d) shall not be allowed unless the assuming
23 insurer agrees in the reinsurance agreements:

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

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

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

20 (h) If the assuming insurer does not meet the requirements
21 of subsection (b) or (c), the credit permitted by subsection (d)
22 or (e) shall not be allowed unless the assuming insurer agrees
23 in the trust agreements to the following conditions:

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- 1 (1) Notwithstanding any other provisions in the trust
2 instrument to the contrary, if the trust fund is
3 inadequate because it contains an amount less than the
4 amount required by subsection (d) (3), or if the
5 grantor of the trust has been declared insolvent or
6 placed into receivership, rehabilitation, liquidation,
7 or similar proceedings under the laws of its state or
8 country of domicile, the trustee shall comply with an
9 order of the commissioner with regulatory oversight
10 over the trust or with an order of any court of
11 competent jurisdiction in any state of the United
12 States directing the trustee to transfer to the
13 commissioner with regulatory oversight all of the
14 assets of the trust fund;
- 15 (2) The assets shall be distributed by and claims shall be
16 filed with and valued by the commissioner with
17 regulatory oversight in accordance with the laws of
18 the state in which the trust is domiciled that are
19 applicable to the liquidation of domestic insurance
20 companies;
- 21 (3) If the commissioner with regulatory oversight
22 determines that the assets of the trust fund or any
23 part thereof are not necessary to satisfy the claims

1 of the United States ceding insurers of the grantor of
2 the trust, the assets or part thereof shall be
3 returned by the commissioner with regulatory oversight
4 to the trustee for distribution in accordance with the
5 trust agreement; and

6 (4) The grantor shall waive any right otherwise available
7 to it under United States law that is inconsistent
8 with this provision.

9 (i) If an accredited or certified reinsurer ceases to meet
10 the requirements for accreditation or certification, the
11 commissioner may suspend or revoke the reinsurer's accreditation
12 or certification. In addition:

13 (1) The commissioner shall give the reinsurer notice and
14 opportunity for hearing. The suspension or revocation
15 may not take effect until after the commissioner's
16 order after a hearing, unless:

17 (A) The reinsurer waives its right to a hearing;

18 (B) The commissioner's order is based on regulatory

19 action by the reinsurer's domiciliary

20 jurisdiction or the voluntary surrender or

21 termination of the reinsurer's eligibility to

22 transact insurance or reinsurance business in its

23 domiciliary jurisdiction or in the primary

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1 certifying state of the reinsurer under
2 subsection (e) (6); or
3 (C) The commissioner finds that an emergency requires
4 immediate action and a court of competent
5 jurisdiction has not stayed the commissioner's
6 action;

7 (2) While a reinsurer's accreditation or certification is
8 suspended, no reinsurance contract issued or renewed
9 after the effective date of the suspension qualifies
10 for credit except to the extent that the reinsurer's
11 obligations under the contract are secured in
12 accordance with section 431:4A-102. If a reinsurer's
13 accreditation or certification is revoked, no credit
14 for reinsurance may be granted after the effective
15 date of the revocation except to the extent that the
16 reinsurer's obligations under the contract are secured
17 in accordance with subsection (e) (5) or section
18 431:4A-102.

19 (j) A ceding insurer shall take steps to:

20 (1) Manage its reinsurance recoverables proportionate to
21 its own book of business. A domestic ceding insurer
22 shall notify the commissioner within thirty days after
23 reinsurance recoverables from any single assuming

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

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

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

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

- 17 (1) Cash;
- 18 (2) Securities listed by the securities valuation office
19 of the National Association of Insurance
20 Commissioners, including those deemed exempt from
21 filing as defined by the Purposes and Procedures
22 Manual of the securities valuation office, and
23 qualifying as admitted assets;

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1 (3) Clean, irrevocable, and unconditional letters of
2 credit, issued or confirmed by a qualified United
3 States financial institution, as defined in section
4 431:4A-103, effective no later than December [~~31st in~~
5 ~~respect~~] 31 of the year for which the filing is being
6 made, and in the possession of, or in trust for, the
7 ceding [~~company~~] insurer on or before the filing date
8 of its annual statement[~~-~~];

9 (4) Letters of credit [~~issued by issuing (or confirming)~~
10 ~~institutions~~] meeting applicable standards of issuer
11 acceptability as of the dates of their issuance (or
12 confirmation) shall, notwithstanding the issuing (or
13 confirming) institution's subsequent failure to meet
14 applicable standards of issuer acceptability, continue
15 to be acceptable as security until their expiration,
16 extension, renewal, modification, or amendment,
17 whichever first occurs; or

18 [~~(4)~~] (5) Any other form of security acceptable to the
19 commissioner."

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

22 ["~~§431:4A-105~~] ~~Reinsurance agreements affected.~~ Sections
23 ~~431:4A-101 through 431:4A-104~~ shall apply to all sessions after

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1 ~~June 12, 1992, under reinsurance agreements which have had an~~
2 ~~inception, anniversary, or renewal date not less than six months~~
3 ~~after June 12, 1992."]~~

4 PART II

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

7 "§431:5-307 Standard valuation law; life. (a) This
8 section shall be known as the standard valuation law.

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

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

12 (A) The commissioner~~[, annually, shall value,]~~ shall
13 annually value, or cause to be valued, the
14 reserve liabilities, hereinafter called reserves,
15 for all outstanding life insurance~~[]~~ policies
16 and annuity~~[]~~ and pure endowment contracts of
17 every life ~~[insurer]~~ insurance company doing
18 business in this State~~[. The commissioner may~~
19 ~~certify the amount of any reserves, specifying~~
20 ~~the mortality table or tables, rate or rates of~~
21 ~~interest, and methods (net level premium method~~
22 ~~or others) used in the calculation of the~~
23 ~~reserves.]~~ issued on or after January 1, 1956,

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1 and prior to the operative date of the valuation
2 manual. In calculating the reserves, the
3 commissioner may use group methods and
4 approximate averages for fractions of a year or
5 otherwise. In lieu of the valuation of the
6 reserves required [~~under this section of any~~] of
7 a foreign or alien [insurer,] company, the
8 commissioner may accept [~~any~~] a valuation made,
9 or caused to be made, by the insurance
10 supervisory official of any state or other
11 jurisdiction, when the valuation complies with
12 the minimum standard under this section [~~, and if~~
13 ~~the official of that state or jurisdiction~~
14 ~~accepts as sufficient and valid for all legal~~
15 ~~purposes the certificate of valuation of the~~
16 ~~commissioner when the certification states the~~
17 ~~valuation to have been made in a specified manner~~
18 ~~according to which the aggregate reserves would~~
19 ~~be at least as large as if they had been computed~~
20 ~~in the manner prescribed by the law of that state~~
21 ~~or jurisdiction,~~

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1 ~~(2) The actual cost of making valuations under this~~
2 ~~section shall be assessed on the insurer, whose~~
3 ~~policies are so valued, by the commissioner, and~~
4 ~~(3) Any insurer, at any time, that has adopted any~~
5 ~~standard of valuation producing greater aggregate~~
6 ~~reserves than those calculated according to the~~
7 ~~minimum standard herein provided, with the approval of~~
8 ~~the commissioner, may adopt any lower standard of~~
9 ~~valuation, but not lower than the minimum provided in~~
10 ~~this section.];~~

11 (B) Subsections (e), (f), (g), (h), (i), (j), (k),
12 (l), (m), and (n) shall apply to all policies and
13 contracts, as appropriate, subject to this
14 section issued on or after January 1, 1956, and
15 prior to the operative date of the valuation
16 manual, provided that subsections (o) and (p)
17 shall not apply to those policies and contracts;

18 (C) The minimum standard for the valuation of
19 policies and contracts issued prior to January 1,
20 1956, shall be that provided by the laws in
21 effect immediately prior to that date;

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

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- 1 (A) The commissioner shall annually value, or cause
2 to be valued, the reserve liabilities,
3 hereinafter called reserves, for all outstanding
4 life insurance contracts, annuity and pure
5 endowment contracts, accident and health
6 contracts, and deposit-type contracts of every
7 company issued on or after the operative date of
8 the valuation manual. In lieu of the valuation
9 of the reserves required of a foreign or alien
10 company, the commissioner may accept a valuation
11 made, or caused to be made, by the insurance
12 supervisory official of any state or other
13 jurisdiction when the valuation complies with the
14 minimum standard provided in this section; and
- 15 (B) Subsections (o) and (p) shall apply to all
16 policies and contracts issued on or after the
17 operative date of the valuation manual.
- 18 (c) For an actuarial opinion prior to the operative date
19 of the valuation manual:
- 20 (1) Every life insurance company doing business in this
21 State shall annually submit the opinion of a qualified
22 actuary as to whether the reserves and related
23 actuarial items held in support of the policies and

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1 contracts specified by the commissioner by rules are
2 computed appropriately, are based on assumptions that
3 satisfy contractual provisions, are consistent with
4 prior reported amounts, and comply with the applicable
5 laws of this State. The commissioner shall define by
6 rules the specifics of this opinion and add any other
7 items deemed to be necessary to its scope;

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

10 (A) Every life insurance company, except as exempted
11 by rules, shall also include annually in the
12 opinion required by paragraph (1), an opinion of
13 the same qualified actuary as to whether the
14 reserves and related actuarial items held in
15 support of the policies and contracts specified
16 by the commissioner by rules, when considered in
17 light of the assets held by the company with
18 respect to the reserves and related actuarial
19 items, including but not limited to the
20 investment earnings on the assets and the
21 considerations anticipated to be received and
22 retained under the policies and contracts, make
23 adequate provision for the company's obligations

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1 under the policies and contracts, including but
2 not limited to the benefits under and expenses
3 associated with the policies and contracts; and

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

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

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

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

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1 the opinion and prepare the supporting memorandum
2 required by the commissioner; and

3 (4) Every opinion required by paragraph (1) shall be
4 governed by the following:

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

9 (B) The opinion shall apply to all business in force
10 including individual and group health insurance
11 plans, in form and substance acceptable to the
12 commissioner as specified by rules;

13 (C) The opinion shall be based on standards adopted
14 from time to time by the Actuarial Standards
15 Board or its successor and on any additional
16 standards as the commissioner may prescribe by
17 rules;

18 (D) In the case of an opinion required to be
19 submitted by a foreign or alien company, the
20 commissioner may accept the opinion filed by that
21 company with the insurance supervisory official
22 of another state if the commissioner determines
23 that the opinion reasonably meets the

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1 requirements applicable to a company domiciled in
2 this State;

3 (E) For the purposes of this subsection, "qualified
4 actuary" means a member in good standing of the
5 American Academy of Actuaries who meets the
6 requirements set forth in the regulation;

7 (F) Except in cases of fraud or wilful misconduct,
8 the qualified actuary shall not be liable for
9 damages to any person, other than the insurance
10 company and the commissioner, for any act, error,
11 omission, decision, or conduct with respect to
12 the actuary's opinion;

13 (G) Disciplinary action by the commissioner against
14 the company or the qualified actuary shall be as
15 defined by rules;

16 (H) Except as provided in subparagraphs (L), (M), and
17 (N), documents, materials, or other information
18 in the possession or control of the insurance
19 division that are part of a memorandum in support
20 of the opinion, and any other material provided
21 by the company to the commissioner in connection
22 with the memorandum, shall be confidential by law
23 and privileged, shall not be subject to chapter

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1 92F, shall not be subject to subpoena, and shall
2 not be subject to discovery or admissible in
3 evidence in any private civil action. However,
4 the commissioner may use the documents,
5 materials, or other information in the
6 furtherance of any regulatory or legal action
7 brought as a part of the commissioner's official
8 duties;

9 (I) Neither the commissioner nor any person who
10 received documents, materials, or other
11 information while acting under the authority of
12 the commissioner shall be permitted or required
13 to testify in any private civil action concerning
14 any confidential documents, materials, or
15 information subject to subparagraph (H);

16 (J) To assist in the performance of the
17 commissioner's duties, the commissioner:

18 (i) May share documents, materials, or other
19 information, including the confidential and
20 privileged documents, materials, or
21 information subject to subparagraph (H) with
22 other state, federal, and international
23 regulatory agencies, with the National

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1 Association of Insurance Commissioners and
2 its affiliates and subsidiaries, and with
3 state, federal, and international law
4 enforcement authorities; provided that the
5 recipient agrees to maintain the
6 confidentiality and privileged status of the
7 document, material, or other information;
8 and
9 (ii) May receive documents, materials, or
10 information, including otherwise
11 confidential and privileged documents,
12 materials, or information, from the National
13 Association of Insurance Commissioners and
14 its affiliates and subsidiaries, and from
15 regulatory and law enforcement officials of
16 other foreign or domestic jurisdictions, and
17 shall maintain as confidential or privileged
18 any document, material, or information
19 received with notice or the understanding
20 that it is confidential or privileged under
21 the laws of the jurisdiction that is the
22 source of the document, material, or
23 information;

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- 1 (K) No waiver of any applicable privilege or claim of
2 confidentiality in the documents, materials, or
3 information shall occur as a result of disclosure
4 to the commissioner under this subsection or as a
5 result of sharing as authorized in subparagraph
6 (J);
- 7 (L) A memorandum in support of the opinion, and any
8 other material provided by the company to the
9 commissioner in connection with the memorandum,
10 may be subject to subpoena for the purpose of
11 defending an action seeking damages from the
12 actuary submitting the memorandum by reason of an
13 action required by this subsection or related
14 rules adopted by the commissioner;
- 15 (M) The memorandum or other material may otherwise be
16 released by the commissioner with the written
17 consent of the company or to the American Academy
18 of Actuaries upon request stating that the
19 memorandum or other material is required for the
20 purpose of professional disciplinary proceedings
21 and setting forth procedures satisfactory to the
22 commissioner for preserving the confidentiality
23 of the memorandum or other material; and

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1 (N) Once any portion of the confidential memorandum
2 is cited by the company in its marketing or is
3 cited before a governmental agency other than a
4 state insurance department or is released by the
5 company to the news media, all portions of the
6 confidential memorandum shall be no longer
7 confidential.

8 (d) For actuarial opinions of reserves after the operative
9 date of the valuation manual:

10 (1) Every company with outstanding life insurance
11 contracts, accident and health insurance contracts, or
12 deposit-type contracts in this State and subject to
13 regulation by the commissioner shall annually submit
14 the opinion of the appointed actuary as to whether the
15 reserves and related actuarial items held in support
16 of the policies and contracts are computed
17 appropriately, are based on assumptions that satisfy
18 contractual provisions, are consistent with prior
19 reported amounts, and comply with applicable laws of
20 this State. The valuation manual shall prescribe the
21 specifics of this opinion including any items deemed
22 to be necessary to its scope;

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- 1 (2) Every company with outstanding life insurance
2 contracts, accident and health insurance contracts, or
3 deposit-type contracts in this State and subject to
4 regulation by the commissioner, except as exempted in
5 the valuation manual, also shall annually include in
6 the opinion required by paragraph (1), an opinion of
7 the same appointed actuary as to whether the reserves
8 and related actuarial items held in support of the
9 policies and contracts specified in the valuation
10 manual, when considered in light of the assets held by
11 the company with respect to the reserves and related
12 actuarial items, including but not limited to the
13 investment earnings on the assets and the
14 considerations anticipated to be received and retained
15 under the policies and contracts, make adequate
16 provision for the company's obligations under the
17 policies and contracts including, but not limited to,
18 the benefits under and expenses associated with the
19 policies and contracts;
- 20 (3) Each opinion required by this subsection shall be
21 governed by the following provisions:
- 22 (A) A memorandum, in form and substance as specified
23 in the valuation manual and acceptable to the

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1 commissioner, shall be prepared to support each
2 actuarial opinion; and

3 (B) If the company fails to provide a supporting
4 memorandum at the request of the commissioner
5 within a period specified in the valuation
6 manual, or the commissioner determines that the
7 supporting memorandum provided by the insurance
8 company fails to meet the standards prescribed by
9 the valuation manual, or is otherwise
10 unacceptable to the commissioner, the
11 commissioner may engage a qualified actuary at
12 the expense of the insurance company to review
13 the opinion and the basis for the opinion and
14 prepare the supporting memorandum required by the
15 commissioner; and

16 (4) Every opinion subject to this subsection shall be
17 governed by the following provisions:

18 (A) The opinion shall be in form and substance as
19 specified in the valuation manual and acceptable
20 to the commissioner;

21 (B) The opinion shall be submitted with the annual
22 statement reflecting the valuation of such

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1 reserve liabilities for each year ending on or
2 after the operative date of the valuation manual;

3 (C) The opinion shall apply to all policies and
4 contracts subject to paragraph (2), plus other
5 actuarial liabilities as may be specified in the
6 valuation manual;

7 (D) The opinion shall be based on standards adopted
8 from time to time by the Actuarial Standards
9 Board or its successor and on such additional
10 standards as may be prescribed in the valuation
11 manual;

12 (E) In the case of an opinion required to be
13 submitted by a foreign or alien company, the
14 commissioner may accept the opinion filed by that
15 company with the insurance supervisory official
16 of another state if the commissioner determines
17 that the opinion reasonably meets the
18 requirements applicable to a company domiciled in
19 this State;

20 (F) Except in cases of fraud or wilful misconduct,
21 the appointed actuary shall not be liable for
22 damages to any person, other than the insurance
23 company and the commissioner, for any act, error,

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

3 (G) Disciplinary action by the commissioner against
4 the company or the qualified actuary shall be
5 defined by rules adopted by the commissioner.

