

JAN 26 2009

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:2-201, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The commissioner may:

4 (1) Make reasonable rules for effectuating any provision
5 of this code, except those relating to the
6 commissioner's appointment, qualifications, or
7 compensation. The commissioner shall adopt rules to
8 effectuate article 10C of chapter 431, subject to the
9 approval of the governor's office and the requirements
10 of chapter 91;

11 (2) Conduct examinations and investigations to determine
12 whether any person has violated any provision of this
13 code or to secure information useful in the lawful
14 administration of any provision; [~~and~~]

15 (3) Require applicants to provide fingerprints and pay a
16 fee to allow the commissioner to make a determination
17 of license eligibility after obtaining state and
18 national criminal history record checks from the

1 Hawaii criminal justice data center and the Federal
2 Bureau of Investigation; and

3 ~~[(3)]~~ (4) Require, upon reasonable notice, that insurers
4 report any claims information the commissioner may
5 deem necessary to protect the public interest."

6 SECTION 2. Section 431:2-209, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§431:2-209 Records and reports.** (a) The commissioner
9 shall preserve in permanent form records and reports of the
10 commissioner's proceedings, hearings, investigations, and
11 examinations, and shall file the records in the commissioner's
12 office.

13 (b) The records of the commissioner and insurance filings
14 in the commissioner's office shall be open to public inspection,
15 except as otherwise provided in this code.

16 (c) One year after conclusion of the transactions to which
17 they relate, the commissioner may destroy any correspondence,
18 void or obsolete filings relating to rates, certificate of
19 authority applications, self-insurance applications,
20 registrations, foreign or alien insurers' annual statements,
21 valuation reports, certificates of compliance and deposits,
22 cards, and expired bonds. Three years after the conclusion of

1 the transactions to which they relate, the commissioner may
2 destroy any claim files, working papers of examinations, reports
3 of examination by insurance supervisory officials of other
4 states, void or obsolete filings relating to license
5 applications, records of hearings and investigations, and any
6 similar records, documents, or memoranda now or hereafter in the
7 commissioner's possession.

8 (d) Three years after the year to which they relate, the
9 commissioner may destroy any foreign or alien insurer's tax
10 reports, or similar records or reports now or hereafter in the
11 commissioner's possession.

12 (e) The following records and reports on file with the
13 commissioner shall be confidential and protected from discovery,
14 production, and disclosure for so long as the commissioner deems
15 prudent:

- 16 (1) Complaints and investigation reports;
- 17 (2) Working papers of examinations, complaints, and
18 investigation reports;
- 19 (3) Proprietary information, including trade secrets,
20 commercial information, and business plans, which, if
21 disclosed may result in competitive harm to the person
22 providing the information;

1 (4) Any documents or information received from the
2 National Association of Insurance Commissioners, the
3 federal government, insurance regulatory agencies of
4 foreign countries, or insurance departments of other
5 states, territories, and commonwealths that are
6 confidential in other jurisdictions. The commissioner
7 may share information, including otherwise
8 confidential information, with the National
9 Association of Insurance Commissioners, the federal
10 government, insurance regulatory agencies of foreign
11 countries, or insurance departments of other states,
12 territories, and commonwealths so long as the statutes
13 or regulations of the other jurisdictions permit them
14 to maintain the same level of confidentiality as
15 required under Hawaii law.

16 (f) The commissioner shall treat and maintain an
17 applicant's fingerprints and any criminal history record
18 information obtained under this code as confidential and shall
19 apply security measures consistent with the Federal Bureau of
20 Investigation Criminal Justice Information Services Division's
21 standards for the electronic storage of fingerprints and
22 necessary identifying information and limit the use of the

1 records solely to the purposes authorized by law. The
 2 fingerprints and any criminal history record information shall
 3 not be subject to subpoena, other than one issued in a criminal
 4 action or investigation, and shall be confidential by law and
 5 privileged, and shall not be subject to discovery or admissible
 6 in evidence in any private civil action.

7 [~~f~~] (g) The commissioner shall not disclose any
 8 information that is exempt from disclosure by federal or Hawaii
 9 statutes."

