

TITLE 16  
DEPARTMENT OF REGULATORY AGENCIES  
CHAPTER 3  
LIFE INSURANCE REPLACEMENT

Subchapter 1 General Provisions

- §16-3-1 Purposes
- §16-3-2 Replacement of life insurance defined
- §16-3-3 Exemptions
- §16-3-4 Penalties

Subchapter 2 Duties of Agents and Insurers; Exhibits

- §16-3-5 Duties of agents
- §16-3-6 Duties of insurers
- §16-3-7 Exhibits

Historical Note: Chapter 3 of Title 16, Administrative Rules, is based substantially upon Chapter 4, Title V, Department of Regulatory Agencies, entitled "Life Insurance Replacement." [Eff 9/1/76; R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§16-3-1 Purposes. The purposes of this chapter are:

- (1) To implement the insurance law of Hawaii by regulating the acts and practices of insurers and mutual and fraternal benefit societies (hereinafter referred to as insurers) and general agents, subagents, solicitors and fraternal benefit society insurance agents (hereinafter referred to as agents) with respect to life insurance replacing life insurance;
- (2) To protect the interests of the life insurance buying public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies; by

making available full and clear information on which an applicant for life insurance can make a decision in the applicant's best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations; and by precluding unfair methods of competition and unfair practices. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103)

§16-3-2 Replacement of life insurance defined. The replacement of life insurance which, as used in this chapter includes annuity contracts, is defined as any transaction not exempted in section 16-3-3, wherein new life insurance is to be purchased and it is known or should be known to the agent that as a part of the transaction or in consequence of it, any previously existing life insurance has been or is to be:

- (1) Lapsed or surrendered; or
- (2) Converted into paid-up insurance, continued as extended term insurance or under another form of nonforfeiture benefit; or
- (3) Converted otherwise so as to effect a reduction either in the amount of the existing life insurance or in the period of time the existing life insurance will continue in force; or
- (4) Reissued with a reduction in amount such that substantial cash values are released. ("Substantial cash values" includes all transactions wherein an amount in excess of fifty percent of the tabular cash value is to be released on one or more of the existing policies); or
- (5) Assigned as collateral for a loan or subjected to substantial borrowing of the loan values whether in a single loan or under a schedule of borrowing over a period of time. "Substantial borrowing" includes all transactions wherein an amount in excess of fifty per cent of the tabular cash value is to be borrowed on one or more existing policies. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103)

§16-3-3 Exemptions. This chapter shall not apply when:

- (1) The application for the new life insurance is made to the same insurer that issued the existing life insurance and a contractual policy change or conversion privilege is being exercised;
- (2) The new life insurance is provided under:
  - (A) A group life insurance policy; or
  - (B) A policy whose cost is borne in whole or in part by the insured's employer or by an association of which the insured is a member. The cost of a policy shall not be deemed to be borne by the insured's employer to the extent the insured's salary is reduced or the insured foregoes a salary increase; or
  - (C) Policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods; or
  - (D) Life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax-deductibility of premiums; provided that as to any plan described in this paragraph, full and complete disclosures of all material facts shall be given to the administrator of any plan to be replaced.
- (3) The existing life insurance is a nonconvertible term policy with five years or less to expire and which cannot be renewed.
- (4) The total cash value of all existing policies affected by the replacement is less than \$250 and the sum of their face amounts is less than \$2,500. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103)

§16-3-4 Penalties. (a) Any insurer, agent, representative, officer or employee of the insurer failing to comply with the requirements of this chapter shall be subject to the penalties as may be appropriate under chapter 431, HRS.

(b) Policyholders have the right to replace existing life insurance after indicating in or as a part of application for new life insurance that it is not their intention; however, the courses of conduct by policyholders of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the transactions, and the courses of conduct shall be deemed prima facie evidence of the agent's intent to violate this chapter. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:3-221, 431:9-235, 431:9-238, 431:13-217)

## SUBCHAPTER 2

### DUTIES OF AGENTS AND INSURERS; EXHIBITS

§16-3-5 Duties of agents. Each life insurance agent shall:

- (1) Obtain with or as a part of each application for life insurance a statement signed by the applicant as to whether the insurance shall replace existing life insurance;
- (2) Submit to the insurer in connection with each application for life insurance a statement as to whether, to the best of the agent's knowledge, replacement is involved in the transaction;
- (3) Where a replacement is involved:
  - (A) Obtain with or as a part of each application a list of all existing life insurance policies proposed to be replaced;
  - (B) Present to the applicant, not later than at the time of taking the application, a completed "Disclosure Statement" signed by the agent and a "Notice to Applicants Regarding Replacement of Life Insurance" in the form substantially as described in Exhibits A and B at the end of this chapter, which is made a part of this chapter, and a copy of the proposal (or sales material) used, and leave the forms with the applicant;
  - (C) Submit with the application to the insurer a copy of the proposal (or sales material) used, the completed "Disclosure Statement," and the name of each insurer which issued any insurance being replaced;
  - (D) Have the applicant acknowledge receipt of the completed "Disclosure Statement" and the "Notice to Applicants Regarding Replacement of Life Insurance," and leave with the applicant a copy of the proposal (or sales material) used; and
  - (E) Notify the designated local general agent of the insurer whose insurance is being replaced by mail (certificate of mailing required) within three business days from the time the application is taken. Notification material must include a copy of the proposal (or sales material) used and the completed "Disclosure Statement."
- (4) Where retention or conservation due to a replacement is involved, an agent of the present insurer who suggests that the existing insurance not be replaced, shall mail or deliver to the policyholder and to the designated local general agent of the replacing insurer