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

7 ~~(1) Old policies:] (e) Except as otherwise provided in~~

8 [~~paragraph (3),]~~ subsections (f), (g), and (n), the minimum
9 standard for the valuation of ~~[all]~~ policies and contracts
10 issued prior to [~~the operative date of section 431:10D-104,~~]
11 January 1, 1956, shall be that provided by the laws in effect
12 immediately prior to January 1, 1956[~~+~~

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

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1 insurance policies, and four and one-half per cent interest for
2 all other policies issued on or after June 1, 1979~~[+]~~, and the
3 following tables:

4 ~~[(A)]~~ (1) For ~~[all]~~ ordinary policies of life insurance
5 issued on the standard basis, excluding any accident
6 and health or sickness and accidental death benefits
7 in the policies~~---~~: the Commissioners 1941 Standard
8 Ordinary Mortality Table for the policies issued prior
9 to the operative date of section ~~[431:10D-104(e)(8)]~~,
10 ~~and~~ 431:10D-104(e)(6), the Commissioners 1958
11 Standard Ordinary Mortality Table for the policies
12 issued on or after the operative date~~[+]~~ of section
13 431:10D-104(e)(6) and prior to the operative date of
14 section 431:104(e)(8); provided that for any category
15 of the policies issued on female risks, all modified
16 net premiums and present values referred to in this
17 section may be calculated according to an age not more
18 than six years younger than the actual age of the
19 insured; and for the policies issued on or after the
20 operative date of section 431:10D-104(e)(8) ~~[, the]~~:
21 (A) The Commissioners 1980 Standard Ordinary
22 Mortality Table ~~[, or at]~~;

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1 the commissioner for use in determining the minimum
2 standard of valuation for ~~these~~ the policies;

3 ~~(C)~~ (3) For individual annuity and pure endowment
4 contracts, excluding any accident and health or
5 sickness and accidental death benefits in the
6 policies~~—~~: the 1937 Standard Annuity Mortality
7 Table, or~~—~~ at the option of the ~~insurer,~~ company,
8 the Annuity Mortality Table for 1949, ultimate, or any
9 modification of either of these tables approved by the
10 commissioner;

11 ~~(D)~~ (4) For group annuity and pure endowment contracts,
12 excluding any accident and health or sickness and
13 accidental death benefits in the policies~~—~~: the
14 Group Annuity Mortality Table for 1951, ~~any~~ a
15 modification of the table approved by the
16 commissioner, or~~—~~ at the option of the ~~insurer,~~
17 company, any of the tables or modifications of tables
18 specified for individual annuity and pure endowment
19 contracts;

20 ~~(E)~~ (5) For total and permanent disability benefits in
21 or supplementary to ordinary policies or contracts~~—~~
22]: for policies or contracts issued after December
23 31, 1965, the tables of period 2 disablement rates and

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1 the 1930 to 1950 termination rates of the 1952
2 disability study of the Society of Actuaries, with due
3 regard to the type of benefit or any tables of
4 disablement rates and termination rates~~[7]~~ adopted
5 after 1980 by the National Association of Insurance
6 Commissioners, that are approved by rules adopted by
7 the commissioner for use in determining the minimum
8 standard of valuation for ~~[the]~~ those policies; for
9 policies or contracts issued after December 31, 1960,
10 and prior to January 1, 1966, either the tables or, at
11 the option of the ~~[insurer,]~~ company, the Class (3)
12 Disability Table (1926); and for policies issued prior
13 to January 1, 1961, the Class (3) Disability Table
14 (1926). Any table, for active lives, shall be
15 combined with a mortality table permitted for
16 calculating the reserves for life insurance policies;

17 ~~[-F-]~~ (6) For accidental death benefits in or
18 supplementary to policies~~[-for-policies]~~ issued after
19 December 31, 1965~~[7]~~: the 1959 Accidental Death
20 Benefits Table or any accidental death benefits
21 table~~[7]~~ adopted after 1980 by the National
22 Association of Insurance Commissioners, that is
23 approved by rules adopted by the commissioner for use

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1 in determining the minimum standard of valuation for
2 ~~[the]~~ those policies~~[,]~~, for policies issued after
3 December 31, 1960, and prior to January 1, 1966,
4 either ~~[the]~~ that table or, at the option of the
5 ~~[insurer,]~~ company, the Inter-company Double Indemnity
6 Mortality Table~~[, and for policies issued prior to~~
7 ~~January 1, 1961, the Inter-company Double Indemnity~~
8 ~~Mortality Table]~~. Either table shall be combined with
9 a mortality table ~~[permitted]~~ for calculating the
10 reserves for life insurance policies; and

11 ~~[(G)]~~ (7) For group life insurance, life insurance issued
12 on the substandard basis, and other special benefits~~[-~~
13 ~~-any]~~: tables ~~[that may be]~~ approved by the
14 commissioner~~[,]~~.

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

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1 ~~[(A)]~~ (1) For individual annuity and pure endowment
2 contracts issued prior to June 1, 1979, excluding any
3 accident and health or sickness and accidental death
4 benefits in the contracts~~---~~: the 1971 Individual
5 Annuity Mortality Table, or any modification of this
6 table approved by the commissioner, and six per cent
7 interest for single premium immediate annuity
8 contracts, and four per cent interest for all other
9 individual annuity and pure endowment contracts;

10 ~~[(B)]~~ (2) For individual single premium immediate annuity
11 contracts issued on or after June 1, 1979, excluding
12 any accident and health or sickness and accidental
13 death benefits in the contracts~~---~~: the 1971
14 Individual Annuity Mortality Table~~[7]~~ or any
15 individual annuity mortality table~~[7]~~ adopted after
16 1980 by the National Association of Insurance
17 Commissioners, that is approved by rules adopted by
18 the commissioner for use in determining the minimum
19 standard of valuation for ~~[the]~~ these contracts, or
20 any modification of these tables approved by the
21 commissioner, and seven and one-half per cent
22 interest;

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1 ~~(C)~~ (3) For individual annuity and pure endowment
2 contracts issued on or after June 1, 1979, other than
3 single premium immediate annuity contracts, excluding
4 any accident and health or sickness and accidental
5 death benefits in ~~the~~ those contracts~~---~~: the 1971
6 Individual Annuity Mortality Table or any individual
7 annuity mortality table~~,~~ adopted after 1980 by the
8 National Association of Insurance Commissioners, that
9 is approved by rules adopted by the commissioner for
10 use in determining the minimum standard of valuation
11 for ~~the~~ those contracts, or any modification of
12 these tables approved by the commissioner, and five
13 and one-half per cent interest for single premium
14 deferred annuity and pure endowment contracts and four
15 and one-half per cent interest for all other
16 individual annuity and pure endowment contracts; ~~and~~
17 ~~(D)~~ (4) For annuities and pure endowment contracts
18 purchased prior to June 1, 1979, under group annuity
19 and pure endowment contracts, excluding any accident
20 and health or sickness and accidental death benefits
21 purchased under those contracts: the 1971 Group
22 Annuity Mortality Table or any modification of this

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1 table approved by the commissioner, and six per cent
2 interest; and
3 (5) For ~~[all]~~ annuities and pure ~~[endowments]~~ endowment
4 contracts purchased on or after June 1, 1979, under
5 group annuity and pure endowment contracts, excluding
6 any accident and health or sickness and accidental
7 death benefits ~~[in the]~~ purchased under those
8 contracts~~[-]~~: the 1971 Group Annuity Mortality
9 Table, or any group annuity mortality table~~[-]~~ adopted
10 after 1980 by the National Association of Insurance
11 Commissioners, that is approved by rules adopted by
12 the commissioner for use in determining the minimum
13 standard of valuation for the annuities and pure
14 ~~[endowments]~~ endowment contracts, or any modification
15 of these tables approved by the commissioner, and
16 seven and one-half per cent interest.

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

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1 annuity and pure endowment contracts.] that company. If [an
2 ~~insurer~~] a company makes no election, the operative date of this
3 [paragraph] subsection for [~~the insurer~~] that company shall be
4 January 1, 1979 [~~;~~ and

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

6 ~~(A) The interest rates used in determining the~~
7 ~~minimum for the valuation of:~~

8 ~~(i) All life insurance policies issued in a~~
9 ~~particular calendar year, on or after the~~
10 ~~operative date of section 431:10D-104(e)(8);~~

11 ~~(ii) All individual annuity and pure endowment~~
12 ~~contracts issued in a particular calendar~~
13 ~~year after December 31, 1982;~~

14 ~~(iii) All annuities and pure endowments purchased~~
15 ~~in a particular calendar year after December~~
16 ~~31, 1982, under group annuity and pure~~
17 ~~endowment contracts; and~~

18 ~~(iv) The net increase, if any, in a particular~~
19 ~~calendar year after 1982, in amounts held~~
20 ~~under guaranteed interest contracts shall be~~
21 ~~the calendar year statutory valuation rates~~
22 ~~as defined in this paragraph;].~~

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1
$$I = .03 + W (R_1 - .03) + - (R_2 - .09);$$

2 2

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

8
$$I = .03 + W (R - .03)$$

9 where R_1 is the lesser of R and $.09$, R_2 is the
 10 greater of R and $.09$, R is the reference interest
 11 rate defined in this [~~section 7,~~] subsection, and W
 12 is the weighting factor defined in this
 13 [~~section 7,~~] subsection;

14 [~~(iii)~~] (C) For other annuities with cash settlement
 15 options and guaranteed interest contracts with
 16 cash settlement options, valued on an issue year
 17 basis, except as stated in [~~clause (ii),~~]
 18 subparagraph (B), the formula for life insurance
 19 stated in [~~clause (i)]~~ subparagraph (A) shall
 20 apply to annuities and guaranteed interest
 21 contracts with guarantee durations in excess of
 22 ten years[~~7~~] and the formula for single premium
 23 immediate annuities stated in [~~clause (ii)]~~

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1 subparagraph (B) shall apply to annuities and
2 guaranteed interest contracts with guarantee
3 duration of ten years or less;

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

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

15 [~~(C) However, if~~] If the calendar year statutory valuation
16 interest rate for any life insurance policies issued
17 in any calendar year determined without reference to
18 this sentence differs from the corresponding actual
19 rate for similar policies issued in the immediately
20 preceding calendar year by less than one-half of one
21 per cent, the calendar year statutory valuation
22 interest rate for [~~these~~] the life insurance policies
23 shall be equal to the corresponding actual rate for

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1 the immediately preceding calendar year. For purposes
 2 of applying the immediately preceding sentence, the
 3 calendar year statutory valuation interest rate for
 4 life insurance policies issued in a calendar year
 5 shall be determined for 1980 (using the reference
 6 interest rate defined for 1979) and shall be
 7 determined for each subsequent calendar year
 8 regardless of when section 431:10D-104(e) (8) becomes
 9 operative;

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

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

14	Guarantee	
15	Duration	Weighting
16	<u>(Years)</u>	<u>Factors</u>
17	10 or [fewer] <u>(less)</u>	.50
18	More than 10, but not more	
19	than 20	.45
20	More than 20	.35

21 For life insurance, the guarantee duration is the
 22 maximum number of years the life insurance can
 23 remain in force on a basis guaranteed in the

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1 policy[7] or under options to convert to plans of
 2 life insurance with premium rates or
 3 nonforfeiture values[7] or both, which are
 4 guaranteed in the original policy;

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

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

16 Table I:

17 For annuities and guaranteed interest contracts
 18 valued on an issue year basis;

19 Guarantee	Weighting Factor		
20 Duration	For Plan Type		
21 <u>(Years)</u>	<u>A</u>	<u>B</u>	<u>C</u>
22 5 or less:	.80	.60	.50
23 More than 5, but not more			

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1	than 10:	.75	.60	.50
2	More than 10, but not more			
3	than 20:	.65	.50	.45
4	More than 20:	.45	.35	.35
5		Plan Type		
6	<u>Table II:</u>	<u>A</u>	<u>B</u>	<u>C</u>
7	For annuities and guaranteed			
8	interest contracts valued on			
9	a change in fund basis, the			
10	factors shown in [clause (i)]			
11	<u>Table I</u> increased by:	.15	.25	.05
12		Plan Type		
13	<u>Table III:</u>	<u>A</u>	<u>B</u>	<u>C</u>
14	For annuities and guaranteed			
15	interest contracts valued on			
16	an issue year basis (other			
17	than those with no cash			
18	settlement options) [which] <u>that</u>			
19	do not guarantee interest on			
20	considerations received more			
21	than one year after issue or			
22	purchase[r] and for annuities			
23	and guaranteed interest			

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1 contracts valued on a change
2 in fund basis [~~which~~] that do
3 not guarantee interest rates on
4 considerations received more
5 than twelve months beyond the
6 valuation date, the factors
7 shown in Table I or derived in

8 Table II increased by: .05 .05 .05

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

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

9 Plan Type B: Before expiration of the
10 interest rate guarantee, the policyholder may
11 withdraw funds only: (1) with an adjustment to
12 reflect changes in interest rates or asset values
13 since receipt of the funds by the insurance
14 company; (2) without an adjustment, but in
15 installments over five years or more; or (3) no
16 withdrawal permitted. At the end of the interest
17 rate guarantee, funds may be withdrawn without
18 adjustment in a single sum or in installments
19 over less than five years;

20 Plan Type C: The policyholder may withdraw
21 funds before expiration of the interest rate
22 guarantee in a single sum or in installments over
23 less than five years either: (1) without

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1 adjustment to reflect changes in interest rates
2 or asset values since receipt of the funds by the
3 insurance company; or (2) subject only to a fixed
4 surrender charge stipulated in the contract as a
5 percentage of the fund.

6 A company may elect to value guaranteed
7 interest contracts with cash settlement options
8 and annuities with cash settlement options on
9 either an issue year basis or on a change in fund
10 basis. Guaranteed interest contracts with no
11 cash settlement options and other annuities with
12 no cash settlement options shall be valued on an
13 issue year basis. As used in this ~~[section, an~~
14 ~~issue year basis of valuation refers to]~~
15 subsection, "issue year basis of valuation" means
16 a valuation basis under which the interest rate
17 used to determine the minimum valuation standard
18 for the entire duration of the annuity or
19 guaranteed interest contract is the calendar year
20 valuation interest rate for the year of issue or
21 year of purchase of the annuity or guaranteed
22 interest contract, and ~~[the change in fund basis~~
23 ~~of valuation refers to]~~ "change in fund basis of

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1 valuation" means a valuation basis under which
2 the interest rate used to determine the minimum
3 valuation standard applicable to each change in
4 the fund held under the annuity or guaranteed
5 interest contract is the calendar year valuation
6 interest rate for the year of the change in the
7 fund;

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

10 ~~(i)~~ (A) For ~~all~~ life insurance, the lesser of the
11 average over a period of thirty-six months and
12 the average over a period of twelve months,
13 ending on June 30 of the calendar year ~~next~~
14 preceding the year of issue, of ~~Moody's~~
15 ~~Corporate Bond Yield Average Monthly Average~~
16 ~~Corporates,~~ the monthly average of composite
17 yield on seasoned corporate bonds, as published
18 by Moody's Investors Service, Inc.;

19 ~~(ii)~~ (B) For single premium immediate annuities and
20 for annuity benefits involving life contingencies
21 arising from other annuities with cash settlement
22 options and guaranteed interest contracts with
23 cash settlement options, the average over a

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1 period of twelve months, ending on June 30 of the
2 calendar year of issue or year of purchase, [~~of~~
3 ~~Moody's Corporate Bond Yield Average Monthly~~
4 ~~Average Corporates,~~] of the monthly average of
5 the composite yield on seasoned corporate bonds,
6 as published by Moody's Investors Service, Inc.;

7 [~~(iii)~~] (C) For other annuities with cash settlement
8 options and guaranteed interest contracts with
9 cash settlement options, valued on a year of
10 issue basis, except as stated in [~~clause (ii),~~]
11 subparagraph (B), with guarantee duration in
12 excess of ten years, the lesser of the average
13 over a period of thirty-six months and the
14 average over a period of twelve months, ending on
15 June 30 of the calendar year of issue or
16 purchase, [~~of Moody's Corporate Bond Yield~~
17 ~~Average Monthly Average Corporates,~~] of the
18 monthly average of the composite yield on
19 seasoned corporate bonds, as published by Moody's
20 Investors Service, Inc.;

21 [~~(iv)~~] (D) For other annuities with cash settlement
22 options and guaranteed interest contracts with
23 cash settlement options, valued on a year of

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1 issue basis, except as stated in [~~clause (ii),~~]
2 subparagraph (B), with guarantee duration of ten
3 years or less, the average over a period of
4 twelve months, ending on June 30 of the calendar
5 year of issue or purchase, [~~of Moody's Corporate~~
6 ~~Bond Yield Average Monthly Average Corporates,~~]
7 of the monthly average of the composite yield on
8 seasoned corporate bonds, as published by Moody's
9 Investors Service, Inc.;

10 [~~(v)~~] (E) For other annuities with no cash settlement
11 options and for guaranteed interest contracts
12 with no cash settlement options, the average over
13 a period of twelve months, ending on June 30 of
14 the calendar year of issue or purchase, [~~of~~
15 ~~Moody's Corporate Bond Yield Average Monthly~~
16 ~~Average Corporates,~~] of the monthly average of
17 the composite yield on seasoned corporate bonds,
18 as published by Moody's Investors Service, Inc. ;
19 and

20 [~~(vi)~~] (F) For other annuities with cash settlement
21 options and guaranteed interest contracts with
22 cash settlement options, valued on a change in
23 fund basis, except as stated in [~~clause (ii),~~]

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1 subparagraph (B), the average over a period of
2 twelve months, ending on June 30 of the calendar
3 year of the change in the fund, [~~of Moody's~~
4 ~~Corporate Bond Yield Average Monthly Average~~
5 ~~Corperates,~~] of the monthly average of the
6 composite yield on seasoned corporate bonds, as
7 published by Moody's Investors Service, Inc.; and

8 [~~(F) Alternative method for determining references~~
9 ~~interest rates.~~]

10 (5) In the event that [~~Moody's Corporate Bond Yield~~
11 ~~Average Monthly Average Corperates~~] the monthly
12 average of the composite yield on seasoned corporate
13 bonds is no longer published by Moody's Investors
14 Service, Inc., or in the event that the National
15 Association of Insurance Commissioners determines that
16 [~~Moody's Corporate Bond Yield Average Monthly Average~~
17 ~~Corperates as published~~] the monthly average of the
18 composite yield on seasoned corporate bonds as
19 published by Moody's Investors Service, Inc., is no
20 longer appropriate for the determination of the
21 reference interest rate, then an alternative method
22 for determination of the reference interest rate[~~7~~
23 ~~which is~~] adopted by the National Association of

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1 Insurance Commissioners and approved by rules adopted
2 by the commissioner^[7] may be substituted.

