



GOV. MSG. NO 1184

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 1, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

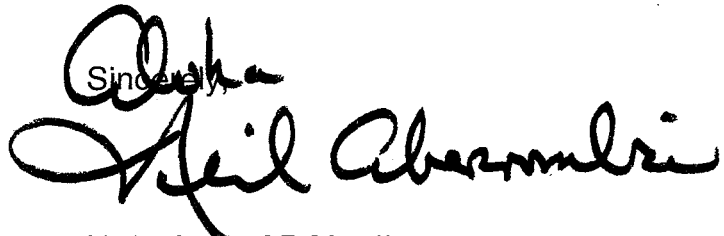
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 1, 2011, the following bill was signed into law:

HB1049 HD2 SD2 CD1

RELATING TO INSURANCE  
Act 081 (11)

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

H.B. NO. 1049  
H.D. 2  
S.D. 2  
C.D. 1

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## A BILL FOR AN ACT

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RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:2-105, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be a chief deputy commissioner, who shall  
4 be subject to chapter 76. The chief deputy commissioner shall  
5 have the power to perform any act or duty assigned by the  
6 commissioner. If a commissioner has not been appointed, the  
7 chief deputy commissioner shall have the power to perform any  
8 act that the commissioner is authorized to perform until an  
9 appointment becomes effective. The certificate of the chief  
10 deputy commissioner's appointment shall be filed in the office  
11 of the lieutenant governor."

12 SECTION 2. Section 431:2-202.5, Hawaii Revised Statutes,  
13 is amended to read as follows:

14 "~~§431:2-202.5~~ **Approval; when deemed effective.** Except as  
15 provided otherwise, any approval required by law shall be deemed  
16 granted on the [~~thirtieth~~] sixtieth calendar day following the  
17 filing of the request for approval if the commissioner does not



1 take any affirmative action to grant or deny the approval within  
2 [~~thirty~~] sixty calendar days of the request."

3 SECTION 3. Section 431:2-206, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) A person competent to serve a summons shall serve  
6 upon the commissioner triplicate copies of legal process against  
7 an insurer for whom the commissioner is attorney. In the  
8 absence of the commissioner, the process may be served upon the  
9 chief deputy or the deputy in charge of the insurance function.

10 At the time of service the plaintiff shall pay to the  
11 commissioner [~~\$12,~~] \$25, taxable as costs in the action."

12 SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) and (b) to read as follows:

14 "**§431:7-101 Fees.** (a) The commissioner shall collect in  
15 advance the following fees:

16 (1) Certificate of authority: Issuance .....\$1,800

17 (2) Organization of domestic insurers and affiliated  
18 corporations:

19 (A) Application and all other papers required for  
20 issuance of solicitation permit, filing ...\$3,000

21 (B) Issuance of solicitation permit .....\$300

22 (3) Producer's license:



1	(A)	Issuance, regular license .....	\$100
2	(B)	Issuance, temporary license .....	\$100
3	(4)	Nonresident producer's license: Issuance .....	\$150
4	(5)	Independent adjuster's license: Issuance .....	\$150
5	(6)	Public adjuster's license: Issuance .....	\$150
6	(7)	<del>[Workers' compensation claim]</del> <u>Claims</u> adjuster's	
7		limited license: Issuance .....	\$150
8	(8)	Independent bill reviewer's license:	
9		Issuance .....	\$160
10	(9)	Limited producer's license: Issuance .....	\$120
11	(10)	Managing general agent's license: Issuance .....	\$150
12	(11)	Reinsurance intermediary's license:	
13		Issuance .....	\$150
14	(12)	Surplus lines broker's license: Issuance .....	\$300
15	(13)	Service contract provider's registration:	
16		Issuance .....	\$150
17	(14)	Approved course provider certificate:	
18		Issuance .....	\$200
19	(15)	Approved continuing education course certificate:	
20		Issuance .....	\$60
21	(16)	Vehicle protection product warrantor's registration:	
22		Issuance .....	\$150



1 (17) Criminal history record check; fingerprinting: For  
2 each criminal history record check and fingerprinting  
3 check, a fee to be established by the commissioner.

