
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:9A-112, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
3 "(b) If the commissioner takes action pursuant to
4 subsection (a), the commissioner shall notify the applicant or
5 licensee in writing of the reason for that action. The
6 applicant or licensee may make written demand upon the
7 commissioner within ten days of the date of receipt of the
8 notice for a hearing before the commissioner to determine the
9 reasonableness of the commissioner's action. The hearing shall
10 be held within thirty days of receipt of the written demand and
11 shall be held pursuant to chapter 91; provided that if the
12 action is for the suspension, revocation, or refusal to renew a
13 license, the commissioner may suspend the license pending the
14 hearing; and provided further that this subsection shall not
15 apply to an action taken pursuant to subsection (a)(15), and
16 following that action, unless otherwise provided by law, the
17 commissioner shall without further review or hearing renew,



1 reinstate, or grant the license only upon receipt of an
2 authorization from the administering entity."

3 SECTION 2. Section 431:9C-102, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§431:9C-102 Licensure. (a) No person, firm,
6 association, or corporation shall act as a managing general
7 agent, with respect to risks located in this State for an
8 insurer licensed in this State, unless licensed as a producer in
9 this State.

10 (b) No person, firm, association, or corporation shall act
11 as a managing general agent, representing an insurer domiciled
12 in this State with respect to risks located outside this State,
13 unless licensed as a producer in this State.

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

21 ~~(1) Proof of the bond at the time of the initial~~
22 ~~application for licensure;~~



- 1 ~~(2) Appropriate documentation at the time of each renewal~~
- 2 ~~to show that the bond continues to be in effect or~~
- 3 ~~that a new bond has been secured; and~~
- 4 ~~(3) Any other report required by the commissioner.~~
- 5 ~~(d) The commissioner shall require the managing general~~
- 6 ~~agent to maintain an errors and omissions policy in an amount~~
- 7 ~~equal to \$1,000,000 or twenty five per cent of annual gross~~
- 8 ~~direct written premiums, whichever is greater, with an insurance~~
- 9 ~~company licensed to do business within the State or an insurance~~
- 10 ~~company approved by the commissioner. Each managing general~~
- 11 ~~agent shall provide the commissioner with:~~
- 12 ~~(1) Proof of the policy at the time of the initial~~
- 13 ~~application for licensure;~~
- 14 ~~(2) Appropriate documentation at the time of each renewal~~
- 15 ~~to show that the policy continues to be in effect or~~
- 16 ~~that a new policy has been secured; and~~
- 17 ~~(3) Any other report required by the commissioner.]"~~

18 SECTION 3. Section 431:9C-103, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "**§431:9C-103 Required contract provisions.** No person,
 21 firm, association, or corporation acting as a managing general
 22 agent shall place business with an insurer unless there is in



1 force, a written contract between the managing general agent and
2 the insurer which sets forth the responsibilities of each party
3 and, where both the managing general agent and the insurer share
4 responsibility for a particular function, specifies the division
5 of those responsibilities, and which contains at least the
6 following additional provisions:

- 7 (1) The insurer may terminate the contract for cause upon
8 written notice to the managing general agent. The
9 insurer may suspend the underwriting authority of the
10 managing general agent during the pendency of any
11 dispute regarding the cause for termination;
- 12 (2) The managing general agent shall render accounts to
13 the insurer detailing all transactions and remit all
14 funds due under the contract to the insurer on not
15 less than a monthly basis;
- 16 (3) All funds collected for the account of an insurer
17 shall be held by the managing general agent in a
18 fiduciary capacity and deposited in an account in a
19 bank which is a member of the Federal Reserve System.
20 This account shall be used for all payments on behalf
21 of the insurer by the managing general agent. The
22 managing general agent may retain no more than three



1 months estimated claims payments and allocated loss
2 adjustment expenses;

3 (4) Separate records of business written by the managing
4 general agent shall be maintained in the licensee's
5 office. The insurer shall have access to and the
6 right to copy all accounts and records of the managing
7 general agent related to the insurer's business in a
8 form usable by the insurer, and the commissioner shall
9 have access to all books, bank accounts, and records
10 of the managing general agent in a form usable to the
11 commissioner. Records shall be in an organized form
12 according to each class of insurance and shall include
13 the following information to the extent it is
14 applicable:

15 (A) A record of each insurance contract procured or
16 issued, together with the names of the insurers
17 and insureds, the amount of premium paid or to be
18 paid, or the basis of the premium or
19 consideration paid or to be paid, and a statement
20 of the subject of the insurance;

21 (B) The names of any other licensees from whom
22 business is accepted and the names of persons to



- 1 whom commissions or allowances of any kind are
2 promised or paid;
- 3 (C) A record of each investigation or adjustment
4 undertaken or consummated and a statement of any
5 fee, commission, or other compensation received
6 or to be received by the adjuster on account of
7 the investigation or adjustment;
- 8 (D) A record of each bill reviewed and a statement of
9 any fee, commission, or other compensation
10 received or to be received by the independent
11 bill reviewer on account of the bill reviewed;
12 and
- 13 (E) Any additional information as shall be customary
14 or as may reasonably be required by the
15 commissioner.
- 16 This paragraph shall not apply to life or accident and
17 health or sickness insurance if the records required
18 of such insurance are customarily maintained in the
19 offices of the insurer;
- 20 (5) The contract may not be assigned in whole or in part
21 by the managing general agent;
- 22 (6) Appropriate underwriting guidelines including:



- 1 (A) The maximum annual premium volume;
2 (B) The basis of the rates to be charged;
3 (C) The types of risks which may be written;
4 (D) Maximum limits of liability;
5 (E) Applicable exclusions;
6 (F) Territorial limitations;
7 (G) Policy cancellation provisions; and
8 (H) The maximum policy period.