3 ~~[(d) Commissioner's reserve valuation methods:~~

4 ~~(1)]~~ (h) (1) Except as otherwise provided in subsections
5 ~~[(e) and (h),]~~ (i), (l), and (n), reserves, according
6 to the commissioner's reserve valuation ~~[methods,~~
7 method, for the life insurance and endowment benefits
8 of policies providing for a uniform amount of
9 insurance and requiring the payment of uniform
10 premiums shall be the excess, if any, of the present
11 value, at the date of valuation, of the future
12 guaranteed benefits provided for by the policies, over
13 the then present value of any future modified net
14 premiums therefor. The modified net premiums for ~~[any~~
15 ~~such]~~ a policy shall be the uniform percentage of the
16 respective contract premiums for the benefits
17 ~~[(excluding extra premiums on a substandard policy)]~~
18 such that the present value, at the date of issue of
19 the policy, of all the modified net premiums shall be
20 equal to the sum of the then present value of the
21 benefits provided for by the policy and the excess of
22 subparagraph (A) over subparagraph (B) as follows:

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1 (A) A net level annual premium equal to the present
2 value, at the date of issue, of the benefits
3 provided for after the first policy year, divided
4 by the present value, at the date of issue, of an
5 annuity of one [~~a-year~~] per annum payable on the
6 first and each subsequent anniversary of the
7 policy on which a premium falls due; provided
8 that the net level annual premium shall not
9 exceed the net level annual premium on the
10 nineteen-year premium whole life plan for
11 insurance of the same amount at an age one year
12 higher than the age of issue of the policy; and

13 (B) A net one-year term premium for the benefits
14 provided for in the first policy year[~~;~~ ~~provided~~
15 ~~that for any~~];

16 (2) For a life insurance policy issued on or after January
17 1, 1986, for which the contract premium in the first
18 policy year exceeds that of the second year, and for
19 which no comparable additional benefit is provided in
20 the first year for the excess, [~~which~~] and that
21 provides an endowment benefit, a cash surrender value,
22 or a combination thereof, in an amount greater than
23 the excess premium, the reserve, according to the

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1 commissioner's reserve valuation method as of any
2 policy anniversary occurring on or before the assumed
3 ending date, defined herein as the first policy
4 anniversary on which the sum of any endowment benefit
5 and any cash surrender value then available is greater
6 than the excess premium, except as otherwise provided
7 in subsection ~~[(h),]~~ (1), shall be the greater of the
8 reserve as of the policy anniversary calculated as
9 described above and the reserve as of the policy
10 anniversary calculated as described, but with:

11 ~~[(i)]~~ (A) The value defined in ~~[subparagraph (A)]~~
12 paragraph (1) being reduced by fifteen per cent
13 of the amount of the excess first year premium;

14 ~~[(ii)]~~ (B) All present values of benefits and premiums
15 being determined without reference to premiums or
16 benefits provided for by the policy after the
17 assumed ending date;

18 ~~[(iii)]~~ (C) The policy being assumed to mature on that
19 date as an endowment; and

20 ~~[(iv)]~~ (D) The cash surrender value provided on that
21 date being considered as an endowment benefit.

1 In making the above comparison, the mortality and
2 interest bases stated in [~~subsection (e) (2) and (3)]
3 subsections (e) and (g) shall be used; and
4 [~~(2) Reserve~~] (3) Reserves according to the
5 commissioner's reserve valuation [~~methods for~~] method
6 shall be calculated by a method consistent with the
7 principles of the preceding paragraphs for:~~

8 (A) Life insurance policies providing for a varying
9 amount of insurance or requiring the payment of
10 varying premiums;

11 (B) Group annuity and pure endowment contracts
12 purchased under a retirement plan or plan of
13 deferred compensation, established or maintained
14 by an employer (including a partnership or sole
15 proprietorship) or by an employee organization,
16 or by both, other than a plan providing
17 individual retirement accounts or individual
18 retirement annuities under section 408 of the
19 Internal Revenue Code, as now or hereafter
20 amended;

21 (C) Accident and health or sickness and accidental
22 death benefits in all policies and contracts; and

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1 (D) All other benefits, except life insurance and
2 endowment benefits in life insurance policies and
3 benefits provided by all other annuity and pure
4 endowment contracts [~~7~~
5 shall be calculated by a method consistent with the
6 principles of this subsection].

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

16 Reserves according to the commissioner's annuity reserve
17 method for benefits under annuity or pure endowment contracts,
18 excluding any accident and health or sickness and accidental
19 death benefits in [~~these~~] the contracts, shall be the greatest
20 of the respective excesses of the present values, at the date of
21 valuation, of the future guaranteed benefits, including
22 guaranteed nonforfeiture benefits, provided for by [~~these~~] the
23 contracts at the end of each respective contract year, over the

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1 present value, at the date of valuation, of any future valuation
2 considerations derived from future gross considerations,
3 required by the terms of the contract, that become payable prior
4 to the end of [~~such~~] the respective contract year. The future
5 guaranteed benefits shall be determined by using the mortality
6 table, if any, and the interest rate, or rates, specified in the
7 contracts for determining guaranteed benefits. The valuation
8 considerations are the portions of the respective gross
9 considerations applied under the terms of the contracts to
10 determine nonforfeiture values.

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

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1 necessary to render the opinion required by [~~subsection (j).~~]
2 subsections (c) and (d).

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

5 (1) Reserves for [any category of] policies[₇] and
6 contracts[₇ or benefits as established by the
7 commissioner, issued on or after the operative date of
8 section 431:10D-104,] issued prior to January 1, 1956,
9 may be calculated, at the option of the [insurer₇]
10 company, according to any standards [which] that
11 produce greater aggregate reserves for [the category
12 than those calculated according to the minimum
13 standard herein provided. The rates of interest used
14 for policies and contracts, other than annuity and
15 pure endowment contracts, shall not be higher than the
16 corresponding rates of interest used in calculating
17 any nonforfeiture benefits provided for therein. Any]
18 all such policies and contracts than the minimum
19 reserves required by the laws in effect immediately
20 prior to that date;

21 (2) Reserves for any category of policies, contracts, or
22 benefits established by the commissioner, issued on or
23 after January 1, 1956, may be calculated, at the

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1 option of the company, according to any standards that
2 produce greater aggregate reserves for the category
3 than those calculated according to the minimum
4 standard provided herein, but the rate or rates of
5 interest used for policies and contracts, other than
6 annuity and pure endowment contracts, shall not be
7 greater than the corresponding rate or rates of
8 interest used in calculating any nonforfeiture
9 benefits provided in the policies or contracts; and

10 (3) A company, which adopts at any time [shall have
11 adopted any] a standard valuation producing greater
12 aggregate reserves than those calculated according to
13 the minimum standard [herein] provided[.] under this
14 section, may adopt a lower standard of valuation with
15 the approval of the commissioner, [may adopt any lower
16 standard of valuation,] but not lower than the minimum
17 [herein] provided[.] herein; provided that for the
18 purposes of this section, the holding of additional
19 reserves previously determined by [a qualified] the
20 appointed actuary to be necessary to render the
21 opinion required by [subsection (j)] subsections (c)
22 and (d) shall not be deemed to be the adoption of a
23 higher standard of valuation.

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1 [~~(h) Minimum reserve:~~] (1) If in any contract year the
2 gross premium charged by [~~any life insurer~~] a company on [~~any~~] a
3 policy or contract is less than the valuation net premium for
4 the policy or contract calculated by the method used in
5 calculating the reserve [~~thereon~~] but using the minimum
6 valuation standards of mortality and rate of interest, the
7 minimum reserve required for [~~that~~] the policy or contract shall
8 be the greater of either the reserve calculated according to the
9 mortality table, rate of interest, and method actually used for
10 the policy or contract, or the reserve calculated by the method
11 actually used for the policy or contract, but using the minimum
12 valuation standards of mortality and rate of interest and
13 replacing the valuation net premium by the actual gross premium
14 in each contract year for which the valuation net premium
15 exceeds the actual gross premium. The minimum valuation
16 standards of mortality and rate of interest referred to in this
17 [~~section~~] subsection are those standards stated in [~~subsection~~
18 ~~(e) (1), (2), and (4); provided that for any~~] subsections (f) and
19 (g). For a life insurance policy issued on or after January 1,
20 1986, for which the gross premium in the first policy year
21 exceeds that of the second year and for which no comparable
22 additional benefit is provided in the first year for the excess
23 and [~~which~~] that provides an endowment benefit or a cash

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1 surrender value, or a combination thereof, in an amount greater
2 than the excess premium, this subsection shall be applied as if
3 the method actually used in calculating the reserve for the
4 policy were the method described in subsection [~~(d)~~] (h),
5 ignoring the second paragraph of that subsection. The minimum
6 reserve at each policy anniversary of such a policy shall be the
7 greater of the minimum reserve calculated in accordance with
8 subsection [~~(d)~~] (h), including subsection [~~(d)~~(2)] (h)(2) and
9 the minimum reserve calculated in accordance with this
10 subsection.

11 [~~(i)~~] (m) In the case of any plan of life insurance
12 [~~which~~] that provides for future premium determination, the
13 amounts of which are to be determined by the insurance company
14 based on then estimates of future experience, or in the case of
15 any plan of life insurance or annuity [~~which~~] that is of such a
16 nature that the minimum reserves cannot be determined by the
17 methods described in subsections [~~(d)~~, ~~(e)~~, ~~and~~] (h), (i), and
18 (l), the reserves [~~which~~] that are held under [~~any such~~] the
19 plan [~~must~~] shall:

20 (1) Be appropriate in relation to the benefits and the
21 pattern of premiums for that plan; and

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1 (2) Be computed by a method [~~which~~] that is consistent
2 with the principles of this section, as determined by
3 rules adopted by the commissioner.

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

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

17 ~~(2) Actuarial analysis of reserves and assets supporting~~
18 the reserves.

19 ~~(A) Every life insurance company, except as exempted~~
20 by or pursuant to rules, also shall include
21 annually in the opinion required by paragraph
22 ~~(1), an opinion of the same qualified actuary as~~
23 to whether the reserves and related actuarial

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1 ~~items held in support of the policies and~~
2 ~~contracts specified by the commissioner by rules,~~
3 ~~when considered in light of the assets held by~~
4 ~~the company with respect to the reserves and~~
5 ~~related actuarial items, including but not~~
6 ~~limited to the investment earnings on the assets~~
7 ~~and the considerations anticipated to be received~~
8 ~~and retained under the policies and contracts,~~
9 ~~make adequate provision for the company's~~
10 ~~obligations under the policies and contracts,~~
11 ~~including but not limited to the benefits under,~~
12 ~~and expenses associated with, the policies and~~
13 ~~contracts; and~~

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

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

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

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1 ~~(B) If the insurance company fails to provide a~~
2 ~~supporting memorandum at the request of the~~
3 ~~commissioner within a period specified by rules~~
4 ~~or if the commissioner determines that the~~
5 ~~supporting memorandum provided by the insurer~~
6 ~~fails to meet the standards prescribed by rules~~
7 ~~or is otherwise unacceptable to the commissioner,~~
8 ~~the commissioner may engage a qualified actuary~~
9 ~~at the expense of the insurer to review the~~
10 ~~opinion and the basis for the opinion and prepare~~
11 ~~any supporting memorandum that is required by the~~
12 ~~commissioner; and~~

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

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

18 ~~(B) The opinion shall apply to all business in force~~
19 ~~including individual and group health insurance~~
20 ~~plans, in form and substance acceptable to the~~
21 ~~commissioner as specified by rules;~~

22 ~~(C) The opinion shall be based on standards adopted~~
23 ~~from time to time by the Actuarial Standards~~

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1 ~~Board and on any [additional] standards that the~~
2 ~~commissioner may prescribe by rules;~~

3 ~~(D) In the case of an opinion required to be~~
4 ~~submitted by a foreign or alien insurer, the~~
5 ~~commissioner may accept the opinion filed by that~~
6 ~~insurer with the insurance supervisory official~~
7 ~~of another state if the commissioner determines~~
8 ~~that the opinion reasonably meets the~~
9 ~~requirements applicable to an insurer domiciled~~
10 ~~in this State;~~

11 ~~(E) For the purposes of this section, "qualified~~
12 ~~actuary" means a member in good standing of the~~
13 ~~American Academy of Actuaries who meets the~~
14 ~~requirements set forth in the regulations adopted~~
15 ~~by the American Academy of Actuaries;~~

16 ~~(F) Except in cases of fraud or wilful misconduct,~~
17 ~~the qualified actuary shall not be liable for~~
18 ~~damages to any person, other than the insurer and~~
19 ~~the commissioner, for any act, error, omission,~~
20 ~~decision, or conduct with respect to the~~
21 ~~actuary's opinion; and~~

22 ~~(G) Any memorandum in support of the opinion, and any~~
23 ~~other material provided by the insurer to the~~

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1 ~~commissioner in connection therewith, shall be~~
2 ~~kept confidential by the commissioner and shall~~
3 ~~not be made public and shall not be subject to~~
4 ~~subpoena, other than for the purpose of defending~~
5 ~~an action seeking damages from any person by~~
6 ~~reason of any action required by this section, or~~
7 ~~by rules adopted hereunder; provided that the~~
8 ~~memorandum or other material may otherwise be~~
9 ~~released by the commissioner with the written~~
10 ~~consent of the insurer or be released to the~~
11 ~~American Academy of Actuaries upon request~~
12 ~~stating that the memorandum or other material is~~
13 ~~required for the purpose of professional~~
14 ~~disciplinary proceedings and setting forth~~
15 ~~procedures satisfactory to the commissioner for~~
16 ~~preserving the confidentiality of the memorandum~~
17 ~~or other material. Once any portion of the~~
18 ~~confidential memorandum is cited by the insurer~~
19 ~~in its marketing material or is cited before any~~
20 ~~governmental agency, other than a state insurance~~
21 ~~department, or is released by the insurer to the~~
22 ~~news media, all portions of the confidential~~
23 ~~memorandum shall no longer be confidential.]~~

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

9 (o) (1) For policies issued on or after the operative date
10 of the valuation manual, the standard prescribed in
11 the valuation manual is the minimum standard of
12 valuation required under subsection (b) (2), except as
13 provided under paragraph (5) or (7);

14 (2) The operative date of the valuation manual is January
15 1 of the first calendar year following the first July
16 1 as of which all of the following have occurred:

17 (A) The valuation manual has been adopted by the
18 National Association of Insurance Commissioners
19 by an affirmative vote of at least forty-two
20 members, or three-fourths of the members voting,
21 whichever is greater;

22 (B) The Standard Valuation Law, as amended by the
23 National Association of Insurance Commissioners

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1 in 2009, or legislation including substantially
2 similar terms and provisions, has been enacted by
3 states representing greater than seventy-five per
4 cent of the direct premiums written as reported
5 in the following annual statements submitted for
6 2008: life, accident and health annual
7 statements; health annual statements; or
8 fraternal annual statements; and

9 (C) The Standard Valuation Law, as amended by the
10 National Association of Insurance Commissioners
11 in 2009, or legislation including substantially
12 similar terms and provisions, has been enacted by
13 at least forty-two of the following fifty-five
14 jurisdictions: the fifty states of the United
15 States, American Samoa, the American Virgin
16 Islands, the District of Columbia, Guam, and
17 Puerto Rico;

18 (3) Unless a change in the valuation manual specifies a
19 later effective date, changes to the valuation manual
20 shall be effective on January 1 following the date
21 when all of the following have occurred:

22 (A) The change to the valuation manual has been
23 adopted by the National Association of Insurance

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1 Commissioners by an affirmative vote

2 representing:

3 (i) At least three-fourths of the members of the

4 National Association of Insurance

5 Commissioners voting, but not less than a

6 majority of the total membership, and

7 (ii) Members of the National Association of

8 Insurance Commissioners representing

9 jurisdictions totaling greater than seventy-

10 five per cent of the direct premiums written

11 as reported in the following annual

12 statements most recently available prior to

13 the vote in clause (i): life, accident and

14 health annual statements; health annual

15 statements; or fraternal annual statements;

16 and

17 (B) The valuation manual becomes effective pursuant

18 to rules adopted by the commissioner;

19 (4) The valuation manual shall specify all of the

20 following:

21 (A) Minimum valuation standards for and definitions

22 of the policies or contracts subject to

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1 subsection (b) (2). These minimum valuation
2 standards shall be:

3 (i) The commissioner's reserve valuation method
4 for life insurance contracts, other than
5 annuity contracts, subject to subsection
6 (b) (2);

7 (ii) The commissioner's annuity reserve valuation
8 method for annuity contracts subject to
9 subsection (b) (2); and

10 (iii) Minimum reserves for all other policies or
11 contracts subject to subsection (b) (2);

12 (B) Which policies or contracts or types of policies
13 or contracts that are subject to the requirements
14 of a principle-based valuation in subsection
15 (p) (1) and the minimum valuation standards
16 consistent with those requirements;

17 (C) For policies and contracts subject to a
18 principle-based valuation under subsection (p):

19 (i) Requirements for the format of reports to
20 the commissioner under subsection (p) (2) (C)
21 that shall include information necessary to
22 determine if the valuation is appropriate
23 and in compliance with this section;

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- 1 (ii) Assumptions shall be prescribed for risks
2 over which the company does not have
3 significant control or influence;
- 4 (iii) Procedures for corporate governance and
5 oversight of the actuarial function, and a
6 process for appropriate waiver or
7 modification of such procedures;
- 8 (D) For policies not subject to a principle-based
9 valuation under subsection (p), the minimum
10 valuation standard shall either:
- 11 (i) Be consistent with the minimum standard of
12 valuation prior to the operative date of the
13 valuation manual; or
- 14 (ii) Develop reserves that quantify the benefits
15 and guarantees, and the funding, associated
16 with the contracts and their risks at a
17 level of conservatism that reflects
18 conditions that include unfavorable events
19 that have a reasonable probability of
20 occurring;
- 21 (E) Other requirements including, but not limited to,
22 those relating to reserve methods, models for
23 measuring risk, generation of economic scenarios,

1 assumptions, margins, use of company experience,
2 risk measurement, disclosure, certifications,
3 reports, actuarial opinions and memorandums,
4 transition rules, and internal controls; and
5 (F) The data and form of the data required under
6 subsection (q), with whom the data shall be
7 submitted, and may specify other requirements
8 including data analyses and reporting of
9 analyses;

10 (5) In the absence of a specific valuation requirement or
11 if a specific valuation requirement in the valuation
12 manual is not, in the opinion of the commissioner, in
13 compliance with this section, then the company shall,
14 with respect to these requirements, comply with
15 minimum valuation standards prescribed by the
16 commissioner by rule;

17 (6) The commissioner may engage a qualified actuary, at
18 the expense of the company, to perform an actuarial
19 examination of the company and opine on the
20 appropriateness of any reserve assumption or method
21 used by the company, or to review and opine on a
22 company's compliance with any requirement set forth in
23 this section. The commissioner may rely upon the

1 opinion, regarding provisions contained within this
2 section, of a qualified actuary engaged by the
3 commissioner of another state, district, or territory
4 of the United States. As used in this paragraph,
5 "engage" includes employment and contracting; and

6 (7) The commissioner may require a company to change any
7 assumption or method that in the opinion of the
8 commissioner is necessary to comply with the
9 requirements of the valuation manual or this section,
10 and the company shall adjust the reserves as required
11 by the commissioner. The commissioner may take other
12 disciplinary action as permitted pursuant to this
13 chapter.

