

JAN 25 2012

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to part III of article 8 nine new sections to
3 be appropriately designated and to read as follows:

4 "§431:8-A Nonresident licensing. (a) Except as provided
5 in section 431:8-317, a nonresident applicant shall receive a
6 nonresident surplus lines broker license if:

- 7 (1) The applicant is currently licensed and is in good
8 standing as a resident surplus lines broker in the
9 applicant's home state;
- 10 (2) The applicant has submitted the proper request for
11 licensure and has paid the fees required by section
12 431:7-101;
- 13 (3) The applicant has submitted or transmitted to the
14 commissioner the application for licensure that the
15 applicant submitted to the applicant's home state, or
16 in lieu of the same, a completed uniform application;
17 and

1 (4) The applicant's home state awards nonresident surplus
2 lines broker licenses to residents of this State on
3 the same basis.

4 (b) The commissioner may verify the surplus lines broker's
5 licensing status through the producer database maintained by the
6 National Association of Insurance Commissioners, its affiliates,
7 or its subsidiaries.

8 (c) A nonresident surplus lines broker who moves from one
9 state to another state or a resident surplus lines broker who
10 moves from this State to another state shall file a change of
11 address with the commissioner and shall provide certification
12 from the new resident state within thirty days of the change of
13 legal residence. No fee or license application shall be
14 required. Failure to timely inform the commissioner of a change
15 in address shall result in a penalty pursuant to section 431:2-
16 203.

17 §431:8-B Reciprocity. (a) The commissioner shall waive
18 any requirements for a nonresident surplus lines broker license
19 applicant with a valid license from the applicant's home state,
20 except for the requirements imposed by section 431:8-A, if the
21 applicant's home state awards nonresident surplus lines broker
22 licenses to residents of this State on the same basis.

S.B. NO. 2768

1 (b) A nonresident surplus lines broker's satisfaction of
2 the surplus lines broker's home state's continuing education
3 requirements for licensed surplus lines brokers shall constitute
4 satisfaction of this State's continuing education requirements
5 if the nonresident surplus lines broker's home state recognizes
6 the satisfaction of its continuing education requirements
7 imposed upon surplus lines brokers from this State on the same
8 basis.

9 §431:8-C Exemption from examination. (a) Subject to
10 section 431:8-B, an individual who applies for a non-resident
11 surplus lines broker license in this State who was previously
12 licensed to sell surplus lines insurance in another state shall
13 not be required to complete any prelicensing education or
14 examination. This exemption is only available if the person is
15 currently licensed in that state or if the application is
16 received within ninety days of the cancellation of the
17 applicant's previous license and if the prior state issues a
18 certification that, at the time of cancellation, the applicant
19 was licensed in good standing in that state, or the state's
20 producer database records, maintained by the National
21 Association of Insurance Commissioners, its affiliates, or its

1 subsidiaries, indicate that the surplus lines broker's license
2 is or was in good standing.

3 (b) A person licensed as a surplus lines broker in another
4 state who moves to this State and makes application within
5 ninety days of establishing legal residence to become a resident
6 licensee pursuant to section 431:8-310, shall not be required to
7 satisfy the prelicensing educational components and examination
8 otherwise required to obtain any line of authority previously
9 held in the prior state, provided that the commissioner may
10 impose these or other requirements by rule.

11 §431:8-D Surplus lines broker license examination. (a)
12 An applicant for a surplus lines broker license shall pass a
13 written examination unless exempt pursuant to section 431:8-C.
14 The examination shall test the knowledge of the applicant
15 concerning property, marine and transportation, vehicle, general
16 casualty, and surety insurance, the duties and responsibilities
17 of a surplus lines broker, and the insurance laws and rules of
18 this State.

19 (b) The commissioner may make arrangements, including
20 contracting with an outside testing service, for administering
21 examinations and collecting fees pursuant to section 431:7-101.
22 The fees collected shall be nonrefundable.

1 (c) An applicant, who fails to appear for the examination
2 as scheduled or fails to pass the examination, shall reapply for
3 an examination and remit all required fees and forms before
4 being scheduled for another examination.

