ACT 190 H.B. NO. 3426

A Bill for an Act Relating to Accreditation in Insurance Regulation.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 3 to be appropriately designated and to read as follows:

"PART . RISK-BASED CAPITAL FOR LIFE AND HEALTH INSURERS

§431:3-A Definitions. For purposes of this part unless the context otherwise requires:

"Adjusted risk-based capital report" means a risk-based capital report which has been adjusted by the commissioner in accordance with section 431:3-B(c).

"Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

"NAIC" means the National Association of Insurance Commissioners.

"Negative trend" means a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the risk-based capital instructions.

"Risk-based capital instructions" means the risk-based capital report including risk-based capital instructions adopted by the NAIC, as such risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:

(1) "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital;

(2) "Regulatory action level risk-based capital" means, with respect to any insurer, the product of 1.5 and its authorized control level risk-based capital;

(3) "Authorized control level risk-based capital" means, with respect to any insurer, the number determined under the risk-based capital formula in accordance with the risk-based capital instructions; and

(4) "Mandatory control level risk-based capital" means, with respect to any insurer, the product of 0.70 and the authorized control level risk-based capital.

"Risk-based capital plan" means a comprehensive financial plan containing the elements specified in section 431:3-C(b). If the commissioner rejects the risk-based capital plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised risk-based capital plan."

"Risk-based capital report" means the report required in section 431:3-B.

"Total adjusted capital" means the sum of:

(1) An insurer's statutory capital and surplus; and

(2) Any other items that the risk-based capital instructions may provide.

§431:3-B Risk-based capital reports. (a) Every domestic insurer, on or before each March 15 (the "filing date"), shall prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing any information that is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

(1) With the NAIC in accordance with the risk-based capital instructions; and

(2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

(A) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or

(B) The filing date.

(b) An insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and any other relevant risks that are set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report which, in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as so adjusted is referred to as an adjusted risk-based capital report.

§431:3-C Company action level event. (a) "Company action level event" means any of the following events:

(1) The filing of a risk-based capital report by an insurer which indicates that:

(A) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

(B) The insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5, and has a negative trend;

(2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1)(A) or (B), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-G; or

(3) If the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1)(A) or (B) under section 431:3-G, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner a comprehensive financial plan which shall:

(1) Identify the conditions in the insurer which contribute to the company action level event;

(2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) Identify the key assumptions having an impact on the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.

(c) The risk-based capital plan shall be submitted:

(1) Within forty-five days of the company action level event; or

(2) If the insurer challenges an adjusted risk-based capital report pursuant to section 431:3-G, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the risk-based capital plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by

the commissioner, and shall submit the revised risk-based capital plan to the commissioner:

(1) Within forty-five days after the notification from the commissioner; or

(2) If the insurer challenges the notification from the commissioner under section 431:3-G, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, at the commissioner's discretion, subject to the insurer's right to a hearing under section 431:3-G, may specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) That state has a risk-based capital provision substantially similar to section 431:3-H(a); and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with that state; or

(B) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsections (c) and (d).

§431:3-D Regulatory action level event. (a) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(1) The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;

(2) The notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-G;

(3) If the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1) under section 431:3-G, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(4) The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(5) The failure of the insurer to submit a risk-based capital plan to the commissioner within the time set forth in section 431:3-C(c);

(6) Notification by the commissioner to the insurer that:

(A) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(B) The notification constitutes a regulatory action level event with respect to the insurer, if the insurer has not challenged the determination under section 431:3-G;

(7) If the insurer challenges a determination by the commissioner under paragraph (6) pursuant to section 431:3-G, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge;

(8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, and if the insurer has not challenged the determination under section 431:3-G; or

(9) If the insurer challenges a determination by the commissioner under paragraph (8) pursuant to section 431:3-G, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge, unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer.