14 (p) (1) A company shall establish reserves using a
15 principle-based valuation that meets the following
16 conditions for policies or contracts as specified in
17 the valuation manual:

18 (A) Quantify the benefits and guarantees, and the
19 funding, associated with the contracts and their
20 risks at a level of conservatism that reflects
21 conditions that include unfavorable events that
22 have a reasonable probability of occurring during
23 the lifetime of the contracts. For policies or

1 contracts with significant tail risk, the
2 valuation shall reflect conditions appropriately
3 adverse to quantify the tail risk;
4 (B) Incorporate assumptions, risk analysis methods
5 and financial models, and management techniques
6 that are consistent with, but not necessarily
7 identical to, those used within the company's
8 overall risk assessment process, while
9 recognizing potential differences in financial
10 reporting structures and any prescribed
11 assumptions or methods;
12 (C) Incorporate assumptions that are prescribed in
13 the valuation manual, or for assumptions that are
14 not prescribed, the assumptions shall:
15 (i) Be established using the company's available
16 experience, to the extent it is relevant and
17 statistically credible; or
18 (ii) To the extent that company data is not
19 available, relevant, or statistically
20 credible, be established using other
21 relevant, statistically credible experience;
22 and

- 1 (D) Provide margins for uncertainty including adverse
2 deviation and estimation error, such that the
3 greater the uncertainty the larger the margin and
4 resulting reserve;
- 5 (2) A company using a principle-based valuation for one or
6 more policies or contracts subject to this section as
7 specified in the valuation manual shall:
- 8 (A) Establish procedures for corporate governance and
9 oversight of the actuarial valuation function
10 consistent with those described in the valuation
11 manual;
- 12 (B) Provide to the commissioner and to the company's
13 board of directors an annual certification of the
14 effectiveness of the internal controls with
15 respect to the principle-based valuation. These
16 controls shall be designed to assure that all
17 material risks inherent in the liabilities and
18 associated assets subject to the valuation are
19 included in the valuation, and that valuations
20 are made in accordance with the valuation manual.
21 The certification shall be based on the controls
22 in place as of the end of the preceding calendar
23 year; and

1 (C) Develop and file with the commissioner, upon
2 request, a principle-based valuation report that
3 complies with standards prescribed in the
4 valuation manual; and

5 (3) A principle-based valuation may include a prescribed
6 formulaic reserve component.

7 (q) On or after the operative date of the valuation
8 manual, a company shall submit mortality, morbidity,
9 policyholder behavior, or expense experience and other data as
10 prescribed in the valuation manual.

11 (r) (1) With respect to privilege for, and confidentiality
12 of, confidential information:

13 (A) Except as provided in this subsection, a
14 company's confidential information is
15 confidential by law and privileged, and shall not
16 be subject to chapter 92F, shall not be subject
17 to subpoena, and shall not be subject to
18 discovery or admissible in evidence in any
19 private civil action; provided that the
20 commissioner may use the confidential information
21 in the furtherance of any regulatory or legal
22 action brought against the company as a part of
23 the commissioner's official duties;

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1 (B) Neither the commissioner nor any person who
2 received confidential information while acting
3 under the authority of the commissioner shall be
4 permitted or required to testify in any private
5 civil action concerning any confidential
6 information;

7 (C) To assist in the performance of the
8 commissioner's duties, the commissioner may share
9 confidential information:

10 (i) With other state, federal, and international
11 regulatory agencies and with the National
12 Association of Insurance Commissioners and
13 its affiliates and subsidiaries; and

14 (ii) In the case of confidential information
15 specified in paragraph (3) (A) (i) and
16 (3) (B) (iv) only, with the Actuarial Board
17 for Counseling and Discipline or its
18 successor upon request stating that the
19 confidential information is required for the
20 purpose of professional disciplinary
21 proceedings and with the state, federal, and
22 international law enforcement officials in
23 the case of clauses (i) and (ii); provided

1 that the recipient agrees, and has the legal
2 authority to agree, to maintain the
3 confidentiality and privileged status of the
4 documents, materials, data, and other
5 information in the same manner and to the
6 same extent as required for the
7 commissioner;

8 (D) The commissioner may receive documents,
9 materials, data, and other information, including
10 otherwise confidential and privileged documents,
11 materials, data, or information, from the
12 National Association of Insurance Commissioners
13 and its affiliates and subsidiaries, from
14 regulatory or law enforcement officials of other
15 foreign or domestic jurisdictions, and from the
16 Actuarial Board for Counseling and Discipline or
17 its successor and shall maintain as confidential
18 or privileged any document, material, data, or
19 other information received with notice or the
20 understanding that it is confidential or
21 privileged under the laws of the jurisdiction
22 that is the source of the document, material, or
23 other information;

- 1 (E) The commissioner may enter into agreements
2 governing the sharing and use of information
3 consistent with this paragraph;
- 4 (F) No waiver of any applicable privilege or claim of
5 confidentiality in the confidential information
6 shall occur as a result of disclosure to the
7 commissioner under this subsection or as a result
8 of sharing as authorized in subparagraph (C);
- 9 (G) A privilege established under the law of any
10 state or jurisdiction that is substantially
11 similar to the privilege established under this
12 paragraph shall be available and enforced in any
13 proceeding in, and in any court of, this State;
- 14 (2) Notwithstanding paragraph (1), any confidential
15 information specified in paragraph (3) (A) (i) and (iv):
- 16 (A) May be subject to subpoena for the purpose of
17 defending an action seeking damages from the
18 appointed actuary submitting the related
19 memorandum in support of an opinion submitted
20 under subsections (c) and (d) or principle-based
21 valuation report developed under subsection
22 (p) (2) (C) by reason of an action required by this
23 section or by rules adopted hereunder;

- 1 (B) May otherwise be released by the commissioner
2 with the written consent of the company; and
- 3 (C) Once any portion of a memorandum in support of an
4 opinion submitted under subsections (c) and (d)
5 or a principle-based valuation report developed
6 under subsection (p) (2) (C) is cited by the
7 company in its marketing, is publicly volunteered
8 to or before a governmental agency other than a
9 state insurance department, or is released by the
10 company to the news media, all portions of the
11 memorandum or report shall no longer be
12 confidential; and
- 13 (3) For purposes of this section:
- 14 (A) "Confidential information" means:
- 15 (i) A memorandum in support of an opinion
16 submitted under subsections (c) and (d) and
17 any other documents, materials, and other
18 information, including but not limited to
19 all working papers and copies thereof,
20 created, produced, or obtained by or
21 disclosed to the commissioner or any other
22 person in connection with such memorandum;

1 (ii) All documents, materials, and other
2 information, including but not limited to
3 all working papers and copies thereof,
4 created, produced, or obtained by or
5 disclosed to the commissioner or any other
6 person in the course of an examination made
7 under subsection (o) (6); provided that if an
8 examination report or other material
9 prepared in connection with an examination
10 made under section 431:2-302 is not held as
11 private and confidential information under
12 section 431:2-305, an examination report or
13 other material prepared in connection with
14 an examination made under subsection (o) (6)
15 shall not be "confidential information" to
16 the same extent as if the examination report
17 or other material had been prepared under
18 section 431:2-305;

19 (iii) Any reports, documents, materials, and other
20 information developed by a company in
21 support of, or in connection with, an annual
22 certification by the company under
23 subsection (p) (2) (B) evaluating the

1 effectiveness of the company's internal
2 controls with respect to a principle-based
3 valuation and any other documents,
4 materials, and other information, including
5 but not limited to all working papers and
6 copies thereof, created, produced, or
7 obtained by, or disclosed to the
8 commissioner or any other person in
9 connection with such reports, documents,
10 materials, and other information;

11 (iv) Any principle-based valuation report
12 developed under subsection (p) (2) (C) and any
13 other documents, materials, and other
14 information, including but not limited to
15 all working papers and copies thereof,
16 created, produced, or obtained by, or
17 disclosed to the commissioner or any other
18 person in connection with the report; and

19 (v) Any documents, materials, data, and other
20 information submitted by a company under
21 subsection (q) (collectively, "experience
22 data") and any other documents, materials,
23 data, and other information, including but

1 not limited to all working papers and copies
2 thereof, created or produced in connection
3 with the experience data, in each case that
4 include any potentially company-identifying
5 or personally identifiable information, that
6 is provided to or obtained by the
7 commissioner (together with any "experience
8 data", the "experience materials") and any
9 other documents, materials, data, and other
10 information, including but not limited to
11 all working papers and copies thereof,
12 created, produced, or obtained by, or
13 disclosed to the commissioner or any other
14 person in connection with the experience
15 materials; and

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

21 (s) The commissioner may exempt specific product forms or
22 product lines of a domestic company that is licensed and doing

1 business only in this State from the requirements of subsection
2 (o); provided that:

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

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

10 For any company granted an exemption under this subsection,
11 subsections (c), (d), (e), (f), (g), (h), (i), (j), (k), (l),
12 (m), and (n) shall be applicable. With respect to any company
13 applying this exemption, any reference to subsection (o) found
14 in subsections (c), (d), (e), (f), (g), (h), (i), (j), (k), (l),
15 (m), and (n) shall not be applicable.

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

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

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

4 "Company" means an entity that:

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

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

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

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

21 "Policyholder behavior" means any action that a
22 policyholder, contract holder, or any other person with the
23 right to elect options, such as a certificate holder, may take

1 under a policy or contract subject to this section including,
2 but not limited to, lapse, withdrawal, transfer, deposit,
3 premium payment, loan, annuitization, or benefit elections
4 prescribed by the policy or contract, but excluding events of
5 mortality or morbidity that result in benefits prescribed in
6 their essential aspects by the terms of the policy or contract.

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

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

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

20 "Valuation manual" means the manual of valuation
21 instructions adopted by the National Association of Insurance
22 Commissioners as specified in this section or as subsequently
23 amended."

1 PART III

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

4 "§431:10D-104 Standard nonforfeiture law~~[+]~~ for life
5 insurance ~~[contracts]~~. (a) This section shall be known as the
6 Standard Nonforfeiture Law for Life Insurance.

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

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

20 (A) That, in the event of default in any premium
21 payment, the ~~[insurer will]~~ company shall grant,
22 upon proper request not later than sixty days
23 after the due date of the premium in default, a

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1 paid-up nonforfeiture benefit on a plan
2 stipulated in the policy, effective as of the due
3 date, of [~~such value~~] an amount as may be
4 hereinafter specified. In lieu of [~~such~~] the
5 stipulated paid-up nonforfeiture benefit, the
6 [~~insurer~~] company may substitute, upon proper
7 request no later than sixty days after the due
8 date of the premium in default, an actuarially
9 equivalent alternative paid-up nonforfeiture
10 benefit [~~which~~] that provides a greater amount or
11 longer period of death benefits or, if
12 applicable, a greater amount or earlier payment
13 of endowment benefits.

14 (B) That, upon surrender of the policy within sixty
15 days after the due date of any premium payment in
16 default after premiums have been paid for at
17 least three full years in the case of ordinary
18 insurance or five full years in the case of
19 industrial insurance, the [~~insurer will~~] company
20 shall pay, in lieu of any paid-up nonforfeiture
21 benefit, a cash surrender value of [~~such~~] an
22 amount as may be hereinafter specified.

- 1 (C) That a specified paid-up nonforfeiture benefit
2 shall become effective as specified in the policy
3 unless the person entitled to make the election
4 elects another available option not later than
5 sixty days after the due date of the premium in
6 default.
- 7 (D) That, if the policy has been [~~paid-up~~] paid up by
8 completion of all premium payments or if it is
9 continued under any paid-up nonforfeiture benefit
10 [~~which~~] that became effective on or after the
11 third policy anniversary in the case of ordinary
12 insurance or the fifth policy anniversary in the
13 case of industrial insurance, the [~~insurer will~~]
14 company shall pay, upon surrender of the policy
15 within thirty days after any policy anniversary,
16 a cash surrender value of [~~such~~] an amount as may
17 be hereinafter specified.
- 18 (E) In the case of policies [~~which~~] that cause, on a
19 basis guaranteed in the policy, unscheduled
20 changes in benefits or premiums, or [~~which~~] that
21 provide an option for changes in benefits or
22 premiums other than a change to a new policy, a
23 statement of the mortality table, interest rate,

1 and method used in calculating cash surrender
2 values and the paid-up nonforfeiture benefits
3 available under the policy. In the case of all
4 other policies, a statement of the mortality
5 table and interest rate used in calculating the
6 cash surrender values and the paid-up
7 nonforfeiture benefits available under the
8 policy, together with a table showing the cash
9 surrender value, if any, and paid-up
10 nonforfeiture benefit, if any, available under
11 the policy on each policy anniversary either
12 during the first twenty policy years or during
13 the term of the policy, whichever is shorter,
14 [~~such~~] the values and benefits to be calculated
15 upon the assumption that there are no dividends
16 or paid-up additions credited to the policy and
17 that there is no indebtedness to the [~~insurer~~]
18 company on the policy.

- 19 (F) A statement that the cash surrender values and
20 the paid-up nonforfeiture benefits available
21 under the policy are not less than the minimum
22 values and benefits required by or pursuant to
23 the insurance law of the jurisdiction in which

1 the policy is delivered; an explanation of the
2 manner in which the cash surrender values and the
3 paid-up nonforfeiture benefits are altered by the
4 existence of any paid-up additions credited to
5 the policy or any indebtedness to the [~~insurer~~]
6 company on the policy; if a detailed statement of
7 the method of computation of the values and
8 benefits shown in the policy is not stated
9 therein, a statement that the method of
10 computation has been filed with the insurance
11 supervisory official of the jurisdiction in which
12 the policy is delivered; and a statement of the
13 method to be used in calculating the cash
14 surrender value and a paid-up nonforfeiture
15 benefit available under the policy on any policy
16 anniversary beyond the last anniversary for which
17 [~~such~~] values and benefits are consecutively
18 shown in the policy.

- 19 (2) Any of the foregoing provisions or portions thereof
20 not applicable by reason of the plan of insurance may,
21 to the extent inapplicable, be omitted from the
22 policy.

1 (3) The [~~insurer~~] company shall reserve the right to defer
2 the payment of any cash surrender value for a period
3 of six months after demand therefor with surrender of
4 the policy.

5 (c) [~~Cash surrender value—life:~~] With regard to the
6 computation of cash surrender value:

7 (1) Any cash surrender value available under the policy in
8 the event of default in a premium payment due on any
9 policy anniversary, [~~whether or not required by~~]
10 regardless of subsection (b), shall be an amount not
11 less than the excess, if any, of the present value, on
12 the anniversary, of the future guaranteed benefits
13 that would have been provided for by the policy,
14 including any existing paid-up additions, if there had
15 been no default, over the sum of:

16 (A) The then present value of the adjusted premiums
17 as defined in subsection (e) corresponding to
18 premiums that would have fallen due on and after
19 the anniversary; and

20 (B) The amount of any indebtedness to the [~~insurer~~]
21 company on [~~account of or secured by~~] the policy;
22 [~~provided that:~~

23 -(i)-]

1 (2) For any policy issued on or after the operative date
2 of subsection (e) (8) that provides supplemental life
3 insurance or annuity benefits at the option of the
4 insured and for an identifiable additional premium by
5 rider or supplemental policy provision, the cash
6 surrender value referred to in ~~[this]~~ paragraph (1)
7 shall be an amount not less than the sum of the cash
8 surrender value for an otherwise similar policy issued
9 at the same age without ~~[such]~~ the rider or
10 supplemental policy provision and the cash surrender
11 value as defined in paragraph (1) for a policy that
12 provides only the benefits otherwise provided by
13 ~~[such]~~ the rider or supplemental policy provision; and
14 ~~[(ii)]~~ (3) For any family policy issued on or after the
15 operative date of subsection (e) (8) that defines a
16 primary insured and provides term insurance on the
17 life of the spouse of the primary insured expiring
18 before the spouse's seventy-first birthday, the cash
19 surrender value referred to in ~~[this]~~ paragraph (1)
20 shall be an amount not less than the sum of the cash
21 surrender value for an otherwise similar policy issued
22 at the same age without ~~[such]~~ term insurance on the
23 life of the spouse and the cash surrender value ~~[for~~

1 ~~an otherwise similar policy issued at the same age~~
2 ~~without such rider or supplemental policy provision~~
3 ~~and the cash surrender value]~~ as defined in paragraph
4 (1) for a policy that provides only the benefits
5 otherwise provided by [such] term insurance on the
6 life of the spouse.

7 ~~[-(2)]~~ (4) Any cash surrender value available within thirty
8 days after any policy anniversary[, of the future
9 guaranteed benefits provided for by the policy
10 including any existing paid-up additions, shall be
11 decreased by any indebtedness to the insurer on
12 account of or secured by the policy.] under any policy
13 paid up by completion of all premium payments or any
14 policy continued under any paid-up nonforfeiture
15 benefit, regardless of subsection (b), shall be an
16 amount not less than the present value, on the
17 anniversary, of the future guaranteed benefits
18 provided for by the policy, including any existing
19 paid-up additions, decreased by any indebtedness to
20 the company on the policy.

21 (d) ~~[Paid up nonforfeiture benefit — life: Any]~~ With
22 regard to the computation of paid-up nonforfeiture benefits, for
23 any paid-up nonforfeiture benefit available under the policy in

1 the event of default in a premium payment due on any policy
2 anniversary shall be such that its present value as of the
3 anniversary shall be at least equal to the cash surrender value
4 then provided for by the policy or, if none is provided for,
5 that cash surrender value ~~[which]~~ that would have been required
6 by this section in the absence of the condition that premiums
7 shall have been paid for at least a specified period.

