

**ACT 195**

**ACT 195**

S.B. NO. 1871

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:4-106.5 Membership in mutual or subscriber in reciprocal insurers; no personal liability of representative.** Any person may make application to enter into agreement for and hold policies or contracts in or with and be a member or subscriber of any domestic, foreign, or alien mutual or reciprocal insurer. Any officer, representative, or trustee, receiver, or legal representative of any such member or policyholder shall be recognized as acting for or on its behalf for the purpose of such contracts or membership, but shall not be personally liable upon the contract by reason of acting in such representative capacity."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:8-300 Exemptions from surplus lines law.** This part shall not apply to reinsurance or to the following insurance when placed by a licensed general agent of this State:

- (1) Ocean marine insurance;
- (2) Insurance on subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State; or
- (3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:10A-310 Filing requirements for advertising.** (a) Every insurer, nonprofit medical indemnity or hospital service association, health maintenance organization, or other entity providing medicare supplement insurance or benefits in this State upon reasonable request from the commissioner shall provide a copy of any medicare supplement advertisement intended for use in this State whether through written, radio, or television medium to the commissioner for review.

(b) If the commissioner finds the advertisement to be in violation of any provision of the insurance code or any rule, the commissioner shall order the insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization to cease and desist use of the advertisement pursuant to section 431:2-201 and section 431:2-202.

(c) In conjunction with a cease and desist order issued pursuant to subsection (b), the commissioner may order the insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization to refund to the insured the premium paid for the medicare supplement policy. Any refund of an amount paid by the insured for the medicare supplement insurance shall be paid within fifteen days to the person entitled thereto; provided that by rule the commissioner may prescribe an amount below which no refund need be made."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part 3 of article 10A to be designated and to read as follows:

**"§431:10A-311 Penalties.** In addition to any other applicable penalties for violations of the insurance code, pursuant to section 431:2-203, the commissioner may require insurers violating any provision of this part or rules adopted pursuant to this part to cease marketing or selling any medicare supplement policy in this State which is related directly or indirectly to a violation or may require such insurer to take such actions as are necessary to comply with the provisions of this part, or both."

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:10A-312 Severability.** If any provision of this part or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the part and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:14-105.5 Standing to intervene in rate-filing and rate-making proceedings.** In any workers' compensation insurance rate-filing and rate-making proceeding before the commissioner under article 14, an insured who is covered by workers' compensation insurance shall have the right to intervene and participate as a party in interest."

SECTION 7. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

**"§431:19- Confidential treatment.** All nonpublic financial information of a captive insurance company and of its parent or its member organizations, or a risk retention captive insurance company, disclosed to the commissioner pursuant to section 431:19-102 shall be given confidential treatment and shall not be made public by the commissioner, except to insurance departments of other states, without the prior written consent of the captive insurer or parent company or member organization or risk retention captive insurer to which it pertains. In the event the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or member organizations or risk retention captive insurer which would be affected thereby three days notice of intent, the commissioner may make public all or any part thereof in such manner as the commissioner deems appropriate.

For purposes of this section, "nonpublic financial information" means information regarding a person's financial condition that prior to disclosure to the commissioner pursuant to section 431:19-102 is not a public record as defined in rule 1001(5) of section 626-1. In the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, "nonpublic financial information" does not include financial information disclosed to owners and holders of equity securities. As used herein, equity securities means:

- (1) A share in a corporation, whether or not transferable or denominated a "stock", or similar security evidencing an ownership interest in the person;
- (2) Interest of a limited partner in a limited partnership;
- (3) Interest of a partner in a partnership, including a joint venture; or
- (4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in (1), (2), or (3)."

SECTION 8. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§431:20-110.5 Dividends.** A title insurer shall not pay any dividends except from profits remaining on hand after retaining unimpaired assets aggregating in value an amount equal to the sum of the following:

- (1) The aggregate par value of the shares of its capital stock, issued and outstanding, including treasury shares;
- (2) The amount set apart as the title insurance reinsurance reserve; and
- (3) A sum sufficient to pay all liabilities for expenses and taxes, all losses reported or in course of settlement, and all other indebtedness, without impairment of the amount required to be set apart as the title insurance reinsurance reserve."

SECTION 9. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§432:1-204 Foreign societies.** Any foreign society subject to this article shall not be excused or relieved from compliance with this article by reason of the nonresidence of its members. Upon a showing to the satisfaction of the commissioner that it is impracticable and would work a hardship to comply with section 432:1-202(b) the commissioner shall permit the society to qualify in this respect upon its appointment of a resident agent, in the same manner and subject to the same conditions as are provided for in the case of foreign corporations under the general laws on corporations. Section 432:1-202(b) shall likewise be applicable to the agent."

