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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. Section 26-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (o) to read as follows:  
3           "(o) Every person licensed under any chapter within the  
4 jurisdiction of the department of commerce and consumer affairs  
5 and every person licensed subject to chapter 485A or registered  
6 under chapter 467B shall pay upon issuance of a license, permit,  
7 certificate, or registration a fee and a subsequent annual fee  
8 to be determined by the director and adjusted from time to time  
9 to ensure that the proceeds, together with all other fines,  
10 income, and penalties collected under this section, do not  
11 surpass the annual operating costs of conducting compliance  
12 resolution activities required under this section. The fees may  
13 be collected biennially or pursuant to rules adopted under  
14 chapter 91, and shall be deposited into the special fund  
15 established under this subsection. Every filing pursuant to  
16 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
17 initial filing and at each renewal period in which a renewal is



1 required, a fee that shall be prescribed by rules adopted under  
2 chapter 91, and that shall be deposited into the special fund  
3 established under this subsection. Any unpaid fee shall be paid  
4 by the licensed person, upon application for renewal,  
5 restoration, reactivation, or reinstatement of a license, and by  
6 the person responsible for the renewal, restoration,  
7 reactivation, or reinstatement of a license, upon the  
8 application for renewal, restoration, reactivation, or  
9 reinstatement of the license. If the fees are not paid, the  
10 director may deny renewal, restoration, reactivation, or  
11 reinstatement of the license. The director may establish,  
12 increase, decrease, or repeal the fees when necessary pursuant  
13 to rules adopted under chapter 91. The director may also  
14 increase or decrease the fees pursuant to section 92-28.

15       There is created in the state treasury a special fund to be  
16 known as the compliance resolution fund to be expended by the  
17 director's designated representatives as provided by this  
18 subsection. Notwithstanding any law to the contrary, all  
19 revenues, fees, and fines collected by the department shall be  
20 deposited into the compliance resolution fund. Unencumbered  
21 balances existing on June 30, 1999, in the cable television fund  
22 under chapter 440G, the division of consumer advocacy fund under



1 chapter 269, the financial institution examiners' revolving  
2 fund, section 412:2-109, the special handling fund, section  
3 414-13, and unencumbered balances existing on June 30, 2002, in  
4 the insurance regulation fund, section 431:2-215, shall be  
5 deposited into the compliance resolution fund. This provision  
6 shall not apply to the drivers education fund underwriters fee,  
7 [~~section~~] sections 431:10C-115[~~7~~] and 431:10G-107, insurance  
8 premium taxes and revenues, revenues of the workers'  
9 compensation special compensation fund, section 386-151, the  
10 captive insurance administrative fund, section 431:19-101.8, the  
11 insurance commissioner's education and training fund, section  
12 431:2-214, the medical malpractice patients' compensation fund  
13 as administered under section 5 of Act 232, Session Laws of  
14 Hawaii 1984, and fees collected for deposit in the office of  
15 consumer protection restitution fund, section 487-14, the real  
16 estate appraisers fund, section 466K-1, the real estate recovery  
17 fund, section 467-16, the real estate education fund, section  
18 467-19, the contractors recovery fund, section 444-26, the  
19 contractors education fund, section 444-29, the condominium  
20 management education fund, section 514A-131, and the condominium  
21 education trust fund, section 514B-71. Any law to the contrary  
22 notwithstanding, the director may use the moneys in the fund to



1 employ, without regard to chapter 76, hearings officers and  
2 attorneys. All other employees may be employed in accordance  
3 with chapter 76. Any law to the contrary notwithstanding, the  
4 moneys in the fund shall be used to fund the operations of the  
5 department. The moneys in the fund may be used to train  
6 personnel as the director deems necessary and for any other  
7 activity related to compliance resolution.