8 (e) ~~[The adjusted premium—life:~~

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

11 (1) This section shall not apply to policies issued on or
12 after the operative date of paragraph (8) ~~[as defined~~
13 ~~therein]~~. Except as provided in paragraph (4), the
14 adjusted premiums for any policy shall be calculated
15 on an annual basis and shall be ~~[such]~~ a uniform
16 percentage of the respective premiums specified in the
17 policy for each policy year, excluding ~~[extra premiums~~
18 ~~on a substandard policy, that the present value, at~~
19 ~~the date of issue of the policy,]~~ amounts stated in
20 the policy as extra premiums to cover impairments or
21 special hazards of the present value at the date of
22 issue of the policy, of all such adjusted premiums
23 shall be equal to the sum of:

- 1 (A) The then present value of the future guaranteed
2 benefits provided for by the policy;
- 3 (B) Two per cent of the amount of insurance, if the
4 insurance is uniform in amount, or of the
5 equivalent uniform amount, as hereinafter
6 defined, if the amount of insurance varies with
7 duration of the policy;
- 8 (C) Forty per cent of the adjusted premium for the
9 first policy year; and
- 10 (D) Twenty-five per cent of either the adjusted
11 premium for the first policy year or the adjusted
12 premium for a whole life policy of the same
13 uniform or equivalent uniform amount with uniform
14 premiums for the whole of life issued at the same
15 age for the same amount of insurance, whichever
16 is less.
- 17 (2) ~~[This paragraph shall not apply to policies issued on~~
18 ~~or after the operative date of paragraph (8).]~~ In
19 applying the percentages specified in paragraph (1) (C)
20 and (D), no adjusted premium shall be deemed to exceed
21 four per cent of the amount of insurance or ~~[uniform]~~
22 level amount equivalent ~~[thereto. Whenever the plan~~
23 ~~or term of a policy has been changed, either by~~

1 ~~request of the insured or automatically in accordance~~
2 ~~with the policy, the date of inception of the changed~~
3 ~~policy for the purposes of determining a nonforfeiture~~
4 ~~benefit or cash surrender value shall be the date as~~
5 ~~of which the age of the insured is determined for the~~
6 ~~purposes of the changed policy]. The date of issue of~~
7 ~~a policy for the purpose of this subsection shall be~~
8 ~~the date as of which the rated age of the insured is~~
9 ~~determined.~~

- 10 (3) ~~[This paragraph shall not apply to policies issued on~~
11 ~~or after the operative date of paragraph (8).] In the~~
12 ~~case of a policy providing an amount of insurance~~
13 ~~varying with duration of the policy, the equivalent~~
14 ~~[uniform] level amount [thereof] for the purpose of~~
15 ~~this [paragraph] subsection shall be deemed to be the~~
16 ~~[uniform] level amount of insurance provided by an~~
17 ~~otherwise similar policy, containing the same~~
18 ~~endowment benefit or benefits, if any, issued at the~~
19 ~~same age and for the same term, the amount of which~~
20 ~~does not vary with duration and the benefits under~~
21 ~~which have the same present value at the [date of~~
22 ~~issue as the benefits under the policy. In the case~~
23 ~~of a policy providing a varying amount of insurance~~

1 ~~issued on the life of a child under age ten, the~~
2 ~~equivalent uniform amount may be computed as though~~
3 ~~the amount of insurance provided by the policy prior~~
4 ~~to the attainment of age ten was the amount provided~~
5 ~~by the policy at age ten.~~

6 ~~(4) This paragraph shall not apply to policies issued on~~
7 ~~or after the operative date of paragraph (8).]~~
8 inception of the insurance as the benefits under the
9 policy.

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

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

18 (B) The adjusted premiums for the term insurance.

19 The foregoing amounts in [~~paragraph (1) (A)~~
20 subparagraphs (A) and (B) being calculated
21 separately and as specified in paragraphs (1) [~~7~~
22 ~~(2)~~,] and (3), except that, for the purposes of
23 [~~paragraph (1) (B), (C), and (D)~~,] paragraph

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1 (1) (B), (1) (C), and (1) (D), the amount of
 2 insurance or equivalent uniform amount of
 3 insurance used in the calculation of the adjusted
 4 premiums referred to in paragraph (1) (B) shall be
 5 equal to the excess of the corresponding amount
 6 determined for the entire policy over the amount
 7 used in the calculation of the adjusted premiums
 8 in [~~paragraph (1) (A).~~] subparagraph (A).

9 (5) [~~This paragraph shall not apply to policies issued on~~
 10 ~~or after the operative date of paragraph (8).~~] Except
 11 as otherwise provided in paragraphs (6) and (7), all
 12 adjusted premiums and present values referred to in
 13 this section shall for all policies of ordinary
 14 insurance be calculated on the basis of the
 15 Commissioners 1941 Standard Ordinary Mortality Table;
 16 provided that for any category of ordinary insurance
 17 issued on female risks, adjusted premiums and present
 18 values may be calculated according to [~~an~~] any age not
 19 more than three years younger than the actual age of
 20 the insured[~~,~~] and [~~such~~] the calculations for all
 21 policies of industrial insurance shall be made on the
 22 basis of the 1941 Standard Industrial Mortality
 23 Table. All calculations shall be made on the basis of

1 the rate of interest, not exceeding three and one-half
2 per cent a year, specified in the policy for
3 calculating cash surrender values and paid-up
4 nonforfeiture benefits.

5 In calculating the present value of any paid-up
6 term insurance with accompanying pure endowment, if
7 any, offered as a nonforfeiture benefit, the rates of
8 mortality assumed may be not more than one hundred
9 thirty per cent of the rates of mortality according to
10 the applicable table.

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

- 16 (6) This paragraph shall not apply to ordinary policies
17 issued on or after the operative date of paragraph
18 (8). In the case of ordinary policies issued on or
19 after the operative date of this paragraph, all
20 adjusted premiums and present values referred to in
21 this section shall be calculated on the basis of the
22 Commissioners 1958 Standard Ordinary Mortality Table[-

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

6 (A) A rate of interest not exceeding four per cent a
7 year may be used for policies issued after June
8 1, 1976, and prior to June 1, 1979;

9 (B) A rate of interest not exceeding five and one-
10 half per cent a year may be used for policies
11 issued on or after June 1, 1979; and

12 (C) For any single premium whole life or endowment
13 insurance policy, a rate of interest not
14 exceeding six and one-half per cent a year may be
15 used.

16 For any category of ordinary insurance issued on
17 female risks, adjusted premiums and present values may
18 be calculated according to an age not more than six
19 years younger than the actual age of the insured.

20 In calculating the present value of any paid-up
21 term insurance with accompanying pure endowment, if
22 any, offered as a nonforfeiture benefit, the rates of

1 mortality assumed may be not more than those shown in
2 the Commissioners 1958 Extended Term Insurance Table.

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

8 After June 1, 1959, any [~~insurer~~] company may
9 file with the commissioner a written notice of its
10 election to comply with [~~the provisions of~~] this
11 paragraph after a specified date before January 1,
12 1966. After the filing of such notice, [~~then~~] upon
13 [~~such~~] the specified date (which shall be the
14 operative date of this paragraph for [~~such insurer~~],
15 that company), this paragraph shall become operative
16 with respect to the ordinary policies thereafter
17 issued by [~~such insurer~~] the company. If [~~an~~
18 ~~insurer~~] a company makes no such election, the
19 operative date of this paragraph for [~~such insurer~~]
20 the company shall be January 1, 1966.

21 (7) This paragraph shall not apply to industrial policies
22 issued on or after the operative date of paragraph

23 (8). In the case of industrial policies issued on or

1 after the operative date of this paragraph, all
2 adjusted premiums and present values referred to in
3 this section shall be calculated on the basis of the
4 Commissioners 1961 Standard Industrial Mortality
5 Table[—

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

- 11 (A) A rate of interest not exceeding four per cent a
12 year may be used for policies issued on or after
13 June 1, 1976, and prior to June 1, 1979;
- 14 (B) A rate of interest not exceeding five and one-
15 half per cent a year may be used for policies
16 issued on or after June 1, 1979; and
- 17 (C) For any single premium whole life or endowment
18 insurance policy a rate of interest not exceeding
19 six and one-half per cent a year may be used.

20 In calculating the present value of any
21 paid-up term insurance with accompanying pure
22 endowment, if any, offered as a nonforfeiture
23 benefit, the rates of mortality assumed may be

1 not more than those shown in the Commissioners
2 1961 Industrial Extended Term Insurance Table.

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

8 After May 8, 1965, any [~~insurer~~] company may
9 file with the commissioner a written notice of
10 its election to comply with [~~the provisions of~~]
11 this paragraph after a specified date before
12 January 1, 1968. After the filing of [~~such~~] the
13 notice, [~~then~~] upon [~~such~~] the specified date
14 (which shall be the operative date of this
15 paragraph for [~~such insurer~~], that company),
16 this paragraph shall become operative with
17 respect to the industrial policies thereafter
18 issued by [~~such insurer~~] the company. If [~~an~~
19 ~~insurer~~] a company makes no such election, the
20 operative date of this paragraph for [~~such~~
21 ~~insurer~~] the company shall be January 1, 1968.

22 (8) (A) This paragraph shall apply to all policies issued
23 on or after the operative date of this

1 paragraph. Except as provided in subparagraph
2 (G), the adjusted premiums for any policy shall
3 be calculated on an annual basis and shall be
4 [~~such~~] a uniform percentage of the respective
5 premiums specified in the policy for each policy
6 year, excluding amounts payable as extra premiums
7 to cover impairments or special hazards and also
8 excluding any uniform annual contract charge or
9 policy fee specified in the policy in a statement
10 of the method to be used in calculating the cash
11 surrender values and paid-up nonforfeiture
12 benefits, that the present value, at the date of
13 issue of the policy, of all adjusted premiums
14 shall be equal to the sum of:

- 15 (i) The then present value of the future
16 guaranteed benefits provided for by the
17 policy;
- 18 (ii) One per cent of either the amount of
19 insurance, if the insurance be uniform in
20 amount, or the average amount of insurance
21 at the beginning of each of the first ten
22 policy years; and

1 (iii) One hundred twenty-five per cent of the
2 nonforfeiture net level premium as
3 hereinafter defined.

4 In applying the percentage specified in clause
5 (iii), no nonforfeiture net level premium shall
6 be deemed to exceed four per cent of either the
7 amount of insurance, if the insurance be uniform
8 in amount, or the average amount of insurance at
9 the beginning of each of the first ten policy
10 years. The date of issue of a policy for the
11 purpose of this paragraph shall be the date as of
12 which the rated age of the insured is determined.

13 (B) The nonforfeiture net level premium shall be
14 equal to the present value, at the date of issue
15 of the policy, of the guaranteed benefits
16 provided for by the policy divided by the present
17 value, at the date of issue of the policy, of an
18 annuity of one per annum payable on the date of
19 issue of the policy and on each anniversary of
20 ~~[such]~~ the policy on which a premium falls due.

21 (C) In the case of policies that cause, on a basis
22 guaranteed in the policy, unscheduled changes in
23 benefits or premiums, or that provide an option

1 for changes in benefits or premiums, other than a
2 change to a new policy, the adjusted premiums and
3 present values shall initially be calculated on
4 the assumption that future benefits and premiums
5 do not change from those stipulated at the date
6 of issue of the policy [~~immediately after the~~
7 ~~change~~]. At the time of any such change in the
8 benefit or premiums, the future adjusted
9 premiums, nonforfeiture net level premiums, and
10 present values shall be recalculated on the
11 assumption that future benefits and premiums do
12 not change from those stipulated by the policy
13 immediately after the change.

14 (D) Except as otherwise provided in subparagraph (G),
15 the recalculated future adjusted premiums for any
16 [~~such~~] policy shall be [~~such~~] the uniform
17 percentage of the respective future premiums
18 specified in the policy for each policy year,
19 excluding amounts payable as extra premiums to
20 cover impairments and special hazards, and also
21 excluding any uniform annual contract charge or
22 policy fee specified in the policy in a statement
23 of the method to be used in calculating the cash

1 surrender values and paid-up nonforfeiture
2 benefits, that the present value, at the time of
3 change to the newly defined benefits or premiums,
4 of all [~~such~~] the future adjusted premiums shall
5 be equal to the excess of the sum of:

6 (i) The then present value of the then future
7 guaranteed benefits provided for by the
8 policy; and

9 (ii) The additional expense allowance, if any,
10 over the then cash surrender value, if any,
11 or present value of any paid-up
12 nonforfeiture benefit under the policy.

13 (E) The additional expense allowance, at the time of
14 the change to the newly defined benefits or
15 premiums, shall be the sum of:

16 (i) One per cent of the excess, if positive, of
17 the average amount of insurance at the
18 beginning of each of the first ten policy
19 years subsequent to the change over the
20 average amount of insurance prior to the
21 change at the beginning of each of the first
22 ten policy years subsequent to the time of
23 the most recent previous change, or, if

1 there has been no previous change, the date
2 of issue of the policy; and
3 (ii) One hundred twenty-five per cent of the
4 increase, if positive, in the nonforfeiture
5 net level premium.
6 (F) The recalculated nonforfeiture net level premium
7 shall be equal to the result obtained by dividing
8 the value defined in clause (i) by the value
9 defined in clause (ii):
10 (i) The nonforfeiture net level premium
11 applicable prior to the charge times the
12 present value of an annuity of one per annum
13 payable on each anniversary of the policy on
14 or subsequent to the date of the charges on
15 which a premium would have fallen due had
16 the change not occurred, plus the present
17 value of the increase in future guaranteed
18 benefits provided for by the policy; and
19 (ii) The present value of an annuity of one per
20 annum payable on each anniversary of the
21 policy on or subsequent to the date of
22 charge on which a premium falls due.

- 1 (G) Notwithstanding any other provision of this
2 paragraph to the contrary, in the case of a
3 policy issued on a substandard basis that
4 provides reduced graded amounts of insurance so
5 that, in each policy year, such policy has the
6 same tabular mortality cost as an otherwise
7 similar policy issued on the standard basis that
8 provides higher uniform amounts of insurance,
9 adjusted premiums and present values for [~~such~~]
10 the substandard policy may be calculated as if it
11 were issued to provide such higher uniform
12 amounts of insurance on the standard basis.
- 13 (H) All adjusted premiums and present values referred
14 to in this section shall: for all policies of
15 ordinary insurance be calculated on the basis of
16 either the Commissioners 1980 Standard Ordinary
17 Mortality Table[7]; or, at the election of the
18 company for any one or more specified plans of
19 life insurance, the Commissioners 1980 Standard
20 Ordinary Mortality Table with Ten-Year Select
21 Mortality Factors; for all policies of industrial
22 insurance be calculated on the basis of the
23 Commissioners 1961 Standard Industrial Mortality

1 Table; and for all policies issued in a
2 particular calendar year be calculated on the
3 basis of a rate of interest not exceeding the
4 nonforfeiture interest rate as defined in this
5 paragraph for policies issued in that calendar
6 year; provided that:

7 (i) At the option of the company, calculations
8 for all policies issued in a particular
9 calendar year may be made on the basis of a
10 rate of interest not exceeding nonforfeiture
11 interest rate, as defined in this paragraph,
12 for policies issued in the immediately
13 preceding calendar year;

14 (ii) Under any paid-up nonforfeiture benefit,
15 including any paid-up dividend additions,
16 any cash surrender value available, [~~whether~~
17 ~~or not required by~~] regardless of subsection
18 (b), shall be calculated on the basis of the
19 mortality table and rate of interest used in
20 determining the amount of such paid-up
21 nonforfeiture benefit and paid-up dividend
22 additions, if any;

- 1 (iii) A company may calculate the amount of any
2 guaranteed paid-up nonforfeiture benefit,
3 including any paid-up additions under the
4 policy on the basis of an interest rate no
5 lower than that specified in the policy for
6 calculating cash surrender values;
- 7 (iv) In calculating the present value of any
8 paid-up term insurance with accompanying
9 pure endowment, if any, offered as a
10 nonforfeiture benefit, the rates of
11 mortality assumed may be not more than those
12 shown in the Commissioners 1980 Extended
13 Term Insurance Table for policies of
14 ordinary insurance and not more than the
15 Commissioners 1961 Industrial Extended Term
16 Insurance Table for policies of industrial
17 insurance;
- 18 (v) For insurance issued on a substandard basis,
19 the calculation of any ~~such~~ adjusted
20 premiums and present values may be based on
21 appropriate modifications of the
22 aforementioned tables;

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1 (vi) [Any] For policies issued prior to the
2 operative date of the valuation manual, any
3 commissioners standard ordinary mortality
4 tables, adopted after 1980 by the National
5 Association of Insurance Commissioners, that
6 are approved by rule by the commissioner for
7 use in determining the minimum nonforfeiture
8 standard may be substituted for the
9 Commissioners 1980 Standard Ordinary
10 Mortality Table with or without Ten-Year
11 Select Mortality Factors or for the
12 Commissioners 1980 Extended Term Insurance
13 Table [~~and~~].

14 For policies issued on or after the
15 operative date of the valuation manual, the
16 valuation manual shall provide the
17 commissioners standard mortality table for
18 use in determining the minimum nonforfeiture
19 standard that may be substituted for the
20 Commissioners 1980 Standard Ordinary
21 Mortality Table with or without Ten-Year
22 Select Mortality Factors or for the
23 Commissioners 1980 Extended Term Insurance

1 Table. If the commissioner approves by rule
2 any commissioners standard ordinary
3 mortality table adopted by the National
4 Association of Insurance Commissioners for
5 use in determining the minimum nonforfeiture
6 standard for policies issued on or after the
7 operative date of the valuation manual, then
8 that minimum nonforfeiture standard
9 supersedes the minimum nonforfeiture
10 standard provided by the valuation manual;

11 (vii) [~~Any~~] For policies issued prior to the
12 operative date of the valuation manual, any
13 commissioners standard industrial mortality
14 tables, adopted after 1980 by the National
15 Association of Insurance Commissioners, that
16 are approved by rule by the commissioner for
17 use in determining the minimum nonforfeiture
18 standard may be substituted for the
19 Commissioners 1961 Standard Industrial
20 Mortality Table or the Commissioners 1961
21 Industrial Extended Term Insurance Table.

22 For policies issued on or after the
23 operative date of the valuation manual, the

1 valuation manual shall provide the
2 Commissioners Standard mortality table for
3 use in determining the minimum nonforfeiture
4 standard that may be substituted for the
5 Commissioners 1961 Standard Industrial
6 Mortality Table or the Commissioners 1961
7 Industrial Extended Term Insurance Table.
8 If the commissioner approves by rule any
9 Commissioners Standard industrial mortality
10 table adopted by the National Association of
11 Insurance Commissioners for use in
12 determining the minimum nonforfeiture
13 standard for policies issues on or after the
14 operative date of the valuation manual, then
15 that minimum nonforfeiture standard
16 supersedes the minimum nonforfeiture
17 standard provided by the valuation manual.

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

22 (i) For policies issued prior to the operative
23 date of the valuation manual, the

1 nonforfeiture interest rate per annum for
2 any policy issued in a particular calendar
3 year shall be equal to one hundred twenty-
4 five per cent of the calendar year statutory
5 valuation interest rate for such policy as
6 defined in the Standard Valuation Law,
7 rounded to the nearer one quarter of one per
8 cent [-]; and

9 (ii) For policies issued on or after the
10 operative date of the valuation manual, the
11 nonforfeiture interest rate per annum for
12 any policy issued in a particular calendar
13 year shall be as provided by the valuation
14 manual.