4 (18) Limited line motor vehicle rental company producer's  
5 license: Issuance .....\$2,000

6 ~~[(19) Life settlement contract provider's license:~~  
7 ~~Issuance .....\$150~~

8 ~~(20) Life settlement contract broker's license:~~  
9 ~~Issuance .....\$150~~

10 ~~(21)]~~ (19) Examination for license: For each examination,  
11 a fee to be established by the commissioner.

12 (b) The fees for services of the department of commerce  
13 and consumer affairs subsequent to the issuance of a certificate  
14 of authority, license, or other certificate are as follows:

15 (1) \$1,200 per year for all services (including extension  
16 of the certificate of authority) for an authorized  
17 insurer;

18 (2) \$100 per year for all services (including extension of  
19 the license) for a regularly licensed producer;

20 (3) \$150 per year for all services (including extension of  
21 the license) for a regularly licensed nonresident  
22 producer;



- 1 (4) \$90 per year for all services (including extension of  
2 the license) for a regularly licensed independent  
3 adjuster;
- 4 (5) \$90 per year for all services (including extension of  
5 the license) for a regularly licensed public adjuster;
- 6 (6) \$90 per year for all services (including extension of  
7 the license) for a [~~workers' compensation~~] claims  
8 adjuster's limited license;
- 9 (7) \$120 per year for all services (including extension of  
10 the license) for a regularly licensed independent bill  
11 reviewer;
- 12 (8) \$90 per year for all services (including extension of  
13 the license) for a producer's limited license;
- 14 (9) \$150 per year for all services (including extension of  
15 the license) for a regularly licensed managing general  
16 agent;
- 17 (10) \$150 per year for all services (including extension of  
18 the license) for a regularly licensed reinsurance  
19 intermediary;
- 20 (11) \$90 per year for all services (including extension of  
21 the license) for a licensed surplus lines broker;



- 1 (12) \$150 per year for all services (including renewal of
- 2 registration) for a service contract provider;
- 3 (13) \$130 per year for all services (including extension of
- 4 the certificate) for an approved course provider;
- 5 (14) \$40 per year for all services (including extension of
- 6 the certificate) for an approved continuing education
- 7 course;
- 8 (15) \$150 per year for all services (including renewal of
- 9 registration) for a vehicle protection product
- 10 warrantor;
- 11 (16) [~~\$40~~] A fee to be determined by the commissioner for
- 12 [a] each criminal history record check[+] and
- 13 fingerprinting; and
- 14 (17) \$1,200 per year for all services (including extension
- 15 of the license) for a regularly licensed limited line
- 16 motor vehicle rental company producer[+]
- 17 ~~(18) \$150 per year for all services (including extension of~~
- 18 ~~the license) for a regularly licensed life settlement~~
- 19 ~~contract provider; and~~
- 20 ~~(19) \$150 per year for all services (including extension of~~
- 21 ~~the license) for a regularly licensed life settlement~~
- 22 ~~contract broker].~~

1           The services referred to in paragraphs (1) to [~~(19)~~] (17)  
2 shall not include services in connection with examinations,  
3 investigations, hearings, appeals, and deposits with a  
4 depository other than the department of commerce and consumer  
5 affairs."

6           SECTION 5. Section 431:9-204, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "**§431:9-204 Applications for license.** (a) Application  
9 for [~~any-such~~] an adjuster or independent bill reviewer license  
10 shall be made to the commissioner upon forms [~~as~~] prescribed and  
11 furnished by the commissioner. As a part of or in connection  
12 with [~~any-such~~] the application, the applicant shall furnish  
13 information including:

14           (1) The applicant's identity, personal history,  
15           experience, business records, and a full set of  
16           fingerprints, including a scanned file from a hard  
17           copy fingerprint, for the commissioner to obtain and  
18           receive national and state criminal history  
19           [+]record[+] checks from the Federal Bureau of  
20           Investigation and the Hawaii criminal justice data  
21           center, pursuant to section 846-2.7; and





1 (2) Other pertinent facts as the commissioner may  
2 reasonably require.