5 (d) An applicant's examination scores shall be valid for
6 two years from the date of the examination.

7 §431:8-E Scope of examination. (a) The commissioner
8 shall prescribe each examination, and each examination shall be
9 of reasonably sufficient scope to test the applicant's knowledge
10 relative to property, marine and transportation, vehicle,
11 general casualty, and surety insurance, that may be dealt with
12 under the license applied for, the duties and responsibilities
13 relating thereto, and the laws of this State that are applicable
14 to the licensee.

15 (b) The commissioner is required to prepare and make
16 available to surplus lines brokers a printed manual specifying
17 in general terms the subjects that may be covered in any
18 examination for a surplus lines broker license.

19 §431:8-F Time of examinations. (a) The commissioner
20 shall give examinations within this State at such times and
21 places as may reasonably serve the convenience of both the
22 commissioner and applicants.

1 (b) The commissioner may require a waiting period of not
2 more than six months before giving a new examination to an
3 applicant who has failed to pass two previous examinations for a
4 surplus brokers license.

5 §431:8-G Prerequisites for license renewal. (a) To
6 qualify for a license renewal, a licensee shall:

7 (1) During the twenty-four months preceding a license
8 renewal, complete the required number of credit hours
9 specified in subsection (b) in approved continuing
10 education courses; and

11 (2) Pay the fees as required under section 431:7-101.

12 (b) The required number of credit hours in approved
13 continuing education courses shall be as follows:

14 (1) For a licensee authorized to sell surplus lines
15 insurance but who does not hold a producer license,
16 the requisite number of credit hours shall be twenty-
17 four credit hours, consisting of twenty-one credit
18 hours relating to property, marine and transportation,
19 vehicle, general casualty, or surety insurance, and
20 three credit hours relating to ethics training or
21 relating to the insurance laws and the insurance
22 rules.

S.B. NO. 2768

1 (2) For a licensee who also holds a producer license to
2 sell life or accident and health or sickness lines of
3 insurance pursuant to article 9A, the total requisite
4 number of credit hours shall be twenty-four credit
5 hours, consisting of:

6 (A) Ten credit hours relating to life or accident and
7 health or sickness insurance;

8 (B) Eleven credit hours relating to property, marine
9 and transportation, vehicle, general casualty, or
10 surety insurance; and

11 (C) Three credit hours relating to ethics training or
12 to insurance laws and rules.

13 For purposes of this section, ethics training shall include but
14 shall not be limited to the topics of fiduciary responsibility,
15 commingling of funds, payment and acceptance of commissions,
16 unfair claims practices, policy replacement considerations, and
17 conflicts of interest.

18 (c) Continuing education equivalents, as determined and
19 approved by the commissioner, may include the teaching of
20 continuing education courses and holding certain professional
21 designations, but shall not include the use of carryover credit

1 hours earned in excess of the required hours in any two-year
2 renewal cycle.

3 (d) Unless an extension of time has been granted in
4 advance by the commissioner, a licensee's failure to satisfy all
5 of the continuing education requirements by the renewal date
6 shall result in that licensee's license being automatically
7 placed on an inactive status. To reactivate a license, the
8 licensee shall submit proof to the commissioner that the
9 requisite number of credit hours has been completed and the
10 licensee shall pay any required fees and penalties.

11 (e) After a licensee completes an approved continuing
12 education course, the approved course provider shall issue to
13 the licensee a certificate of completion in a form approved by
14 the commissioner that certifies that the licensee has
15 successfully completed the course. Both the licensee and a
16 person authorized to sign on behalf of the approved course
17 provider shall sign the certificate of completion. The approved
18 course provider shall electronically submit the certificate of
19 completion to the commissioner within fifteen days of course
20 completion.

S.B. NO. 2768

1 (f) This section shall not apply to a licensee granted an
2 exemption by the commissioner from this section pursuant to
3 section 431:8-B.