15 (J) Notwithstanding any other provision in this
16 [~~code~~] chapter to the contrary, any refiling of
17 nonforfeiture values or their methods of
18 computation for any previously approved policy
19 form that involves only a change in the interest
20 rate or mortality table used to compute
21 nonforfeiture values shall not require refiling
22 of any other provisions of that policy form.

- 1 (K) After the effective date of this paragraph, any
2 company may file with the commissioner a written
3 notice of its election to comply with this
4 paragraph after a specified date before January
5 1, 1989, which shall be the operative date of
6 this paragraph for [~~such~~] the company. If a
7 company makes no [~~such~~] election, the operative
8 date of this paragraph for [~~such~~] the company
9 shall be January 1, 1989.
- 10 (L) In the case of any plan of life insurance that
11 provides for future premium determination, the
12 amounts of which are to be determined by the
13 insurance company based on [~~then~~] estimates of
14 future experience, or in the case of any plan of
15 life insurance that is of such a nature that
16 minimum values cannot be determined by the
17 methods described in subsections (b), (c), (d),
18 and (e), then:
- 19 (i) The commissioner shall be satisfied that the
20 benefits provided under the plan are
21 substantially as favorable to policyholders
22 and insureds as the minimum benefits

1 otherwise required by subsections (b), (c),
2 (d), and (e);

3 (ii) The commissioner shall be satisfied that the
4 benefits and the pattern of premiums of that
5 plan are not such as to mislead prospective
6 policyholders or insureds; and

7 (iii) The cash surrender values and paid-up
8 nonforfeiture benefits provided by ~~such~~
9 the plan shall not be less than the minimum
10 values and benefits required for the plan
11 computed by a method consistent with the
12 principles of this Standard Nonforfeiture
13 Law for Life Insurance, as determined by
14 rules adopted by the commissioner.

15 (f) ~~[Calculation of values—life.]~~ Any cash surrender
16 value and ~~[any paid-up value and]~~ any paid-up nonforfeiture
17 benefit, available under the policy in the event of default in a
18 premium payment due at any time other than on the policy
19 anniversary, shall be calculated with allowance for the lapse of
20 time and the payment of fractional premiums beyond the last
21 preceding policy anniversary. All values referred to in
22 subsections (c), (d), and (e) may be calculated upon the
23 assumption that any death benefit is payable at the end of the

1 policy year of death. The net value of any paid-up additions,
2 other than paid-up term additions, shall be not less than the
3 amounts used to provide such additions. Notwithstanding
4 subsection (c) [~~7~~] to the contrary, additional benefits payable:

5 (1) In the event of death or dismemberment by accident or
6 accidental means;

7 (2) In the event of total and permanent disability;

8 (3) As reversionary annuity or deferred reversionary
9 annuity benefits;

10 (4) As term insurance benefits provided by a rider or
11 supplemental policy provision to which, if issued as a
12 separate policy, this section would not apply;

13 (5) As term insurance on the life of a child or on the
14 lives of children provided in a policy on the life of
15 a parent of the child, if [~~sueh~~] the term insurance
16 expires before the child's age is twenty-six, is
17 uniform in amount after the child's age is one, and
18 has not become paid up by reason of the death of a
19 parent of the child; and

20 (6) As other policy benefits additional to life insurance
21 and endowment benefits, and premiums for all such
22 additional benefits,

1 shall be disregarded in ascertaining cash surrender values
2 and nonforfeiture benefits required by this section, and no
3 such additional benefits shall be required to be included
4 in any paid-up nonforfeiture benefits.

5 (g) This subsection, in addition to all other applicable
6 subsections [~~of this section,~~], shall apply to all policies
7 issued on or after January 1, 1985. Any cash surrender value
8 available under the policy in the event of default in a premium
9 payment due on any policy anniversary shall be in an amount that
10 does not differ by more than two-tenths of one per cent of
11 either the amount of insurance, if the insurance be uniform in
12 amount, or the average amount of insurance at the beginning of
13 each of the first ten policy years, from the sum of the greater
14 of zero and the basic cash value hereinafter specified, and the
15 present value of any existing paid-up additions less the amount
16 of any indebtedness to the company under the policy.

17 The basic cash value shall be equal to the present value,
18 on [~~such~~] the anniversary, of the future guaranteed benefits
19 that would have been provided for by the policy, excluding any
20 existing paid-up additions and before deduction of any
21 indebtedness to the company, if there had been no default, less
22 the then present value of the nonforfeiture factors, as
23 hereinafter defined, corresponding to premiums that would have

1 fallen due on and after [~~such~~] the anniversary. The effects on
2 the basic cash value of supplemental life insurance or annuity
3 benefits or of family coverage, as described in subsection (c)
4 or (e) (1), (2), (3), (4), and (5), whichever is applicable,
5 shall be the same as are the effects specified in subsection (c)
6 or (e) (1), (2), (3), (4), and (5), whichever is applicable, on
7 the cash surrender values defined in that subsection.

8 The nonforfeiture factor for each policy year shall be an
9 amount equal to a percentage of the adjusted premium for the
10 policy year, as defined in subsection (e) (1), (2), (3), (4), and
11 (5) or subsection (e) (8), whichever is applicable. Except as is
12 required by the next succeeding sentence of this paragraph,
13 [~~such~~] the percentage:

- 14 (1) Shall be the same for each policy year between the
15 second policy anniversary and the later of:
- 16 (A) The fifth policy anniversary; and
- 17 (B) The first policy anniversary at which there is
18 available under the policy a cash surrender value
19 in an amount, before including any paid-up
20 additions and before deducting any indebtedness,
21 of at least two-tenths of one per cent of either
22 the amount of insurance, if the insurance be
23 uniform in amount, or the average amount of

1 insurance at the beginning of each of the first
2 ten policy years; and

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

7 No basic cash value may be less than the value that would be
8 obtained if the adjusted premiums for the policy, as defined in
9 [~~subsection (e) (1), (2), (3), (4), and (5) or~~] subsection
10 (e) (8), [~~whichever is applicable,~~] were substituted for the
11 nonforfeiture factors in the calculation of the basic cash
12 value.

13 All adjusted premiums and present values referred to in
14 this subsection shall for a particular policy be calculated on
15 the same mortality and interest bases as are used in
16 demonstrating the policy's compliance with [~~the other~~
17 ~~subsections of~~] this section. The cash surrender values
18 referred to in this subsection shall include any endowment
19 benefits provided for by the policy.

20 Any cash surrender value available other than in the event
21 of default in a premium payment due on a policy anniversary, and
22 the amount of any paid-up nonforfeiture benefit available under
23 the policy in the event of default in a premium payment shall be

1 determined in manners consistent with the manners specified for
2 determining the analogous minimum amounts in subsections (b),
3 (c), (d), (e) (8), and (f). The amounts of any cash surrender
4 values and of any paid-up nonforfeiture benefits granted in
5 connection with additional benefits such as those listed as
6 paragraphs (1) through (6) in subsection (f) shall conform with
7 the principles of this subsection.

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

- 10 (1) Reinsurance;
- 11 (2) Group insurance;
- 12 (3) Pure endowment;
- 13 (4) Annuity or reversionary annuity contract;
- 14 (5) Term policy uniform amount, which provides no
15 guaranteed nonforfeiture or endowment benefits, or
16 renewal thereof, of twenty years or less expiring
17 before age seventy-one, for which uniform premiums are
18 payable during the entire term of the policy;
- 19 (6) Term policy of decreasing amount, which provides no
20 guaranteed nonforfeiture or endowment benefits;
21 ~~[issued at the same age and for the same initial~~
22 ~~amount of insurance and for a term of twenty years or~~
23 ~~less expiring before age seventy one, for which~~

1 ~~uniform premiums are payable during the entire term of~~
2 ~~the policy,]~~ on which each adjusted premium,
3 calculated as specified in subsection (e), is less
4 than the adjusted premium so calculated, on a term
5 policy of uniform amount, or renewal thereof, which
6 provides no guaranteed nonforfeiture or endowment
7 benefits, issued at the same age and for the same
8 initial amount of insurance and for a term of twenty
9 years or less expiring before age seventy-one, for
10 which uniform premiums are payable during the entire
11 term of the policy;

12 (7) Policy, which provides no guaranteed nonforfeiture or
13 endowment benefits, for which no cash surrender value,
14 if any, or present value of any paid-up nonforfeiture
15 benefit, at the beginning of any policy year
16 calculated as specified in subsections (c), (d), and
17 (e), exceeds two and one-half per cent of the amount
18 [~~on~~] of insurance at the beginning of the policy year;
19 and

20 (8) Policy [~~which~~] that shall be delivered outside this
21 State through a producer or other representative of
22 the company issuing the policy.

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

4 (i) [~~Operative date.~~] After January 1, 1956, any
5 [~~insurer~~] company may file with the commissioner a written
6 notice of its election to comply with [~~the provisions of~~] this
7 section after a specified date within six months from January 1,
8 1956. After the filing of [~~such~~] the notice, then upon [~~such~~]
9 the specified date (which shall be the operative date for [~~such~~
10 ~~insurer~~], the company), this section shall become operative
11 with respect to the policies thereafter issued by [~~such~~
12 ~~insurer~~]. the company. If [~~an insurer~~] a company makes no
13 [~~such~~] election, the operative date of this section for [~~such~~
14 ~~insurer~~] the company shall be six months from January 1, 1956.

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

19 PART IV

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

1 "§431:11- Supervisory colleges. (a) With respect to
2 any insurer registered under section 431:11-105, and in
3 accordance with subsection (c), the commissioner may participate
4 in a supervisory college for any domestic insurer that is part
5 of an insurance holding company system with international
6 operations to determine compliance by the insurer with this
7 article. The powers of the commissioner with respect to
8 supervisory colleges shall include, but not be limited to:

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

19 (b) Each registered insurer subject to this section shall
20 be liable for and shall pay the reasonable expenses of the
21 commissioner's participation in a supervisory college in
22 accordance with subsection (c), including reasonable travel
23 expenses. For purposes of this section, a supervisory college

1 may be convened as either a temporary or permanent forum for
2 communication and cooperation between the regulators charged
3 with the supervision of the insurer or its affiliates, and the
4 commissioner may establish a regular assessment to the insurer
5 for the payment of these expenses.

6 (c) To assess the business strategy, financial position,
7 legal and regulatory position, risk exposure, risk management,
8 and governance processes, and as part of the examination of
9 individual insurers in accordance with section 431:11-107, the
10 commissioner may participate in a supervisory college with other
11 regulators charged with supervision of the insurer or its
12 affiliates, including other state, federal, and international
13 regulatory agencies. The commissioner may enter into agreements
14 in accordance with section 431:11-108 providing the basis for
15 cooperation between the commissioner and the other regulatory
16 agencies, and the activities of the supervisory college.
17 Nothing in this section shall delegate to the supervisory
18 college the authority of the commissioner to regulate or
19 supervise the insurer or its affiliates within the
20 commissioner's jurisdiction."

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

1 1. By adding a new definition to be appropriately inserted
2 and to read as follows:

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

13 2. By amending the definition of "person" to read as
14 follows:

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

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

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

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

6 (1) No person other than the issuer shall make a tender
7 offer or a request or invitation for tenders~~[7]~~ of, or
8 enter into any agreement to exchange securities~~[7-~~or~~]~~
9 for, seek to acquire, or acquire, in the open market
10 or otherwise, any voting security of a domestic
11 insurer if, after the consummation thereof, the
12 person, directly or indirectly (by conversion or by
13 exercise of any right to acquire), would be in control
14 of the insurer, and no person shall enter into an
15 agreement to merge with or otherwise to acquire
16 control of a domestic insurer or any person
17 controlling a domestic insurer unless, at the time any
18 offer, request, or invitation is made or ~~[any]~~ the
19 agreement is entered into, or prior to the acquisition
20 of the securities if no offer or agreement is
21 involved, the person has filed with the commissioner
22 and has sent to the insurer, and the insurer has sent
23 to its shareholders, a statement containing the

1 information required by [~~subsection (b)~~] this section
2 and the offer, request, invitation, agreement, or
3 acquisition has been approved by the commissioner in
4 the manner [~~hereinafter~~] prescribed[-] in this
5 article.

6 (2) For purposes of this section, any controlling person
7 of a domestic insurer seeking to divest its
8 controlling interest in the domestic insurer, in any
9 manner, shall file with the commissioner, with a copy
10 to the insurer, a confidential notice of its proposed
11 divestiture at least thirty days prior to the
12 cessation of control. The commissioner shall
13 determine those instances in which the party seeking
14 to divest or to acquire a controlling interest in an
15 insurer will be required to file for and obtain
16 approval of the transaction. The information shall
17 remain confidential until the conclusion of the
18 transaction unless the commissioner, in the
19 commissioner's discretion, determines that
20 confidential treatment will interfere with enforcement
21 of this section. If the statement referred to in
22 paragraph (1) is otherwise filed, this paragraph shall
23 not apply.

1 (3) With respect to a transaction subject to this section,
2 the acquiring person shall also file a preacquisition
3 notification with the commissioner containing the
4 information set forth in section 431:11-104.3(b).
5 Failure to file the notification may subject the
6 acquiring person to penalties specified in section
7 431:11-104.5(f).

8 (4) For purposes of this section[~~,a~~]:

9 (A) A domestic insurer includes any person
10 controlling a domestic insurer unless the
11 commissioner determines that the person, directly
12 or through its affiliates, is primarily engaged
13 in business other than the business of
14 insurance [~~. Such a person shall file a~~
15 ~~preacquisition notification with the commissioner~~
16 ~~containing the information set forth in section~~
17 ~~431:11-104.3(b) thirty days prior to the proposed~~
18 ~~effective date of the acquisition. Failure to~~
19 ~~file is subject to section 431:11-104.5(f). This~~
20 ~~section does]; and~~

21 (B) "Person" shall not [apply to] include any
22 securities broker holding, in the usual and
23 customary broker's function, less than twenty per

1 cent of the voting securities of an insurance
2 company or of any person who controls an
3 insurance company.

4 (b) The statement to be filed with the commissioner
5 hereunder shall be made under oath or affirmation and shall
6 contain the following information:

7 (1) The name and address of each person by whom or on
8 whose behalf the merger or other acquisition of
9 control referred to in subsection (a) is to be
10 effected (hereinafter called "acquiring party"), and

11 (A) If the person is an individual, the principal
12 occupation and all offices and positions held by
13 the individual during the past five years, and
14 any conviction of crimes other than minor traffic
15 violations during the past ten years; or

16 (B) If the person is not an individual, a report of
17 the nature of its business operations during the
18 past five years or for such lesser period as the
19 person and any predecessors thereof shall have
20 been in existence; an informative description of
21 the business intended to be done by the person
22 and the person's subsidiaries; and a list of all
23 individuals who are or who have been selected to

1 become directors or executive officers of [such]
2 the person, or who perform or will perform
3 functions appropriate to the positions. The list
4 shall include for each individual the information
5 required by [†] subparagraph [†] (A);

6 (2) The source, nature, and amount of the consideration
7 used or to be used in effecting the merger or other
8 acquisition of control, a description of any
9 transaction wherein funds were or are to be obtained
10 for any purpose (including any pledge of the insurer's
11 stock, or the stock of any of its subsidiaries or
12 controlling affiliates), and the identity of persons
13 furnishing the consideration; provided that where a
14 source of the consideration is a loan made in the
15 lender's ordinary course of business, the identity of
16 the lender shall remain confidential, if the person
17 filing the statement requests confidentiality;

18 (3) Fully audited financial information as to the earnings
19 and financial condition of each acquiring party for
20 the preceding five fiscal years (or for the lesser
21 period as the acquiring party and any predecessors
22 thereof shall have been in existence), and similar

- 1 unaudited information as of a date not earlier than
2 ninety days prior to the filing of the statement;
- 3 (4) Any plans or proposals [~~which~~] that each acquiring
4 party may have to liquidate the insurer, to sell its
5 assets or merge or consolidate it with any person, or
6 to make any other material change in its business or
7 corporate structure or management;
- 8 (5) The number of shares of any security referred to in
9 subsection (a) [~~which~~] that each acquiring party
10 proposes to acquire, and the terms of the offer,
11 request, invitation, agreement, or acquisition
12 referred to in subsection (a), and a statement as to
13 the method by which the fairness of the proposal was
14 arrived at;
- 15 (6) The amount of each class of any security referred to
16 in subsection (a) [~~which~~] that is beneficially owned
17 or concerning which there is a right to acquire
18 beneficial ownership by each acquiring party;
- 19 (7) A full description of any contracts, arrangements, or
20 understandings with respect to any security referred
21 to in subsection (a) in which any acquiring party is
22 involved, including but not limited to, transfer of
23 any of the securities, joint ventures, loan or option

1 arrangements, puts or calls, guarantees of loans,
2 guarantees against loss or guarantees of profits,
3 division of losses or profits, or the giving or
4 withholding of proxies. The description shall
5 identify the persons with whom the contracts,
6 arrangements, or understandings have been entered
7 into;

8 (8) A description of the purchase of any security referred
9 to in subsection (a) during the twelve calendar months
10 preceding the filing of the statement[~~7~~] by any
11 acquiring party, including the dates of purchase,
12 names of the purchasers, and considerations paid or
13 agreed to be paid therefore;

14 (9) A description of any recommendations to purchase any
15 security referred to in subsection (a) made during the
16 twelve calendar months preceding the filing of the
17 statement[~~7~~] by any acquiring party, or by anyone
18 based upon interviews or at the suggestion of [~~such~~]
19 the acquiring party;

20 (10) Copies of all tender offers[~~7~~] for, requests[~~7~~] or
21 invitation for tenders[~~7-0x~~] of, exchange offers for,
22 and agreements to acquire or exchange any securities

1 referred to in subsection (a), and (if distributed) of
2 additional soliciting material relating thereto;

3 (11) The term of any agreement, contract, or understanding
4 made with or proposed to be made with any
5 [~~broker/dealer~~] broker-dealer as to solicitation of
6 securities referred to in subsection (a) for tender,
7 and the amount of any fees, commissions, or other
8 compensation to be paid to [~~broker/dealers~~] broker-
9 dealers with regard thereto; [~~and~~]

10 (12) An agreement by the person required to file the
11 statement referred to in subsection (a) that the
12 person will provide the annual report, specified in
13 section 431:11-105(1), for so long as control exists;

14 (13) An acknowledgement by the person required to file the
15 statement referred to in subsection (a) that the
16 person and all subsidiaries within the person's
17 control in the insurance holding company system will
18 provide information to the commissioner upon request
19 as necessary to evaluate enterprise risk to the
20 insurer; and

21 (14) Any additional information as the commissioner may by
22 rule [~~or regulation~~] prescribe as necessary or

1 appropriate for the protection of policyholders of the
2 insurer or in the public interest.

