

**ACT 24**

S.B. NO. 2814

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to place certain provisions adopted as Hawaii administrative rules regarding insurance into the Hawaii Revised Statutes. Currently, provisions governing insurance are found both within the Hawaii Revised Statutes and the Hawaii administrative rules.

This Act places portions of current insurance administrative rules properly within the Hawaii Revised Statutes. This Act streamlines insurance administration within the State by consolidating certain regulatory provisions into one location.

The affected administrative rules include: fifteen sections of chapter 16-1 (Proxies, Consents, and Authorizations of Domestic Stock Insurers); two sections of chapter 16-5 (Mass Merchandising of Motor Vehicle Insurance); three sections of

chapter 16-14 (Insurance Holding Company System); and thirteen sections of chapter 16-23 (Motor Vehicle Insurance Law).

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 4 to be appropriately designated and to read as follows:

**“PART . PROXIES, CONSENTS, AND AUTHORIZATIONS  
OF DOMESTIC STOCK INSURERS**

**431:4-A Applicability.** This part is applicable to all domestic stock insurers having one hundred or more stockholders; provided that this part shall not apply to any insurer if ninety-five per cent or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by less than five hundred stockholders. A domestic stock insurer that files with the Securities and Exchange Commission forms of proxies, consents, and authorizations complying with the requirements of the Securities Exchange Act of 1934 (title 15 United States Code section 78a), the Securities and Exchange Acts Amendments of 1964 (P.L. 88-467), and Regulation X-14 of the Securities and Exchange Commission adopted thereunder shall be exempt from this part.

**§431:4-B Schedule A: information required in a proxy statement. (a)**

When applicable, information in schedule A shall include, among other things:

- (1) Whether or not the person giving the proxy has the power to revoke it;
- (2) A brief outline of the rights of appraisal of dissenting stockholders;
- (3) A statement as to who is making the solicitation;
- (4) A description of the interest of persons in the matters to be acted upon;
- (5) A statement as to the class of voting stock to be voted at the meeting, the number of shares outstanding, and the number of votes to which each class is entitled;
- (6) Detailed information of nominees for directors;
- (7) A statement on remuneration and other transactions with management and others;
- (8) Information on the insurer’s bonus, profit sharing, and other remuneration plans;
- (9) Information on the insurer’s pension or retirement plan;
- (10) Information on the options, warrants, or rights to purchase stock of the insurer;
- (11) Information of the title, amount, and description of stock to be authorized or issued;
- (12) Detailed information on mergers, consolidations, acquisitions, and other similar matters; and
- (13) Detailed information on any asset, capital, or surplus of the insurer.

(b) If action is to be taken with respect to any matter which is not required to be submitted to a vote of stockholders, the schedule shall state the nature of the matter, the reason for the matter being submitted to a vote of the stockholders, and the action intended to be taken by the management in the event of a negative vote on the matter by the stockholders.

(c) If action is to be taken with respect to any amendment of the insurer’s charter, by-laws, or other such documents as to which information is not required, the schedule shall briefly state the reasons for and the general effect of the amendment and the vote needed for its approval.

**§431:4-C Schedule B: information to be included in statements filed by or on behalf of a participant other than an insurer in a proxy solicitation in an election contest.** Information in schedule B shall include, among other things:

- (1) The name and address of the insurer;
- (2) Detailed information about the participant;
- (3) The participant's interest in the stock of the insurer;
- (4) A description of the time and circumstances in which the participant became involved with the solicitation and the nature and extent of the activities or proposed activities of the participant; and
- (5) The date and signature of the participant.

**§431:4-D Proxies, consents, and authorizations.** No domestic stock insurer, or any director, officer, or employee of the insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization with respect to any stock of the insurer in contravention of this part or schedule A in section 431:4-B and schedule B in 431:4-C.

**§431:4-E Schedules and exhibits.** Reporting of the information required in schedule A under section 431:4-B and in schedule B under section 431:4-C, and the exhibit entitled "stockholders information supplement-financial reporting to stockholder" shall be made on forms or in a format approved by the commissioner.