8 As used in this subsection, unless otherwise required by  
9 the context, "compliance resolution" means a determination of  
10 whether:

- 11 (1) Any licensee or applicant under any chapter subject to  
12 the jurisdiction of the department of commerce and  
13 consumer affairs has complied with that chapter;
- 14 (2) Any person subject to chapter 485A has complied with  
15 that chapter;
- 16 (3) Any person submitting any filing required by chapter  
17 514E or section 485A-202(a)(26) has complied with  
18 chapter 514E or section 485A-202(a)(26);
- 19 (4) Any person has complied with the prohibitions against  
20 unfair and deceptive acts or practices in trade or  
21 commerce; or



1 (5) Any person subject to chapter 467B has complied with  
2 that chapter;  
3 and includes work involved in or supporting the above functions,  
4 licensing, or registration of individuals or companies regulated  
5 by the department, consumer protection, and other activities of  
6 the department.

7 The director shall prepare and submit an annual report to  
8 the governor and the legislature on the use of the compliance  
9 resolution fund. The report shall describe expenditures made  
10 from the fund including non-payroll operating expenses."

11 SECTION 2. Section 431:2-215, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13 "(a) All assessments, fees, fines, penalties, and  
14 reimbursements collected by or on behalf of the insurance  
15 division under title 24, except for the commissioner's education  
16 and training fund (section 431:2-214), the patients'  
17 compensation fund (Act 232, Session Laws of Hawaii 1984), the  
18 drivers education fund underwriters fee [~~section~~] (sections  
19 431:10C-115[+], and 431:10G-107), and the captive insurance  
20 administrative fund (section 431:19-101.8) to the extent  
21 provided by section 431:19-101.8(b), shall be deposited into the  
22 compliance resolution fund under section 26-9(o). All sums



1 transferred from the insurance division into the compliance  
2 resolution fund may be expended by the commissioner to carry out  
3 the commissioner's duties and obligations under title 24."

4 SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes,  
5 is amended by amending subsection (c) to read as follows:

6 "(c) The audit required in subsection (a) and the audited,  
7 consolidated, or combined financial statements as may be  
8 approved under subsection (b) shall be prepared in accordance  
9 with either the National Association of Insurance Commissioners'  
10 annual statement instructions, following the practices and  
11 procedures prescribed by the National Association of Insurance  
12 Commissioners' accounting practices and procedure manuals[-], or  
13 rules adopted by the commissioner."

14 SECTION 4. Section 431:6-317, Hawaii Revised Statutes, is  
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) To meet the requirements under section 431:6-201, an  
18 [An] insurer may invest any of its funds in common shares of  
19 stock that are filed with the SVO or are considered "filing  
20 exempt" by the Purposes and Procedures Manual of the SVO, or its  
21 successor publication, provided that [In aggregate,] an insurer's  
22 amount of investment in common stocks[-] and in non-dividend



1 paying stocks made pursuant to this section and in common trust  
2 funds, mutual funds, and exchange traded funds [~~including~~  
3 ~~investments~~] made pursuant to section 431:6-322 [~~, and non-~~  
4 ~~dividend paying stocks,~~] shall not exceed the greater of twenty-  
5 five per cent of its admitted assets or one hundred per cent of  
6 its surplus as regards to policyholders as defined in section  
7 431:6-101."

8 2. By amending subsection (c) to read:

9 "(c) An insurer's aggregate amount of investment in non-  
10 dividend paying stocks [~~is~~] shall be subject to the limitations  
11 [~~of~~] in section 431:6-104."

12 SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**~~§431:6-322 Common trust funds; mutual funds; and exchange~~**  
15 **~~traded funds.~~** [~~(a) Subject to the limitations in subsections~~  
16 ~~(b) and (c), an insurer may invest in:~~

17 ~~(1) A bank's common trust fund as defined in Section 584~~  
18 ~~of the United States Internal Revenue Code of 1986, as~~  
19 ~~amended;~~

20 ~~(2) The securities of any open end management type~~  
21 ~~investment company or investment trust registered with~~  
22 ~~the federal Securities and Exchange Commission under~~



