

ACT 171

S. B. NO. 280

A Bill for an Act Relating to the Regulation of Credit Life Insurance and Credit Disability Insurance.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE

Sec. -1. Purpose; construction. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

Sec. -2. Citation, scope, and definitions. (a) Citation and scope.

(1) This chapter may be cited as ‘The Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance’.

(2) All life insurance and all disability insurance in connection with loans or other credit transactions shall be subject to this chapter, except such insurance in connection with a loan or other credit transaction of more than ten years’ duration; nor shall insurance be subject to this chapter where the issuance of such insurance is an isolated transaction on the part of the insurer

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not related to an agreement or a plan for insuring debtors of the creditor. Nothing in this chapter shall be construed to relieve any person from compliance with any other applicable law.

(b) Definitions. For the purpose of this chapter:

(1) 'Commissioner' means the director of regulatory agencies in his capacity as insurance commissioner;

(2) 'Credit life insurance' means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transactions;

(3) 'Credit disability insurance' means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(4) 'Creditor' means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them or any other person in any way associated with any of them;

(5) 'Debtor' means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;

(6) 'Indebtedness' means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

Sec. -3. Forms of credit life insurance and credit disability insurance. Credit life insurance and credit disability insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of disability insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors pursuant to section 431-573 providing insurance upon the lives of debtors on the term plan;

(4) Group policies of disability insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

Sec. -4. Maximum amount of credit life insurance and credit disability insurance. (a) Credit life insurance. The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. In the case of revolving loan or revolving charge accounts, the insurance shall at no time exceed the unpaid indebtedness.

(b) Credit disability insurance. The total amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid in-

stallments of the indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

Sec. -5. Term of credit life and credit disability insurance. The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and the evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurer determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section -8.

Sec. -6. Provisions of policies and certificates of insurance; disclosure to debtors. (a) All credit life insurance and credit disability insurance subject to this chapter shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(b) Each individual policy or group certificate of credit life insurance or credit disability insurance or any combination thereof shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit disability insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations, and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(c) Notwithstanding subsection (b), a certificate issued under a group policy where the debtor obligated himself to pay the insurance premium or payment periodically with the debt payments on the decreasing amount of the insurance or where the indebtedness is a revolving loan or revolving charge account, the rate of insurance premium or payment per unit of coverage may be set forth instead of the premium or amount of payment, if any, by the debtor.

(d) Each such individual policy or group certificate of insurance shall be

delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.

(e) If an individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit disability insurance, the amount, term, and a brief description of the coverage provided, shall be delivered to the debtor at the time the indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in section -5.

(f) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

Sec. -7. Filing, approval and withdrawal of forms and premium rates. (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner for approval. Forms and rates so filed shall be approved at the expiration of thirty days after filing, unless earlier approved or disapproved by the commissioner. The commissioner by written notice to the insurer may, within the thirty-day period, extend the period for approval or disapproval for an additional thirty days.

(b) The commissioner shall, within the waiting period or any extension thereof after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, disapprove any such form or any premium rates if the benefits provided are not reasonable in relation to the premium charge, or if the form contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of chapter 431, or of any rule or regulation promulgated thereunder.

(c) The benefits provided by any such policy form shall not be deemed reasonable in relation to the premium charge or to be charged if the ratio of losses incurred to premiums earned is not at least fifty per cent or may not reasonably be expected to be at least fifty per cent. In the determination of the reasonableness of the relation of benefits and premiums consistent with a fifty

per cent loss ratio, the commissioner may establish a common authorized premium rate for similar or substantial similar coverage by class of creditor. The commissioner may approve a higher rate than such common rate where a creditor's experience under a specific policy form reasonably indicates an ultimate loss ratio higher than fifty per cent, but the commissioner shall limit the use of such higher rate to those creditors whose experience was the basis of the approval of such higher rates. The commissioner shall require insurers to file such information as he deems necessary to determine that this standard is met each two years, or more often in his discretion, on forms recommended by the national association of insurance commissioners for that purpose. Upon giving such notice as is required by law, the commissioner may withdraw approval of any such form including the rate set forth therein, on the ground that a reasonable relation of benefits to premiums no longer exists or may approve a higher or lower rate if justified by experience.