10 SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is
 11 amended by amending subsection (a) to read as follows:

12 "(a) The commissioner shall collect in advance the
 13 following fees:

14 (1) Certificate of authority: Issuance\$900

15 (2) Organization of domestic insurers and affiliated
 16 corporations:

17 (A) Application and all other papers required for
 18 issuance of solicitation permit,
 19 filing..... \$1,500

20 (B) Issuance of solicitation permit.....\$150

21 (3) Producer's license:

22 (A) Issuance, regular license.....\$50

S.B. NO. 890

1	(B) Issuance, temporary license.....	\$50
2	(4) Nonresident producer's license:	
3	Issuance.....	\$75
4	(5) Independent adjuster's license: Issuance....	\$75
5	(6) Public adjuster's license: Issuance.....	\$75
6	(7) Workers' compensation claim adjuster's limited	
7	license: Issuance.....	\$75
8	(8) Independent bill reviewer's license:	
9	Issuance	\$80
10	(9) Limited producer's license: Issuance.....	\$60
11	(10) Managing general agent's license: Issuance..	\$75
12	(11) Reinsurance intermediary's license:	
13	Issuance	\$75
14	(12) Surplus lines broker's license: Issuance..	\$150
15	(13) Service contract provider's registration:	
16	Issuance	\$75
17	(14) Approved course provider certificate:	
18	Issuance	\$100
19	(15) Approved continuing education course	
20	certificate:	
21	Issuance.....	\$30

S.B. NO. 890

- 1 (16) Vehicle protection product warrantor's
- 2 registration:
- 3 Issuance..... \$75
- 4 (17) Criminal history record check; fingerprinting:
- 5 ~~[\$20]~~ For each criminal history record and
- 6 fingerprinting check, a fee to be established by
- 7 the commissioner
- 8 (18) Limited line motor vehicle rental company producer's
- 9 license: Issuance..... \$1,000
- 10 (19) Life settlement contract provider's license:
- 11 Issuance..... \$75
- 12 (20) Life settlement contract broker's license:
- 13 Issuance..... \$75
- 14 (21) Examination for license: For each examination, a fee
- 15 to be established by the commissioner."

16 SECTION 4. Section 431:9-204, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Application for any such license shall be made to the
19 commissioner upon forms as prescribed and furnished by the
20 commissioner. As a part of or in connection with any such
21 application, the applicant shall furnish information
22 [~~concerning~~] including:

1 (1) The applicant's identity, personal history,
2 experience, business record[+], and full set of
3 fingerprints, including a scanned file from a hard
4 copy fingerprint, for the commissioner to obtain and
5 receive national and state criminal history records
6 checks from the Federal Bureau of Investigation and
7 the Hawaii criminal justice data center, pursuant to
8 section 846-2.7; and

9 (2) Other pertinent facts as the commissioner may
10 reasonably require."

11 SECTION 5. Section 431:9A-106, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A person applying for an insurance producer license
14 shall make application to the commissioner on the uniform
15 application and declare under penalty of denial, suspension, or
16 revocation of the license that the statements made in the
17 application are true, accurate, and complete to the best of the
18 applicant's knowledge and belief. Before approving the
19 application, the commissioner shall find that the applicant:

- 20 (1) Is at least eighteen years of age;
21 (2) Has not committed any act that is a ground for a
22 licensure sanction set forth in section 431:9A-112;

S.B. NO. 890

- 1 (3) Has paid the applicable [~~fee~~] fees set forth in
- 2 section 431:7-101; [~~and~~]
- 3 (4) Has passed, within the two years immediately preceding
- 4 the date of the examination or issuance of the
- 5 license, whichever is later, the applicable
- 6 examination for each line of authority for which the
- 7 applicant has applied[~~-~~]; and
- 8 (5) Has submitted a full set of fingerprints, including a
- 9 scanned file from a hard copy fingerprint, for the
- 10 commissioner to obtain and receive national and state
- 11 criminal history records checks from the Federal
- 12 Bureau of Investigation and the Hawaii criminal
- 13 justice data center, pursuant to section 846-2.7."

14 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Criminal history record checks may be conducted by:

- 17 (1) The department of health on operators of adult foster
- 18 homes or developmental disabilities domiciliary homes
- 19 and their employees, as provided by section 333F-22;
- 20 (2) The department of health on prospective employees,
- 21 persons seeking to serve as providers, or
- 22 subcontractors in positions that place them in direct

1 contact with clients when providing non-witnessed
2 direct mental health services as provided by section
3 321-171.5;

4 (3) The department of health on all applicants for
5 licensure for, operators for, and prospective
6 employees, and volunteers at one or more of the
7 following: skilled nursing facility, intermediate
8 care facility, adult residential care home, expanded
9 adult residential care home, assisted living facility,
10 home health agency, hospice, adult day health center,
11 special treatment facility, therapeutic living
12 program, intermediate care facility for the mentally
13 retarded, hospital, rural health center and
14 rehabilitation agency, and, in the case of any of the
15 above-related facilities operating in a private
16 residence, on any adult living in the facility other
17 than the client as provided by section 321-15.2;

18 (4) The department of education on employees, prospective
19 employees, and teacher trainees in any public school
20 in positions that necessitate close proximity to
21 children as provided by section 302A-601.5;