1 ~~the Investment Company Act of 1940, as amended, if the~~  
2 ~~investment company or trust, other than one of which~~  
3 ~~as a subsidiary of the insurer is investment adviser~~  
4 ~~or principal underwriter, has a new value of not less~~  
5 ~~than \$25,000,000 as of the date of investment by the~~  
6 ~~insurer; and~~

7 ~~(3) An exchange traded fund that is registered with the~~  
8 ~~federal Securities and Exchange Commission under the~~  
9 ~~Investment Company Act of 1940, as amended, and is~~  
10 ~~traded on a public exchange.]~~

11 ~~[(b) In aggregate, an insurer's amount of investment] (a)~~

12 To meet the requirements under section 431:6-201, an insurer may  
13 invest in common trust funds, mutual funds, and exchange traded  
14 funds, provided that an insurer's amount of investment made  
15 pursuant to this section and in common stocks [including  
16 investments] made pursuant to section 431:6-317(a) [7] shall not  
17 exceed the greater of twenty-five per cent of its admitted  
18 assets or one hundred per cent of its surplus as regards to  
19 policyholders as defined in section 431:6-101. This limitation  
20 shall not apply to investments approved on the "Mutual Funds  
21 List" from the Purposes and Procedures Manual of the SVO, or its  
22 successor publication.





1        [~~(e)~~] (b) An insurer may invest any of its funds in common  
2 trust funds, mutual funds, and exchange traded funds after  
3 satisfying the requirements of section 431:6-201.

4        (c) For purposes of this section:

5        "Common trust funds" means a fund maintained by a bank  
6 exclusively for the collective investment and reinvestment of  
7 moneys contributed by the bank in its capacity as a trustee,  
8 executor, administrator, guardian, or custodian of accounts as  
9 defined in Section 584 of the United States Internal Revenue  
10 Code of 1986, as amended.

11        "Exchange traded fund" means a security that tracks an  
12 index, commodity, or basket of assets similar to an index fund,  
13 is registered with the federal Securities and Exchange  
14 Commission under the Investment Company Act of 1940, as amended,  
15 and is traded on a public exchange.

16        "Mutual funds" means an investment company that is  
17 registered with the federal Securities and Exchange Commission  
18 under the Investment Company Act of 1940 (15 United States Code  
19 Section 80a-1, et seq.), as amended."

20        SECTION 6. Section 431:7-206, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§431:7-206 Domestic company credit for retaliatory taxes**  
2 **paid other states.** If by the laws of any state other than this  
3 State, or by the action of any public official of another state,  
4 any insurer or company, as defined in section 431:1-202,  
5 organized or domiciled in this [~~State,~~] state, shall be required  
6 to pay taxes for the privilege of doing business in the other  
7 state, and the amounts are imposed or assessed so that the taxes  
8 which are or would be imposed against Hawaii domestic insurance  
9 companies are greater than those taxes required of insurers  
10 organized or domiciled in the other state, to the extent the  
11 amounts are legally due to the other states, an insurer or  
12 company organized or domiciled in this [~~State~~] state may claim a  
13 credit against the tax payable pursuant to this article of a sum  
14 not to exceed one hundred per cent of the amount. The credit  
15 shall not be greater than the tax payable pursuant to this  
16 article during the taxable year. All claims for the tax credit  
17 under this section, including any amended claims, shall be filed  
18 on or before the end of the twelfth month following the close of  
19 the taxable year for which the credit may be claimed. Failure  
20 to comply with the foregoing provision shall constitute a waiver  
21 of the right to claim the credit."



1 SECTION 7. Section 431:8-310, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The commissioner shall issue a surplus lines broker  
4 license to any producer licensed under article 9A, except  
5 producers licensed under section 431:9A-107(a)(1), (2), or (5),  
6 when the producer has:

7 (1) Remitted the annual license fee to the commissioner as  
8 provided in article 7; and

9 (2) Submitted a completed license application on a form  
10 furnished by the commissioner."