**§431:4-F Disclosure of equivalent information.** Unless proxies, consents, or authorizations with respect to a stock of a domestic insurer, subject to section 431:4-A, are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this part and the schedules thereunder prior to any annual or other meeting, the insurer shall file with the insurance commissioner and transmit to all stockholders of record information substantially equivalent to the information that would be required to be transmitted if a solicitation were made.

**§431:4-G Definitions.** As used in this part:

"Solicit" or "solicitation" includes:

- (1) Any request for a proxy, whether or not accompanied by or included in a form of proxy;
- (2) Any request to execute or not to execute, or to revoke a proxy; or
- (3) The furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

"Solicit" or "solicitation" does not include:

- (1) Any solicitation by a person in respect to stock of which the person is the beneficial owner;
- (2) Action by a broker or other person in respect to stock carried in the person's name;
- (3) Action in the name of the nominee in forwarding to the beneficial owner of the stock soliciting material received from the company;
- (4) Impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy;
- (5) Impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; or
- (6) The furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

“Participant” or “participant in a solicitation” includes:

- (1) The insurer;
- (2) Any director of the insurer and any proxy for a nominee for whom an election as a director is solicited; or
- (3) Any other person acting alone or with one or more other persons, committees, or groups in organizing, directing, or financing the solicitation.

“Participant” or “participant in a solicitation” does not include:

- (1) A bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;
- (2) Any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;
- (3) Any person employed in the capacity of attorney, accountant, or advertising, public relations, or financial advisor, and whose activities are limited to the performance of the person’s duties in the course of the employment of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant;
- (4) Any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant; or
- (5) Any officer, director, or person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.

**§431:4-H Information to be furnished to stockholders.** (a) No solicitation shall be made unless the person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required under schedule A pursuant to section 431:4-B.

(b) If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to subsection (a) shall be accompanied or preceded by an annual report (in preliminary or final form) to the stockholders containing the financial statements for the last fiscal year as are included in the exhibit entitled “stockholders information supplement-financial reporting to stockholder”. Subject to these requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

(c) Two copies of each annual report sent to the stockholders pursuant to this part shall be mailed to the commissioner not later than the date on which the annual report is first sent or given to stockholders or the date on which preliminary copies of solicitation are filed with the commissioner, pursuant to section 431:4-J(a), whichever date is later.

**§431:4-I Requirements as to proxy.** (a) The form of proxy shall:

- (1) Indicate in boldface type whether or not the proxy is solicited on behalf of the management;
- (2) Provide a specifically designated blank space for dating the proxy; and
- (3) Identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or stockholders. No reference need be made to proposals for which discretionary authority is conferred pursuant to subsection (c).

(b) The proxy shall provide a means by which the person solicited may specify by ballot a choice between approval or disapproval of each matter or group

of related matters referred to therein, other than elections to office. A proxy may confer discretionary authority with respect to matters for which no choice is specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.

(c) A proxy may confer discretionary authority with respect to other matters which may come before the meeting; provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided that a specific statement to that effect is made in the proxy statement or in the form of a proxy.

(d) No proxy shall confer authority to:

- (1) Vote for the election of any person to office for which a bona fide nominee is not named in the proxy statement; or
- (2) Vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies, by means of a ballot provided pursuant to subsection (b), a choice with respect to any matter to be acted upon, the vote will be in accordance with the specification so made.

(f) The information included in the proxy statement shall be clearly presented and the statement made shall be divided into groups according to subject matter, with appropriate headings. All printed proxy statements shall be clearly and legibly presented.

**§431:4-J Material required to be filed.** (a) Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently therewith shall be filed with the commissioner at least ten days prior to the date final form copies of the material are first sent or given to stockholders, or a shorter period prior to that date as the insurance commissioner may authorize upon a showing of good cause.

(b) Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days (exclusive of Saturdays, Sundays, or legal state holidays) prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to that date as the commissioner may authorize upon a showing of good cause.

(c) Two definitive copies of the proxy statement, final form of proxy, and all other soliciting material, in the form in which the material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.

(d) Where any proxy statement, form of proxy, or other material filed pursuant to this chapter is amended or revised, two of the copies shall be marked to clearly show the changes.

(e) Copies of replies to inquiries from stockholders requesting further information and copies of communications that only request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this part.