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

18 If any material change occurs in the facts set forth in the
19 statement filed with the commissioner and sent to the insurer
20 pursuant to this section, an amendment setting forth the change,
21 together with copies of all documents and other material
22 relevant to the change, shall be filed with the commissioner and
23 sent to the insurer within two business days after the person

1 learns of the change. The insurer shall send the amendment to
2 its shareholders."

3 2. By amending subsection (d) to read as follows:

4 "(d)(1) The commissioner shall approve any merger or other
5 acquisition of control referred to in subsection (a)
6 unless, after a public hearing thereon, the
7 commissioner finds that:

8 (A) After the change of control, the domestic insurer
9 referred to in subsection (a) would not be able
10 to satisfy the requirements for the issuance of a
11 license to write the line or lines of insurance
12 for which it is presently licensed;

13 (B) The effect of the merger or other acquisition of
14 control would be substantially to lessen
15 competition in insurance in this State or tend to
16 create a monopoly therein[+]. In applying the
17 competitive standard in this subparagraph:

18 (i) The informational requirements of section
19 431:11-104.3(b) and the standards of section
20 431:11-104.4(b) shall apply;

21 (ii) The merger or other acquisition shall not be
22 disapproved if the commissioner finds that
23 any of the situations meeting the criteria

1 provided by section 431:11-104.4(c) exist;

2 and

3 (iii) The commissioner may condition the approval

4 of the merger or other acquisition on the

5 removal of the grounds for disapproval

6 within a specified period of time;

7 (C) The financial condition of any acquiring party
8 might jeopardize the financial stability of the
9 insurer[~~r~~] or prejudice the interest of its
10 policyholders;

11 (D) The plans or proposals [~~which~~] that the acquiring
12 party has to liquidate the insurer, sell its
13 assets or consolidate or merge it with any
14 person, or to make any other material change in
15 its business or corporate structure or
16 management, are unfair and unreasonable to
17 policyholders of the insurer [~~and~~] or not in the
18 public interest;

19 (E) The competence, experience, and integrity of
20 those persons who would control the operation of
21 the insurer would not be in the interest of
22 policyholders of the insurer [~~and~~] or not in the
23 public interest; or

1 (F) The acquisition is likely to be hazardous or
2 prejudicial to the [~~insurance buying~~] insurance-
3 buying public.

4 (2) The public hearing referred to in paragraph (1) shall
5 commence within [~~sixty~~] thirty days after the
6 statement required by subsection (a) is filed, except
7 that the hearing may commence within such additional
8 time as agreed to by the commissioner, the acquiring
9 party, and the person to be acquired, and at least
10 twenty days notice of the scheduled public hearing
11 shall be given by the commissioner to the person
12 filing the statement. Not less than seven days notice
13 of the public hearing shall be given by the person
14 filing the statement to the insurer and to any other
15 persons as may be designated by the commissioner. The
16 insurer shall give notice to its security holders.
17 The commissioner shall make a determination within
18 [~~thirty days after the conclusion of the hearing.~~] the
19 sixty-day period preceding the effective date of the
20 proposed transaction. At the hearing, the person
21 filing the statement, the insurer, any person to whom
22 notice of hearing was sent, and any other person whose
23 interest may be affected thereby shall have the right

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1 to present evidence, examine and cross-examine
2 witnesses, and offer oral and written arguments and in
3 connection therewith shall be entitled to conduct
4 discovery proceedings in the same manner as is
5 presently allowed in chapter 91. All discovery
6 proceedings shall be concluded not later than three
7 days prior to the commencement of the public hearing.

8 (3) If the proposed acquisition of control requires the
9 approval of more than one commissioner, the public
10 hearing referred to in paragraph (2) may be held on a
11 consolidated basis upon request of the person filing
12 the statement referred to in subsection (a). The
13 person shall file the statement referred to in
14 subsection (a) with the National Association of
15 Insurance Commissioners within five days of making the
16 request for a public hearing. A commissioner may opt
17 out of a consolidated hearing, and shall provide
18 notice to the applicant of the opt-out within ten days
19 of the receipt of the statement referred to in
20 subsection (a). A hearing conducted on a consolidated
21 basis shall be public and shall be held within the
22 United States before the commissioners of the states
23 in which the insurers are domiciled. The

1 commissioners shall hear and receive evidence. A
2 commissioner may attend such hearing, in person or by
3 telecommunication.

4 (4) In connection with a change of control of a domestic
5 insurer, any determination by the commissioner that
6 the person acquiring control of the insurer shall be
7 required to maintain or restore the capital of the
8 insurer to the level required by the laws and rules of
9 this State shall be made not later than sixty days
10 after the date of notification of the change in
11 control submitted pursuant to paragraph (1) of
12 subsection (a).

13 [~~3~~] (5) The commissioner may retain at the acquiring
14 person's expense any attorneys, actuaries,
15 accountants, and other experts not otherwise a part of
16 the commissioner's staff as may be reasonably
17 necessary to assist the commissioner in reviewing the
18 proposed acquisition of control."

19 3. By amending subsection (g) to read as follows:

20 "(g) The following shall be violations of this article:

21 (1) The failure to file any statement, amendment, or other
22 material required to be filed pursuant to subsections
23 (a) or (b); or

1 (2) The effectuation or any attempt to effectuate an
2 acquisition of[-] control of, divestiture of, or
3 merger with, a domestic insurer unless [~~approval is~~
4 ~~given by~~] the commissioner[-] has given approval."

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

7 "(b) This section and sections 431:11-104.3 through
8 431:11-104.6 shall not apply to the following:

9 (1) [~~An acquisition subject to approval by the~~
10 ~~commissioner pursuant to section 431:11-104,~~
11 ~~(2)~~] A purchase of securities solely for investment
12 purposes, so long as those securities are not used by
13 voting or otherwise to cause or attempt to cause the
14 substantial lessening of competition in any insurance
15 market in this State. If a purchase of securities
16 results in a presumption of control as defined in
17 section 431:11-102, it is not solely for investment
18 purposes unless the commissioner of the insurer's
19 state of domicile accepts a disclaimer of control or
20 affirmatively finds that control does not exist and
21 the disclaimer action or affirmative finding is
22 communicated by the domiciliary commissioner to the
23 commissioner;

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- 1 [~~3~~] (2) The acquisition of a person by another person
2 when both persons are neither directly nor through
3 affiliates primarily engaged in the business of
4 insurance, if preacquisition notification is filed
5 with the commissioner in accordance with section
6 431:11-104.3 thirty days prior to the proposed
7 effective date of the acquisition. However, the
8 preacquisition notification is not required for
9 exclusion from this section and sections 431:11-104.3
10 through 431:11-104.6 if the acquisition would
11 otherwise be excluded by any other paragraph of this
12 subsection;
- 13 [~~4~~] (3) The acquisition of affiliated persons;
- 14 [~~5~~] (4) An acquisition if, as an immediate result of the
15 acquisition:
- 16 (A) In no market would the combined market share of
17 the involved insurers exceed five per cent of the
18 total market;
- 19 (B) There would be no increase in any market share;
20 or
- 21 (C) In no market would:

1 (i) The combined market share of the involved
2 insurers exceed twelve per cent of the total
3 market; and

4 (ii) The market share increase by more than two
5 per cent of the total market.

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

11 [~~(6)~~] (5) An acquisition for which a preacquisition
12 notification would be required pursuant to this
13 section due solely to the resulting effect on the
14 ocean marine insurance line of business; and

15 [~~(7)~~] (6) An acquisition of an insurer whose domiciliary
16 commissioner affirmatively finds that the insurer is
17 in failing condition; there is a lack of feasible
18 alternative to improving such condition; the public
19 benefits of improving the insurer's condition through
20 the acquisition exceed the public benefits that would
21 arise from not lessening competition; and those
22 findings are communicated by the domiciliary
23 commissioner to the commissioner[~~-~~] of this State."

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

3 "§431:11-105 Registration of insurers. (a) Every insurer
4 [~~who~~] that is authorized to do business in this State and [~~who~~]
5 is a member of an insurance holding company system shall
6 register with the commissioner, except a foreign insurer subject
7 to registration requirements and standards adopted by statute or
8 regulation in the jurisdiction of its domicile that are
9 substantially similar to those contained in this section and
10 section 431:11-106(a)(1), (b), and (d). The insurer shall file
11 a copy of the summary of its registration statement as required
12 by subsection (c) in each state in which that insurer is
13 authorized to do business if requested by the commissioner of
14 that state. Any insurer [~~who~~] that is subject to registration
15 under this section shall register within fifteen days after it
16 becomes subject to registration, and annually thereafter by
17 March 15 of each year for the previous calendar year, unless the
18 commissioner for good cause shown extends the time for
19 registration, and then within the extended time. The
20 commissioner may require any insurer [~~who~~] authorized to do
21 business in the state that is a member of [a] an insurance
22 holding company system [~~who~~], and that is not subject to
23 registration under this section, to furnish a copy of the

1 registration statement or other information filed by the
2 insurance company with the insurance regulatory authority of its
3 domiciliary jurisdiction.

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

9 (1) The capital structure, general financial condition,
10 ownership, and management of the insurer and any
11 person controlling the insurer;

12 (2) The identity and relationship of every member of the
13 insurance holding company system;

14 (3) The following agreements in force, and transactions
15 currently outstanding or [~~which~~] that have occurred
16 during the last calendar year between [~~such~~] the
17 insurer and its affiliates:

18 (A) Loans, other investments, or purchases, sales, or
19 exchanges of securities of the affiliates by the
20 insurer or of the insurer by its affiliates;

21 (B) Purchases, sales, or exchange of assets;

22 (C) Transactions not in the ordinary course of
23 business;

- 1 (D) Guarantees or undertakings for the benefit of an
2 affiliate [~~which~~] that result in an actual
3 contingent exposure of the insurer's assets to
4 liability, other than insurance contracts entered
5 into in the ordinary course of the insurer's
6 business;
- 7 (E) All management agreements, all service contracts,
8 and all cost-sharing arrangements;
- 9 (F) Reinsurance agreements;
- 10 (G) Dividends and other distributions to
11 shareholders; and
- 12 (H) Consolidated tax allocation agreements;
- 13 (4) Any pledge of the insurer's stock, including stock of
14 any subsidiary or controlling affiliate, for a loan
15 made to any member of the insurance holding company
16 system; [~~and~~]
- 17 (5) If requested by the commissioner, the insurer shall
18 include financial statements of or within an insurance
19 holding company system, including all affiliates.
20 Financial statements may include, but are not limited
21 to, annual audited financial statements filed with the
22 Securities and Exchange Commission pursuant to the
23 Securities Act of 1933, as amended, or the Securities

1 Exchange Act of 1934, as amended. An insurer required
2 to file financial statements pursuant to this
3 paragraph may satisfy the request by providing the
4 commissioner with the most recently filed financial
5 statements of the parent corporation that have been
6 filed with the Securities and Exchange Commission;

7 [~~5~~] (6) Other matters concerning transactions between
8 registered insurers and any affiliates as may be
9 included from time to time in any registration forms
10 adopted or approved by the commissioner[-];

11 (7) Statements that the insurer's board of directors
12 oversees corporate governance and internal controls
13 and that the insurer's officers or senior management
14 have approved, implemented, and continue to maintain
15 and monitor corporate governance and internal control
16 procedures; and

17 (8) Any other information required by the commissioner by
18 rule.

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

22 (d) No information need be disclosed on the registration
23 statement filed pursuant to subsection (b) if the information is

1 not material for the purposes of this section. Unless the
2 commissioner by rule or order provides otherwise, sales,
3 purchases, exchanges, loans or extensions of credit,
4 investments, or guarantees involving one-half of one per cent or
5 less of an insurer's admitted assets as of the thirty-first day
6 of December next preceding shall not be deemed material for
7 purposes of this section.

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

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

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

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

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

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

11 (k) Any person may file with the commissioner a disclaimer
12 of affiliation with any authorized insurer or a disclaimer may
13 be filed by the insurer or any member of an insurance holding
14 company system. The disclaimer shall fully disclose all
15 material relationships and bases for affiliation between the
16 person and the insurer as well as the basis for disclaiming the
17 affiliation. ~~[After a disclaimer has been filed, the insurer~~
18 ~~shall be relieved of any duty to register or report under this~~
19 ~~section which may arise out of the insurer's relationship with~~
20 ~~the person unless and until the commissioner disallows the~~
21 ~~disclaimer. The commissioner shall disallow a disclaimer only~~
22 ~~after furnishing all parties in interest with notice and~~
23 ~~opportunity to be heard and after making specific findings of~~

1 ~~fact to support the disallowance.]~~ A disclaimer of affiliation
2 shall be deemed to have been granted unless the commissioner,
3 within thirty days following receipt of a complete disclaimer,
4 notifies the filing party that the disclaimer is disallowed. In
5 the event of disallowance, the disclaiming party may request an
6 administrative hearing, which shall be granted. The disclaiming
7 party shall be relieved of its duty to register under this
8 section if approval of the disclaimer has been granted by the
9 commissioner, or if the disclaimer is deemed to have been
10 approved.

11 (1) The ultimate controlling person of every insurer
12 subject to registration shall also file an annual enterprise
13 risk report. The report shall, to the best of the ultimate
14 controlling person's knowledge and belief, identify the material
15 risks within the insurance holding company system that could
16 pose enterprise risk to the insurer. The report shall be filed
17 with the lead state commissioner of the insurance holding
18 company system as determined by the procedures within the
19 Financial Analysis Handbook adopted by the National Association
20 of Insurance Commissioners.

21 ~~[(1)]~~ (m) The failure to file a registration statement
22 ~~[or],~~ any summary of the registration statement, or enterprise

1 risk filing, required by this section within the time specified
2 for ~~such~~ the filing shall be a violation of this section."

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

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

6 "(a) (1) Transactions within [æ] an insurance holding
7 company system to which an insurer subject to
8 registration is a party shall be subject to the
9 following standards:

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

11 (B) Agreements for cost sharing services and
12 management shall include provisions as required
13 by rule adopted by the commissioner;

14 (C) Charges or fees for services performed shall be
15 reasonable;

16 [~~(C)~~] (D) Expenses incurred and payment received
17 shall be allocated to the insurer in conformity
18 with customary insurance accounting practices
19 consistently applied;

20 [~~(D)~~] (E) The books, accounts, and records of each
21 party to all transactions shall be maintained so
22 as to clearly and accurately disclose the nature
23 and details of the transactions including the

1 accounting information necessary to support the
2 reasonableness of the charges or fees to the
3 respective parties; and

4 [~~(E)~~] (F) The insurer's surplus as regards
5 policyholders following any dividends or
6 distributions to shareholder affiliates shall be
7 reasonable in relation to the insurer's
8 outstanding liabilities and adequate to its
9 financial needs;

10 (2) The following transactions involving a domestic
11 insurer and any person in its insurance holding
12 company system [~~shall~~], including amendments or
13 modifications of affiliate agreements previously filed
14 pursuant to this section, which are subject to any
15 materiality standards found in subparagraphs (A)
16 through (G), shall not be entered into unless the
17 insurer has notified the commissioner in writing of
18 its intention to enter into the transaction at least
19 thirty days prior to the transaction, or a shorter
20 period as the commissioner may permit, and the
21 commissioner has not disapproved the transaction
22 within that period[+]. The notice for amendments or
23 modifications shall include the reasons for the change

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1 and the financial impact on the domestic insurer.
2 Informal notice shall be reported within thirty days
3 after a termination of a previously filed agreement to
4 the commissioner for determination of the type of
5 filing required, if any.

6 (A) Sales, purchases, exchanges, loans [~~or~~],
7 extensions of credit, [~~guarantees,~~] or
8 investments; provided that the transactions are
9 equal to or exceed:

10 (i) With respect to nonlife insurers, the lesser
11 of three per cent of the insurer's admitted
12 assets or twenty-five per cent of surplus as
13 regards policyholders [~~each~~] as of the
14 thirty-first day of December next preceding;
15 or

16 (ii) With respect to life insurers, three per
17 cent of the insurer's admitted assets as of
18 the thirty-first day of December next
19 preceding;

20 (B) Loans or extensions of credit to any person who
21 is not an affiliate, where the insurer makes the
22 loans or extensions of credit with the agreement
23 or understanding that the proceeds of the

1 transactions, in whole or in substantial part,
2 are to be used to make loans or extensions of
3 credit to, to purchase assets of, or to make
4 investments in, any affiliate of the insurer
5 making the loans or extensions of credit;
6 provided that the transactions are equal to or
7 exceed:

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

13 (ii) With respect to life insurers, three per
14 cent of the insurer's admitted assets as of
15 the thirty-first day of December next
16 preceding;

17 (C) Reinsurance agreements or modifications to
18 reinsurance agreements, including:

19 (i) All reinsurance pooling agreements;

20 (ii) Agreements in which the reinsurance premium
21 or a change in the insurer's liabilities, or
22 the projected reinsurance premium or a
23 change in the insurer's liabilities in any

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1 of the next three years, equals or exceeds
2 five per cent of the insurer's surplus as
3 regards policyholders, as of the thirty-
4 first day of December next preceding,
5 including those agreements that may require
6 as consideration the transfer of assets from
7 an insurer to a nonaffiliate, if an
8 agreement or understanding exists between
9 the insurer and nonaffiliate that any
10 portion of the assets will be transferred to
11 one or more affiliates of the insurer;

12 (D) All management agreements, service contracts, tax
13 allocation agreements, guarantees, and all cost-
14 sharing arrangements; [and]

15 (E) Guarantees when made by a domestic insurer;
16 provided that a guarantee that is quantifiable as
17 to amount shall not be subject to the notice
18 requirements of this paragraph unless it exceeds
19 the lesser of one-half of one per cent of the
20 insurer's admitted assets or ten per cent of
21 surplus as regards policyholders as of the
22 thirty-first day of December next preceding. All
23 guarantees that are not quantifiable as to amount

1 are subject to the notice requirements of this
2 paragraph;

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

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

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

- 1 (3) A domestic insurer may not enter into transactions
2 that are part of a plan or series of like transactions
3 with persons within the insurance holding company
4 system if the purpose of those separate transactions
5 is to avoid the statutory threshold amount and thus
6 avoid the review that would otherwise occur; provided
7 that the commissioner determines that the separate
8 transactions were entered into over any twelve-month
9 period for that purpose, the commissioner may exercise
10 the commissioner's authority under section 431:11-111;
- 11 (4) The commissioner, in reviewing transactions pursuant
12 to [~~subsection (a)(2)~~], paragraph (2), shall consider
13 whether the transactions comply with the standards set
14 forth in [~~subsection (a)(1)~~] paragraph (1) and whether
15 the transactions may adversely affect the interests of
16 policyholders; and
- 17 (5) The commissioner shall be notified within thirty days
18 of any investment of the domestic insurer in any one
19 [~~person~~] corporation if the total investment in the
20 [~~person~~] corporation by the insurance holding company
21 system exceeds ten per cent of the [~~person's~~]
22 corporation's voting securities [~~or the domestic~~

1 ~~insurer possesses control of the person as the term~~
2 ~~"control" is defined in section 431:11-102]."~~

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

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

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

17 (3) Not less than one-third of the directors of a domestic
18 insurer, and not less than one-third of the members of
19 each committee of the board of directors of any
20 domestic insurer, shall be persons who are not
21 officers or employees of the insurer or of any entity
22 controlling, controlled by, or under common control
23 with the insurer and who are not beneficial owners of

1 a controlling interest in the voting stock of the
2 insurer or entity. At least one such person shall be
3 included in any quorum for the transaction of business
4 at any meeting of the board of directors or any
5 committee thereof.

