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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 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 conferred upon the commissioner until such appointment is  
9 made. The certificate of the chief deputy commissioner's  
10 appointment shall be filed in the office of the lieutenant  
11 governor."

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

14 "(a) A person competent to serve a summons shall serve  
15 upon the commissioner triplicate copies of legal process against  
16 an insurer for whom the commissioner is attorney. In the  
17 absence of the commissioner, the process may be served upon the

1 chief deputy or the deputy in charge of the insurance function.  
2 At the time of service the plaintiff shall pay to the  
3 commissioner [~~\$12,~~ \$25, taxable as costs in the action."

4 SECTION 3. Section 431:9-204, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§431:9-204 Applications for license.** (a) Application  
7 for [~~any such~~] an adjuster or independent bill reviewer license  
8 shall be made to the commissioner upon forms as prescribed and  
9 furnished by the commissioner. As a part of or in connection  
10 with any such application, the applicant shall furnish  
11 information including:

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

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

- 4           ~~(A) The names of all partners or officers; and~~  
5           ~~(B) A designation of each individual who is to~~  
6           ~~exercise the powers to be conferred by the~~  
7           ~~license upon the partnership or corporation.~~

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

11       ~~(e)]~~ (b) Any person wilfully misrepresenting or omitting  
12 any fact required to be disclosed in any such application shall  
13 be liable for penalties as provided by this code."

14       SECTION 4. Section 431:9C-101, Hawaii Revised Statutes, is  
15 amended by amending the definition of "managing general agent"  
16 to read as follows:

17       ""Managing general agent" means any person, firm,  
18 association, or corporation that manages all or part of the  
19 insurance business of an insurer (including the management of a  
20 separate division, department, or underwriting office) and acts  
21 as an agent for such insurer whether known as a managing general  
22 agent, manager, or other similar term, who, with or without the

1 authority, either separately or together with affiliates,  
2 produces, directly or indirectly, and underwrites an amount of  
3 gross direct written premium equal to or more than five per cent  
4 of the policyholder surplus as reported in the last annual  
5 statement of the insurer in any one quarter or year, together  
6 with one or more of the following activities related to the  
7 business produced: adjusts or pays claims in excess of [~~an~~  
8 ~~amount determined by the commissioner,~~] \$10,000, or negotiates  
9 reinsurance on behalf of the insurer. Notwithstanding the  
10 preceding sentence, the following persons shall not be  
11 considered as managing general agents for the purposes of this  
12 article:

- 13 (1) An employee of the insurer;
- 14 (2) A United States manager of the United States branch of  
15 an alien insurer;
- 16 (3) An underwriting manager who, pursuant to contract,  
17 manages all the insurance operations of the insurer,  
18 is under common control with the insurer, subject to  
19 article 11, and whose compensation is not based on the  
20 volume of premiums written;

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

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

9 SECTION 5. Section 431:10H-228, Hawaii Revised Statutes,  
10 is amended to read as follows:

11 "[+]§431:10H-228 **Filing requirements; advertisements.** [.]

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

1           (b) The commissioner may exempt from the requirements of  
2 this section any advertising form or material when, in the  
3 commissioner's opinion, this requirement may not reasonably be  
4 applied."

5           SECTION 6. Section 431:11-106, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

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

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

11           (B) Charges or fees for services performed shall be  
12           reasonable;

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

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

1                   reasonableness of the charges or fees to the  
2                   respective parties; and

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

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

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

19                   (i)   With respect to nonlife insurers, the lesser  
20                          of three per cent of the insurer's admitted  
21                          assets or twenty-five per cent of surplus as