no later than three business days of making the suggestion a written statement setting forth the advantages and disadvantages of the agent's suggestion; and shall promptly forward a copy of the written statement to the insurer. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103)

§16-3-6 Duties of insurers. (a) Each insurer shall:

- (1) Inform its agents of the requirements of this chapter;
- (2) Require with or as a part of each application for life insurance a statement signed by the applicant as to whether such insurance will replace existing life insurance;
- (3) Require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent's knowledge, replacement is involved in the transaction; and
- (4) Where a replacement is involved:
  - (A) Require with or as a part of each application a list prepared by the agent representing, to the best of the agent's knowledge, all of the existing life insurance policies proposed to be replaced;
  - (B) Obtain a copy of any proposal (or sales material) used, the completed "Disclosure Statement," proof of receipt by the applicant of the "Notice to Applicants Regarding Replacement of Life Insurance," and the name of each insurer whose insurance is being replaced;
  - (C) Immediately notify any insurer whose insurance is being replaced and upon request promptly furnish a copy of the proposal (or sales material) used and the completed "Disclosure Statement;"
  - (D) Examine the proposal (or sales material) used and the completed "Disclosure Statement" and ascertain that the latter meets the requirements of this chapter; and
  - (E) Maintain copies of the proposal (or sales material) used, the completed "Disclosure Statement," proof of receipt by the applicant of the "Notice to Applicants Regarding Replacement of Life Insurance" and the applicant's signed statement with respect to replacement in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

(5) Where retention or conservation pursuant to section 16-3-5(4) is involved:

- (A) Examine any written statement received from an agent and ascertain that it is complete and accurate;
- (B) Upon request from the replacement insurer, promptly furnish a copy of any written statement received; and
- (C) Maintain copies of any written statements in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

(b) Any insurer which receives notice that its existing insurance may be replaced shall maintain copies of such notification on its premises, indexed by insurer notifying it of the replacement, for three years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(c) Any insurer which receives a request for information required to complete a "Disclosure Statement" from an agent, together with a proper authorization signed by the insured, shall furnish the information in writing immediately but in no event later than ten days from receipt of the request.

(d) Each insurer shall designate a local general agent to receive the notice of replacement, a copy of the proposal (or sales material) used, a copy of the "Disclosure Statement," and where retention or conservation is involved, the written statement of the present agent. The insurer shall notify in writing its designated local general agent to the insurance commissioner. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103)

§16-3-7 Exhibits. (a) Exhibits A and B at the end of this chapter, which are made a part of this chapter, are hereby approved for use as specified in this chapter. Substantially equivalent forms may be adopted with the prior approval of the insurance commissioner.

(b) To the extent that the forms in Exhibits A and B are not entirely appropriate for replacements involving annuity contracts, the insurer shall have the responsibility of adapting these forms to fit annuity cases when they arise; provided however that:

- (1) If the transaction involves life insurance, either existing or proposed, the agent shall be required to complete a "Disclosure Statement" for each policy;
- (2) If the transaction involves one or more annuity contracts, the agent shall be required to complete a written statement summarizing the

benefits and the reasons for recommending the replacement to the policyholder; and

- (3) All such "Disclosure Statements" and written statements shall be signed by both the agent and the policyholder, and otherwise subject to all pertinent requirements of sections 16-3-5 and 16-3-6 of this chapter. [Eff 6/22/81] (Auth: HRS §431:2-201) (Imp: HRS §431:13-103-643)

DEPARTMENT OF REGULATORY AGENCIES

Chapter 2, Hawaii Temporary Disability Insurance Risk Spreading Plan Rules of Practice and Procedure, on the Summary Page dated May 28, 1981 was adopted on May 28, 1981 following a public hearing held on May 28, 1981, after public notice was given in the Honolulu Star-Bulletin on May 8, 1981.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Mary G.F. Bitterman  
MARY G.F. BITTERMAN  
Director of Regulatory Agencies

APPROVED AS TO FORM:

/s/ Ruth I. Tsujimura  
Deputy Attorney General

/s/ George R. Ariyoshi  
GEORGE R. ARIYOSHI  
Governor  
State of Hawaii

Date: June 10, 1981

June 12, 1981  
Filed