HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2320 H.D. 1

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 .

ANNUAL AUDITED FINANCIAL REPORTS

§431:3-A Definitions. As used in this part, unless the context requires otherwise:

"Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the independent certified public accountant is licensed to practice. For Canadian or British companies, it means a Canadian-chartered or British-chartered accountant or accounting firm.

"Audited financial report" means a report meeting the requirements of section 431:3-D.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or

limit in any manner the potential liability of the accountant or accounting firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of misrepresentations made by the insurer or its representatives.

"Insurer" means a domestic insurer as defined in section 431:3-104.

§431:3-B Scope. (a) Every domestic insurer as defined in section 431:3-104 shall be subject to this part. An insurer having direct written premiums of less than $1,000,000 in any calendar year and less than one thousand policyholders or certificate holders nationwide at the end of the calendar year may apply to the commissioner for an exemption from this part for the year. An insurer having assumed premiums pursuant to contract or treaties of reinsurance of $1,000,000 or more shall not be exempt.

(b) This part shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the rules, practices, and procedures of the insurance division.

§431:3-C Filing annual audited financial reports; extensions. (a) All domestic insurers shall have an annual

audit performed by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended on December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 by giving ninety days' advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the commissioner for good cause for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extensions. A request for an extension shall be submitted in writing not fewer than ten days prior to the audit due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

§431:3-D Contents of annual audited financial report. (a) The annual audited financial report shall disclose the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended, in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance division.

(b) The annual audited financial report shall include:

(1) A report by an independent certified public accountant;

(2) A balance sheet disclosing admitted assets, liabilities, capital, and surplus;

(3) A statement of operations;

(4) A statement of cash flows;

(5) A statement of changes in capital and surplus;

(6) Applicable notes to financial statements. These notes shall be those required by the National Association of Insurance Commissioners Annual Statement Instructions and the National Association of Insurance Commissioners Accounting Practices and Procedures Manual. The notes shall include a reconciliation of any differences between the audited financial reports and the annual statement filed pursuant to section 431:3-301, with a written description of the nature of these differences; and

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial

statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. The comparative data may be omitted in the first year in which an insurer is required to file an audited financial report.

§431:3-E Designation of independent certified public accountant; disputes. (a) Each insurer required by this part to file an annual audited financial report shall within sixty days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this part. The commissioner may approve or reject any designation of an accountant or accounting firm. Insurers not retaining an independent certified public accountant on the effective date of this part shall register the name and address of their retained certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain from the accountant and file with the commissioner a letter stating that the accountant is aware of the provisions of the insurance code and regulations of

the insurance division that relate to accounting and financial matters and affirming that the accountant meets the requirements of section 431:3-F and will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance division, specifying the exceptions the accountant believes appropriate.

(c) If an accountant, who was the accountant for the audited financial report most recently filed, is dismissed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter, within ten business days of that notification, stating whether in the twenty-four months preceding the dismissal or resignation there were any disagreements with the former accountant on any matter involving accounting principles or practices, financial statement disclosures, or auditing scope or procedures, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported pursuant to this section include both those resolved to the

former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, such as between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request in writing the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons why the accountant does not agree. The insurer shall furnish the responsive letter from the former accountant to the commissioner together with the insurer's position.

(d) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration; provided that the parties provide written notice to the commissioner of the mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under article 15, the mediation or arbitration provisions shall operate at the option of the statutory successor.

§431:3-F Qualifications of the independent certified public accountant. (a) The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(1) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, is not a chartered accountant; or

(2) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(b) Except as otherwise provided in this part, the commissioner shall recognize an independent certified public accountant as qualified as long as the accountant conforms to professional standards, as contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants and rules, code of ethics, and the rules of professional conduct of the Hawaii Board of Public Accountancy or similar code.

(c) Effective on July 1, 2008, no partner or principal responsible for rendering an opinion on an audited financial

report may act in that capacity for more than seven consecutive years. Following a period of service, the partner or principal shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of two years. An insurer may apply to the commissioner for relief from the foregoing requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if relief should be granted:

(1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or

(3) Number of jurisdictions in which the insurer transacts business.

(d) The commissioner shall not recognize as a qualified independent certified public accountant nor accept an annual audited financial report prepared by any person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practice under federal or state law;

(2) Has been found to have violated the insurance laws of this state or any other state; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material misstatements in this state or any other state.

