H.B. NO. 3096

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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

"PART AA. DISCLOSURE OF MATERIAL TRANSACTIONS

§431:3-A Reports. (a) Every insurer domiciled in this State shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of the insurance code, laws, rules, or other requirements.

(b) The report required in subsection (a) shall be filed within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments, shall be filed with:

(1) The insurance commissioner; and

(2) The National Association of Insurance Commissioners.

(d) Reports by insurers shall be given confidential treatment as provided herein.

(1) All reports in the possession or control of the commissioner, or obtained by or disclosed to the commissioner pursuant to this part shall be confidential by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action without the prior written consent of the insurer to which it pertains. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(2) Notwithstanding paragraph (1), after giving the affected insurer notice and an opportunity to be heard, the commissioner may determine that the interests of policyholders, shareholders, or the public will be served by publication of the information, in which event the commissioner may publish all or any part of the reports in the manner the commissioner may deem appropriate.

(3) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (1).

(4) To assist in the performance of the commissioner's duties, the commissioner:

(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance

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

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (4).

§431:3-B Acquisitions and dispositions of assets. (a) No acquisition or disposition of assets need be reported pursuant to section 431:3-A if the acquisition or disposition is not material. For purposes of this part, a material acquisition (or the aggregate of any series of related acquisitions during any thirty-day period) or disposition (or the aggregate of any series of related dispositions during any thirty-day period) means one that is nonrecurring and not in the ordinary course of business and involves more than five per cent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the commissioner.

(b) Asset acquisitions subject to this part include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

1 Asset dispositions subject to this part include every sale,
2 lease, exchange, merger, consolidation, mortgage, hypothecation,
3 assignment (whether for the benefit of creditors or otherwise),
4 abandonment, destruction, or other disposition.
5 (c) The following information is required to be disclosed in
6 any report of a material acquisition or disposition of assets:
7 (1) Date of the transaction;
8 (2) Manner of acquisition or disposition;
9 (3) Description of the assets involved;
10 (4) Nature and amount of the consideration given or
11 received;
12 (5) Purpose or reason for the transaction;
13 (6) Manner by which the amount of consideration was
14 determined;
15 (7) Gain or loss recognized or realized as a result of the
16 transaction; and
17 (8) Names of all persons from whom the assets were acquired
18 or to whom they were disposed.
19 (d) Insurers are required to report material acquisitions
20 and dispositions on a non-consolidated basis unless the insurer is
21 part of a consolidated group of insurers which utilizes a pooling
22 arrangement or one hundred per cent reinsurance agreement that

1 affects the solvency and integrity of the insurer's reserves and
2 the insurer ceded substantially all of its direct and assumed
3 business to the pool. An insurer is deemed to have ceded
4 substantially all of its direct and assumed business to a pool if
5 the insurer has less than $1,000,000 total direct plus assumed
6 written premiums during a calendar year that are not subject to a
7 pooling arrangement and the net income of the business not subject
8 to the pooling arrangement represents less than five per cent of
9 the insurer's capital and surplus.

10 **§431:3-C Nonrenewals, cancellations, or revisions of ceded**
11 **reinsurance agreements.** (a) No nonrenewal, cancellation, or
12 revision of a ceded reinsurance agreement or a new ceded
13 reinsurance agreement affecting in force life insurance business
14 need be reported pursuant to section 431:3-A if the nonrenewal,
15 cancellation, or revision of the ceded reinsurance agreement or
16 new ceded reinsurance agreement affecting in force life insurance
17 business is not material. For purposes of this part, a material
18 nonrenewal, cancellation, or revision of a ceded reinsurance
19 agreement or a material new ceded reinsurance agreement affecting
20 in force life insurance business means one that affects:

1 (1) As respects property and casualty business, including
2 accident and health business written by a property and
3 casualty insurer:
4 (A) More than fifty per cent of the insurer's total
5 ceded written premium; or
6 (B) More than fifty per cent of the insurer's total
7 ceded indemnity and loss adjustment reserves.
8 (2) As respects life, annuity, and accident and health
9 business, more than fifty per cent of the total reserve
10 credit taken for business ceded, on an annualized basis,
11 as indicated in the insurer's most recent annual
12 statement.
13 (3) As respects either property and casualty or life,
14 annuity, and accident and health business, either of the
15 following events shall constitute a material revision
16 which must be reported:
17 (A) An authorized reinsurer representing more than ten
18 per cent of a total cession is replaced by one or
19 more unauthorized reinsurers; or
20 (B) Previously established collateral requirements have
21 been reduced or waived as respects one or more

unauthorized reinsurers representing collectively more than ten per cent of a total cession.

(b) No reporting shall be required if:

(1) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten per cent of its total written premium for direct and assumed business; or

(2) As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten per cent of the statutory reserve requirement prior to any cession.

(c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business:

(1) The effective date of the nonrenewal, cancellation, or revision or new agreement;

(2) A description of the transaction with an identification of the initiator of the transaction;

1 (3) The purpose or reason for the transaction; and
2 (4) If applicable, the identity of the replacement
3 reinsurers.
4 (d) Insurers are required to report all material
5 nonrenewals, cancellations, or revisions of ceded reinsurance
6 agreements or material new ceded reinsurance agreements affecting
7 in force life insurance business on a non-consolidated basis,
8 unless the insurer is part of a consolidated group of insurers
9 which utilizes a pooling arrangement or one hundred per cent
10 reinsurance agreement that affects the solvency and integrity of
11 the insurer's reserves and the insurer ceded substantially all of
12 its direct and assumed business to the pool. An insurer is deemed
13 to have ceded substantially all of its direct and assumed business
14 to a pool if the insurer has less than $1,000,000 total direct
15 plus assumed written premiums during a calendar year that are not
16 subject to a pooling arrangement and the net income of the
17 business not subject to the pooling arrangement represents less
18 than five per cent of the insurer's capital and surplus.
19 **§431:3-D Enforcement.** Any insurer failing or refusing to
20 file any report, document, or information required by this part
21 shall be liable for a fine in an amount not less than $100 and not
22 more than $500 for each day of delinquency. The commissioner may

suspend or revoke the certificate of authority of any insurer that fails to file any of the reports, documents, or information required pursuant to this part."

SECTION 2. Section 431:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall file annually with the commissioner, [~~on or before March 1 of each year,~~] a copy of its annual statement convention blank, statement of actuarial opinion by a qualified actuary [~~or specialist~~], and additional filings as prescribed by the commissioner for the preceding year. Property and casualty insurers shall also file annually with the commissioner an actuarial opinion summary by a qualified actuary 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. The statements shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals. The annual and quarterly

statements shall be verified by oaths of at least two of the insurer's principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer shall relate only to its transactions and affairs in the United States. Foreign and alien insurers that are in compliance with section 431:3-302 are not required to file annual and quarterly statements with this State."

SECTION 3. Section 431:3-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall electronically file annually with the National Association of Insurance Commissioners, [~~on or before March 1 of each year, a copy of~~] its annual statement convention blank, statement of actuarial opinion by a qualified actuary [~~or specialist~~], and additional filings as prescribed by the commissioner for the preceding year. Each insurer shall electronically file quarterly, on or before the forty-fifth day after each quarter, [~~a copy of~~] its quarterly statement with the National Association of Insurance Commissioners. The information electronically filed with the National Association of Insurance

Commissioners 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.~~] filed in the format prescribed by the National Association of Insurance Commissioners' annual statement instructions. Any amendments and addenda to the statement filing subsequently filed with the commissioner shall also be filed electronically with the National Association of Insurance Commissioners. [~~In addition to the printed annual and quarterly filings addressed in this section, the annual and quarterly filings shall also be filed electronically in the format prescribed by the National Association of Insurance Commissioners' annual statement instructions. The annual and quarterly electronic filings shall be due on the same dates as the corresponding printed information.~~]"