(f) Notwithstanding subsections (a) and (b), and section 431:4-O, copies of soliciting material in the form of speeches, press releases, and radio or television scripts may be filed with the commissioner prior to use or publication. Final form copies, however, shall be filed with or mailed for filing to the commissioner as required by subsection (c) not later than the date the material is used or published.

Subsections (a) and (b) and section 431:4-O shall apply to any reprints or reproductions of all or any part of the material.

**§431:4-K False or misleading statements.** No solicitation subject to this part shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits any material fact necessary in order to make the statements not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

**§431:4-L Prohibition of certain solicitations.** No person making a solicitation shall solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

**§431:4-M Election contests; applicability.** This part shall apply to any solicitation by any person or group for the purpose of opposing a solicitation by any person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

**§431:4-N Filing of information required by schedule B.** (a) No solicitation shall be made by any person, other than the management of an insurer unless at least five business days prior thereto or a shorter period as the commissioner may authorize upon a showing of good cause, there has been filed, with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified in schedule B pursuant to section 431:4-C and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders shall be deferred until the commissioner's comments have been received and complied with.

(b) Within five business days after a solicitation is made by the management of an insurer, or a longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer and by or on behalf of each management nominee or director, a statement in duplicate containing the information specified by schedule B under section 431:4-C.

(c) If any solicitation on behalf of the management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation in opposition thereto, a statement in duplicate containing the information specified in schedule B shall be filed with the commissioner, by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto.

(d) If, subsequent to the filing of the statements required by subsections (a), (b), and (c), additional persons become participants in a solicitation, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified in schedule B under section 431:4-C, within three business days after the person becomes a participant, or longer period as the commissioner may authorize upon a showing of good cause.

(e) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall

be filed within three business days by or on behalf of each respective participant with the commissioner.

(f) Each statement and amendment thereto filed pursuant to this section shall be part of the public files of the commissioner.

**§431:4-O Solicitations prior to furnishing required written proxy statement.** Notwithstanding section 431:4-H(a), a solicitation subject to this part may be made prior to furnishing stockholders a written proxy statement containing the information specified in schedule A under section 431:4-B with respect to the solicitation, provided that:

- (1) The statements required by section 431:4-N are filed by or on behalf of each participant in the solicitation;
- (2) No form of proxy is furnished to stockholders prior to the time the proxy statement required by section 431:4-H(a) is furnished to such persons. This paragraph shall not apply where a proxy statement then meeting the requirements of schedule A under section 431:4-B has been furnished to stockholders;
- (3) At the minimum, the information specified in paragraphs (2) and (3) of the statements required by schedule B under section 431:4-C to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to stockholders in connection with the solicitation; and
- (4) A written proxy statement containing the information specified in schedule A pursuant to section 431:4-B with respect to a solicitation is sent or given to stockholders at the earliest practicable date.

**§431:4-P Solicitation prior to furnishing required written proxy statement; filing requirements.** Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by section 431:4-H(a) shall be filed with the commissioner in preliminary form at least five business days prior to the date final form copies of the material are first sent or given to the stockholders, or a shorter period as the commissioner may authorize upon a showing of good cause therefor.

**§431:4-Q Application of this part to annual report.** Notwithstanding section 431:4-H(b) and (c), two copies of any portion of the annual report referred to in section 431:4-H(b), which comments upon or refers to any solicitation subject to this section or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to this part. The portion of the annual report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the annual report are first sent or given to stockholders.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding eight new sections to article 10C to be appropriately designated and to read as follows:

**“§431:10C-A Agreement.** The applicant shall execute and file with the commissioner an agreement in a form prescribed by the commissioner, that if certified as a self-insurer the applicant shall:

- (1) Permit the commissioner or an authorized representative to inspect and copy records and provide them copies of records pertaining to the self-insurer’s financial condition, processing and payment of claims, and

any other matters pertinent to the administration and enforcement of this article; and

- (2) Provide all mandatory benefits required under this article and comply with all requirements of articles 10C and 13, and with the rules and directives of the commissioner, including, but not limited to, those relating to processing and payment of assessments and fees.