SECTION 10. Section 431:2-209, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Five years after conclusion of transactions to which they relate, the commissioner may destroy any correspondence, claim files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to rates, foreign or alien insurers' annual statements and valuation reports, license applications, cards, expired bonds, records of hearings, investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner's possession."

SECTION 11. Section 431:2-214, Hawaii Revised Statutes, is amended to read as follows:

**"§431:2-214 The commissioner's education and training fund.** (a) The commissioner may establish a separate fund designated as the commissioner's education and training fund.

(b) This fund may be used to compensate or reimburse staff and personnel of the insurance division for education and training. Upon approval by the commissioner, staff and personnel may be compensated or reimbursed for:

- (1) Actual travel expenses in amounts customary for these expenses;
- (2) A reasonable living expense allowance at a rate customary for these expenses;
- (3) Per diem compensation at a [rate customary for these compensation;] customary rate; and
- (4) Any fees or charges necessary to attend educational and training conferences, workshops, seminars, and any other event of this nature.

(c) Any person receiving a reimbursement or compensation from the commissioner's education and training fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred on account of any education and training for the insurance division.

[(d) Every rate filing shall be accompanied by a fee as designated in sections 431:14-104 and 431:14-205. This fee shall be credited to the commissioner's education and training fund.]"

SECTION 12. Section 431:2-302, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In lieu of making the commissioner’s examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of the state, province, or country of domicile or the state of entry into the United States. A certified copy of the annual report of the directors and statement of accounts approved by the British Board of Trade in London in accordance with the British Assurance Companies’ Act may be acceptable to the commissioner in the absence of other British insurance supervisory officials’ examination.”

SECTION 13. Section 431:3-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-205 Funds required of new insurers. Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on [December 31, 1987,] July 1, 1988, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if (A) a reciprocal insurer, or (B) a mutual insurer which does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307, in an amount not less than show<sup>1</sup> in the applicable Schedule “A”;
- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in [the] this State; and
- (3) Secure the approval of the commissioner before making withdrawals from [this designated] the depository.

**Schedule “A”**

Class of Insurance	Amount Required
Life	\$ 600,000
Disability	450,000
Property	750,000
Marine and Transportation	1,000,000
Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000”

SECTION 14. Section 431:4-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may decrease its capital stock by:
- (1) Vote of not less than seventy-five per cent of the holders of the shares of stock outstanding and entitled to vote; and
  - (2) Filing a certificate [that such vote occurred, executed in the same manner as the section 416-65 certificate, and] executed in the same manner as provided in section 415-58, that such vote occurred, upon which filing[, ] the decrease in capital is effective.”

SECTION 15. Section 431:4-504, Hawaii Revised Statutes, is amended to read as follows:

“§431:4-504 Merger or conversion of reciprocal insurer. (a) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers

who vote upon such merger pursuant to such notice as may be approved by the commissioner and with approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(b) Every new reciprocal insurer formed by merger shall assume and succeed to all of the obligations and liabilities of the respective merging reciprocal insurers and shall be held liable to pay and discharge all such debts and liabilities and perform such obligations in the same manner as if they had been incurred or contracted by it, but the subscribers of the predecessor reciprocal insurers shall continue subject to all the liabilities, claims, and demands which shall then exist, or which may thereafter accrue against them, or any of them, by reason of any liabilities and obligations incurred by them, or on their behalf as the subscribers before the date of merger.

[(b)] (c) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like classes of insurance.

[(c)] (d) The commissioner shall not approve:

- (1) Any plan for a merger or conversion which is inequitable to subscribers, or
- (2) Any plan for a conversion to a stock insurer which does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to the subscriber's interest in the reciprocal insurer, as determined in accordance with section 431:4-424, and a reasonable length of time within which to exercise the right."

SECTION 16. Section 431:6-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the foregoing, an insurer may invest any of its funds in obligations issued or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development [or], the Asian Development Bank[,] or the African Development Bank."

SECTION 17. Section 431:7-303, Hawaii Revised Statutes, is amended to read as follows:

**"§431:7-303 Securities eligible for deposit.** All deposits shall consist of cash or other assets comprised of securities which are eligible for the investment of the funds of insurers under section 431:6-301 representing public obligations, and section 431:6-302[,] representing corporate obligations."

SECTION 18. Section 431:8-102, Hawaii Revised Statutes, is amended to read as follows:

**"§431:8-102 Definitions.** As used in this article: [(a)] [Authorized insurer] "Authorized insurer" means an insurer holding a valid certificate of authority to transact an insurance business in this State.