(b) In the event of a regulatory action level event the commissioner shall:

(1) Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

(2) Perform any examination or analysis that the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its risk-based capital plan or revised risk-based capital plan; and

(3) Subsequent to the examination or analysis, issue a corrective order specifying the corrective actions the commissioner determines are required.

(c) In determining corrective actions, the commissioner may take into account any relevant factors with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including but not limited to the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

(1) Within forty-five days after the occurrence of the regulatory action level event;

(2) If the insurer challenges an adjusted risk-based capital report pursuant to section 431:3-G and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge; or

(3) If the insurer challenges a revised risk-based capital plan under section 431:3-G, within forty-five days after notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(d) The commissioner may retain actuaries and investment experts and other consultants that may be necessary, in the judgment of the commissioner, to review the insurer's risk-based capital plan or revised risk-based capital plan,

examine or analyze the assets, liabilities, and operations of the insurer, and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or any other party as directed by the commissioner.

§431:3-E Authorized control level event. (a) "Authorized control level event" means any of the following events:

(1) The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;

(2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-G;

(3) If the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in section 431:3-G(1), notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge;

(4) The failure of the insurer to respond in a manner satisfactory to the commissioner to a corrective order; provided the insurer has not challenged the corrective order under section 431:3-G; or

(5) If the insurer has challenged a corrective order under section 431:3-G and the commissioner, after a hearing, has rejected the challenge or modified the corrective order, the failure of the insurer to respond in a manner satisfactory to the commissioner to the corrective order subsequent to rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) Take any actions that are required under section 431:3-D regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions under this paragraph pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under the provisions of section 431:15-201.

§431:3-F Mandatory control level event. (a) "Mandatory control level event" means any of the following events:

(1) The filing of a risk-based capital report which indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;

(2) Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in

paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-G; or

(3) If the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event under section 431:3-G(1), notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(b) In the event of a mandatory control level event, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

§431:3-G Hearing. The insurer shall have the right to a hearing pursuant to chapter 91 upon being notified of any of the following:

(1) Notification to an insurer by the commissioner of an adjusted risk-based capital report;

(2) Notification to an insurer by the commissioner that:

(A) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and

(B) The notification constitutes a regulatory action level event with respect to the insurer;

(3) Notification to any insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or

(4) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

§431:3-H Confidentiality and prohibition on announcements. (a) All risk-based capital reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and risk-based capital plans (including the results or report of any examination or analysis of an insurer performed pursuant to this part and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the commissioner, constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only to enforce actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this State.

(b) The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this part, the

making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing as assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

§431:3-I Supplemental provisions. The provisions of this part are supplemental to any other laws of this State, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to chapter 431:15.

§431:3-J Foreign insurers. (a) Any foreign insurer, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report as of the end of the calendar year just ended by the later of:

(1) The date a risk-based capital report would be required to be filed by a domestic insurer under this part; or

(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer, at the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

(b) In the event of a company action level event or regulatory action level event with respect to any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or if no risk-based capital provision is in force in that state, under this part, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital law of that state, or if no risk-based capital provision is in force in that state, under section 431:3-C, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner. In this event, the failure of the foreign insurer to file a risk-based capital plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this State.

(c) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the circuit court of the first judicial circuit of this State under article 15 with respect to the liquidation of property of foreign insurers found in this State, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

§431:3-K Severability. If any provision of this part, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or application of this part which can be given effect without the invalid provision or application, and to that end the provisions of this part are severable.

§431:3-L Notices. All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail or, in the case of any other transmission, shall be effective upon the insurer's receipt of the notice.

§431:3-M Phase-in provision. For risk-based capital reports required to be filed with respect to 1994, the following requirements shall apply in lieu of sections 431:3-C, 431:3-D, 431:3-E, and 431:3-F:

(1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder;

(2) In the event of a regulatory action level event under sections 431:3-D(a)(1), (2), or (3), the commissioner shall take the actions required under section 431:3-C;

(3) In the event of a regulatory action level event under sections 431:3-D(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the commissioner shall take the actions required under section 431:3-D with respect to the insurer; and

(4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 431:3-E with respect to the insurer."