11 SECTION 8. Section 431:9-222.5, Hawaii Revised Statutes,  
12 is amended to read as follows:

13 "~~§431:9-222.5 [Workers' compensation claims]~~ Claims  
14 adjusters; limited license. (a) The commissioner may issue a  
15 limited license to an adjuster who only adjusts either workers'  
16 compensation or crop insurance claims; provided that the  
17 adjuster:

18 (1) Is domiciled in the State of Hawaii, or in a state  
19 that permits residents of the State of Hawaii to act  
20 as adjusters in that other state;

21 (2) Has had experience, special education, or training in  
22 handling loss claims under workers' compensation or



1           crop insurance contracts of sufficiently reasonable  
2           duration and extent to enable an individual to fulfill  
3           the responsibilities of an adjuster;

4           (3) Has a passing grade on the workers' compensation or  
5           crop insurance examination pursuant to section 431:9-  
6           206; and

7           (4) Pays the applicable fees.

8           (b) An adjuster with a limited license in workers'  
9           compensation issued under this section may extend the license  
10          biennially upon successfully passing a reexamination on workers'  
11          compensation."

12          SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is  
13          amended by amending subsection (b) to read as follows:

14          "(b) The required number of credit hours shall be as  
15          follows:

16          (1) For a licensee authorized to sell lines of insurance  
17          in only one of the following groups:

18                (A) Life or accident and health or sickness; or

19                (B) Property, marine and transportation, vehicle,  
20                general casualty, or surety;

21          the requisite number of credit hours shall be [~~twenty~~]

22          twenty-four credit hours, consisting of twenty-one



1 credit hours relating to the line of authority for  
2 which the license is held[, ~~including~~] and three  
3 credit hours relating to ethics training or relating  
4 to the insurance laws and the insurance rules;

5 (2) For a licensee with a license to sell lines of  
6 insurance in both groups in paragraph (1), the total  
7 requisite number of credit hours shall be [~~thirty~~]  
8 twenty-four credit hours, [of which:] consisting of:

9 (A) [~~Twelve~~] Ten credit hours [shall relate] relating  
10 to paragraph (1)(A) [of which two hours shall  
11 relate to the insurance laws and the rules  
12 relating to the line of authority for which the  
13 license is held; and];

14 (B) [~~Eighteen~~] Eleven credit hours [shall relate]  
15 relating to paragraph (1)(B) [of which two hours  
16 shall relate to the insurance laws and the rules  
17 relating to the line of authority for which the  
18 license is held.]; and

19 (C) Three credit hours relating to ethics training or  
20 relating to the insurance laws and the insurance  
21 rules.



1 For purposes of this section, ethics training shall include but  
2 shall not be limited to the study of fiduciary responsibility,  
3 commingling of funds, payment and acceptance of commissions,  
4 unfair claims practices, policy replacement considerations, and  
5 conflicts of interest."

6 SECTION 10. Section 431:14-104, Hawaii Revised Statutes,  
7 is amended to read as follows:

8 "**§431:14-104 Rate filings.** (a) Every insurer shall file  
9 with the commissioner every manual of classifications, rules,  
10 and rates, every rating plan, every other rating rule, and every  
11 modification of any of the foregoing that it proposes to use;  
12 provided that filings with regard to specific inland marine  
13 risks, which by general custom of the business are not written  
14 according to manual rate or rating plans, and bail bonds,  
15 subject to section 804-62, shall not be required pursuant to  
16 this subsection.

17 Every filing shall:

18 [~~(1)~~ ~~Consist of two printed copies and one copy filed by~~  
19 ~~electronic, telephonic, or optical means;~~

20 ~~(2)]~~ (1) State its proposed effective date;

21 [~~(3)]~~ (2) Indicate the character and extent of the coverage  
22 contemplated; [~~and]~~



1       ~~[(4)]~~ (3)   Include a report on investment income~~[-]~~; and

2       (4)   Be accompanied by a \$50 fee payable to the  
3       commissioner, which fee shall be deposited in the  
4       commissioner's education and training fund.