6 (4) The board of directors of a domestic insurer shall
7 establish one or more committees comprised solely of
8 directors who are not officers or employees of the
9 insurer or of any entity controlling, controlled by,
10 or under common control with the insurer and who are
11 not beneficial owners of a controlling interest in the
12 voting stock of the insurer or any such entity. The
13 committee or committees shall have responsibility for
14 nominating candidates for director for election by
15 shareholders or policyholders, evaluating the
16 performance of officers deemed to be principal
17 officers of the insurer, and recommending to the board
18 of directors the selection and compensation of the
19 principal officers.

20 (5) Paragraphs (3) and (4) shall not apply to a domestic
21 insurer if the person controlling the insurer, such as
22 an insurer, a mutual insurance holding company, or a
23 publicly held corporation, has a board of directors

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1 and committees thereof that meet the requirements of
2 paragraphs (3) and (4) with respect to the controlling
3 entity.

4 (6) An insurer may make application to the commissioner
5 for a waiver from the requirements of this subsection
6 if the insurer's annual direct written and assumed
7 premium, excluding premiums reinsured with the Federal
8 Crop Insurance Corporation and Federal Flood Program,
9 is less than \$300,000,000. An insurer may also make
10 application to the commissioner for a waiver from the
11 requirements of this subsection based upon unique
12 circumstances. The commissioner may consider various
13 factors including, but not limited to, the type of
14 business entity, volume of business written,
15 availability of qualified board members, or the
16 ownership or organizational structure of the entity."

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

19 "§431:11-107 Examination. (a) Subject to the limitation
20 contained in this section and in addition to the powers [which]
21 that the commissioner has under article 2 relating to the
22 examination of insurers, the commissioner [~~shall also have the~~
23 ~~power to order~~] may examine any insurer registered under section

1 431:11-105 [~~to produce records, books, or other information~~
2 ~~papers in the possession of the insurer or its]~~ and affiliates
3 as are reasonably necessary to ascertain the financial condition
4 of the insurer or to determine compliance with this article. In
5 ~~the event the insurer fails to comply with the order, the~~
6 ~~commissioner shall have the power to examine the insurer's~~
7 ~~affiliates to obtain the information.], including the enterprise
8 risk to the insurer by the ultimate controlling party, or by any
9 entity or combination of entities within the insurance holding
10 company system, or by the insurance holding company system on a
11 consolidated basis.~~

12 (b) The commissioner may order any insurer registered
13 under section 431:11-105 to:

14 (1) Produce such records, books, or other information in
15 the possession of the insurer or its affiliates as are
16 reasonably necessary to determine compliance with this
17 article; and

18 (2) To determine compliance with this article, produce
19 information not in the possession of the insurer if
20 the insurer can obtain access to such information
21 pursuant to contractual relationships, statutory
22 obligations, or other methods. In the event the
23 insurer cannot obtain the information requested by the

1 commissioner, the insurer shall provide the
2 commissioner a detailed explanation of the reason that
3 the insurer cannot obtain the information and the
4 identity of the holder of information. Whenever it
5 appears to the commissioner that the detailed
6 explanation is without merit, the commissioner may
7 require, after notice and hearing, the insurer to pay
8 a penalty of not less than \$100 and not more than \$500
9 for each day's delay, or may suspend or revoke the
10 insurer's license.

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

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

22 (e) In the event the insurer fails to comply with an
23 order, the commissioner may examine the affiliates to obtain the

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

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

19 "§431:11-108 Confidential treatment. [~~All information,~~
20 ~~documents, and copies thereof]~~ (a) Documents, materials, or
21 other information in the possession or control of the insurance
22 division that are obtained by or disclosed to the commissioner
23 or any other person in the course of an examination or

1 investigation made pursuant to section 431:11-107 and all
2 information reported pursuant to ~~[section]~~ sections 431:11-
3 104(b)(12) and (13), 431:11-105, and [section] 431:11-106, shall
4 be ~~[given]~~ confidential ~~[treatment,]~~ by law and privileged,
5 shall not be subject to chapter 92F, shall not be subject to
6 subpoena, and shall not be ~~[made public by the commissioner, the~~
7 ~~National Association of Insurance Commissioners, or any other~~
8 ~~person, except to insurance departments of other states, without~~
9 ~~the prior written consent of the insurer to which it pertains~~
10 ~~unless the commissioner, after giving the insurer and its~~
11 ~~affiliates who would be affected thereby notice and opportunity~~
12 ~~to be heard, determines that the interest of the policyholders,~~
13 ~~shareholders or the public will be served by the publication~~
14 ~~thereof, in which event the commissioner may publish all or any~~
15 ~~part thereof in such manner as the commissioner may deem~~
16 ~~appropriate.]~~ subject to discovery or admissible in evidence in
17 any private civil action. The commissioner may use the
18 documents, materials, or other information in the furtherance of
19 any regulatory or legal action brought as part of the
20 commissioner's official duties. The commissioner shall not
21 otherwise make the documents, materials, or other information
22 public as may be deemed appropriate.

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

8 (c) To assist in the performance of the commissioner's
9 duties, the commissioner:

10 (1) May share documents, materials, or other information,
11 including the confidential and privileged documents,
12 materials, or information subject to subsection (a),
13 with other state, federal, and international
14 regulatory agencies, with the National Association of
15 Insurance Commissioners and its affiliates and
16 subsidiaries, and with state, federal, and
17 international law enforcement authorities, including
18 members of any supervisory college described in
19 section 431:11-107.1; provided that the recipient
20 agrees in writing to maintain the confidentiality and
21 privileged status of the document, material, or other
22 information, and has verified in writing the legal
23 authority to maintain confidentiality;

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- 1 (2) Notwithstanding paragraph (1) to the contrary, the
2 commissioner may only share confidential and
3 privileged documents, material, or information
4 reported pursuant to section 431:11-105(1) with
5 commissioners of states having statutes or regulations
6 substantially similar to subsection (a) and who have
7 agreed in writing not to disclose such information;
8 (3) May receive documents, materials, or information,
9 including otherwise confidential and privileged
10 documents, materials, or information from the National
11 Association of Insurance Commissioners and its
12 affiliates and subsidiaries and from regulatory and
13 law enforcement officials of other foreign or domestic
14 jurisdictions, and shall maintain as confidential or
15 privileged any document, material, or information
16 received with notice or the understanding that it is
17 confidential or privileged under the laws of the
18 jurisdiction that is the source of the document,
19 material, or information; and
20 (4) Shall enter into written agreements with the National
21 Association of Insurance Commissioners governing
22 sharing and use of information provided pursuant to

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1 article 11 and consistent with this subsection that
2 shall:

3 (A) Specify procedures and protocols regarding the
4 confidentiality and security of information
5 shared with the National Association of Insurance
6 Commissioners and its affiliates and subsidiaries
7 pursuant to this article, including procedures
8 and protocols for sharing by the National
9 Association of Insurance Commissioners with other
10 state, federal, or international regulators;

11 (B) Specify that ownership of information shared with
12 the National Association of Insurance
13 Commissioners and its affiliates and subsidiaries
14 pursuant to article 11 remains with and for the
15 use by the commissioner and the National
16 Association of Insurance Commissioners' and is
17 subject to the direction of the commissioner;

18 (C) Require that prompt notice be given to an insurer
19 whose confidential information is in the
20 possession of the National Association of
21 Insurance Commissioners pursuant to article 11
22 and require that the insurer is subject to a
23 request or subpoena from the National Association

1 of Insurance Commissioners for disclosure or
2 production; and

3 (D) Require the National Association of Insurance
4 Commissioners and its affiliates and subsidiaries
5 to consent to intervention by an insurer in any
6 judicial or administrative action in which the
7 National Association of Insurance Commissioners
8 and its affiliates and subsidiaries may be
9 required to disclose confidential information
10 about the insurer shared pursuant to this
11 article.

12 (d) The sharing of information by the commissioner
13 pursuant to this article shall not constitute a delegation of
14 regulatory authority or rulemaking, and the commissioner shall
15 be solely responsible for the administration, execution, and
16 enforcement of the provisions of article 11.

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

22 (f) Documents, materials, or information in the possession
23 or control of the National Association of Insurance

1 Commissioners pursuant to this article shall be confidential by
2 law and privileged, shall not be subject to chapter 92F, shall
3 not be subject to subpoena, and shall not be subject to
4 discovery or admissible in evidence in any private civil
5 action."

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

8 "§431:11-111 Sanctions. (a) Any insurer failing, without
9 just cause, to file any registration statement as required in
10 this article shall be [~~liable for~~] required, after notice and
11 hearing, to pay a fine in an amount of not less than \$100 and
12 not more than \$500 for each [~~day of delinquency,~~] day's delay,
13 to be recovered by the commissioner, and the penalty so
14 recovered shall be paid into the compliance resolution fund. The
15 commissioner may reduce the penalty if the insurer demonstrates
16 to the commissioner that the imposition of the penalty would
17 constitute a financial hardship to the insurer.

18 (b) Every director or officer of an insurance holding
19 company system who knowingly violates, participates in, or
20 assents to, or who knowingly permits any of the officers or
21 agents of the insurer to engage in any transactions or make
22 investments that have not been properly reported or submitted
23 pursuant to [~~sections~~] section 431:11-105(a), 431:11-106(a) (2),

1 or 431:11-106(b), or ~~[who]~~ that violates this article, shall ~~[be~~
2 ~~subject to a fine]~~ pay, in their individual capacity, a civil
3 forfeiture of not less than \$100 and not more than \$10,000 per
4 violation~~[-]~~, after notice and hearing before the commissioner.

5 In determining the amount of the ~~[fine,]~~ civil forfeiture, the
6 commissioner shall take into account the appropriateness of the
7 ~~[fine]~~ civil forfeiture with respect to the gravity of the
8 violation, the history of previous violations, and ~~[such]~~ other
9 matters as justice may require.

10 (c) Whenever it appears to the commissioner that any
11 insurer subject to this article or any director, officer,
12 employee, or agent thereof has engaged in any transaction or
13 entered into a contract ~~[which]~~ that is subject to section
14 431:11-106 and ~~[which]~~ that would not have been approved had the
15 approval been requested, the commissioner may order the insurer
16 to cease and desist immediately any further activity under that
17 transaction or contract. After notice and hearing, the
18 commissioner may also order the insurer to void any of the
19 contracts and restore the status quo if that action is in the
20 best interest of the policyholders, creditors, or the public.

21 (d) Whenever it appears to the commissioner that any
22 insurer or any director, officer, employee, or agent thereof has
23 committed a wilful violation of this article, the commissioner

1 may cause criminal proceedings to be instituted against the
2 insurer or the responsible director, officer, employee, or agent
3 thereof. Any insurer [~~who~~] that wilfully violates this article
4 [~~shall be subject to a fine of~~] may be fined not less than \$100
5 and not more than \$10,000 per violation. Any individual who
6 wilfully violates this article [~~shall be subject to a fine in~~
7 ~~the individual's capacity of~~] may be fined in the person's
8 individual capacity not less than \$100 and not more than \$10,000
9 per violation[7] or be imprisoned for not more than one year[-],
10 or both.

11 (e) Any officer, director, or employee of an insurance
12 holding company system who wilfully and knowingly subscribes to
13 or makes, or causes to be made, any false statements, false
14 reports, or false filings with the intent to deceive the
15 commissioner in the performance of the commissioner's duties
16 under this article, upon conviction thereof, shall be imprisoned
17 for not more than one year[7] or fined \$5,000, or both. Any
18 fines imposed shall be paid by the officer, director, or
19 employee in the person's individual capacity.

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

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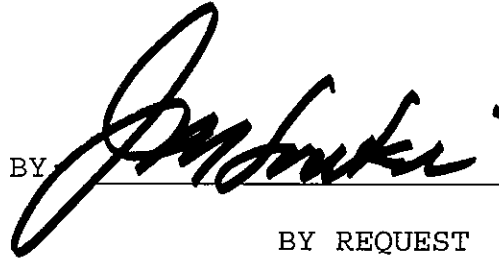
1 system, the violation may serve as an independent basis for
2 disapproving dividends or distributions and for placing the
3 insurer under an order of supervision in accordance with part 2
4 of article 15."

5 SECTION 15. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 16. This Act, upon its approval, shall take effect
8 on July 1, 2014; provided that part I of this Act shall take
9 effect on January 1, 2015.

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11
12

INTRODUCED BY



BY REQUEST

JAN 21 2014

H.B. NO. 2271

Report Title:
Insurance

Description:

Adopts revisions to the National Association of Insurance Commissioners' model laws on Credit for Reinsurance Model Act, Standard Valuation Law, Standard Nonforfeiture for Life Insurance, and Insurance Holding Company System Regulatory Act.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To adopt revisions of the following model laws of the National Association of Insurance Commissioners (NAIC):

- (1) Credit for Reinsurance Model Act;
- (2) Standard Valuation Law;
- (3) Standard Nonforfeiture Law for Life Insurance; and
- (4) Insurance Holding Company System Regulatory Act.

MEANS: Add a new section to article 11 of chapter 431, Hawaii Revised Statutes (HRS); amend sections 431:4A-101, 431:4A-102, 431:5-307, 431:10D-104, 431:11-102, 431:11-104(a), (b), (d), and (g), 431:11-104.2(b), 431:11-105, 431:11-106(a) and (c), 431:11-107, 431:11-108, and 431:11-111, HRS; and repeal section 431:4A-105, HRS.

JUSTIFICATION: NAIC's financial regulation standards and accreditation program ensure that each state has adequate solvency laws and regulations to protect consumers and guarantee reserve funds.

The adoption of NAIC model laws and regulations is important for the Insurance Division to retain its NAIC accreditation.

This bill adopts the revisions to the NAIC Insurance Holding Company System Regulatory Act, Standard Valuation Law, Standard Nonforfeiture Law for Life Insurance, and Credit for Reinsurance Model Act. These revisions are part of NAIC's Solvency Modernization Initiative (SMI). The SMI is

a critical self-examination to update the insurance solvency regulation framework in the United States and includes a review of international developments regarding insurance supervision, banking supervision, and international accounting standards and their potential use in insurance regulation in the United States.

The SMI scope includes the entire financial regulatory system in this country and all aspects relative to the financial condition of an insurer, and is not limited to the evaluation of solvency-related areas. The SMI focuses on key issues, such as capital requirements, governance and risk management, group supervision, statutory accounting and financial reporting, and reinsurance.

The revisions to the NAIC Insurance Holding Company System Regulatory Act resulted from the recent U.S. and global financial crisis in 2008. At the heart of the lessons learned from the recent financial crisis was the need for regulators to be able to assess the enterprise risk within a holding company system and its impact or contagion upon the insurers within that group. Therefore, regulators want to enhance certain prudential features of group supervision within the models and monitoring practices, providing clearer windows into group operations, while building upon the existing walls that provide solvency protection for insurers. The concepts addressed in the enhanced "windows and walls" approach include: (1) communication between regulators; (2) supervisory colleges; (3) access to and collection of information; (4) enforcement measures; (5) group capital assessment; and (6) accreditation.

The revisions to the Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance resulted from innovation in life insurance products. Innovation provides

consumers with products they want, but can also make it more difficult to capture the value of the life insurance promise with a simple formula. The result is a constant need for modification of formulas and the laws containing those formulas. NAIC adopted a revised model Standard Valuation Law (SVL) that introduced a new method for calculating life insurance policy reserves to more easily adapt requirements for changing products. This new method is referred to as Principle-Based Reserving (PBR). Once adopted by a supermajority of legislatures, PBR would replace the current formulaic approach to determining policy reserves with an approach that more closely reflects the risks of the highly complex products. The improved calculation is expected to "right-size" reserves, reducing reserves that are too high for some products, and increasing reserves that are too low for other products.

The changes to NAIC Standard Non-Forfeiture Law for Life Insurance were intended as a package with the SVL changes so that mortality and interest rate assumptions are coordinated.

The revisions to the NAIC Credit for Reinsurance Model Act are also a result from the recent financial crisis and the resulting federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was signed into law on July 21, 2010. While the Dodd-Frank Act contains provisions that impact reinsurance regulation, NAIC's proposed federal legislation was not included. The Dodd-Frank Act includes the Nonadmitted and Reinsurance Reform Act (NRRRA) and establishes the Federal Insurance Office (FIO) within the U.S. Department of the Treasury. With respect to reinsurance, NRRRA prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is

(1) an NAIC-accredited state; or (2) has financial solvency requirements substantially similar to NAIC accreditation requirements. It also preempts the extraterritorial application of a non-domiciliary state's laws, regulations, or other actions (with certain limitations), and it reserves sole responsibility for regulating the reinsurer's financial solvency to a reinsurer's domiciliary state. Finally, it prohibits any other state from requiring a reinsurer to provide financial information in addition to that required by its NAIC-compliant domiciliary state. In light of these developments, states began to move forward with state-based reinsurance collateral reforms and NAIC adopted revisions that reduce reinsurance collateral requirements for non-U.S. licensed reinsurers that are licensed and domiciled in qualified jurisdictions.

Impact on the public: This bill promotes the public interest by ensuring the financial solvency and prudent regulation of insurers.

Impact on the department and other agencies: The adoption of these proposals would enable the Insurance Division to update Hawaii insurance law to reflect changes to NAIC model laws and maintain its accreditation status with NAIC.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2014, provided that part I of this Act shall take effect on January 1, 2015.