[(b)] [Surplus lines broker] "Surplus lines broker" means any general agent licensed under section [431:3-308] 431:8-310 to place insurance on risks resident, located, or to be performed in this State with unauthorized insurers.

[(c)] [Surplus lines insurance] "Surplus lines insurance" means any insurance on risks resident, located or to be performed in this State, procured from or placed with an unauthorized insurer in accordance with part III of this article.

[(d)] [Unauthorized insurer] "Unauthorized insurer" means an insurer not holding a valid certificate of authority to transact an insurance business in [Hawaii.] this State."

## ACT 195

SECTION 19. Section 431:8-201, Hawaii Revised Statutes, is amended to read as follows:

**"§431:8-201 Transacting insurance business without certificate of authority prohibited.** It shall be unlawful for any insurer to transact an insurance business in this State, as defined in section 431:1-215, without a certificate of authority[; provided, however], except that this section shall not apply to:

- (1) The lawful transaction of surplus lines insurance;
- (2) The lawful transaction of reinsurance by insurers;
- (3) Transactions in this State involving a policy lawfully solicited, written, and delivered outside of this State covering only subjects of insurance not resident, located, or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this State involving group life and group accident and sickness or blanket accident and sickness insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business;
- (6) Transactions in this State involving any policy of insurance or annuity contract issued prior to [July 1, 1988;] and
- (7) Transactions in this State involving [insurance on vessels, craft or hulls, cargos, marine builder's risks, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.] ocean marine insurance."

SECTION 20. Section 431:8-202, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section does not apply to:

- (1) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this State; and
- (2) The property and operation of aircraft engaged in interstate or foreign commerce[; and
- (3) Those transactions exempted from the application of section 431:8-201]."

SECTION 21. Section 431:8-205, Hawaii Revised Statutes, is amended to read as follows:

**"§431:8-205 Insurance independently procured; duty to report and pay tax.** (a) Nothing in this part shall prohibit a person from independently procuring, continuing, or renewing insurance from an insurer which is not authorized to transact insurance in this State.

[(a)] (b) Each insured who in this State procures or continues or renews insurance with an unauthorized insurer on a risk located or to be performed in whole or in part in this State, other than insurance procured through a surplus lines broker pursuant to part III of this article shall, within sixty days after the date the insurance was so procured, continued, or renewed, file a written report of the same with the commissioner, upon forms prescribed by the commissioner, showing:

- (1) The name and address of the insured or insureds;
- (2) The name and address of the insurer;
- (3) The subject of the insurance;
- (4) A general description of the coverage;
- (5) The amount of premium currently charged therefor; and
- (6) Such additional pertinent information as is reasonably requested by the commissioner.

[(b)] (c) Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of 4.68 per cent. At the time of filing the report required in subsection [(a),] (b), the insured shall pay the tax to the commissioner.

[(c)] (d) If an independently procured policy covers risks or exposures only partially located or to be performed in this State, the tax payable shall be computed on the portion of the premium properly attributable to the risks or exposures located or to be performed in this State.

[(d)] (e) Delinquent taxes [hereunder] shall bear interest at the rate of ten per cent per annum.

[(e)] (f) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of section 431:8-202 or any other provision of this code.

[(f)] (g) This section shall not apply to life insurance, accident and sickness insurance, or annuities."

SECTION 22. Section 431:8-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner may suspend or revoke any surplus lines broker's license:

- (1) For failure to file [an] the annual statement required by section 431:8-313 or to pay the tax [as] required by [section 431:8-313 through section 431:8-316] section 431:8-315;
- (2) For failure to maintain an office in this State, or to keep records, or to allow the commissioner to examine such surplus lines broker's records as provided in this article;
- (3) For removal of office accounts and records from this State during the period in which such accounts are required to be maintained under this article;
- (4) For failure to maintain the bond required by section 431:8-310; or
- (5) For any of the causes for which a general agent's license may be suspended or revoked under article 9."

SECTION 23. Section 431:9-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) General agent means any person appointed under section 431:3-203(b)(1) and authorized by the insurer to perform all of the following acts in this State:

- (1) Solicit applications for insurance;
- (2) Collect premiums on insurance applied for or effectuated;
- (3) Appoint subagents and solicitors;
- (4) Arrange insurance on subjects located, resident, or to be performed wholly outside this State [in] with an authorized insurer for which the agent is not licensed;



- (5) In accordance with the provisions of article 8, arrange insurance on subjects located, resident, or to be performed wholly outside this State [in] with an [authorized] unauthorized insurer; and
- (6) Any other lawful acts pursuant to this article."