The commissioner shall promulgate a rate that shall be deemed acceptable as satisfying this standard without any actuarial or statistical filing; provided that for a one-year period, or for such longer period as the commissioner feels is required to produce credible mortality and morbidity data, a creditor may make an identifiable charge to a debtor not to exceed the following:

(1) Life: (declining balance term) 75 cents per year per \$100 of initial insured indebtedness to be paid in equal installments over a one-year period. If premiums or identifiable charges are calculated on other than an advance single premium basis, they shall not exceed the actuarial equivalent of the foregoing.

If premiums are payable on other than a single premium basis, they shall not exceed the substantial actuarial equivalent of the foregoing 75 cent rate.

Premiums and premium rates for insurance covering obligations payable in other than substantially equal monthly installments during the period of coverage shall be determined in a manner resulting in a rate not exceeding the substantial actuarial equivalent of the foregoing 75 cent rate.

(2) Disability: The disability rates as set forth below shall be the maximum rates applicable to policies which exclude disabilities resulting from intentional self-inflicted injury, pregnancy, foreign residence, flights in non-scheduled aircraft, and pre-existing illness, disease, or physical condition for which the debtor received or was professionally advised to obtain, medical advice, consultation, or treatment during the six-month period preceding the effective date of the debtor's coverage. Premiums or identifiable charges for maturities or waiting periods other than those shown below, which shall be the maxima, must be actuarially consistent with those shown.

No. of

Months in Which

Indebtedness is Repayable	Non-Retroactive Benefits			Retroactive Benefits		
	30-day	14-day	7-day	30-day	14-day	7-day
0-12	.80	1.50	2.30	1.70	2.20	3.00
13-24	1.60	2.00	3.20	2.50	3.00	4.00
25-36	2.30	2.50	4.15	3.30	3.80	5.00
37-48	2.90	3.00	4.70	3.80	4.30	6.00
49-60	3.30	3.50	5.15	4.30	4.70	7.00

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A credit insurance policy issued under the above life and disability may exclude from the classes eligible for insurance, classes of debtors determined by age and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of specified ages.

In order to determine whether or not the benefits provided in a particular policy form submitted by an insurer are reasonable in relation to the premium charge for the policy and to facilitate the submission and approval of policy forms and premium rates to be used in connection therewith, the commissioner shall give full consideration and make reasonable allowances for mortality cost or morbidity cost and other relevant factors and trends. Any such changed maximum rate of premium or identifiable charge shall not affect any insurance then in force on debtors.

(d) After the one-year period, or such longer period deemed necessary by the commissioner as provided in subsection (c), the commissioner shall by regulation establish prima facie acceptable premium rates, except as set forth below, which shall be usable without statistical justification when filed together with an otherwise acceptable policy form submission. The rates shall produce or shall reasonably be expected to produce a ratio of losses incurred to premiums earned of at least fifty per cent. The regulation shall specify the plans of benefits to which the premium rates apply.

(e) The commissioner shall approve deviations to rates higher than the prima facie acceptable rates upon filing of reasonable evidence that loss experience for a creditor or a class of creditors exceeds the average loss experience used to determine the established rate and shall base his determination on the fifty per cent loss ratio standard, except where the deviated rate exceeds 75 cents per \$100 initial insurance per year for reducing term credit life insurance and its actuarial equivalent for other forms of credit life insurance, a reasonable variance from the fifty per cent loss ratio standard may be required. Such deviation may be limited to the debtors or creditors whose experience was the statistical basis for the filing.

(f) Credit life insurance policies for which premium rates vary by individual ages or by age brackets shall be filed as provided in this section and the commissioner shall approve or disapprove such filings in accordance with the fifty per cent loss ratio standard and the other applicable provisions of law.

(g) If the commissioner notifies the insurer that the form or premium rate is disapproved, it shall be unlawful thereafter for the insurer to issue or use the form or premium rate. In the notice the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement, or rider or premium rate, shall be issued or used until the expiration of thirty days after it has been so filed, unless the commissioner gives his prior written approval.

(h) The commissioner may, at any time after a hearing held not less than twenty days after written notice to the insurer, withdraw his approval of any such form or premium rate or any ground set forth in subsection (b). The writ-

ten notice of the hearing shall state the reason for the proposed withdrawal.

(i) It shall be unlawful for the insurer to issue or use forms or premium rates after the effective date of their withdrawal.