1                    regards policyholders each as of the thirty-  
2                    first day of December next preceding; or  
3                    (ii) With respect to life insurers, three per cent  
4                    of the insurer's admitted assets as of the  
5                    thirty-first day of December next preceding;  
6                    (B) Loans or extensions of credit to any person who  
7                    is not an affiliate, where the insurer makes the  
8                    loans or extensions of credit with the agreement  
9                    or understanding that the proceeds of the  
10                   transactions, in whole or in substantial part,  
11                   are to be used to make loans or extensions of  
12                   credit to, to purchase assets of, or to make  
13                   investments in, any affiliate of the insurer  
14                   making the loans or extensions of credit;  
15                   provided that the transactions are equal to or  
16                   exceed:  
17                   (i) With respect to nonlife insurers, the lesser  
18                   of three per cent of the insurer's admitted  
19                   assets or twenty-five per cent of surplus as  
20                   regards policyholders each as of the thirty-  
21                   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           (C) Reinsurance agreements or modifications thereto
- 6           in which the reinsurance premium or a change in
- 7           the insurer's liabilities equals or exceeds five
- 8           per cent of the insurer's surplus as regards
- 9           policyholders, as of the thirty-first day of
- 10           December next preceding, including those
- 11           agreements which may require as consideration the
- 12           transfer of assets from an insurer to a
- 13           nonaffiliate, if an agreement or understanding
- 14           exists between the insurer and nonaffiliate that
- 15           any portion of the assets will be transferred to
- 16           one or more affiliates of the insurer;
  
- 17           (D) All management agreements, service contracts, and
- 18           ~~[all]~~ cost-sharing arrangements; and
  
- 19           (E) Any material transactions, specified by rule,
- 20           which the commissioner determines may adversely
- 21           affect the interests of the insurer's
- 22           policyholders.

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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 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 the  
11          commissioner determines that the separate transactions  
12          were entered into over any twelve-month period for  
13          that purpose, the commissioner may exercise the  
14          commissioner's authority under section 431:11-111;

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

20          (5) The commissioner shall be notified within thirty days  
21          of any investment of the domestic insurer in any one  
22          person if the total investment in the person by the

1 insurance holding company system exceeds ten per cent  
2 of the [~~corporation's~~] person's voting securities[~~-~~]  
3 or the domestic insurer possesses control of the  
4 person as defined in section 431:11-102."

5 SECTION 7. Section 431:14G-105, Hawaii Revised Statutes,  
6 is amended by amending subsections (a) and (b) to read as  
7 follows:

8 "(a) Every managed care plan shall file [~~in triplicate~~]  
9 with the commissioner, every rate, charge, classification,  
10 schedule, practice, or rule and every modification of any of the  
11 foregoing that it proposes to use.

12 Every filing shall [~~state~~]:

13 (1) State its proposed effective date [~~and shall~~  
14 ~~indicate~~];

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

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

18 (4) Be accompanied by a \$50 fee payable to the  
19 commissioner and shall be deposited in the  
20 commissioner's education and training fund.

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

4       (b) For each filing, an insurer shall submit to the  
5 commissioner:

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

7       (2) Two printed copies of the filing.

8 The commissioner may also request a printed version of an  
9 electronic filing to be submitted pursuant to paragraph (1)."

10       SECTION 8. Section 431P-16, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12       "(e) After each covered event, if the board shall  
13 determine that the moneys in the hurricane reserve trust fund,  
14 excluding moneys determined by the board to be needed to  
15 continue fund operations following that covered event, will be  
16 insufficient to pay claims and other obligations of the fund  
17 arising out of that covered event, the Hawaii hurricane relief  
18 fund ~~[is authorized to]~~ shall levy a surcharge not to exceed  
19 seven and one-half per cent a year on premiums charged for all  
20 property and casualty insurance policies issued for risks  
21 insured in this State. These moneys may be deposited into the  
22 hurricane reserve trust fund or into trust or custodial

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

20 SECTION 9. Section 432:1-306, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

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1           "~~(a) [After the organization of the society is completed,~~  
2 ~~and before a certificate of compliance is granted by the~~  
3 ~~commissioner, the]~~ The society shall deposit with the  
4 commissioner [one-half the maximum amount required to be  
5 maintained in its death benefit and disability, or sick, or other  
6 benefit fund, as provided in section 432:1-401,] fifty per cent  
7 of the minimum net worth requirement as provided in section  
8 432:1-407(a)(2), either in cash or in securities approved by the  
9 commissioner[-]; provided that the deposit shall be not less than  
10 \$1,000,000 and shall not exceed \$20,000,000."