4 (g) The commissioner may grant an extension of time to
5 meet the requirements of this section to a licensee on extended
6 active military duty for a period of time equal to the number of
7 days the licensee was on active military duty, provided there
8 are no federal laws mandating an extension of time in a
9 specified situation.

10 (h) A licensee need not retake the surplus lines broker
11 license examination provided that renewal requirements in this
12 section are met or reactivation occurs within two years of the
13 date of inactivation.

14 §431:8-H Continuing education recordkeeping. (a)
15 Licensees shall maintain their own continuing education records
16 and shall keep these records for four years after completion of
17 an approved continuing education course.

18 (b) Approved course providers shall maintain attendance
19 records for five years to permit the commissioner to verify the
20 attendance and course completion of all licensees enrolled in an
21 approved course. Approved course providers shall make their
22 records available at all times to the commissioner.

S.B. NO. 2768

1 §431:8-I Commissioner's authority to grant waiver. Upon
2 the receiving of a written request and a showing of good cause,
3 the commissioner shall have the authority to grant a waiver of
4 any requirement of an insurance law or insurance rule as applied
5 to an applicant or a producer."

6 SECTION 2. Section 431:2-203, Hawaii Revised Statutes, is
7 amended as follows:

8 (1) By amending subsection (d) to read as follows:

9 "(d) If the commissioner has cause to believe that any
10 person is violating or is about to violate any provision of this
11 code or any order of the commissioner, the commissioner may
12 issue a cease and desist order to enforce compliance with this
13 code or any order of the commissioner, or bring an action in any
14 court of competent jurisdiction to enjoin the person from
15 continuing the violation or doing any act in furtherance
16 thereof. The commissioner shall have the discretion to include
17 in a cease and desist order or request in an action brought in
18 any court an assessment of a monetary penalty and restitution
19 against any person who violates this code or who has violated an
20 order of the commissioner."

21 (2) By amending subsection (g) to read as follows:

1 "(g) A monetary penalty and restitution may be imposed in
2 addition to any applicable suspension, revocation, or denial of
3 a license or certificate of authority."

4 SECTION 3. Section 431:8-102, Hawaii Revised Statutes, is
5 amended as follows:

6 (1) By adding nine new definitions to be appropriately
7 inserted and to read as follows:

8 "Approved continuing education course" means a course
9 approved by the commissioner following receipt of
10 recommendations from insurance professionals.

11 "Approved course provider" means an individual or entity
12 that is approved to offer continuing education courses pursuant
13 to article 9A.

14 "Business entity" means an association, corporation,
15 individual, limited liability company, limited liability
16 partnership, partnership, person, or other legal entity.

17 "Credit hour" means the value assigned to an approved
18 continuing education course that is equivalent to at least fifty
19 minutes of classroom instruction.

20 "Home state" means, with respect to an insured, the state
21 in which an insured maintains the insured's principal place of
22 business or, in the case of a surplus lines broker, the state in

1 which the surplus lines broker maintains the surplus lines
2 broker's principal residence or principal place of business and
3 is licensed to act as surplus lines broker; provided that if one
4 hundred per cent of the insured risk is located out of the state
5 where the insured maintains the insured's principal place of
6 business or the state where the individual maintains the
7 principal residence, the home state shall be the state where the
8 greatest percentage of the insured's taxable premium for that
9 insurance contract is allocated.

10 "Inactive" means that the authority of a license issued by
11 the commissioner is not in effect.

12 "Individual" means a natural person or a business entity.

13 "License" means a document issued by the commissioner
14 authorizing a person to act as a surplus lines broker as
15 specified in the document. The license itself shall not create
16 any authority, actual, apparent, or inherent, in the holder to
17 represent or commit an insurer.

18 "Licensee" means a surplus lines broker licensed under this
19 article."

20 (2) By amending the definition of "surplus lines broker"
21 to read as follows:

S.B. NO. 2768

1 "Surplus lines broker" means any ~~producer~~ person
2 licensed under section 431:8-310 to place insurance on risks
3 resident, located, or to be performed in this State with
4 unauthorized insurers."