SECTION 2. Section 431:3-302, Hawaii Revised Statutes, is amended to read as follows:

"**§431:3-302 Annual and quarterly filings with the National Association of Insurance Commissioners.** (a) Each domestic, foreign, and alien insurer which is authorized to transact insurance in this State shall [annually on or before March 1 of each year] file annual and quarterly statements with the National Association of Insurance Commissioners (NAIC). Each insurer, annually on or before March 1 of each year, shall file a copy of its annual statement convention blank along with additional filings as prescribed by the commissioner for the preceding year. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement with the commissioner and the NAIC. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and [addendums] addenda to the statement filing subsequently filed with the commissioner shall also be filed with the NAIC. In addition to the printed annual statement blank, quarterly statements, and other reports addressed in this section, the annual filing for 1993 and thereafter and the quarterly filings for 1994 and thereafter shall include diskettes containing annual and quarterly statement information in the format prescribed by the NAIC annual and quarterly statement diskette filing specifications[, and must be submitted on or before the March 1 due date of]. The annual and quarterly diskette filings shall be due on the same dates as the corresponding printed information.

(b) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) shall be deemed in compliance with this section."

SECTION 3. Section 431:5-307, Hawaii Revised Statutes, is amended to read as follows:

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

(b) Reserve valuation:

(1) The commissioner [shall], annually, shall value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance[1], annuity, and pure endowment contracts of every life insurer doing business in this State. The commissioner may certify the amount of any [such] reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or others) used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves [herein] required under this section of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction, when the valuation complies with the minimum standard [herein provided,] under this section, and if the official of [such] that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when [such] the certification states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction[.];

(2) The actual cost of making valuations under this section shall be assessed on the insurer, whose policies are so valued, by the commissioner[.]; and

(3) Any [such] insurer [which], at any time, that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided [may], with the approval of the commissioner, may adopt any lower standard of valuation, but not lower than the minimum [herein] provided[.] in this section.

(c) Computation of minimum standard:

(1) Old policies: Except as otherwise provided in [item] paragraph (3), the minimum standard for the valuation of all [such] policies and contracts issued prior to the operative date of section 431:10D-104, shall be that provided by the laws in effect immediately prior to January 1, 1956[.];

(2) Except as otherwise provided in [item] paragraph (3), the minimum standard for the valuation of all [the] policies and contracts issued on or after the operative date of section 431:10D-104, shall be the [commissioners] commissioner's reserve valuation methods defined in subsections (d), (e), and (h), three and one-half per cent interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1976, four per cent interest; for [such] the policies issued prior to June 1, 1979, five and

one-half per cent interest for single premium life insurance policies and four and one-half per cent interest for all other [such] policies issued on or after June 1, 1979; and the following tables:

(A) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies — the Commissioners 1941 Standard Ordinary Mortality Table for [such] the policies issued prior to the operative date of section 431:10D-104(e)(8), and the Commissioners 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date; provided that for any category of [such] the policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for [such] the policies issued on or after the operative date of section 431:10D-104(e)(8), the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table[,] adopted after 1980 by the National Association of Insurance Commissioners[,] that is approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] policies[.];

(B) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies — the 1941 Standard Industrial Mortality Table for [such] the policies issued prior to the operative date of section 431:10D-104(e)(7), and for the policies issued on or after [such] the operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table[,] adopted after 1980 by the National Association of Insurance Commissioners, that is approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] those policies[.];

(C) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in [such] the policies — the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner[.];

(D) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in [such] the policies — the Group Annuity Mortality Table for 1951, any modification of the table approved by the commissioner[,] or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts[.];

(E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued after December 31, 1965, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of

the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners[,] that are approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] the policies; for policies or contracts issued after December 31, 1960, and prior to January 1, 1966, either the tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any [such] table [shall], for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies[.];