3 ~~[(b) (1) If the applicant is a partnership or corporation, the~~  
4 ~~application shall furnish in addition to the~~  
5 ~~requirements set forth in subsection (a):~~

6 ~~(A) The names of all partners or officers; and~~

7 ~~(B) A designation of each individual who is to~~  
8 ~~exercise the powers to be conferred by the~~  
9 ~~license upon the partnership or corporation.~~

10 ~~(2) Each individual shall be required to furnish~~  
11 ~~information to the commissioner as though for an~~  
12 ~~individual license.~~

13 ~~(e)] (b) Any person who wilfully [misrepresenting]~~  
14 ~~misrepresents or [emitting] omits any fact required to be~~  
15 ~~disclosed in [any such] an application filed pursuant to this~~  
16 ~~section shall be liable for penalties as provided by this code."~~

17 SECTION 6. Section 431:9C-101, Hawaii Revised Statutes, is  
18 amended by amending the definition of "managing general agent"  
19 to read as follows:

20 "Managing general agent" means any person, firm,  
21 association, or corporation that manages all or part of the  
22 insurance business of an insurer [(-)]including the management of



1 a separate division, department, or underwriting office[+] and  
2 acts as an agent for [~~such~~] the insurer regardless of whether  
3 the person, firm, association, or corporation is known as a  
4 managing general agent, manager, or [~~other~~] similar term[-] and  
5 who, with or without the authority, either separately or  
6 together with affiliates, produces, directly or indirectly, and  
7 underwrites an amount of gross direct written premium equal to  
8 or more than five per cent of the policyholder surplus as  
9 reported in the last annual statement of the insurer in any one  
10 quarter or year[~~, together with one or more of the following~~  
11 ~~activities related to the business produced.~~] and adjusts or  
12 pays claims in excess of [~~an amount determined by the~~  
13 ~~commissioner,~~] \$10,000 or negotiates reinsurance on behalf of  
14 the insurer. Notwithstanding the [~~preceding sentence,~~]  
15 specified requirements, the following persons shall not be  
16 considered [~~as~~] managing general agents for [~~the~~] purposes of  
17 this article:

- 18 (1) An employee of the insurer;
- 19 (2) A United States manager of the United States branch of  
20 an alien insurer;
- 21 (3) An underwriting manager who, pursuant to contract,  
22 manages all the insurance operations of the insurer,



1 is under common control with the insurer[7] subject to  
2 article 11, and whose compensation is not based on the  
3 volume of premiums written;

4 (4) The attorney-in-fact authorized by and acting for the  
5 subscribers of a reciprocal insurer or inter-insurance  
6 exchange under a power of attorney; and

7 (5) Any person, firm, association, or corporation  
8 domiciled in the State [~~and~~], authorized to do  
9 business only in the State, and acting as a managing  
10 general agent for an insurer licensed and conducting  
11 business only in the State."

12 SECTION 7. Section 431:10H-228, Hawaii Revised Statutes,  
13 is amended by amending subsection (a) to read as follows:

14 "(a) Every insurer, health care service plan, or other  
15 entity providing long-term care insurance or benefits in this  
16 State shall provide a copy of any long-term care insurance  
17 advertisement intended for use in this State [~~whether~~] through  
18 written, radio, or television [~~medium~~] media to the commissioner  
19 for review or approval by the commissioner to [~~the extent it may~~  
20 ~~be reviewed under state law. In addition, all~~] determine  
21 compliance with this article. All advertisements subject to  
22 this section shall be retained by the insurer, health care



1 service plan, or other entity for at least three years from the  
2 date the advertisement was first used."

3 SECTION 8. Section 431:11-106, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) (1) Transactions within a holding company system to  
6 which an insurer subject to registration is a party  
7 shall be subject to the following standards:

8 (A) The terms shall be fair and reasonable;

9 (B) Charges or fees for services performed shall be  
10 reasonable;

11 (C) Expenses incurred and payment received shall be  
12 allocated to the insurer in conformity with  
13 customary insurance accounting practices  
14 consistently applied;

15 (D) The books, accounts, and records of each party to  
16 all transactions shall be maintained so as to  
17 clearly and accurately disclose the nature and  
18 details of the transactions including the  
19 accounting information necessary to support the  
20 reasonableness of the charges or fees to the  
21 respective parties; and



1 (E) The insurer's surplus as regards policyholders  
2 following any dividends or distributions to  
3 shareholder affiliates shall be reasonable in  
4 relation to the insurer's outstanding liabilities  
5 and adequate to its financial needs;

