



GOV. MSG. NO. 1290

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 5, 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 July 5, 2011, the following bill was signed into law:

SB1277 SD2 HD2 CD1

RELATING TO CONSUMER PROTECTION
Act 186 (11)

Aloha
Sincerely,
Neil Abercrombie
NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor.

on JUL 5 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 186
S.B. NO. 1277
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 **PART I**

2 SECTION 1. Chapter 488, Hawaii Revised Statutes, is
3 amended by adding two new sections to be appropriately
4 designated and to read as follows:

5 "§488- Access to records. (a) Every plan and its
6 owners, operators, officers, employees, and representatives
7 shall:

- 8 (1) Be subject to investigation or examination by the
9 commissioner;
10 (2) Produce and make freely accessible to the commissioner
11 all accounts, records, documents, and files in the
12 person's possession or control relating to the subject
13 of the investigation or examination; and
14 (3) Cooperate with any investigation or examination by the
15 commissioner.

16 (b) If the commissioner finds the accounts or records of a
17 plan, or of its owners, operators, officers, employees, or
18 representatives, to be inadequate, improperly kept, or



1 improperly posted, and if the plan has failed to correct the
2 accounts or records after the commissioner has given the plan
3 written notice and a reasonable opportunity to do so, the
4 commissioner may employ experts to rewrite, post, or balance the
5 accounts at the expense of the plan being examined.

6 (c) A plan administrator shall provide a written response
7 within seven days to any written inquiry made by the
8 commissioner. The response shall be more than an
9 acknowledgement that the commissioner's communication was
10 received and shall adequately address the concerns stated in the
11 communication.

12 §488- Records and reports. (a) The commissioner shall
13 preserve in permanent form records and reports of the
14 commissioner's proceedings, hearings, investigations, and
15 examinations and shall file the records in the commissioner's
16 office.

17 (b) The commissioner's records and filings in the
18 commissioner's office shall be open to public inspection, except
19 as otherwise provided in this chapter.

20 (c) The commissioner shall maintain the confidentiality of
21 any documents or information received from the National
22 Association of Insurance Commissioners, the federal government,



1 insurance regulatory agencies of foreign countries, or insurance
2 departments of other states, territories, and commonwealths that
3 are confidential in the jurisdiction of origin. Documents and
4 records subject to this subsection shall be confidential and
5 privileged, shall not be made public, shall not be subject to
6 subpoena or discovery, and shall not be admissible as evidence
7 in any private civil action, and neither the commissioner nor
8 any other person who received documents, materials, or other
9 information subject to this subsection while acting under the
10 authority of the commissioner shall be permitted or required to
11 testify in any private civil action concerning any confidential
12 documents, materials, or information subject to this subsection.

13 This subsection shall not be construed to limit the
14 commissioner's authority to use any necessary documents,
15 materials, or other information in furtherance of any regulatory
16 or legal action brought as part of the commissioner's official
17 duties. The commissioner may share information, including
18 otherwise confidential information, with the National
19 Association of Insurance Commissioners, the federal government,
20 insurance regulatory agencies of foreign countries, or insurance
21 departments of other states, territories, and commonwealths if
22 the statutes or regulations of the jurisdiction receiving the



1 information require the receiving person or entity to maintain
2 the same level of confidentiality as required under this
3 subsection and other applicable law.

4 (d) The commissioner shall not disclose any information
5 that is protected from disclosure by law other than as provided
6 in subsection (c)."

7 SECTION 2. Chapter 488, Hawaii Revised Statutes, is
8 amended by amending the title to read as follows:

9 " ~~[+]~~ CHAPTER 488 ~~[+]~~

10 ~~PREPAID] LEGAL [SERVICES] SERVICE PLANS"~~

11 SECTION 3. Section 488-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding one new definition to read:

14 "Legal service plan" or "plan" means any arrangement by
15 which a person as defined in section 431:1-212, or entity, not
16 otherwise authorized to engage in the practice of law, offers to
17 provide or arranges for the provision of legal services in
18 exchange for any valuable consideration that is paid to the
19 plan."

20 2. By amending the definition of "commissioner" to read:

21 "Commissioner" means the insurance commissioner~~[-]~~ of the
22 department of commerce and consumer affairs."



1 3. By deleting the definitions of "department", "group
2 legal service plan", and "prepaid legal service plan".