SECTION 4. Section 431:3-304, Hawaii Revised Statutes, is amended to read as follows:

"**§431:3-304 Confidentiality.** (a) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the insurance division by the National Association of Insurance Commissioners' Insurance Regulatory

1 Information System are confidential and may not be disclosed by
2 the insurance division.
3 (b) Documents, materials, or other information in the
4 possession or control of the commissioner that are considered an
5 actuarial report, working paper, memorandum in support of the
6 opinion, regulatory asset adequacy issues summary, or actuarial
7 opinion summary provided in support of the opinion, and any
8 other material provided by the company to the commissioner in
9 connection therewith, shall be confidential by law and
10 privileged, shall not be subject to chapter 92F, shall not be
11 subject to subpoena, and shall not be subject to discovery or
12 admissible in evidence in any private civil action.
13 This subsection shall not be construed to limit the
14 commissioner's authority to release the documents, materials, or
15 other information to the Actuarial Board for Counseling and
16 Discipline so long as the documents, materials or other
17 information are required for the purpose of professional
18 disciplinary proceedings and the Actuarial Board for Counseling
19 and Discipline establishes procedures satisfactory to the
20 commissioner for preserving the confidentiality of the
21 documents. This subsection shall not be construed to limit the
22 commissioner's authority to use the documents, materials, or

1 other information in furtherance of any regulatory or legal
2 action brought as part of the commissioner's official duties.
3 (c) Neither the commissioner nor any person who received
4 documents, materials, or other information while acting under
5 the authority of the commissioner shall be permitted or required
6 to testify in any private civil action concerning any
7 confidential documents, materials, or other information subject
8 to subsection (b).
9 (d) To assist in the performance of the commissioner's
10 duties, the commissioner:
11 (1) May share documents, materials, or other information,
12 including the confidential and privileged documents,
13 materials, or information subject to subsection (b)
14 with other state, federal, and international
15 regulatory agencies, with the National Association of
16 Insurance Commissioners and its affiliates and
17 subsidiaries, and with state, federal, and
18 international law enforcement authorities, provided
19 that the recipient agrees to maintain the
20 confidentiality and privileged status of the document,
21 material, or other information and has the legal
22 authority to maintain confidentiality;

(2) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information; and

(3) May enter into agreements governing sharing and use of information consistent with subsections (b), (c), and (d).

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (d)."

SECTION 5. Section 431:5-307, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

1 "(j) The actuarial opinion of reserves and this subsection
2 shall become effective December 31, 1995.
3 (1) Every life insurance company doing business in this
4 State shall annually submit the opinion of a qualified
5 actuary as to whether the reserves and related
6 actuarial items held in support of the policies and
7 contracts specified by the commissioner, by rules, are
8 computed appropriately, are based on assumptions which
9 satisfy contractual provisions, are consistent with
10 prior reported amounts, and comply with the applicable
11 laws of this State. The commissioner, by rules, shall
12 define the specifics of this opinion and add any other
13 items deemed to be necessary to its scope;
14 (2) Actuarial analysis of reserves and assets supporting
15 the reserves:
16 (A) Every life insurance company, except as exempted
17 by or pursuant to rules, also shall include
18 annually in the opinion required by paragraph
19 (1), an opinion of the same qualified actuary as
20 to whether the reserves and related actuarial
21 items held in support of the policies and
22 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

1 (B) If the insurance company fails to provide a
2 supporting memorandum at the request of the
3 commissioner within a period specified by rules
4 or if the commissioner determines that the
5 supporting memorandum provided by the insurer
6 fails to meet the standards prescribed by rules
7 or is otherwise unacceptable to the commissioner,
8 the commissioner may engage a qualified actuary
9 at the expense of the insurer to review the
10 opinion and the basis for the opinion and prepare
11 any supporting memorandum that is required by the
12 commissioner; and
13 (4) Every opinion shall be governed by the following:
14 (A) The opinion shall be submitted with the annual
15 statement reflecting the valuation of reserve
16 liabilities for each year ending on or after
17 December 31, 1995;
18 (B) The opinion shall apply to all business in force
19 including individual and group health insurance
20 plans, in form and substance acceptable to the
21 commissioner as specified by rules;