**§431:10C-B Surety bond, deposit of security, or proof of financial ability.** An applicant for self-insurance shall:

- (1) (A) File with the commissioner and maintain a bond of a surety company authorized to do business in the State, conditioned for the payment of benefits and amounts as would be payable if the applicant were insured under a motor vehicle insurance policy as prescribed in this article. The bond shall be in the form and penal sum acceptable to the commissioner, but in no event shall be less than \$300,000, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was self-insured, unless the commissioner has given prior written consent. It shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii". The surety company may not cancel the bond for the period of certification; or
- (B) Deposit with the commissioner cash or those securities as may be legally purchased for investment by insurance companies under this chapter and evidence satisfactory to the commissioner that there are no unsatisfied judgments against the applicant. As used herein, "cash" includes an irrevocable letter of credit issued by a federally insured financial institution whose principal office is located in this State. Prior to the issuance of a certificate of self-insurance the securities and cash, if appropriate, shall be registered in the name of the "Commissioner of Insurance, State of Hawaii". The deposit shall be held to satisfy claims for personal injury protection benefits and liability coverage as prescribed in this article. The commissioner shall deposit the cash or securities with the director of finance. The applicant shall execute an agreement satisfactory in form to the commissioner with respect to the deposit. The cash or market value of the securities deposited shall be in an amount determined by the commissioner to afford security substantially equivalent to that afforded under a motor vehicle insurance policy, but in no event less than \$300,000 and shall provide that the cash or securities shall not be withdrawn until two years have elapsed from the last day the applicant was self-insured, unless the commissioner has given prior written consent; and
- (2) Furnish the commissioner satisfactory proof of the applicant's solvency and financial ability to timely pay benefits and amounts as would be payable if the applicant were insured under this article. The commissioner shall consider the assets, liabilities, profit, loss records, and liquidity of the applicant, the number of vehicles involved, the exposure, and other factors appropriate to determining whether the applicant qualifies as a self-insurer.

**§431:10C-C Proof of ability to process and pay claims promptly.** An applicant for self-insurance shall submit proof satisfactory to the commissioner that



the applicant has retained an adjuster licensed under this chapter to provide a complete claims service to process and promptly pay claims in accordance with this article and article 13. During the period that the applicant is self-insured, the applicant shall immediately refer all claims to the adjuster for processing. From time to time, the commissioner may require a self-insurer to show that the self-insurer is continuing to maintain an effective claims service.

**§431:10C-D Issuance of certificate of self-insurance.** The commissioner shall issue a certificate of self-insurance if:

- (1) The applicant has provided the bond, cash, or securities and proof of qualification as a self-insurer affording security substantially equivalent to that afforded under a motor vehicle insurance policy; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against the self-insurer as the claimant would have had if a motor vehicle insurance policy was applicable.

**§431:10C-E Duty to notify commissioner.** A self-insurer shall notify the commissioner in writing of any change in status of any motor vehicle which is self-insured, such as a transfer, sale, removal from the State, or any additional motor vehicle which the self-insurer desires to self-insure within ten working days after the change is effected.

**§431:10C-F Duration of certification.** A certificate of self-insurance is valid for a period of one year from the date of issuance and may be renewed annually.

**§431:10C-G Revocation of certificate of self-insurance.** The commissioner may revoke a certificate of self-insurance for good cause at any time after providing notice and the opportunity for a hearing in accordance with chapter 91. Failure to comply with this article, rules, orders, or directives of the commissioner, or to pay any lawful fee or assessment is cause for revocation. Upon a revocation, the owner of any self-insured motor vehicle shall not operate or permit operation of the vehicle in the State until the owner has obtained insurance or has received a new certificate of self-insurance from the commissioner.

**§431:10C-H Termination of self-insurer status and withdrawal of security deposit.** (a) A person who terminates the person's status as a self-insurer or whose certificate of self-insurance has been revoked and who obtains a motor vehicle insurance policy for any formerly self-insured motor vehicle or shows that the person does not own any motor vehicle, may apply to the commissioner for the return of the person's security deposit or cancellation of the surety bond.