(F) For accidental death benefits in or supplementary to policies — for policies issued after December 31, 1965, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] the policies; for policies issued after December 31, 1960, and prior to January 1, 1966, either the table or, at the option of the insurer, the Inter-company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies[.]; and

(G) For group life insurance, life insurance issued on the substandard basis, and other special benefits — [such] any tables [as] that may be approved by the commissioner[.];

(3) Except as provided in [item] paragraph (4), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph [as defined herein], and for all annuities and pure endowments purchased on or after [such] the operative date under group annuity and pure endowment contracts, shall be the [commissioners] commissioner's reserve valuation methods defined in subsections (d) and (e) and the following tables and interest rates:

(A) For individual annuity and pure endowment contracts issued prior to June 1, 1979, excluding any disability and accidental death benefits in [such] the contracts — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six per cent interest for single premium immediate annuity contracts, and four per cent interest for all other individual annuity and pure endowment contracts[.];

(B) For individual single premium immediate annuity contracts issued on or after June 1, 1979, excluding any disability and accidental death benefits in [such] the contracts — the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by

[regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] the contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest[.];

(C) For individual annuity and pure endowment contracts issued on or after June 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in [such] the contracts — the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] the contracts, or any modification of these tables approved by the commissioner, and five and one-half per cent interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent interest for all other [such] individual annuity and pure endowment contracts[.]; and

(D) For all annuities and pure endowments purchased on or after June 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in [such] the contracts — the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by [regulation promulgated] rules adopted by the commissioner for use in determining the minimum standard of valuation for [such] the annuities and pure endowments, or any modification of these tables approved by the commissioner and seven and one-half per cent interest.

After June 1, 1976, any insurer may file with the commissioner a written notice of its election to comply with [the provisions of] this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for [such] the insurer; provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no [such] election, the operative date of this paragraph for [such] the insurer shall be January 1, 1979[.]; and

(4) Applicability of this section:

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

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

(ii) All individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982[,];

(iii) All annuities and pure endowments purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts[,]; and

(iv) The net increase, if any, in a particular calendar year after 1982, in amounts held under guaranteed interest

contracts shall be the calendar year statutory valuation rates as defined in this paragraph[.];

(B) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one per cent:

(i) For life insurance,

$$[I = .03 + W (R - .03) + \frac{W}{2} (R - .09);]$$

$$I = .03 + W (R_1 - .03) + \frac{W}{2} (R_2 - .09);$$

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

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

where R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate defined in this section, and W is the weighting factor defined in this [paragraph] section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in clause (ii), the formula for life insurance stated in clause (i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in clause (ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in clause (ii) shall apply; and

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in clause (ii) shall apply[.];

(C) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent, the calendar year statutory valuation interest rate for [such] those life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding

sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 431:10D-104(e)(8) becomes operative[.]:

(D) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or [less] fewer	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy, or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80; and

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in clause (ii), shall be as specified in the tables below, according to the rules and definitions stated below:

Table I:
For annuities and guaranteed interest contracts valued on an issue year basis;

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Table II:	Plan Type A	B	C
For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (i) increased by:	.15	.25	.05

Table III:	Plan Type A	B	C
For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in Table I or derived in Table II increased by:	.05	.05	.05

For other annuities with cash settlement options with guaranteed interest contracts [with] and cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence. Plan type as used in the above tables is defined as follows:

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

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

Plan Type C: [Policyholder] The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or in installments over less than five years either: (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company[,]; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change

in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options [must] shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund[.];

(E) The reference interest rate referred to in [subsection] paragraph (4)(B) shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months,

ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in clause (ii), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and

(F) Alternative method for determining references interest rates: In the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by [regulation promulgated] rules adopted by the commissioner, may be substituted.