1 (C) The opinion shall be based on standards adopted
2 from time to time by the Actuarial Standards
3 Board and on any [+]additional[+] standards that
4 the commissioner may prescribe by rules;
5 (D) In the case of an opinion required to be
6 submitted by a foreign or alien insurer, the
7 commissioner may accept the opinion filed by that
8 insurer with the insurance supervisory official
9 of another state if the commissioner determines
10 that the opinion reasonably meets the
11 requirements applicable to an insurer domiciled
12 in this State;
13 (E) For the purposes of this section, "qualified
14 actuary" means a member in good standing of the
15 American Academy of Actuaries who meets the
16 requirements set forth in the regulations adopted
17 by the American Academy of Actuaries;
18 (F) Except in cases of fraud or wilful misconduct,
19 the qualified actuary shall not be liable for
20 damages to any person, other than the insurer and
21 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, regulatory asset adequacy issues summary, 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.~~]

pursuant to section 431:3-304."

SECTION 6. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The statements required to be filed in subsections (a) and (b) shall include but not be limited to actuarially appropriate reserves for the business underwritten. An actuarial opinion regarding reserves for the business underwritten by the company shall be included in the audited statements, except that the actuarial opinion for class 3 companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year[~~.~~], and the actuarial opinion summary for class 3 property and casualty captive insurance companies shall be filed on or before March 15 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by

the National Association of Insurance Commissioners; provided that all captive insurance companies, other than a class 3 company, may, alternatively, utilize an actuarial opinion prepared by a loss reserve specialist deemed appropriate by the commissioner."

SECTION 7. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to captive insurance companies formed under this article. In addition to this article, article 1, article 2, sections 431:3-302 to 431:3-304, section 431:3-307, <u>part AA of article 3,</u> article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter shall apply to captive insurance companies other than pure captive insurance companies and branch captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article, and except as otherwise provided in this article, article 1, article 2, article 6,

article 11, and article 15 of this chapter shall apply to class 5 companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies authorized under this article."

SECTION 8. Section 431:20-103, Hawaii Revised Statutes, is amended to read as follows:

"**§431:20-103 General insurance law applicable.** The following provisions shall apply to title insurance and to title insurers:

(1) Sections 431:1-103 and 431:1-105;

(2) Sections 431:1-212, 431:1-213, and 431:1-214;

(3) Sections 431:2-101 to 431:2-106[~~,~~] and [~~sections~~] 431:2-108 to 431:2-110;

(4) Sections 431:2-201 to 431:2-204, [~~sections~~] 431:2-207 to 431:2-212, and [~~section~~] 431:2-215;

(5) Sections 431:2-302, 431:2-303, 431:2-305, and 431:2-306;

(6) Sections 431:3-101 to 431:3-105;

(7) Sections 431:3-201 to 431:3-203, 431:3-205, [~~and~~] 431:3-206, and [~~sections~~] 431:3-209 to 431:3-220;

(8) Sections 431:3-301, 431:3-302, 431:3-305, 431:3-307, and 431:3-308[~~,~~] and part AA of article 3;

(9) Sections 431:4-102 to 431:4-127;

(10) Sections 431:4-202 to 431:4-207;

(11) Section 431:5-101;

(12) Sections 431:5-201 to 431:5-203;

(13) Sections 431:5-305 [~~and~~], 431:5-306, and [~~sections~~] 431:5-308 to 431:5-311;

(14) Article 6;

(15) Article 7;

(16) Article 9A;

(17) Sections 431:10-211, 431:10-216 to 431:10-218, [~~and~~] 431:10-220, 431:10-221, [~~and~~] 431:10-224, 431:10-225, and [~~sections~~] 431:10-235 to 431:10-238;

(18) Article 13; and

(19) Article 15."