5       ~~[(b)   Each filing shall be accompanied by a \$50 fee payable~~  
6       ~~to the commissioner, which fee shall be deposited in the~~  
7       ~~commissioner's education and training fund.]~~

8       (b)   An insurer shall submit to the commissioner:

9       (1)   An electronic version of the filing. The commissioner  
10       may request a printed version of the electronic filing  
11       to be also submitted; or

12       (2)   Two printed versions of the filing.

13       (c)   At the same time as the filing of the rate, every  
14       insurer shall file all supplementary rating and supporting  
15       information to be used in support of or in conjunction with a  
16       rate. The insurer may satisfy its obligation to file  
17       supplementary rating and supporting information by reference to  
18       material which has been approved by the commissioner. The  
19       information furnished in support of a filing may include or  
20       consist of a reference to:



- 1 (1) The prospective loss cost filing made by a rating  
2 organization or an advisory organization and approved  
3 by the commissioner;
- 4 (2) The experience or judgment of the insurer or  
5 information filed by the rating organization or  
6 advisory organization on behalf of the insurer as  
7 permitted by section 431:14-104.5;
- 8 (3) Its interpretation of any statistical data upon which  
9 it relies;
- 10 (4) The experience of other insurers, rating  
11 organizations, or advisory organizations; or
- 12 (5) Any other relevant factors.
- 13 (d) When a filing is not accompanied by the information  
14 upon which the insurer supports the filing, and the commissioner  
15 does not have sufficient information to determine whether the  
16 filing meets the requirements of this article, the commissioner  
17 shall require the insurer to furnish additional information and,  
18 in that event, the waiting period shall commence as of the date  
19 the information is furnished. Until the requested information  
20 is provided, the filing shall not be deemed complete or filed  
21 nor available for use by the insurer. If the requested  
22 information is not provided within a reasonable time period, the





1 filing may be returned to the insurer as not filed and not  
2 available for use.

3 (e) Except for rates filed in accordance with subsections  
4 (k), (l), and (m), a filing and any supporting information shall  
5 be open to public inspection upon filing with the commissioner.

6 (f) Specific inland marine rates on risks specially rated,  
7 made by a rating organization, shall be filed with the  
8 commissioner.

9 (g) An insurer may satisfy its obligation to make the  
10 filings by becoming a member of, or a subscriber to, a licensed  
11 rating organization which makes the filings except for those  
12 lines of insurance for which the commissioner determines  
13 individual insurer rate filings shall be made. Nothing  
14 contained in this article shall be construed as requiring any  
15 insurer to become a member of or a subscriber to any rating  
16 organization.

17 (h) After reviewing an insurer's filing, the commissioner  
18 may require that the insurer's rates be based upon the insurer's  
19 own loss and expense information. If the insurer's loss or  
20 allocated loss adjustment expense information is not actuarially  
21 credible, as determined by the commissioner, the insurer may use  
22 or supplement its experience with information filed with the



1 commissioner by a rating organization or advisory organization.  
2 At the commissioner's request, each insurer utilizing the  
3 services of a rating organization or advisory organization must  
4 submit with its rate filing, a description of the rationale for  
5 that use, including the insurer's own information and method of  
6 utilizing the rating or advisory organization's information.

7 (i) The commissioner shall review filings as soon as  
8 reasonably possible after they have been made to determine  
9 whether they meet the requirements of this article. The  
10 commissioner shall calculate the investment income and accuracy  
11 of loss reserves upon which filings are based, and the insurer  
12 shall provide the information necessary to make the calculation.