3 ~~["Department" means the department of commerce and
4 consumer affairs.~~

5 ~~"Group legal service plan" is a plan by which legal
6 services are rendered to individual members of a group
7 identifiable in terms of some common interest.~~

8 ~~"Prepaid legal service plan" or "plan" means a group legal
9 service plan in which the cost of the services are prepaid by
10 the group member or by some other person or organization in the
11 member's behalf."]~~

12 SECTION 4. Section 488-2, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) This chapter shall apply to all plans in the State
15 other than:

16 (1) Plans in which any party to the plan is the federal
17 government or any agency thereof; or

18 (2) Any employer-employee plan that is subject to the
19 federal Employee Retirement Income Security Act of
20 1974, Public Law 93-406.

21 Plans that are owned and operated by an insurer subject to
22 chapter 431 shall be exempt from the requirements of this



1 chapter; provided that the insurer shall comply with the
2 provisions of chapter 431 and file a statement certifying
3 compliance with chapter 431."

4 SECTION 5. Section 488-3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§488-3 [~~Filing and other requirements.~~] Certificate of
7 authority; authority issued or denied; plan termination. (a)
8 [~~Sixty days prior to implementation of any plan and the~~
9 ~~accumulation or payment of money thereunder, all plan documents~~
10 ~~shall be submitted in writing for approval by the commissioner.]
11 Before conducting business in this State, a plan shall submit
12 for approval with the commissioner an application for a
13 certificate of authority, shall file documentation with the
14 commissioner, and shall pay to the commissioner a fee as
15 provided under section 431:7-101.~~

16 (b) The documentation required by subsection (a) shall
17 contain in writing the following:

18 (1) A brief statement of the plan's financial structure,
19 including a statement of the amount of prepayment,
20 other charges or dues to be paid by plan members, and
21 the manner in which the amounts are to be paid;



- 1 (2) A statement of the amount of benefits, legal services,
2 or reimbursement for legal services to be furnished
3 each member of a plan, and the period during which
4 [~~it~~] they will be furnished; and, if there are
5 exceptions, reductions, exclusions, limitations, or
6 restrictions of benefits, legal services, or
7 reimbursements, a detailed statement of the
8 exceptions, reductions, exclusions, limitations, or
9 restrictions;
- 10 (3) A statement of the terms and conditions upon which the
11 plan may be canceled or otherwise terminated by the
12 group, the plan administrator, the persons furnishing
13 legal services, or the member; provided that for any
14 cancellation or termination[~~r~~] other than by a member,
15 there shall be provision made for the disposition of
16 funds accumulated under the plan;
- 17 (4) A statement describing the applicability or
18 nonapplicability of the benefits of the plan to the
19 family dependents of the member;
- 20 (5) A statement of the period of grace [~~which~~] that will
21 be allowed the member or the member's group for making
22 any payment due under the plan;



- 1 (6) A statement describing a procedure for settling
2 disputes between or among the group, the plan
3 administrator, the persons furnishing legal services,
4 and the member; [~~and~~]
- 5 (7) A statement that the plan includes the endorsements
6 thereon and attached papers, if any, and contains the
7 entire contract or contracts to be used among all
8 parties to a plan[-], including the executed written
9 agreement between the plan and any person providing
10 legal services to the plan; and
- 11 (8) A listing of the owners, operators, officers, and plan
12 administrator of the plan, including the current
13 business address, home address, mailing address,
14 business phone number, business fax number, business
15 electronic mail address, business website address, and
16 home phone number.
- 17 Any amendments or changes to the documents filed under
18 paragraphs (1) to [~~(7)~~] (8) shall be filed with the commissioner
19 for approval at least sixty days before they take effect. All
20 documents filed under this section shall be public documents.



1 (c) If the commissioner finds that a plan has met the
2 requirements of this section, the commissioner shall issue to it
3 a proper certificate of authority.

4 (d) If the commissioner finds that a plan has not met the
5 requirements of this section, the commissioner shall deny the
6 plan a certificate of authority within a reasonable length of
7 time following filing of the application by the plan.

8 (e) If the plan is canceled or otherwise terminated by the
9 group, the plan administrator, or the persons furnishing legal
10 services, the plan shall notify the commissioner in writing at
11 least sixty days prior to the termination of the plan of the
12 fact of plan termination and the provisions made for the
13 disposition of funds accumulated under the plan."

14 SECTION 6. Section 488-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§488-4 Accumulated funds, protection, violation. ~~(a)~~
17 Any plan that accumulates funds from payments of premiums prior
18 to paying those funds to persons providing legal services shall
19 meet the requirements of this section.

20 ~~(b)]~~ (a) The plan administrator shall have the
21 responsibilities of a trustee for all funds received,
22 accumulated, or collected under this chapter.