9 The insurer shall have the right to cancel or nonrenew
10 any policy of insurance subject to the applicable laws
11 and rules concerning the cancellation and nonrenewal
12 of insurance policies;

13 (7) The insurer shall require the managing general agent
14 to obtain and maintain a surety bond for the
15 protection of the insurer. The bond amount shall be
16 in the amount of \$100,000 or ten per cent of the
17 managing general agent's total annual written premium
18 nationwide for the insurer in the prior calendar year,
19 whichever is greater; provided that the amount of the
20 surety bond shall not exceed \$500,000;



1 (8) The insurer shall require the managing general agent
2 to obtain and maintain an errors and omissions policy
3 in the minimum amount of \$1,000,000 with an insurance
4 company licensed to do business within the State or an
5 insurance company approved by the commissioner;

6 ~~(7)~~ (9) If the contract permits the managing general
7 agent to settle claims on behalf of the insurer:

8 (A) All claims shall be reported to the insurer in a
9 timely manner;

10 (B) A copy of the claim file shall be sent to the
11 insurer at its request or as soon as it becomes
12 known that the claim:

13 (i) Has the potential to exceed an amount
14 determined by the commissioner or exceeds
15 the limit set by the insurer, whichever is
16 less;

17 (ii) Involves a coverage dispute;

18 (iii) May exceed the managing general agent's
19 claims settlement authority;

20 (iv) Is open for more than six months; or



- 1 (v) Is closed by payment of an amount set by the
2 commissioner or an amount set by the
3 insurer, whichever is less;
- 4 (C) All claim files shall be the joint property of
5 the insurer and managing general agent. However,
6 upon an order of liquidation of the insurer, the
7 files shall become the sole property of the
8 insurer or its estate; provided that the managing
9 general agent shall have reasonable access to and
10 the right to copy the files on a timely basis;
- 11 (D) Any settlement authority granted to the managing
12 general agent may be terminated for cause upon
13 the insurer's written notice to the managing
14 general agent or upon the termination of the
15 contract. The insurer may suspend the settlement
16 authority during the pendency of any dispute
17 regarding the cause for termination; and
- 18 (E) Where electronic claims files are in existence,
19 the contract shall address the timely
20 transmission of the data;
- 21 [~~+~~] (10) If the contract provides for a sharing of interim
22 profits by the managing general agent, and the



1 managing general agent has the authority to determine
2 the amount of the interim profits by establishing loss
3 reserves or controlling claim payments, or in any
4 other manner, interim profits shall not be paid to the
5 managing general agent until one year after they are
6 earned for property insurance business and five years
7 after they are earned on casualty business and, in any
8 event, not until the profits have been verified
9 through examination pursuant to section 431:9C-105;
10 and

11 [~~9~~] (11) The managing general agent shall not:

12 (A) Bind reinsurance or retrocessions on behalf of
13 the insurer, except that the managing general
14 agent may bind facultative reinsurance contracts
15 pursuant to obligatory facultative agreements if
16 the contract with the insurer contains
17 reinsurance underwriting guidelines including,
18 for both reinsurance assumed and ceded, a list of
19 reinsurers with whom those automatic agreements
20 are in effect, the coverages and amounts or
21 percentages that may be reinsured, and commission
22 schedules;



- 1 (B) Commit the insurer to participate in insurance or
2 reinsurance syndicates;
- 3 (C) Appoint any producer without assuring that the
4 producer is lawfully licensed to transact the
5 type of insurance for which the producer is
6 appointed;
- 7 (D) Without prior approval of the insurer, pay or
8 commit the insurer to pay a claim over a
9 specified amount, net of reinsurance, which shall
10 not exceed one per cent of the insurer's
11 policyholder's surplus as of December 31 of the
12 last completed calendar year;
- 13 (E) Collect any payment from a reinsurer or commit
14 the insurer to any claim settlement with a
15 reinsurer without prior approval of the insurer.
16 If prior approval is given, a report shall be
17 promptly forwarded to the insurer;
- 18 (F) Permit its subagent to serve on the board of
19 directors of the insurer;
- 20 (G) Employ an individual who is employed by the
21 insurer also; or
- 22 (H) Appoint a sub-managing general agent."



1 SECTION 4. Section 431:20-122, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:20-122 Annual statement. (a) Every domestic title
4 insurer shall include in its annual statement furnished to the
5 commissioner pursuant to section 431:20-103(4), the name of each
6 person in this State which is a controlled escrow company or
7 underwritten title company by reason of its relationship with
8 [~~such~~] title insurer.

9 (b) Every foreign and alien title insurer shall comply
10 with the reporting requirements of sections 431:3-301 and 431:3-
11 302."

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Insurance Licensing; Suspension; Managing General Agents; Bond;
Errors and Omissions Policy; Title Insurance

Description:

Clarifies suspension pending a hearing requirements for actions to suspend, revoke, or refuse to renew a license. Establishes a cap on the bond amount that managing general agents are required to furnish. Requires insurers to require managing general agents' compliance with bond and errors and omissions policy requirements. Conforms financial statement filing requirements for title insurers with existing law. (SD1)