13 (j) Except as provided herein and in subsections (k) and  
14 (l) and section 431:14-120, each filing shall be on file for a  
15 waiting period of thirty days before the filing becomes  
16 effective. The period may be extended by the commissioner for  
17 an additional period not to exceed fifteen days if the  
18 commissioner gives written notice within the waiting period to  
19 the insurer, rating organization, or advisory organization that  
20 made the filing that the commissioner needs the additional time  
21 for the consideration of the filing. Upon the written  
22 application by the insurer, rating organization, or advisory



1 organization, the commissioner may authorize a filing which the  
2 commissioner has reviewed to become effective before the  
3 expiration of the waiting period or any extension thereof. A  
4 filing shall be deemed to meet the requirements of this article  
5 unless disapproved by the commissioner within the waiting period  
6 or any extension thereof.

7 (k) The following rates shall become effective when filed:

- 8 (1) Specific inland marine rates on risks specially rated  
9 by a rating organization;
- 10 (2) Any special filing with respect to a surety or  
11 guaranty bond required by law or by court or executive  
12 order or by order or rule of a public body, not  
13 covered by a previous filing; and
- 14 (3) Any special filing with respect to any class of  
15 insurance, subdivision, or combination thereof which  
16 is subject to individual risk premium modification and  
17 has been agreed to by an insured under a formal or  
18 informal bid process.

19 The rates shall be deemed to meet the requirements of this  
20 article until the time the commissioner reviews the filing and  
21 so long as the filing remains in effect.



1           (1) The commissioner, by written order, may suspend or  
2 modify the requirement of filing as to any class of insurance,  
3 subdivision, or combination thereof, or as to classes of risks,  
4 the rates for which cannot practicably be filed before they are  
5 used. The orders shall be made known to the affected insurers  
6 and rating organizations. The commissioner may make  
7 examinations as the commissioner may deem advisable to ascertain  
8 whether any rates affected by the order meet the standards set  
9 forth in section 431:14-103(a)(1).

10           (m) The commissioner may approve a rate on any specific  
11 risk in excess of that set by an applicable rate filing,  
12 provided the insured files with the commissioner a written  
13 application stating the insured's reasons for consenting to the  
14 excess rate. Upon approval by the commissioner, the rate shall  
15 be deemed effective retroactive to the date of the insured's  
16 application.

17           (n) No insurer shall make or issue a contract or policy  
18 except in accordance with filings which are in effect for the  
19 insurer as provided in this article or in accordance with  
20 subsections (k), (l), or (m). This subsection shall not apply  
21 to contracts or policies for inland marine risks as to which  
22 filings are not required."



1 SECTION 11. Section 431:14-105, Hawaii Revised Statutes,  
2 is amended to read as follows:

3 "**§431:14-105 Policy revisions that alter coverage.** (a)

4 Any policy revisions that alter coverage in any manner shall be  
5 filed with the commissioner [~~consist of two printed copies and~~  
6 ~~one copy by electronic, telephonic, or optical means,~~] and  
7 include an analysis of the impact of each revision on rates.

8 (b) A filing shall consist of either:

9 (1) An electronic version of the filing. The commissioner  
10 may request a printed version of the electronic filing  
11 to be also submitted; or

12 (2) Two printed versions of the filing.

13 (c) After review by the commissioner, the commissioner  
14 shall determine whether a rate filing for the policy revision  
15 must be submitted in accordance with section 431:14-104."

16 SECTION 12. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 13. This Act shall take effect on July 1, 2009,  
19 provided that section 3 shall take effect on January 1, 2010.



**Report Title:**

Insurance Producers; Surplus Lines Brokers; Retaliatory Tax Credit; Limited Lines Adjuster License; Continuing Education Credits

**Description:**

Makes numerous updates to the Insurance Code. Clarifies allowable insurer investments to meet capital and reserve requirements. Sets a time limit for insurers to claim the Retaliatory Tax Credit. Limits the issuance of surplus lines broker licenses to certain insurance lines of authority. Allows a limited adjuster license for crop insurance claims. Amends the continuing education credit hours required for insurance produce license renewals. Makes printed form filings optional for insurance rate filings in accordance with state plans to begin accepting electronic rate filings and payments for all lines of insurance. (HB1074 HD1)