SECTION 24. Section 431:10A-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-203 Standard provisions.** Every policy of group or blanket disability insurance shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability insurance policies.

- (1) Representations. There shall be a provision that:
  - (A) All statements, made by the policyholder or by the individuals insured, shall be deemed to be representations and not warranties;
  - (B) No statement, made in the application by the policyholder, shall be used in any contest unless a copy of the application, if any, of the policyholder shall be attached to the policy when issued;
  - (C) No statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to the individual's beneficiary, if any; and
  - (D) A misrepresentation, unless it is made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer, shall not prevent a recovery on the policy.
- (2) Certificates. There shall be a provision that the insurer shall issue to the policyholder for delivery to each insured employee or member, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits are payable. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies.
- (3) Additional insureds. There shall be a provision that to the group originally insured may be added, from time to time, eligible new employees, members or dependents, as the case may be, in accordance with the terms of the policy.
- (4) Age limitations. There shall be a provision specifying:
  - (A) The ages, if any, to which the insurance provided shall be limited;
  - (B) The ages, if any, for which additional restrictions are placed on benefits; and
  - (C) The additional restrictions placed on the benefits at such ages.
- (5) Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof within such grace period as may be specified therein."

SECTION 25. Section 431:10A-301, Hawaii Revised Statutes, is amended by amending the definition of "medicare supplement policy" to read:

- "(3) Medicare supplement policy means a group or individual policy of disability insurance or a subscriber contract of a nonprofit medical indemnity or hospital service association or health maintenance organization which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:
- (A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations<sup>1</sup> or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations[, or];
  - (B) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:
    - (i) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;
    - (ii) Has been maintained in good faith for purposes other than obtaining insurance; and
    - (iii) Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members[.]; or
  - (C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this part or rule adopted thereunder, or issued to employees or members as additions to franchise plans in existence on the effective date of the applicable rule."

SECTION 26. Section 431:10A-304, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner shall issue reasonable rules to establish specific standards for the [policy] provisions[.] of medicare supplement policies. Such standards shall be in addition to and in accordance with applicable laws of this State, including the provisions of part I of this article, and may cover, but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage;
- (4) Probationary periods;
- (5) Benefit limitations, exceptions and reductions;
- (6) Elimination periods;
- (7) Requirements for replacement;
- (8) Recurrent conditions; and
- (9) Definition of terms."

SECTION 27. Section 431:10A-305, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-305 Minimum standards for benefits[.] and claims payment.** The commissioner shall issue reasonable rules to establish minimum standards for benefits and claims payment under medicare supplement policies.”

SECTION 28. Section 431:10A-306, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-306 Loss ratio standards.** (a) Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For the purposes of rules issued under this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be regarded as individual policies.

(b) No entity shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing medicare supplement policy if the existing policy is replaced by another medicare supplement policy with the same company where the new policy benefits are substantially similar to the benefits under the old medicare supplement policy and the old policy was issued by the same insurer or insurer group.”

SECTION 29. Section 431:10A-308, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-308 Notice of free examination.** Medicare supplement policies or certificates[, other than those issued pursuant to direct response solicitation,] shall have a notice prominently printed on the first page stating in substance that the applicant shall have the right to return the policy or certificate within [ten] thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. [Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.] Any refund made pursuant to this section shall be paid directly to the applicant by the insurer in a timely manner.”

SECTION 30. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of “no-fault benefits” to read:

- “(10) (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:
  - (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, [its] products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the

teachings, faith, or belief of any group which depends for healing upon spiritual means through prayer;

- (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
- (iii) Monthly earnings loss measured by an amount equal to the lesser of:
  - (I) \$900 a month; or
  - (II) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity[.];
- (iv) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to:
  - (I) Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of the person or the persons' family up to \$800 a month;
  - (II) Funeral expenses not to exceed \$1,500; and
  - (III) Attorney's fees and costs to the extent provided in section [431:10C-208(a);] 431:10C-211(a);

[Provided] provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section [431:10C-422(2)(B).] 431:10C-410(3)(A)., shall not include benefits under items (i), (ii), and (iii) for any person receiving public assistance benefits.

- (B) No-fault benefits shall be subject to:
  - (i) An aggregate limit of \$15,000 per person or such person's survivor where each applicable policy provides only the basic no-fault coverage; or
  - (ii) An aggregate limit of the expanded limits where the insured has contracted for it under an optional additional coverage."