1 [~~(e)~~] (b) The plan administrator, upon receipt of
2 [~~premium~~] funds intended for payment to a person providing legal
3 services pursuant to this chapter, shall maintain the funds at
4 all times in a federally insured account with a bank, savings
5 and loan association, or financial services loan company located
6 in Hawaii, separate from the plan's own funds or funds held by
7 the plan administrator in any other capacity, in an amount at
8 least equal to the funds collected and unpaid to the persons
9 providing legal services, unless otherwise approved by the
10 commissioner. Only additional funds that are reasonably
11 necessary to pay bank, savings and loan association, or
12 financial services loan company charges may be commingled with
13 [~~premium~~] the funds accumulated pursuant to this section. If
14 the bank, savings and loan association, or financial services
15 loan company account is an interest earning account, the plan
16 shall not retain the interest earned on accumulated funds for
17 the plan or plan administrator's own use or benefit without the
18 prior written consent of the person entitled to the funds. A
19 plan trustee account shall be designated on the records of the
20 bank, savings and loan association, or financial services loan
21 company as a "trustee account established pursuant to section
22 488-4, Hawaii Revised Statutes", or words of similar import.



1 ~~[(d)]~~ (c) The plan administrator shall obtain a \$100,000
2 bond ~~[in an amount and form approved by the commissioner]~~, which
3 shall be executed by the plan administrator and a surety company
4 authorized to do business in the State as a surety. ~~[The bond~~
5 ~~shall be to the benefit of the members of the plan and shall be~~
6 ~~filed with the commissioner.]~~

7 The bond shall run to the State for the benefit of any
8 claimants against the plan to secure the faithful performance of
9 the obligations of the plan. The aggregate liability of the
10 surety shall not exceed the principal sum of the bond. The plan
11 administrator shall provide the commissioner with proof of the
12 bond at the time of the initial request for approval and at any
13 time thereafter as requested by the commissioner. The plan
14 shall not release the bond without the commissioner's approval.

15 In lieu of the bond required by this section, the commissioner
16 may accept letters of credit, certificates of deposits, or other
17 ~~[evidences]~~ evidence of security in form and amounts deemed
18 appropriate by the commissioner.

19 ~~[(e)]~~ (d) Any person, including a plan administrator,
20 owner, operator, officer, employee, or representative who, not
21 being lawfully entitled to do so, diverts or appropriates funds
22 accumulated pursuant to this section or any portion ~~[thereof to~~



1 ~~the plan or plan administrator's]~~ of accumulated funds for the
2 person's own use, shall be subject to penalties as provided by
3 law."

4 SECTION 7. Section 488-7, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§488-7 Failure to comply; penalty. (a) Any plan that
7 ~~[neglects or refuses to]~~ does not comply with this chapter shall
8 be notified in writing by the commissioner of the ~~[neglect or~~
9 ~~refusal]~~ noncompliance and of the need to take corrective
10 action within seven days. If the ~~[neglect or refusal]~~
11 noncompliance continues for seven days after notification, the
12 plan~~[, group]~~ or plan administrator may be fined not more than
13 \$1,000 ~~[. Every day's neglect or refusal after the expiration of~~
14 ~~seven days shall be a separate offense.]~~ per day for each day of
15 noncompliance.

16 (b) ~~[The]~~ In addition to penalties provided in subsection
17 (a), the commissioner may deny, suspend, revoke, or refuse to
18 approve the certificate of authority of any plan or any plan
19 amendments ~~[and may levy civil penalties as allowed by chapters~~
20 ~~431, 432, 480, 481A, 481B, and 481C, and any applicable law for~~
21 ~~any violation of this chapter]~~.



1 (c) If the commissioner takes any action pursuant to
2 subsection (b), the commissioner shall notify the applicant or
3 licensee in writing of the reason for that action. The
4 applicant or licensee may submit a written request within ten
5 days of the date of receipt of the notice for a hearing before
6 the commissioner to determine the propriety of the
7 commissioner's action. A hearing pursuant to this subsection
8 shall be held within thirty days of receipt of the written
9 request, unless postponed by mutual consent, and shall be
10 conducted pursuant to chapter 91.

11 (d) If the commissioner has cause to believe that any plan
12 is violating or is about to violate any provision of this
13 chapter or any order of the commissioner, the commissioner may
14 issue a cease and desist order to enforce compliance with this
15 chapter or any order of the commissioner, or may bring an action
16 in any court of competent jurisdiction to enjoin the plan from
17 continuing the violation. The commissioner may order or
18 petition the court to order restitution on behalf of persons
19 aggrieved by a violation of this chapter and an assessment of a
20 monetary penalty against any plan, plan administrator, or owner,
21 operator, or officer of the plan for violation of this chapter
22 or an order of the commissioner."