5 SECTION 4. Section 431:8-310, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§431:8-310 Surplus lines broker license required;
8 application and qualifications for license. (a) No person
9 shall procure any contract of surplus lines insurance with an
10 unauthorized insurer unless the person is licensed as a surplus
11 lines broker.

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

- 19 (1) Is at least eighteen years of age;
20 (2) Has not committed any act that is a ground for a
21 licensure sanction set forth in section 431:8-317;

1 (3) Has paid the applicable fees set forth in section
2 431:7-101;

3 (4) Has passed, within the two years immediately preceding
4 the date of the application or issuance of the
5 license, whichever is later, the applicable
6 examination; and

7 (5) Has submitted a full set of fingerprints, including a
8 scanned file from a hard copy fingerprint, for the
9 commissioner to obtain and receive national and state
10 criminal history records checks from the Federal
11 Bureau of Investigation and the Hawaii criminal
12 justice data center, pursuant to section 846-2.7.

13 (c) The commissioner may require any documents reasonably
14 necessary to verify the information contained in an
15 application.

16 [~~(b)~~] (d) The commissioner shall issue a surplus lines
17 broker license to any producer licensed under article 9A, except
18 producers licensed under section 431:9A-107(a)(1), (2), or (5),
19 when the producer has:

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

1 (2) Submitted a completed license application on a form
2 furnished by the commissioner.

3 ~~[(e)]~~ (e) A surplus lines broker license shall be
4 inactivated if the licensee fails to pay any required fee or
5 penalty. A surplus lines broker who allows the surplus lines
6 broker's license to become inactive for nonpayment of the
7 renewal fee may reinstate that license without the necessity of
8 a written examination; provided that the surplus lines broker:

9 (1) Pays the fee and a penalty in the amount of fifty per
10 cent of the then unpaid fees within twenty-four months
11 from the inactivation date; and

12 (2) Is in compliance with all requirements of chapter 431.
13 The license shall automatically expire if the surplus lines
14 broker does not reinstate the surplus lines broker's license
15 within the twenty-four[-]month period.

16 ~~[(d)]~~ (f) Business entities shall be eligible to be
17 surplus lines brokers, upon meeting the following conditions:

18 (1) The business entity licensee shall list individuals
19 within the business entity who have satisfied all
20 requirements of this part to become surplus lines
21 brokers;

1 (2) Only those individuals listed on the business entity's
2 license shall transact surplus lines business; and

3 (3) [~~An individual~~] A natural person licensed as a surplus
4 lines broker shall be identified as the business
5 entity's designated representative.

6 [~~(e)~~] (g) Licensing procedure, duration, and related
7 matters [~~are~~] shall be governed by [~~articles~~] article 7 [~~and~~
8 9A]."

9 SECTION 5. Section 431:8-317, Hawaii Revised Statutes, is
10 amended as follows:

11 (1) By amending its title to read as follows:

12 "§431:8-317 [~~Suspension~~] License denial, nonrenewal,
13 suspension, or revocation [~~of license~~]."

14 (2) By amending subsections (a) and (b) to read as
15 follows:

16 "(a) The commissioner may deny, place on probation,
17 suspend, revoke, or refuse to [~~extend~~] issue or renew any
18 surplus lines broker's license and may levy a civil penalty in
19 accordance with articles 2 and 3, or any combination of these
20 actions, for any cause specified in any other provision of this
21 chapter, or for any of the following causes:

S.B. NO. 2768

- 1 (1) Failure to file statements required by section 431:8-
2 313 or to pay the tax required by section 431:8-315;
- 3 (2) Failure to keep records or to allow the commissioner
4 to examine the surplus lines broker's records as
5 provided in this article;
- 6 (3) Removal of office accounts and records from this State
7 during the period in which the accounts are required
8 to be maintained under this article;
- 9 (4) Any of the causes for which a producer's license may
10 be suspended or revoked under article 9A;
- 11 (5) Any cause for which issuance of the license could have
12 been refused had it then existed and been known to the
13 commissioner;
- 14 (6) Wilful violation or knowing participation in the
15 violation of any provision of this code;
- 16 (7) Obtaining or attempting to obtain a license under this
17 chapter through wilful misrepresentation or fraud, or
18 failure to pass any examination required by section
19 [~~431:9A-105;~~] 431:8-D;
- 20 (8) Misappropriation, conversion to the licensee's own
21 use, or illegally withholding moneys required to be
22 held in a fiduciary capacity;