SECTION 31. Section 431:10C-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who violates the provisions of this section shall be subject to the provisions of section [431:10C-118(a).] 431:10C-117(a)."

SECTION 32. Section 431:10C-109, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding the provisions of this section, the imposition of criminal sanctions under section [431:10C-118] 431:10C-117 shall not be precluded."

SECTION 33. Section 431:10C-111, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-111 [Restriction against cancellation or renewal.] Rejection of applications, cancellation, and nonrenewal of policies: when prohibited, when permitted.** (a) An insurer may not cancel or refuse to renew a no-fault policy, including required optional additional insurance meeting the provisions of section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked; or
- (2) Premium payments for the policy are not made after reasonable demand therefor.

(b) An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 431:10C-302 where the insured is a member of a class set forth in section [431:10C-408(b)(1)(A) or (B)] 431:10C-407(b)(1)(A) or (B) at the time of the refusal to renew.

(c) In any case of cancellation or refusal to renew, the insurer shall continue all no-fault and optional-additional<sup>1</sup> coverages in force, to the date of expiration or for thirty days following notice, whichever date occurs first.

(d) An insurer may reject or refuse to accept additional applications for, or refuse to renew no-fault policies:

- (1) If the commissioner determines that the financial soundness of the insurer would be impaired by the writing of additional policies of insurance; or
- (2) The insurer ceases to write any new policies of insurance of any kind in this State.

[(d)] (e) Within fifteen days of a cancellation and the return of the no-fault card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 431:10C-109."

SECTION 34. Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any insurer, any general agent, agent, solicitor, or representative of an insurer who violates subsection (a) shall be subject to the provisions of section [431:10C-117(e).] 431:10C-117(c)."

SECTION 35. Section 431:10C-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the event section [431:10C-308(a) through (c)] 431:10C-306(a) through (c) is held constitutionally invalid, then it is the intent of the legislature that the following sections only shall be voided:

- (1) 431:10C-104,
- (2) 431:10C-105,
- (3) 431:10C-120,
- (4) 431:10C-303,
- (5) 431:10C-304, and
- (6) 431:10C-305.

It shall be conclusively presumed that the legislature would have enacted the remainder of this article without such invalid or unconstitutional provision."

SECTION 36. Section 431:10C-401, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A joint underwriting plan is established consisting of all insurers authorized to write and engage in writing [automobile] motor vehicle insurance in this State[.], except those insurers writing motor vehicle insurance exclusively under section 431:10C-106."

SECTION 37. Section 431:11-102, Hawaii Revised Statutes, is amended by amending the definition of "control" to read as follows:

“Control” (including controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

- (1) Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section [431:11-105(i)] 431:11-105(k) that control does not in fact exist.<sup>1</sup>
- (2) The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific finds<sup>1</sup> of fact to support the commissioner’s determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.”

SECTION 38. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person other than the issuer shall make a tender offer or a request or invitation for tenders[,] of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person, directly or indirectly (by conversion or by exercise of any right to acquire), would be in control of the insurer[. No], and no person shall enter in an agreement to merge with or otherwise to acquire control of a domestic insurer or any person or any person controlling a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement containing the information required by subsection (b) and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.”

SECTION 39. Section 431:16-214, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 431:16-208. Nothing in subsection (b) shall limit the duty of the association to render a report of its activities under section [431:16-215.] 431:2-304(b).”

SECTION 40. Section 431:19-102, Hawaii Revised Statutes, is amended to amend subsection (b) to read as follows:

“(b) No captive insurance company shall do any insurance business in this State unless:

- (1) It first obtains from the commissioner a license authorizing it to do insurance business in this State;
- (2) Its board of directors holds at least one meeting each year in this State;

## ACT 195

- (3) It maintains its principal place of business in this State; and
- (4) It appoints a resident [registered broker or] agent to accept service of process and to otherwise act on its behalf in this State. Whenever the [registered broker or] agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice,<sup>1</sup> or demand may be served.”

SECTION 41. Section 431:19-108, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-108 Examinations and investigations. (a) At least once a year, and whenever the commissioner determines it to be prudent, the commissioner, or a designated agent, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article. The commissioner, upon application, may enlarge the one-year period to three years; provided that the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner. [The expenses and charges of the examination shall be paid to the State by the company or companies examined and the director of finance shall issue warrants for the proper charges incurred in all examinations.]

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under section 431:2-301 through section 431:2-307 of the code are extended to and imposed upon the commissioner in respect to examinations of captive insurance companies.”

SECTION 42. Section 431:4-425, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 431:10-213, Hawaii Revised Statutes, is repealed.

SECTION 44. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 45. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.