(d) [Commissioners Reserve Valuation Methods:] Commissioner's reserve valuation methods:

(1) Except as otherwise provided in subsections (e) and (h), reserves, according to the [commissioners] commissioner's reserve valuation methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of [such] the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for [such] the benefits (excluding extra premiums on a substandard policy) that the present value, at the date of issue of the policy, of all [such] the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subparagraph (A) over subparagraph (B) as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one a year payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided that the net level annual[2] shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of [such] the policy.

(B) A net one-year term premium for the benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year, and no comparable additional benefit is provided in the first year for [such] the excess, which provides an endowment benefit, a cash surrender value, or a combination thereof, in an amount greater than [such] the excess premium, the reserve, according to the [commissioner] commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than [such] the excess premium, [shall,] except as otherwise provided in subsection (h), shall be the greater of the reserve as [such] the policy anniversary calculated as described [in the foregoing provisions of this subsection] above and the reserve as of [such] the policy anniversary calculated as described [in those provisions], but with:

(i) The value defined in subparagraph (A) being reduced by fifteen per cent of the amount of [such] the excess first year premium;

(ii) All present values benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(iii) The policy being assumed to mature on [such] that date as an endowment; and

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

In making the above comparison, the mortality and interest bases stated in [subsections] subsection (c)(2) and [(c)] (3) shall be used[.]; and

(2) Reserve according to the [commissioners] commissioner's reserve valuation methods for:

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

(B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended;

(C) Disability and accidental death benefits in all policies and contracts; and

(D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts[,];

shall be calculated by a method consistent with the [principals] principles of this subsection [(d)].

(e) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an

employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the [commissioners] commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in [such] those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by [such] those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of [such] the contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in [such] the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of [such] the contracts to determine nonforfeiture values.

(f) Minimum aggregate reserves: In no event shall an insurer's aggregate reserves for all life insurance policies excluding disability and accidental death benefits, issued on or after the operative date of section 431:10D-104, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (e), (h), and (i), and the mortality tables and rates of interest used in calculating nonforfeiture benefits for [such] those policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (j).

(g) Optional reserves bases: Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after the operative date of section 431:10D-104, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard herein provided. The rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rates of interest used in calculating any nonforfeiture benefits provided for therein. Any [such] company which at any time shall have adopted any standard valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided, [may,] with the approval of the commissioner, may adopt any lower standard of valuation, but not lower than the minimum herein provided[.]; provided that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (j) shall not be deemed to be the adoption of a higher standard of valuation.

(h) Minimum reserve: If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for [such] that policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for [such] the policy or contract, or the reserve calculated by the method actually used for [such] the policy or contract using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for

which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in [subsections] subsection (c)(1), [(c)] (2), and [(c)] (4)[.

Provided]; provided that for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for [such] the excess and which provides an endowment benefit or a cash surrender value, or a combination thereof, in an amount greater than [such] the excess premium, [the foregoing provisions of] this subsection shall be applied as if the method actually used in calculating the reserve for [such] the policy were the method described in subsection (d), ignoring the second paragraph of that subsection. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (d), including [the second paragraph of that] subsection[,] (d)(2) and the minimum reserve calculated in accordance with this subsection.

(i) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (d), (e), and (h), the reserves which are held under any such plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan[,]; and

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

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

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

(2) Actuarial analysis of reserves and assets supporting the reserves:

(A) Every life insurance company, except as exempted by or pursuant to rules, also shall include annually in the opinion required by paragraph (1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rules, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under, and expenses associated with, the policies and contracts; and

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

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

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

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rules or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare any supporting memorandum that is required by the commissioner; and

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

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

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

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any addition standards that the commissioner may prescribe by rules;

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

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

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

(G) Any memorandum in support of the opinion, and any other material provided by the insurer to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section, or by rules adopted hereunder; provided that the memorandum or other material may otherwise be released by the commissioner with the written consent of the insurer or be released to the American Academy of

Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing material or is cited before any governmental agency, other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum shall no longer be confidential."