11           SECTION 10. Act 59, Session Laws of Hawaii 2010, is  
12 amended by amending sections 4 and 5 to read as follows:

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

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

17           (1) Certificate of authority: Issuance.....\$900

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

20           (A) Application and all other papers required for  
21 issuance of solicitation permit,  
22 filing..... \$1,500

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

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1 (15) Approved continuing education course certificate:

2 Issuance.....\$30

3 (16) Vehicle protection product warrantor's registration:

4 Issuance.....\$75

5 (17) Criminal history record check; fingerprinting: For  
6 each criminal history record check and fingerprinting  
7 check, a fee to be established by 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 (19) Legal service plan certificate of authority:

15 Issuance.....\$500

16 [~~21~~] (20) Examination for license: For each examination, a  
17 fee to be established by the commissioner.

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



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- 1           (1) \$600 per year for all services (including extension of  
2           the certificate of authority) for an authorized  
3           insurer;
- 4           (2) \$50 per year for all services (including extension of  
5           the license) for a regularly licensed producer;
- 6           (3) \$75 per year for all services (including extension of  
7           the license) for a regularly licensed nonresident  
8           producer;
- 9           (4) \$45 per year for all services (including extension of  
10          the license) for a regularly licensed independent  
11          adjuster;
- 12          (5) \$45 per year for all services (including extension of  
13          the license) for a regularly licensed public adjuster;
- 14          (6) \$45 per year for all services (including extension of  
15          the license) for a [~~workers' compensation~~] claims  
16          adjuster's limited license;
- 17          (7) \$60 per year for all services (including extension of  
18          the license) for a regularly licensed independent bill  
19          reviewer;
- 20          (8) \$45 per year for all services (including extension of  
21          the license) for a producer's limited license;

- 1           (9) \$75 per year for all services (including extension of  
2           the license) for a regularly licensed managing general  
3           agent;
- 4           (10) \$75 per year for all services (including extension of  
5           the license) for a regularly licensed reinsurance  
6           intermediary;
- 7           (11) \$45 per year for all services (including extension of  
8           the license) for a licensed surplus lines broker;
- 9           (12) \$75 per year for all services (including renewal of  
10          registration) for a service contract provider;
- 11          (13) \$65 per year for all services (including extension of  
12          the certificate) for an approved course provider;
- 13          (14) \$20 per year for all services (including extension of  
14          the certificate) for an approved continuing education  
15          course;
- 16          (15) \$75 per year for all services (including renewal of  
17          registration) for a vehicle protection product  
18          warrantor;
- 19          (16) \$20 for a criminal history record check;  
20          fingerprinting: For each criminal history record  
21          check and fingerprinting check, a fee to be  
22          established by the commissioner.

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- 1       (17) \$600 per year for all services (including extension of
- 2               the license) for a regularly licensed limited line
- 3               motor vehicle rental company producer[+
- 4       ~~(18) \$150 per year for all services (including extension of~~
- 5               ~~the license) for a regularly licensed life settlement~~
- 6               ~~contract provider; and~~
- 7       ~~(19) \$150 per year for all services (including extension of~~
- 8               ~~the license) for a regularly licensed life settlement~~
- 9               ~~contract broker.]; and~~
- 10       (18) \$500 per year for all services (including extension of
- 11               the certificate) for an authorized legal service plan.

12       The services referred to in paragraphs (1) to [~~(19)~~] (18)

13 shall not include services in connection with examinations,

14 investigations, hearings, appeals, and deposits with a

15 depository other than the department of commerce and consumer

16 affairs.

17       SECTION 5. Section 431:7-101, Hawaii Revised Statutes, is

18 amended to read as follows:

19       1. By amending subsections (a) and (b) to read:

20       (a) The commissioner shall collect in advance the

21 following fees:

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

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- 1           (2) Organization of domestic insurers and affiliated
- 2           corporations:
- 3           (A) Application and all other papers required for
- 4                 issuance of solicitation permit,
- 5                 filing.....\$3,000
- 6           (B) Issuance of solicitation permit.....\$300
- 7           (3) Producer's license:
- 8                 (A) Issuance, regular license.....\$100
- 9                 (B) Issuance, temporary license.....\$100
- 10          (4) Nonresident producer's license:
- 11                 Issuance.....\$150
- 12          (5) Independent adjuster's license: Issuance.....\$150
- 13          (6) Public adjuster's license: Issuance.....\$150
- 14          (7) [~~Workers' compensation claim~~] Claim adjuster's limited
- 15                 license: Issuance.....\$150
- 16          (8) Independent bill reviewer's license:
- 17                 Issuance.....\$160
- 18          (9) Limited producer's license: Issuance.....\$120
- 19          (10) Managing general agent's license: Issuance.....\$150
- 20          (11) Reinsurance intermediary's license:
- 21                 Issuance.....\$150
- 22          (12) Surplus lines broker's license: Issuance.....\$300