(b) After a lapse of twenty-four months from termination or revocation of self-insurer status and proof satisfactory to the commissioner that all claims have been fully adjudicated and paid, that all allotments and assessments have been paid, and that the owner has complied with the applicable provisions of this article, rules, orders, and directives of the commissioner, and provisions of the self-insurer's agreement, the commissioner may release the securities deposited or permit the cancellation of the bond."

SECTION 4. Section 431:10C-103, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Alternative care provider” means any person providing medical or rehabilitative services in section 431:10C-302(a)(10) to a claimant covered by a motor vehicle insurance policy.

“Anesthetist” means a registered nurse-anesthetist who performs anesthesia services under the supervision of a licensed physician.

“Medical fee schedule” refers to the Medicare Resource Based Relative Value Scale System applicable to Hawaii, entitled “Workers’ Compensation Supplemental Medical Fee Schedule”.”

SECTION 5. Section 431:10C-105, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-105 Self-insurance.** (a) The motor vehicle insurance required by section 431:10C-104 may be satisfied by any owner of a motor vehicle if:

- (1) [Such] The owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a motor vehicle insurance policy, providing coverage at all times for the entire motor vehicle registration period, as determined and approved by the commissioner under [regulations;] rules; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against [such] the owner as the claimant would have had if a motor vehicle insurance policy had been applicable to [such] the vehicle.

(b) A person desiring to qualify as a self-insurer shall apply to the commissioner on a form or in a format approved by the commissioner pursuant to rules.”

SECTION 6. Section 431:10C-107, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-107 Verification of insurance: motor vehicles.** (a) Every insurer shall issue to its insureds a motor vehicle insurance identification card for each motor vehicle for which the basic motor vehicle insurance coverage is written. The identification card shall contain the following:

- (1) Name of make and factory or serial number of the motor vehicle; provided that insurers of five or more motor vehicles which are under common registered ownership and used in the regular course of business shall not be required to indicate the name of make and the factory or serial number of each motor vehicle;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.

(b) The identification card shall be in the insured motor vehicle at all times and shall be exhibited to a law enforcement officer upon demand.

(c) The identification card shall be resistant to forgery by whatever means appropriate. The commissioner shall approve the construction, form, and design of the identification card to ensure that the card is forgery resistant.

(d) The commissioner shall issue a certificate of self-insurance periodically, as necessary, for use in each motor vehicle insured under section 431:10C-105.

(e) The identification card issued by an insurer shall not be issued for a period exceeding the period for which premiums have been paid or earned; provided that this subsection shall apply only to the first application of a person for a motor vehicle insurance policy and shall not apply to applications for commercial and fleet vehicles.”

SECTION 7. Section 431:10C-115, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-115 Drivers education fund underwriters fee.** (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit the fees into a special drivers education fund account.

(c) The commissioner shall allocate the fees deposited for each fiscal year in the following manner:

- (1) Fifty per cent to the commissioner to be expended for the operation of the drivers education program provided in section [1286-128(d)]; and
- (2) Fifty per cent to the director of commerce and consumer affairs for:
  - (A) The drivers education program administered by the department of education for high school students; and
  - (B) The traffic safety education program established and administered by the department of education pursuant to section 302A-417.

(d) Motor vehicles insured under the joint underwriting plan shall be excluded from the drivers education fund assessment.

[(d)] (e) The commissioner shall adopt rules in accordance with chapter 91 for the execution of this section and the distribution of this fund.”

SECTION 8. Section 431:11-102, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, or any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

“Statement” means information required to be filed with the commissioner pursuant to sections 431:11-104, 431:11-105, and 431:11-106, and guidelines set forth on a form or in a format approved by the commissioner.

“Ultimate controlling person” means a person who is not controlled by any other person.”