6 (2) The following transactions involving a domestic  
7 insurer and any person in its holding company system  
8 shall not be entered into unless the insurer has  
9 notified the commissioner in writing of its intention  
10 to enter into the transaction at least thirty days  
11 prior [~~thereto,~~] to the transaction, or a shorter  
12 period as the commissioner may permit, and the  
13 commissioner has not disapproved [~~it~~] the transaction  
14 within that period:

15 (A) Sales, purchases, exchanges, loans or extensions  
16 of credit, guarantees, or investments; provided  
17 that the transactions are equal to or exceed:

18 (i) With respect to nonlife insurers, the lesser  
19 of three per cent of the insurer's admitted  
20 assets or twenty-five per cent of surplus as  
21 regards policyholders each as of the thirty-  
22 first day of December next preceding; or



1 (ii) With respect to life insurers, three per  
2 cent of the insurer's admitted assets as of  
3 the thirty-first day of December next  
4 preceding;

5 (B) Loans or extensions of credit to any person who  
6 is not an affiliate, where the insurer makes the  
7 loans or extensions of credit with the agreement  
8 or understanding that the proceeds of the  
9 transactions, in whole or in substantial part,  
10 are to be used to make loans or extensions of  
11 credit to, to purchase assets of, or to make  
12 investments in, any affiliate of the insurer  
13 making the loans or extensions of credit;  
14 provided that the transactions are equal to or  
15 exceed:

16 (i) With respect to nonlife insurers, the lesser  
17 of three per cent of the insurer's admitted  
18 assets or twenty-five per cent of surplus as  
19 regards policyholders each as of the thirty-  
20 first day of December next preceding; or

21 (ii) With respect to life insurers, three per  
22 cent of the insurer's admitted assets as of



1                   the thirty-first day of December next  
2                   preceding;

3           (C) Reinsurance agreements or modifications [~~thereto~~]  
4           to reinsurance agreements in which the  
5           reinsurance premium or a change in the insurer's  
6           liabilities equals or exceeds five per cent of  
7           the insurer's surplus as regards policyholders[7]  
8           as of the thirty-first day of December next  
9           preceding, including those agreements [~~which~~]  
10          that may require as consideration the transfer of  
11          assets from an insurer to a nonaffiliate[7] if an  
12          agreement or understanding exists between the  
13          insurer and nonaffiliate that any portion of the  
14          assets will be transferred to one or more  
15          affiliates of the insurer;

16          (D) All management agreements, service contracts, and  
17          [~~all~~] cost-sharing arrangements; and

18          (E) Any material transactions, specified by rule,  
19          which the commissioner determines may adversely  
20          affect the interests of the insurer's  
21          policyholders.

1 Nothing in this section shall be deemed to authorize  
2 or permit any transactions which, in the case of an  
3 insurer not a member of the same holding company  
4 system, would be otherwise contrary to law;

5 (3) A domestic insurer may not enter into transactions  
6 [~~which~~] that are part of a plan or series of like  
7 transactions with persons within the holding company  
8 system if the purpose of those separate transactions  
9 is to avoid the statutory threshold amount and thus  
10 avoid the review that would otherwise occur[~~—If~~];  
11 provided that the commissioner determines that the  
12 separate transactions were entered into over any  
13 twelve-month period for that purpose, the commissioner  
14 may exercise the commissioner's authority under  
15 section 431:11-111;

16 (4) The commissioner, in reviewing transactions pursuant  
17 to subsection (a)(2), shall consider whether the  
18 transactions comply with the standards set forth in  
19 subsection (a)(1) and whether [~~they~~] the transactions  
20 may adversely affect the interests of policyholders;  
21 and





1           (5) The commissioner shall be notified within thirty days  
2           of any investment of the domestic insurer in any one  
3           person if the total investment in the person by the  
4           insurance holding company system exceeds ten per cent  
5           of the ~~[corporation's]~~ person's voting securities[-]  
6           or the domestic insurer possesses control of the  
7           person as the term "control" is defined in section  
8           431:11-102."