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

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

4 (1) \$1,200 per year for all services (including extension  
5 of the certificate of authority) for an authorized  
6 insurer;

7 (2) \$100 per year for all services (including extension of  
8 the license) for a regularly licensed producer;

9 (3) \$150 per year for all services (including extension of  
10 the license) for a regularly licensed nonresident  
11 producer;

12 (4) \$90 per year for all services (including extension of  
13 the license) for a regularly licensed independent  
14 adjuster;

15 (5) \$90 per year for all services (including extension of  
16 the license) for a regularly licensed public adjuster;

17 (6) \$90 per year for all services (including extension of  
18 the license) for a [~~workers' compensation~~] claims  
19 adjuster's limited license;

20 (7) \$120 per year for all services (including extension of  
21 the license) for a regularly licensed independent bill  
22 reviewer;

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- 1 (8) \$90 per year for all services (including extension of  
2 the license) for a producer's limited license;
- 3 (9) \$150 per year for all services (including extension of  
4 the license) for a regularly licensed managing general  
5 agent;
- 6 (10) \$150 per year for all services (including extension of  
7 the license) for a regularly licensed reinsurance  
8 intermediary;
- 9 (11) \$90 per year for all services (including extension of  
10 the license) for a licensed surplus lines broker;
- 11 (12) \$150 per year for all services (including renewal of  
12 registration) for a service contract provider;
- 13 (13) \$130 per year for all services (including extension of  
14 the certificate) for an approved course provider;
- 15 (14) \$40 per year for all services (including extension of  
16 the certificate) for an approved continuing education  
17 course;
- 18 (15) \$150 per year for all services (including renewal of  
19 registration) for a vehicle protection product  
20 warrantor;
- 21 (16) \$40 for a criminal history record check;  
22 fingerprinting: For each criminal history record

1           check and fingerprinting check, a fee to be  
2           established by the commissioner;

3           (17) \$1,200 per year for all services (including extension  
4           of the license) for a regularly licensed limited line  
5           motor vehicle rental company producer; and

6           ~~[(18) \$150 per year for all services (including extension of~~  
7           ~~the license) for a regularly licensed life settlement~~  
8           ~~contract provider; and~~

9           ~~(19) \$150 per year for all services (including extension of~~  
10           ~~the license) for a regularly licensed life settlement~~  
11           ~~contract broker.]~~

12           (18) \$1,000 per year for all services (including extension  
13           of the certificate) for an authorized legal service  
14           plan.

15           The services referred to in paragraphs (1) to ~~[(19)]~~ (18)  
16 shall not include services in connection with examinations,  
17 investigations, hearings, appeals, and deposits with a  
18 depository other than the department of commerce and consumer  
19 affairs.

20           2. By amending subsection (e) to read as follows:

21           (e) All fees and penalties shall be deposited to the  
22 credit of the compliance resolution fund; provided that



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1 beginning July 1, 2010, the statutory fees collected pursuant to  
2 subsections (a) and (b), not including administratively set fees  
3 and assessments as may be authorized under this section, shall  
4 be deposited as follows:

5 (1) Fifty per cent shall be deposited into the compliance  
6 resolution fund; and

7 (2) Fifty per cent shall constitute an insurance license  
8 and service tax, which shall be deposited into the  
9 general fund."

10 SECTION 11. Section 431:2-202.5, Hawaii Revised Statutes,  
11 is repealed.

12 [~~"§431:2-202.5 Approval; when deemed effective. Except as~~  
13 ~~provided otherwise, any approval required by law shall be deemed~~  
14 ~~granted on the thirtieth calendar day following the filing of~~  
15 ~~the request for approval if the commissioner does not take any~~  
16 ~~affirmative action to grant or deny the approval within thirty~~  
17 ~~calendar days of the request."}]~~

18 SECTION 12. Section 432:1-401, Hawaii Revised Statutes, is  
19 repealed.

20 [~~"§432:1-401 Benefit funds. Each society shall at all~~  
21 ~~times maintain:~~