SECTION 4. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition, each association captive and risk retention captive shall file an annual statement on or before March 1 each year, in accordance with statutory accounting practices, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, in general form and [context] content as approved by the National Association of Insurance Commissioners, verified by oaths of at least two of the insurer's principal officers. Each risk retention group captive shall file with the National Association of Insurance Commissioners, on or before March 1 of each year, a copy of its annual convention blank along with any additional filings as prescribed by the commissioner for the preceding year."

SECTION 5. Section 431:19-115, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-115 Laws applicable.** No insurance laws of this State other than those contained in this article, or contained in specific references contained in this article, shall apply to pure captive insurance companies. In addition to this article, all of the other insurance laws of this State shall apply to association captive insurance companies, including risk retention insurance companies, unless these other laws are inconsistent with this article."

SECTION 6. Act 280, Session Laws of Hawaii 1993, is amended by amending section 64 to read as follows:

"SECTION 64. This Act shall take effect on July 1, 1993, except that sections 19, 21, [25,] 38, and 41 shall take effect on June 30, 1994; provided that the director of finance shall transfer to the credit of the state general fund:

(1) On July 1, 1993, all unexpended or unencumbered balances remaining in any special or revolving fund scheduled for repeal on July 1, 1993, under this Act; and
(2) On June 30, 1994, all unexpended or unencumbered balances remaining in any special or revolving fund scheduled for repeal on June 30, 1994, under this Act."

SECTION 7. Section 25 of Act 280, Session Laws of Hawaii, 1993, is repealed.

["SECTION 25. Section 431:2-307, Hawaii Revised Statutes, is amended to read as follows:

"**§431:2-307 [Insurance examiners revolving fund.**

(a) The commissioner may establish a separate fund designated as the insurance examiners revolving fund.

(b) The funds shall be used to compensate independent contractor examiners. Independent contractors examiners may be reimbursed or compensated for:

(1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;

(2) A reasonable living expense allowance at a rate customary for such expenses and approved by the commissioner; and

(3) Per diem compensation at a rate customary for such compensation as approved by the commissioner.

(c) The funds may also be used to reimburse insurance division staff examiners for the following expenses necessarily incurred on account of an examination and the examiners' education and training:

(1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;

(2) A reasonable living expense allowance at a rate customary for such expenses and approved by the commissioner; and

(3) Any fee or tuition necessary to attend educational and training conferences, workshops, seminars, and any similar event of this nature.

(d) The funds may also be used for other expenses relating to examinations of insurance companies.

(e) All persons receiving any reimbursement or compensation from the insurance examiners revolving fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred. Persons shall not receive or accept any additional emolument on account of an examination. In the case of an examination, any reimbursement or compensation made by the fund and approved by the commissioner shall be charged to the person being examined by the commissioner and all receipts shall be credited to the fund.

(f) Moneys in the insurance examiners revolving fund shall not revert to the general fund.

(g) Each authorized insurer shall deposit at a time determined by the commissioner the sum of $200 with the commissioner to be credited to the insurance examiners revolving fund.] **Reimbursement and compensation of examiners; source of funds; disposition of receipts.** (a) All moneys necessary for the compensation and reimbursement of independent contractor examiners and insurance division staff examiners for actual travel expenses, reasonable living expenses, and per diem expenses, at customary rates approved by the commissioner shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) Each authorized insurer shall deposit at a time determined by the commissioner the sum of $200 with the commissioner for deposit into the state general fund.

(c) All moneys, fees, and other payments received by the commissioner under this part shall be deposited to the credit of the state general fund.""]

SECTION 8. In codifying the new part added to article 3 of chapter 431, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1994 and be repealed on June 30, 1996; provided that any statutory or session law material in this Act in existence on June 30, 1994, shall be reenacted on July 1, 1996 in the same form in which it existed on June 30, 1994.

(Approved June 21, 1994.)

Notes

1. Prior to amendment "policies" appeared here.
2. Prior to amendment "premium" appeared here.