S.B. NO. 890

- 1 (5) The counties on employees and prospective employees
2 who may be in positions that place them in close
3 proximity to children in recreation or child care
4 programs and services;
- 5 (6) The county liquor commissions on applicants for liquor
6 licenses as provided by section 281-53.5;
- 7 (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 (8) The department of human services on prospective
12 adoptive parents as established under section 346-
13 19.7;
- 14 (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 (10) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide
21 child care and receive child care subsidies as
22 provided by section 346-152.5;

S.B. NO. 890

- 1 (11) The department of human services on operators and
2 employees of home and community-based case management
3 agencies and operators and other adults, except for
4 adults in care, residing in foster family homes as
5 provided by section 346-335;
- 6 (12) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (13) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (14) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 353C-5;

S.B. NO. 890

1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;

4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section
11 302C-1;

12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section
15 302A-601.5;

16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, vulnerable adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to

1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;

3 (20) The department of human services on licensed adult day
4 care center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 346-97;

7 (21) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult and
10 community care services branch, as provided by section
11 346-97;

12 (22) The department of human services on foster grandparent
13 program, retired and senior volunteer program, senior
14 companion program, and respite companion program
15 participants as provided by section 346-97;

16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (Title 42 United States Code Section
21 1396n(c)), or under any other applicable section or
22 sections of the Social Security Act for the purposes

1 of providing home and community-based services, as
2 provided by section 346-97;

3 (24) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a bank,
5 savings bank, savings and loan association, trust
6 company, and depository financial services loan
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on
9 proposed directors and executive officers of a
10 nondepository financial services loan company as
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the
13 original chartering applicants and proposed executive
14 officers of a credit union as provided by section
15 412:10-103;

16 [+](27)[+] The department of commerce and consumer affairs on:

17 (A) Each principal of every non-corporate applicant
18 for a money transmitter license; and

19 (B) The executive officers, key shareholders, and
20 managers in charge of a money transmitter's
21 activities of every corporate applicant for a

S.B. NO. 890

1 money transmitter license, as provided by section
2 489D-9; [~~and~~]

3 (28) The department of commerce and consumer affairs on
4 applicants for licensure and persons licensed under
5 Title 24; and

6 [~~(28)~~] (29) Any other organization, entity, or the State,
7 its branches, political subdivisions, or agencies as
8 may be authorized by state law."

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect on July 1, 2009;
12 provided that the amendments made to section 431:7-101(a),
13 Hawaii Revised Statutes, by this Act shall not be repealed when
14 section 431:7-101(a), Hawaii Revised Statutes, is reenacted on
15 June 16, 2010, pursuant to Act 177, Session Laws of Hawaii 2008.

16
17 INTRODUCED BY: _____

18 BY REQUEST

Report Title:

Insurance; Insurance Licensing; Background Check;
Fingerprinting; Criminal Database

Description:

Adopts the National Association of Insurance Commissioners' Authorization for Criminal History Record Check Model Act to allow fingerprinting of insurance licensees.

SB 890

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To clarify that the Insurance Commissioner (Commissioner) is authorized to conduct criminal background checks and to collect fingerprints of applicants for insurance licensure.

MEANS: Amend sections 431:2-201(c), 431:2-209, 431:7-101(a), 431:9-204(a), 431:9A-106(a), and 846-2.7(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Under current state law, sections 431:2-201.3 and 431:9A-112(a)(6), HRS, anyone who has been convicted of a felony is prohibited from engaging in the business of insurance, unless an application for a waiver is requested and granted by the commissioner.

Federal law, 18 United States Code §§ 1033 and 1034, also prohibits those who have been convicted of crimes involving dishonesty or breach of trust from engaging in the business of insurance, unless a waiver is requested and granted by the Commissioner.

Although the licensing application requires applicants to disclose the applicant's criminal history, applicants may either misunderstand or respond untruthfully to the questions in the application.

Access to federal and state criminal databases is crucial for the Insurance Division to meet its statutory duty in identifying applicants who may not disclose their criminal background and in protecting the public from those who may engage in unscrupulous insurance practices.

Impact on the public: This bill will ensure that the Commissioner has the means to protect the public.

Impact on the department and other agencies: These amendments will clarify that the Commissioner is authorized to conduct criminal background checks on insurance applicants and ensure that the Commissioner has access to information from the Hawaii Criminal Justice Data Center.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: Department of the Attorney General Hawaii
Criminal Justice Data Center.

EFFECTIVE DATE: July 1, 2009; provided that the amendments made to section 431:7-101(a), Hawaii Revised Statutes, by this Act shall not be repealed when section 431:7-101(a), Hawaii Revised Statutes, is reenacted on June 16, 2010, pursuant to Act 177, Session Laws of Hawaii 2008.