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

4 ~~(2) In its sick, disability or other benefit fund, at least~~  
5 ~~twenty times the maximum amount of sick, disability or~~  
6 ~~other benefits, whichever maximum amount is greater,~~  
7 ~~offered or promised to be paid to any one member during~~  
8 ~~or within a period of thirty days." ]~~

9 SECTION 13. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 14. This Act shall take effect on July 1, 2011.

12  
13 INTRODUCED BY: Calvin K. Boy  
14 BY REQUEST  
JAN 24 2011

H. B. 1049

**Report Title:**

Insurance

**Description:**

Updates the Insurance Code and related provisions.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE

PURPOSE: To update the Insurance Code, chapter 431, Hawaii Revised Statutes (HRS), and related provisions by:

- (1) Clarifying in section 431:2-105(a) the authority of the chief deputy commissioner to perform any act or duty conferred upon the insurance commissioner (commissioner) when a commissioner has not been appointed;
- (2) Changing in section 431:2-206(a) the fee for service of process upon the commissioner from \$12 to \$25;
- (3) Making a technical, nonsubstantive change to subsection (a) and deleting subsection (b) in section 431:9-204, governing applications for adjuster or independent bill reviewer licenses, for consistency with section 431:9-105 because adjusters and reviewers are individuals;
- (4) Conforming the definition of "managing general agent" in section 431:9C-101 with the definition in the National Association of Insurance Commissioners (NAIC) model law by specifying claims in excess of \$10,000;
- (5) Amending section 431:10H-228 by specifying that the commissioner will determine an advertisement's compliance with that article;
- (6) Clarifying in section 431:11-106(a) (5) that notification applies to an insurer's investment in entities other than corporations;

- (7) Allowing in section 431:14G-105(a) health insurers to submit rate filings by electronic or printed means and making other technical, nonsubstantive changes;
- (8) Clarifying in section 431P-16(e) that the surcharge for the Hawaii Hurricane Relief Fund (Fund) is nondiscretionary and allowing the Fund to establish procedures to allow insurers to collect the surcharge from customers;
- (9) Amending in section 432:1-306(a) the deposit requirement for mutual benefit societies by changing the reference from the benefit fund amount in section 432:1-401 to the net worth requirements in section 432:1-407;
- (10) Revising Act 59, SLH 2010 at sections 4 and 5 regarding the licensing fee schedule in section 431:7-101
- (11) Repealing the time limit for automatic approvals in section 431:2-202.5; and
- (12) Repealing section 432:1-401.

MEANS:

Amend sections 431:2-105(a), 431:2-206(a), 431:9-204, 431:9C-101, 431:10H-228, 431:11-106(a), 431:14G-105(a), (b), 431P-16(e), and 432:1-306(a), HRS; amend sections 4 and 5 of Act 59, Session Laws of Hawaii 2010; repeal sections 431:2-202.5 and 432:1-401, HRS.

JUSTIFICATION:

Section 431:2-105(a) currently allows the chief deputy insurance commissioner to perform any act or duty "assigned" by the commissioner. Prior to 2000, this provision allowed the chief deputy insurance commissioner to perform any act or duty "conferred" upon the commissioner. There may be times where there will be no commissioner to delegate duties to the chief

deputy commissioner. Allowing the chief deputy commissioner to perform all acts of the commissioner ensures the continuous operations of the insurance division.

Section 431:2-206(a) currently allows for service of legal process against an insurer upon the commissioner at a cost of \$12. The commissioner is required to send the complaint to the insurer's agent for service of process, pursuant to section 431:2-206(c). This fee has remained unchanged since 1987. The fee increase to \$25 is intended to reflect the increased cost of mailing the complaint via certified mail to the insurer.

Section 431:9-204 governs applications for adjusters and independent bill reviewers. Section 431:9-204(b) currently allows partnerships and corporations to apply for these licenses. By definition in section 431:9-105, adjusters and bill reviewers must be individuals. For consistency with section 431:9-105, section 431:9-204 should be amended by deleting subsection (b).

Section 431:9C-101 currently defines the term "managing general agent" (MGA). To maintain consistency with the NAIC's Managing General Agents Model Act, the definition should be amended by specifying that an MGA who pays claims in excess of \$10,000 is subject to the provisions of Article 9C. This amendment is intended to conform Hawaii law to national standards, thus improving reciprocity with the other states and contributing to the Insurance Division retention of NAIC accreditation.