(e) The commissioner may hold a hearing pursuant to section 431:2-308 to determine whether an independent certified public accountant is qualified. Depending upon the evidence presented, the commissioner may rule that the accountant is not qualified to express an opinion on the insurer's financial statements or the annual audited financial report made pursuant to this part. The commissioner may require the insurer to replace the accountant with another accountant who is qualified.

§431:3-G Consolidated or combined audits. An insurer may apply to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements, if the insurer is part of a group of insurance companies that uses a pooling or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In

that case, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included showing any differences between the amounts shown in the individual insurer columns on the worksheet and comparable amounts shown in the annual statements of the insurers.

§431:3-H Scope of examination and report of independent certified public accountant. Financial statements furnished pursuant to section 431:3-D shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. The accountant shall adhere to the procedures in the Financial Condition Examiners

1 Handbook promulgated by the National Association of Insurance
2 Commissioners.
3 **§431:3-I Notification of adverse financial condition.** (a)
4 The insurer required to furnish the annual audited financial
5 report shall require the independent certified public accountant
6 to report, in writing, within five business days to the
7 insurer's board of directors or its audit committee any
8 determination by the accountant that the insurer has materially
9 misstated its financial condition as reported to the
10 commissioner as of the balance sheet date currently under
11 examination or that the insurer does not meet the minimum
12 capital and surplus requirement of the insurance code as of that
13 date. An insurer that has received a report pursuant to this
14 subsection shall forward a copy of that report to the
15 commissioner within five business days of receipt of the report
16 and shall provide the independent certified public accountant
17 making the report with evidence that the report has been
18 furnished to the commissioner. If the independent certified
19 public accountant fails to receive from the insurer evidence
20 that the report was furnished to the commissioner within the
21 required five business day period, the independent certified

public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) if the statement is truthful and is made in good faith in compliance with subsection (a).

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this part, becomes aware of facts that might have affected that report, the accountant is obligated to take action as prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

§431:3-J Report on significant deficiencies in internal controls. In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. Statement of Accounting Standards No. 60, Communication of Internal Control Structure Matters Noted in an Audit (section AU 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant

deficiencies noted during a financial statement audit to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the insurance division within sixty days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report.

§431:3-K Accountant's letter of qualifications. In connection with and for inclusion in the filing of the annual audited financial report, the accountant shall furnish the insurer with a letter stating:

(1) That the accountant is independent from the insurer and conforms to the standards of the accounting profession as contained in the Code of Professional Conduct and pronouncements of the American Institute of Certified Public Accountants and rules of professional conduct of the Hawaii Board of Public Accountancy or similar code;

(2) The accountant's background and experience in general and the experience in audits of insurers of the staff assigned to the engagement and whether each accountant is an independent certified public accountant. Nothing in this part shall be construed as prohibiting the accountant from using the staff the accountant deems appropriate, where that use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and the accountant's opinion shall be filed in compliance with this part. The accountant shall acknowledge that the commissioner will be relying on this information in the monitoring and regulation of the financial position of the insurer;

(4) That the accountant consents to the requirements of section 431:3-L and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers defined in section 431:3-L;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants; and

(6) A representation that the accountant is in compliance with the requirements of section 431:3-F.

§431:3-L Definition, availability, and maintenance of workpapers. (a) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's examination of the financial statements of an insurer and that support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this part shall require the accountant to make available for review by the commissioner and insurance

division examiners, all workpapers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance division has filed a report on examination covering the period of the audit but, in any event, no longer than seven years from the date of the audit report.

(c) In the conduct of the periodic review by the commissioner and the insurance division examiners as prescribed by subsection (b), it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner and the insurance division. Reviews by the insurance division examiners shall be considered investigations and all workpapers and communications obtained during the course of the investigations shall be afforded the same confidentiality as other examination workpapers pursuant to section 431:2-305.

§431:3-M Exemptions and effective dates. (a) Upon written application by any insurer, the commissioner may grant an exemption from compliance with this part if the commissioner finds, upon review of the application, that compliance with this part would constitute a financial or organizational hardship

upon the insurer. An exemption may be granted at a time as determined by the commissioner. Within ten days from the commissioner's denial of an insurer's written request for exemption from this part, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with chapter 91.