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PART II

SECTION 8. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

- (1) Certificate of authority: Issuance.....\$1,800
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing... \$3,000
 - (B) Issuance of solicitation permit..... \$300
- (3) Producer's license:
 - (A) Issuance, regular license..... \$100
 - (B) Issuance, temporary license..... \$100
- (4) Nonresident producer's license: Issuance..... \$150
- (5) Independent adjuster's license: Issuance..... \$150
- (6) Public adjuster's license: Issuance..... \$150
- (7) [~~Workers' compensation claim~~] Claim adjuster's limited license: Issuance..... \$150
- (8) Independent bill reviewer's license: Issuance..... \$160
- (9) Limited producer's license: Issuance..... \$120



- 1 (10) Managing general agent's license: Issuance \$150
- 2 (11) Reinsurance intermediary's license:
- 3 Issuance \$150
- 4 (12) Surplus lines broker's license: Issuance \$300
- 5 (13) Service contract provider's registration:
- 6 Issuance \$150
- 7 (14) Approved course provider certificate:
- 8 Issuance \$200
- 9 (15) Approved continuing education course certificate:
- 10 Issuance \$60
- 11 (16) Vehicle protection product warrantor's registration:
- 12 Issuance \$150
- 13 (17) Criminal history record check; fingerprinting: For
- 14 each criminal history record check and fingerprinting
- 15 check, a fee to be established by the commissioner.
- 16 (18) Limited line motor vehicle rental company
- 17 producer's license: Issuance \$2,000
- 18 ~~(19) Life settlement contract provider's license:~~
- 19 ~~Issuance \$150~~
- 20 ~~(20) Life settlement contract broker's license:~~
- 21 ~~Issuance \$150]~~
- 22 (19) Legal service plan certificate of authority:



1	<u>Issuance before July 1, 2014</u>	<u>\$1,000</u>
2	<u>Issuance on or after July 1, 2014</u>	<u>\$500</u>

3 ~~[(21)]~~ (20) Examination for license: For each examination,
4 a fee to be established by the commissioner.

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

- 8 (1) \$1,200 per year for all services (including extension
9 of the certificate of authority) for an authorized
10 insurer;
- 11 (2) \$100 per year for all services (including extension of
12 the license) for a regularly licensed producer;
- 13 (3) \$150 per year for all services (including extension of
14 the license) for a regularly licensed nonresident
15 producer;
- 16 (4) \$90 per year for all services (including extension of
17 the license) for a regularly licensed independent
18 adjuster;
- 19 (5) \$90 per year for all services (including extension of
20 the license) for a regularly licensed public adjuster;



- 1 (6) \$90 per year for all services (including extension of
2 the license) for a [~~workers' compensation~~] claims
3 adjuster's limited license;
- 4 (7) \$120 per year for all services (including extension of
5 the license) for a regularly licensed independent bill
6 reviewer;
- 7 (8) \$90 per year for all services (including extension of
8 the license) for a producer's limited license;
- 9 (9) \$150 per year for all services (including extension of
10 the license) for a regularly licensed managing general
11 agent;
- 12 (10) \$150 per year for all services (including extension of
13 the license) for a regularly licensed reinsurance
14 intermediary;
- 15 (11) \$90 per year for all services (including extension of
16 the license) for a licensed surplus lines broker;
- 17 (12) \$150 per year for all services (including renewal of
18 registration) for a service contract provider;
- 19 (13) \$130 per year for all services (including extension of
20 the certificate) for an approved course provider;



- 1 (14) \$40 per year for all services (including extension of
- 2 the certificate) for an approved continuing education
- 3 course;
- 4 (15) \$150 per year for all services (including renewal of
- 5 registration) for a vehicle protection product
- 6 warrantor;
- 7 (16) [\$40] A fee to be established by the commissioner for
- 8 [a] each criminal history record check[+] and
- 9 fingerprinting;
- 10 (17) \$1,200 per year for all services (including extension
- 11 of the license) for a regularly licensed limited line
- 12 motor vehicle rental company producer;
- 13 ~~(18) \$150 per year for all services (including extension of~~
- 14 ~~the license) for a regularly licensed life settlement~~
- 15 ~~contract provider; and~~
- 16 ~~(19) \$150 per year for all services (including extension of~~
- 17 ~~the license) for a regularly licensed life settlement~~
- 18 ~~contract broker.]~~
- 19 (18) \$1,000 per year for all services provided before July
- 20 1, 2014, (including extension of the certificate) for
- 21 an authorized legal service plan; and