Section 431:10H-228 governing long-term care insurance advertising is based upon the provision in the NAIC's Long-Term Care Insurance Model Regulation. The current language is vague and provides no guidance to the industry as to what standards the long term care advertisement is to be

measured against. Clarifying that compliance is to be with the long-term care regulation will give greater certainty to the industry and streamline the process of review for the regulator.

Section 431:11-106(a)(5) currently requires a domestic insurer to notify the commissioner within 30 days of an investment in any person as defined in section 431:11-102, where the total investment by the insurance holding company in any one person exceeds 10% of the corporation's voting securities. This amendment clarifies that the notification requirement applies where the total investment exceeds 10% of the person's voting securities or where the domestic insurer controls the person.

Section 431:14G-105 governs rate filings for health insurers. Currently, property and casualty insurance rate filings may be submitted by electronic means in accordance with the System for Electronic Rate and Form Filing (SERFF), pursuant to section 431:14-104(a). Electronic filing of health insurance rate filing is required in conformity with reporting requirements under federal health care reform.

Section 431P-16(e) currently authorizes the Hawaii hurricane relief fund to levy a surcharge (not to exceed 7.5% per year) on property and casualty insurance premiums, when the board determines that moneys in the hurricane reserve trust fund will be insufficient to pay claims and obligations following a covered event. This amendment clarifies that the surcharge is nondiscretionary to ensure the financial solvency of the hurricane fund.

Section 432:1-306 currently requires a mutual benefit society to deposit with the commissioner an amount equal to one-half of the maximum benefit amount in its benefit fund, pursuant to section 432:1-401. Small

mutual benefit societies are having difficulty complying with the current deposit requirement. This bill redefines the deposit amount to be a percentage of minimum net worth as provided in section 432:1-407(a)(2), setting minimum and maximum deposit requirements, and capping the deposit at a reasonable amount. Deposits by mutual benefit societies protect the public in the event of insolvency. Tying up unnecessarily large sums in deposits deprives the insurer of funds that could be used to defer premium increases. Making the deposit requirement relative to the size of the mutual benefit society is fairer and removes a barrier to entry for new mutual benefit societies, thus allowing for a more competitive market.

Section 431:7-101, governing insurance licensing fees, was amended by sections 4 and 5 of Act 59, Session Laws of Hawaii 2010 (Act 59). Revisions are needed to reflect changes in the law. First, Act 77, Session Laws of Hawaii 2009, amended section 431:9-222.5 to provide for the licensing of limited crop insurance claims adjusters. Second, Act 177, Session Laws of Hawaii 2008, governing life settlement transactions, contained an automatic sunset date of June 15, 2010. Amendments to Act 59 are required to clarify the applicable licensing fee for the claims adjuster's limited license and to delete the licensing fees pertaining to life settlement contract brokers and providers.

Section 431:2-202.5 currently deems any approval required by law to be granted in 30 days after the filing of the request, where the commissioner fails to take any affirmative action within the 30-day period. The Insurance Code contains many provisions that impose specific time limits for approvals of various rate filings, including sections 431:10A-309 (61 days), 431:10B-108 (45 days), 431:14-104 (30 days), 431:14G-105



(60 days). Existing statutory time limits currently ensure that the insurance division will take timely action on pending matters.

Section 432:1-401 currently requires a mutual benefit society to maintain a benefit fund in a specified amount. Since the reference in section 432:1-306 is amended to refer to section 432:1-407(a)(2), this section should be repealed to eliminate any confusion.

The above represent efforts to streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce the cost of insurance regulation.

Impact on the public: This bill will make provisions of the Insurance Code more understandable, technically correct, and consistent, and decrease the cost and burden of regulatory compliance.

Impact on the department and other agencies: These amendments streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce confusion and inefficiency in implementing Hawaii insurance laws. The impact of the proposed increase in the fee for service of process upon the commissioner is minimal, as this occurs about 60 times per year and alternative means for litigants to serve insurers exists.

GENERAL FUND:	None.
OTHER FUNDS:	Compliance resolution fund.
PPBS PROGRAM DESIGNATION:	CCA-106.
OTHER AFFECTED AGENCIES:	None.

EFFECTIVE DATE: July 1, 2011.