(b) Domestic insurers shall comply with this part for the year ending December 31, 2006, and each year thereafter unless the commissioner permits otherwise."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding to part II of article 10 a new section to be appropriately designated and to read as follows:

"**§431:10- Commercial general liability extended reporting requirements.** (a) Any policy for commercial general liability coverage wherein the insurer shall offer and the insured may elect to purchase an extended reporting period for claims arising during the expiring policy period shall provide that:

(1) In the event of a cancellation, there shall be a thirty-day period during which the insured may elect to purchase coverage for the extended reporting period;

(2) The limit of liability in the policy aggregate for the extended reporting period shall be one hundred per cent of the expiring policy aggregate; and

(3) The insurer shall provide the following loss information to the first named insured within thirty days of the insured's request or upon any notice of cancellation or nonrenewal:

(A) All information on closed claims, including the date and description of occurrence and amount of payments, if any;

(B) All information on open claims, including the date and description of occurrence, amount of payment, and amount of reserves, if any; and

(C) All information on notices of occurrence, including the date and description of occurrence and amount of resources, if any."

SECTION 3. Section 431:2-301.8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No cause of action shall arise nor shall any liability be imposed against any examiner appointed or otherwise designated as an examiner by the commissioner for any statements

made or conduct performed in good faith while carrying out the provisions of the insurance code."

SECTION 4. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The commissioner may assess all examination costs of any person subject to examination under section 431:2-303(1) and article 16 when there is a premium trust fund shortage due to substantial noncompliance with section [~~431:9-230. The commissioner, subject to chapter 91, shall adopt rules to carry out the purposes of this subsection. The rules shall include criteria for the levying of examination assessment costs and specific criteria for appealing assessment costs levied by the commissioner.~~] 431:9A-123.5."

SECTION 5. Section 431:3-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every certificate of authority shall [~~specify~~:] include but not be limited to:

(1) The name of the insurer[~~, the location of its principal office,~~] and the classes of insurance it is authorized to transact in this State; or

(2) The name of and location of the principal office of its attorney-in-fact if a reciprocal insurer."

SECTION 6. Section 431:9A-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The licensee shall promptly notify the commissioner in writing of any change of business address."

SECTION 7. Section 431:9B-102, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this State if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation:

(1) In this State, unless the reinsurance intermediary-broker is a licensed [~~agent~~] producer in this State; or

(2) In another state, unless the reinsurance intermediary-broker is a licensed [~~agent~~] producer in this State or another state having a law substantially similar to this law, or such reinsurance intermediary-broker is licensed in this State as a nonresident reinsurance intermediary."

2. By amending subsection (c) to read:

"(c) The commissioner shall require a reinsurance intermediary-manager subject to subsection (b) to:

(1) File a bond from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner in an amount equal to $500,000 or ten per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed $10,000,000, for the protection of the reinsurer; [~~and~~]

(2) Maintain an errors and omissions policy, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to $250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed $10,000,000[~~.~~]; and

(3) Provide any other report required by the commissioner.

At the time of application for licensure and each renewal, each reinsurance intermediary-manager shall provide the commissioner with proof of the bond and the policy, and appropriate documentation to show that the bond and the policy [~~continues~~] continue to be in effect or that a new bond and a new policy [~~has~~] have been secured."

SECTION 8. Section 431:9C-102, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The commissioner shall require the managing general agent to furnish a bond in an amount equal to $100,000 or ten per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, for the protection of the insurer. Each managing general agent shall provide the commissioner with:

(1) Proof of the bond at the time of the initial application for licensure; [~~and~~]

(2) Appropriate documentation at the time of each renewal to show that the bond continues to be in effect or that a new bond has been secured[~~.~~]; and

(3) Any other report required by the commissioner.

(d) The commissioner shall require the managing general agent to maintain an errors and omissions policy in an amount equal to $1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company approved by the commissioner. Each managing general agent shall provide the commissioner with:

(1) Proof of the policy at the time of the initial application for licensure; [~~and~~]

(2) Appropriate documentation at the time of each renewal to show that the policy continues to be in effect or that a new policy has been secured[~~.~~]; and

(3) Any other report required by the commissioner."