SECTION 9. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

1 "(b) Article 2, article 2D, sections 431:3-301 and 431:3-
2 302, part AA of article 3, article 13, and article 14G of
3 chapter 431, and the powers there granted to the commissioner,
4 shall apply to managed care plans, health maintenance
5 organizations, or medical indemnity or hospital service
6 associations, which are owned or controlled by mutual benefit
7 societies, so long as the application in any particular case is
8 in compliance with and is not preempted by applicable federal
9 statutes and regulations."
10 SECTION 10. Section 432:1-404, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:
12 "(a) Each society shall file with the commissioner
13 annually, on or before March 1 in each year, a statement under
14 oath, and in such form and detail as the commissioner shall
15 prescribe; provided that any association or society organized
16 and operating as a nonprofit medical indemnity or hospital
17 service association shall file a report with the commissioner
18 covering the preceding calendar year and verified by at least
19 two principal officers. Each mutual benefit society shall file
20 quarterly with the commissioner, on or before the forty-fifth
21 day after each quarter, a copy of its quarterly report verified
22 by at least two principal officers. [~~The report~~] These reports

1 shall comply with sections 431:3-301 and 431:3-302. The
2 commissioner may prescribe the forms on which [~~the~~] each report
3 is to be filed. In addition, any association or society
4 organized and operating as a nonprofit medical indemnity or
5 hospital service association annually shall file with the
6 commissioner the following by the dates specified:
7 (1) An audit, by an independent certified public
8 accountant or an accounting firm designated by the
9 association or society, of the financial statements,
10 reporting the financial condition and results of
11 operations of the association or society on or before
12 June 1, or a later date as the commissioner upon
13 request or for cause may specify. The association or
14 society, on an annual basis and prior to the
15 commencement of the audit, shall notify the
16 commissioner in writing of the name and address of the
17 person or firm retained to conduct the annual audit.
18 The commissioner may disapprove the association's or
19 society's designation within fifteen days of receipt
20 of the association's or society's notice, and the
21 association or society shall be required to designate
22 another independent certified public accountant or

accounting firm. The audit required in this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals; and

(2) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before March 1."

SECTION 11. Section 432:1-407, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every mutual benefit society, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium, and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. The liabilities shall be computed in accordance with [~~rules adopted by the~~

~~commissioner upon reasonable consideration of the ascertained experience and character of the society.~~] sections 431:3-301 and 431:3-302."

SECTION 12. Section 432:2-602, Hawaii Revised Statutes, is amended to read as follows:

"**§432:2-602 Reports.** [~~Reports shall be filed in accordance with the provisions of this section.~~] (a) Every society transacting business in this State shall annually, on or before March 1, unless for cause shown [~~such~~] the time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of $7.50 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(b) As part of the annual statement herein required each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided the commissioner may, in the commissioner's discretion for cause shown, extend the time for filing [~~such~~] the valuation for not more than two calendar months. [~~Such~~] The

valuation shall be done in accordance with the standards specified in [~~section~~] sections 431:3-301, 431:3-302, and 432:2-601. [~~Such~~] The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(c) Every domestic society shall disclose material transactions pursuant to part AA of article 3 of chapter 431.

[~~(c)~~] (d) A society neglecting to file [~~the~~] any annual statement, report, documents, or information in the form and within the time provided in this section shall be liable for a penalty of not less than $100 and not more than $500 for each day during which [~~such~~] the neglect continues, and upon notice by the commissioner to that effect, [~~its~~] the society's authority to do business in this State shall cease while [~~such~~] the default continues."