(j) If a group policy of credit life insurance or credit disability insurance (1) has been delivered in this State before the effective date of this chapter, or (2) has been or is delivered in another state before or after the effective date of this chapter, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in subsections (b) and (e) of section -6 and these forms shall be approved by the commissioner if (1) they conform with the requirements specified in said subsections; (2) they are accompanied by a certification in a form satisfactory to the commissioner that the substance of the forms are in substantial conformity with the master policy; and (3) the schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with and approved by the commissioner; provided the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the effective date of this chapter.

(k) Any order or final determination of the commissioner under this section shall be subject to chapter 91.

Sec. -8. Premiums and refunds. (a) Any insurer may revise its schedules of premium rates from time to time, and shall file the revised schedules for approval with the commissioner. No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then on file with and approved by the commissioner.

(b) Each individual policy, group certificate, or notice of proposed insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for the insurance shall be paid or credited promptly to the person entitled thereto; provided that the commissioner by rules and regulations shall prescribe a minimum refund and no refund which would be less than the minimum need be made. The formula to be used in computing the refund shall be filed with and approved by the commissioner.

(c) If a creditor requires a debtor to make any payment for credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the next payment due on the account.

(d) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premium rates filed with and approved by the commissioner for the coverage provided or the premium charged by the insurer, as computed at the time the charge to the debtor is determined, whichever is less.

(e) Nothing in this chapter shall be construed to authorize any payments for insurance now prohibited under any statute, or rule there thereunder, governing credit transactions.

Sec. -9. Issuance of policies. (a) All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this State only by an admitted insurer and shall be issued only through holders of certificates, licenses, or authorizations issued by the commissioner.

(b) The enrolling of debtors under a group creditor policy and the issuance of certificates of insurance pursuant thereto or the issuing of individual policies by a creditor shall not be considered a sale or solicitation of insurance or the transaction of an insurance business. A limited license issued under section 431-379 shall be required for such acts. An agent's or broker's license shall not be required.

Sec. -10. Claims. (a) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(b) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.

(c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claims representative for the insurer in adjusting claims; provided that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

Sec. -11. Existing insurance; choice of insurer. When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the creditor shall give the debtor written notice that he is free to procure the required insurance from any insurance company authorized to transact an insurance business in the State.

Sec. -12. Enforcement. The commissioner may, after notice and hearing and as provided in chapter 91, issue such rules and regulations as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or of any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. The order shall be binding on the insurer and any other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

In all proceedings before him, the commissioner shall have the same powers with respect to administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses

as are possessed by circuit judges at chambers. In cases of disobedience by any person of any order of the commissioner or of any subpoena issued by him or the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit judge, on application by the commissioner, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify therein.

Sections -5, -6, -7, and -8 shall not be operative until ninety days after the effective date of this chapter.

Sec. -13. Penalties. In addition to any other penalty provided by law, any person, firm, or corporation which violates an order of the commissioner after it has become final, and while the order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to this State a sum not to exceed \$250 which may be recovered in a civil action, except that if the violation is found to be wilful, the amount of the penalty shall be a sum not to exceed \$1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm, or corporation guilty of the violation. An order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review."

SECTION 2. Section 479-1, Hawaii Revised Statutes, is amended by deleting therefrom the words "provided that this chapter shall not apply to group insurance under a policy issued to a creditor insuring debtors of the creditor pursuant to section 431-573".

SECTION 3. Section 431-379, Hawaii Revised Statutes, is amended by adding a new subsection to be appropriately designated and to read as follows:

"() The commissioner may issue a like limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors."

SECTION 4. Subsection 431-582(1), Hawaii Revised Statutes, is amended to read as follows:

"(1) Provisions set forth in sections 431-588 to 431-592 shall not apply to policies issued to a credit union to insure its members, and provisions set forth in sections 431-588 and 431-590 to 431-592 shall not apply to policies issued to a creditor to insure its debtors."

SECTION 5. Separability provision. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act, which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 6. There is appropriated out of the general revenues of the State the sum of \$10,000 or so much thereof as may be necessary, to be expended by the director of regulatory agencies for actuarial and other services necessary for the purposes of this Act.

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SECTION 7. This Act does not affect transactions, or rights, duties, or interests flowing from them, entered into before its effective date.

SECTION 8. This Act shall take effect on July 1, 1969.

(Approved July 8, 1969.)