9           SECTION 9. Section 431:14G-105, Hawaii Revised Statutes,  
10          is amended by amending subsections (a) and (b) to read as  
11          follows:

12           "(a) Every managed care plan shall file ~~[in triplicate]~~  
13          with the commissioner~~[-]~~ every rate, charge, classification,  
14          schedule, practice, or rule and every modification of any of the  
15          foregoing that it proposes to use. Every filing shall [state]:

16           (1) State its proposed effective date [and shall  
17           indicate];

18           (2) Indicate the character and extent of the coverage  
19           contemplated[. The filing also shall include];

20           (3) Include a report on investment income[-]; and



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

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

8            (1) An electronic copy of the filing; or

9            (2) Two printed copies of the filing;

10 provided that the commissioner may request an insurer that  
11 submits an electronic copy of the filing pursuant to paragraph  
12 (1) to also submit a printed copy of the electronic filing."

13        SECTION 10. Section 431P-16, Hawaii Revised Statutes, is  
14 amended by amending subsection (e) to read as follows:

15        "(e) After each covered event, if the board [~~shall~~  
16 ~~determine~~] determines that the moneys in the hurricane reserve  
17 trust fund, excluding moneys determined by the board to be  
18 needed to continue fund operations following [~~that~~] the covered  
19 event, will be insufficient to pay claims and other obligations  
20 of the fund arising out of that covered event, the Hawaii  
21 hurricane relief fund [~~is authorized to~~] shall levy a surcharge  
22 not to exceed seven and one-half per cent a year on premiums



1 charged for all property and casualty insurance policies issued  
2 for risks insured in this State. These moneys may be deposited  
3 into the hurricane reserve trust fund or into trust or custodial  
4 accounts[~~7~~] created for the benefit of the fund's secured  
5 parties[~~7~~] that are held inside or outside the hurricane reserve  
6 trust fund. The [~~formula to calculate the amount and period of~~  
7 ~~the surcharge for each covered event and the procedures and~~  
8 ~~methodology for payment of claims and other obligations of the~~  
9 ~~fund shall be provided in the plan of operation and the]~~  
10 surcharge [~~may~~] shall remain in effect until all claims and  
11 other obligations of the fund, including but not limited to  
12 claims under fund policies of hurricane property insurance,  
13 claims financing transactions, bonds, notes, and other  
14 obligations arising out of that covered event[~~7, shall~~] have been  
15 fully discharged. The amount and reason for any surcharge made  
16 pursuant to this subsection shall be separately stated on any  
17 billing sent to an insured. The surcharge shall not be  
18 considered premiums for any other purpose[~~7~~] including the  
19 computation of gross premium tax or the determination of  
20 producers' commissions. The fund may establish procedures for  
21 insurers to collect the surcharge from customers who hold  
22 property or casualty policies."



1 SECTION 11. Section 432:1-306, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) [~~After the organization of the society is completed,~~  
4 ~~and before a certificate of compliance is granted by the~~  
5 ~~commissioner, the] The society shall deposit with the  
6 commissioner [one half the maximum amount required to be  
7 maintained in its death benefit and disability, or sick, or  
8 other benefit fund, as provided in section 432:1-401,] fifty per  
9 cent of the minimum net worth requirement provided in section  
10 432:1-407(a)(2), either in cash or in securities approved by the  
11 commissioner[-]; provided that the deposit shall be no less than  
12 \$1,000,000 and shall not exceed \$20,000,000."~~

13 SECTION 12. Section 432:1-401, Hawaii Revised Statutes, is  
14 repealed.

15 [~~"§432:1-401 Benefit funds. Each society shall at all~~  
16 ~~times maintain:~~

17 (1) ~~In its death benefit fund, at least five times the~~  
18 ~~maximum amount of death benefit offered or promised to~~  
19 ~~be paid to any one member, and~~

20 (2) ~~In its sick, disability or other benefit fund, at~~  
21 ~~least twenty times the maximum amount of sick,~~  
22 ~~disability or other benefits, whichever maximum amount~~



1 ~~is greater, offered or promised to be paid to any one~~  
2 ~~member during or within a period of thirty days." ]~~

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

5 SECTION 14. This Act shall take effect on July 1, 2011;  
6 provided that the amendments made to section 431:7-101, Hawaii  
7 Revised Statutes, shall not be repealed when that section is  
8 reenacted on July 1, 2014, pursuant to section 7(3) of Act 59,  
9 Session Laws of Hawaii 2010.

APPROVED this 1 day of JUN , 2011



GOVERNOR OF THE STATE OF HAWAII