SECTION 13. Section 432D-5, Hawaii Revised Statutes, is amended to read as follows:

"**§432D-5 Annual and quarterly reports.** (a) Every health maintenance organization shall file annually, on or before March 1, a report verified by at least two principal officers covering the preceding calendar year. Each health maintenance organization

shall file quarterly with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers. These reports shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the reports are to be filed. In addition, the health maintenance organization annually shall file with the commissioner the following by the dates specified:

(1) An audit, by an independent certified public accountant or an accounting firm designated by the health maintenance organization of the financial statements, reporting the financial condition and results of operations of the health maintenance organization on or before June 1, or a later date as the commissioner upon request or for cause may specify. The health maintenance organization, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the health maintenance organization's designation within fifteen days of receipt of the health maintenance organization's notice, and the health maintenance organization shall be

required to designate another independent certified public accountant or accounting firm. The audit required in this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals;

(2) A list of the providers who have executed a contract that complies with section 432D-8(d) on or before March 1; and

(3) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before March 1.

(b) Every domestic health maintenance organization shall disclose material transactions pursuant to part AA of article 3 of chapter 431.

[~~(b)~~] (c) The commissioner may require additional reports as are deemed necessary and appropriate to enable the

commissioner to carry out the commissioner's duties under this chapter.

[~~(c)~~] (d) The commissioner may suspend or revoke the certificate of authority of any health maintenance organization [~~who~~] that fails to file any of the documents required under subsection (a). In lieu of or in addition to the suspension or revocation of the certificate of authority of any health maintenance organization, the commissioner may fine the health maintenance organization not less than $100 and not more than $500 for each day of delinquency."

SECTION 14. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Article 2, part AA of article 3, article 13, and article 14G of chapter 431, and the [~~power~~] powers there granted to the commissioner, shall apply to health maintenance organizations, so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."

SECTION 15. 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 part and

1 section numbers for the letters used in the designations of and
2 references to the new part and sections in this Act.
3 SECTION 16. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.
5 SECTION 17. This Act shall take effect on July 1, 2008.
6
7 INTRODUCED BY: Calvin K.Y. Say
8 BY REQUEST

JAN 22 2008

Report Title:
Insurer's Material Financial Transactions & Actuarial Reports

Description:
Adopts National Association of Insurance Commissioners (NAIC) Model provisions relating to the insurers' disclosure of material financial transactions and actuarial reports. The uniform reporting requirements for all insurers is necessary to meet NAIC requirements for accreditation.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To help ensure that the Insurance Division meets the requirements for accreditation by the National Association of Insurance Commissioners (NAIC). Specifically, the bill clarifies the reporting requirements for insurers and makes the standards for actuarial opinions consistent among all insurers, including captives, fraternal benefit societies, health maintenance organizations, and mutual benefit societies.

MEANS: Add a new part to article 3, chapter 431, Hawaii Revised Statutes (HRS), and amend sections 431:3-301(a), 431:3-302(a), 431:3-304, 431:5-307(j), 431:19-107(c), 431:19-115(a), 431:20-103, 432:1-102(b), 432:1-404(a), 432:1-407(c), 432:2-602, 432D-5, and 432D-19(d), HRS.

JUSTIFICATION: The insurance division is periodically reviewed for compliance with national standards to renew its accreditation from the NAIC. Accreditation certifies to other jurisdictions that Hawaii's financial surveillance, examination, and reporting on insurance licensees are reliable. NAIC accreditation requires the Insurance Division to adopt certain statutes and rules. Upon adoption of the statutory changes in the bill, the division will revise the rules accordingly. If adopted into statute as a new part of article 3, the language in this bill will clarify that all insurers must disclose material transactions, and include the confidentiality provisions presently in the NAIC model regulation. Since the provisions in this bill are not part of existing rules in HAR chapter 16-169 governing the statement of actuarial opinion, the confidentiality provisions pertaining to

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the statement of actuarial opinion will be included in HRS section 431:3-304 and, if adopted, existing rules in HAR chapter 16-170 shall be repealed.

Impact on the public: This bill will improve the insurance commissioner's ability to protect policyholders and the public by updating the reporting requirements.

Impact on the department and other agencies: This bill will improve the insurance commissioner's ability to regulate insurers by updating and clarifying the reporting requirements for insurers.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2008.