SECTION 9. Section 431:10A-106, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10A-106 Optional provisions.** Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below unless the provisions are in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording approved by the

commissioner that are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions are optional provisions. Any such provision contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

(1) "Change of Occupation: If the insured is injured or contracts sickness after having changed occupations to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured's occupation changes to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of

occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(2) "Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(3) Other insurance in this insurer shall be in one of the following forms:

1 (A) "Other Insurance in This Insurer: If an accident
2 and health or sickness policy or policies
3 previously issued by the insurer to the insured
4 be in force concurrently herewith, making the
5 aggregate indemnity for (insert type of coverage
6 or coverages) in excess of $ (insert maximum
7 limit of indemnity or indemnities) the excess
8 insurance shall be void and all premiums paid for
9 such excess shall be returned to the insured or
10 to the insured's estate."; or
11 (B) "Other Insurance in This Insurer: Insurance
12 effective at any one time on the insured under a
13 like policy or policies in this insurer is
14 limited to the one such policy elected by the
15 insured, the insured's beneficiary, or the
16 insured's estate, as the case may be, and the
17 insurer will return all premiums paid for all
18 other such policies."
19 (4) Insurance with other insurers. Either or both of the
20 following forms shall be used:
21 (A) (i) "Insurance with Other Insurers: If there be
22 other valid coverage, not with this insurer,

providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered

would have cost in the absence of such coverage."

(ii) "Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all the indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(B) If the provision set forth in subparagraph (A)(i) is included in a policy that also contains the provision set forth in subparagraph (A)(ii),

there shall be added to the caption of the subparagraph (A)(i) provision the phrase, "expense incurred benefits".

(C) The insurer may, at its option, include in the provision set forth in subparagraph (A)(i) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, automobile medical payment insurance, or coverage provided by hospital or medical service organizations, union welfare plans, or employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(i) with respect to any

1 insured, any amount of benefit provided for such
2 insured pursuant to any compulsory benefit
3 statute (including any workers' compensation or
4 employers' liability statute), whether provided
5 by a governmental agency or otherwise, shall in
6 all cases be deemed to be other valid coverage of
7 which the insurer has had notice. In applying
8 the provision set forth in subparagraph (A)(i),
9 no third party liability coverage shall be
10 included as other valid coverage.
11 (D) If the provision set forth in subparagraph
12 (A)(ii) is included in a policy that also
13 contains the provision set forth in subparagraph
14 (A)(i), there shall be added to the caption of
15 the subparagraph (A)(ii) provision the phrase,
16 "other benefits".
17 (E) The insurer may, at its option, include in the
18 provision set forth in subparagraph (A)(ii) a
19 definition of other valid coverage, approved as
20 to form by the commissioner, which definition
21 shall be limited in subject matter to coverage
22 provided by organizations subject to regulation

by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, or benefits provided by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(ii) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(ii), no third party liability coverage shall be included as other valid coverage.

(5) (A) "Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable

under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(B) The policy provision in subparagraph (A) may be inserted only in a policy which the insured has the right to continue in force, subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.

(C) The insurer may, at its option, include in the provision set forth in subparagraph (A) a definition of valid loss of time coverage approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this State or any state, district, or territory of the United

States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such terms shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

(6) "Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(7) "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this

policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(8) "Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(9) "Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony

or to which a contributing cause was the insured's being engaged in an illegal occupation."

[~~(10) "Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."~~]"

SECTION 10. Section 431:11-104.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners, including information relating to those markets in which the acquisition would not be exempted pursuant to section 431:11-104.2(b)(5). The commissioner may require such additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of section 431:11-104.4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience indicating that economist's ability to render an informed opinion."

SECTION 11. Section 431:14-116, Hawaii Revised Statutes, is amended to read as follows:

"**§431:14-116 Assigned risks.** (a) Agreements may be made among insurers with respect to the equitable apportionment among them of insurance [~~which~~] that may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner[~~; provided that this~~].

(b) This section shall not apply to workers' compensation insurance after [~~December 31, 1996, or the date the domestic mutual insurance company established pursuant to section 431:14A-103 writes its first policy, whichever is later.~~] July 20, 1997."

SECTION 12. In codifying the new part added to 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 designating the new sections in this Act.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2006.

Report Title:
Insurance; Examination and Reporting Requirements

Description:
Updates and conforms current statutes governing insurer examinations and commercial general liability extended reporting requirements with the changes and revisions in the most current NAIC Model Acts and Model Regulations. Adopts a new part with insurer annual financial audit requirements (HB2320 HD1).