SECTION 9. Section 431:11-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted [under article 6,] in this chapter, a domestic insurer may also:

- (1) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten per cent of the insurer’s assets or fifty per cent of the insurer’s surplus as regards policyholders; provided that after the investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

- (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary,

- including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
- (B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;
- (2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer; provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in [item] paragraph (1) or in [article 6.] this chapter. For the purpose of this subsection, the total investment of the insurer shall include:
- (A) Any direct investment by the insurer in an asset[,]; and
- (B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary; and
- (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 10. Section 431:11-106, Hawaii Revised Statutes, is amended to read as follows:

**“§431:11-106 Standards and management of an insurer within a holding company system.**

- (a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
- (A) The terms shall be fair and reasonable;
- (B) Charges or fees for services performed shall be reasonable;
- (C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (D) The books, accounts, and records of each party to all transactions shall be [so] maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information [as is] necessary to support the reasonableness of the charges or fees to the respective parties; and
- (E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period

as the commissioner may permit, and the commissioner has not disapproved it within that period:

- (A) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments; provided that the transactions are equal to or exceed:
  - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
  - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
- (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
  - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
  - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
- (C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per cent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (D) All management agreements, service contracts, and all cost-sharing arrangements; and
- (E) Any material transactions, specified by [regulation,] rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

- (3) A domestic insurer may not enter into transactions, which are part of a plan or series of like transactions with persons within the holding company system, if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111.
- (4) The commissioner, in reviewing transactions pursuant to subsection (a)(2), shall consider whether the transactions comply with the stan-

dards set forth in subsection (a)(1) and whether they may adversely affect the interests of policyholders.

- (5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten per cent of the corporation's voting securities.
- (b) (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:
  - (A) Thirty days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment; or
  - (B) The commissioner [shall have] has approved the payment within the thirty-day period.
- (2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the [[ ]lesser[ ]] of:
  - (A) Ten per cent of [such] the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or
  - (B) The net gain from operations of a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding.

Extraordinary dividend or distribution shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval thereof, and the declaration shall confer no rights upon shareholders until the commissioner has either approved the payment of the dividend or distribution or has not disapproved the payment within the thirty-day period referred to above.

- (c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability which they would otherwise be subject to by law. The insurer shall be managed so as to assure its separate operating identity consistent with this article.
- (2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (a)(1).
- (d) For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:
  - (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

- (2) The extent to which the insurer's business is diversified among the several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) The surplus as regards policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves; and
- (10) The quality and liquidity of investments in affiliates. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

(e) In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling, and the commissioner shall:

- (1) Consider the net effect of all of the factors, along with other factors bearing on the financial condition of the insurer;
- (2) In comparing the surplus maintained by other insurers, consider the extent to which each of these factors varies among insurers; and
- (3) In determining the quality and liquidity of investments in subsidiaries, consider the individual subsidiary and discount or disallow its valuation to the extent warranted by individual investments."

SECTION 11. Section 431:12-105, Hawaii Revised Statutes, is amended to read as follows:

**"§431:12-105 Mass merchandising requirements.** Mass merchandising of insurance and every mass merchandising plan shall be subject to the following conditions:

- (1) The insurance offered shall be open to participation by or be available to every employee of the employer who meets the underwriting requirements of the insurer.
- (2) The insurance shall be offered without discrimination against any employee as to rates, forms, or coverages. Nothing herein shall preclude the establishment of different classes of risks.
- (3) Upon the termination of employment or upon the termination of the mass merchandising agreement, an insured employee shall have the option of continuing the employee's participation in a group policy or the employee's individual policy then in force for a period of one year upon payment of the applicable premium; provided that the employee shall exercise the employee's option within thirty days following the date of [such] the termination. The terms, conditions, and coverages for the one-year period are those that were effective on the date of termination and shall not be more restrictive than those contained in the mass merchandising agreement, the group policy, or the individual policy in force immediately prior to the date of termination.
- (4) The insurer shall issue a certificate or other evidence of participation to every member covered under a group policy and a policy of insurance to every member insured under an individual policy.
- (5) The insurance offered shall not be contingent upon the purchase of any other insurance, product, or service; nor shall the purchase of any other

insurance, product, or service be contingent upon the purchase of the motor vehicle, property, and casualty insurance offered.”

SECTION 12. Section 431:12-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:12-115 Establishment and maintenance of office.** (a) Every insurer selling insurance on a mass merchandising basis shall establish and maintain at all times an office in the State to conduct the administration of its business and handle claims.

(b) Establishment and maintenance of an office by any licensed general agent of an insurer shall meet the requirements of this section.”

SECTION 13. In codifying the new sections added to chapter 431, Hawaii Revised Statutes, by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of these new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect upon its approval.

(Approved April 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.