1 (9) Material misrepresentation with intent to deceive of
2 the terms or effect of any insurance contract, or
3 engagement or intent to engage in any fraudulent
4 transaction;

5 (10) Commission of any unfair practice or fraud as defined
6 in article 13;

7 (11) Conduct of affairs under a license issued pursuant to
8 this chapter in a manner that causes injury and loss
9 to the public;

10 (12) The issuance or purported issuance of any binder as to
11 any insurer named in the binder if the licensee is not
12 authorized to bind the insurer; or

13 (13) Dealing or attempting to deal with insurance or
14 exercising powers relative to insurance outside the
15 scope of the licensee's licenses.

16 (b) The license of any [~~partnership or corporation~~]
17 business entity may be denied, placed on probation, suspended,
18 revoked, [~~or refused~~ not issued or not renewed for any of the
19 causes applicable to any individual designated in the license to
20 exercise the [~~partnership's or corporation's~~] business entities'
21 powers."

1 SECTION 6. Section 431:9A-102, Hawaii Revised Statutes, is
2 amended by amending the definition of "credit hour" to read as
3 follows:

4 "Credit hour" means the value assigned to[+]

5 ~~(1) Fifty minutes of classroom instruction; or~~

6 ~~(2) In the case of self study courses, fifteen to twenty~~
7 ~~full pages of reading materials excluding graphics,~~
8 ~~quizzes, and illustrations, depending on content and~~
9 ~~type face, as determined by the commissioner,~~

10 ~~in]~~ an approved continuing education course[-] that is
11 equivalent to at least fifty minutes of classroom instruction."

12 SECTION 7. Section 431:9A-105, Hawaii Revised Statutes, is
13 amended by amending subsection (d) as follows:

14 "(d) An applicant's examination scores shall be valid for
15 two years from the date of the examination [~~or last renewal,~~
16 ~~whichever is later]."~~

17 SECTION 8. Section 431:9A-108, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§431:9A-108 Nonresident licensing. (a) Except as
20 provided in section 431:9A-112, a nonresident applicant shall
21 receive a nonresident producer license if:

- 1 (1) The applicant is currently licensed [~~as a resident~~]
2 and is in good standing as a resident producer in the
3 applicant's home state;
- 4 (2) The applicant has submitted the proper request for
5 licensure and has paid the fees required by section
6 431:7-101;
- 7 (3) The applicant has submitted or transmitted to the
8 commissioner the application for licensure that the
9 applicant submitted to the applicant's home state, or
10 in lieu of the same, a completed uniform application;
11 and
- 12 (4) The applicant's home state awards nonresident producer
13 licenses to residents of this State on the same basis.
- 14 (b) The commissioner may verify the producer's licensing
15 status through the producer database maintained by the National
16 Association of Insurance Commissioners, its affiliates, or
17 subsidiaries.
- 18 (c) A nonresident producer who moves from one state to
19 another state or a resident producer who moves from this State
20 to another state shall file a change of address with the
21 commissioner and shall provide certification from the new
22 resident state within thirty days of the change of legal

1 residence. No fee or license application shall be required.
2 Failure to timely inform the commissioner of a change in address
3 shall result in a penalty pursuant to section 431:2-203.

4 ~~[(d) Notwithstanding any other provision of this article,~~
5 ~~an applicant licensed as a surplus lines producer in the~~
6 ~~applicant's home state shall receive a surplus lines broker~~
7 ~~license if:~~

8 ~~(1) The applicant complies with subsection (a); and~~
9 ~~(2) The applicant's home state issues nonresident surplus~~
10 ~~lines broker licenses to residents of this State on~~
11 ~~the same basis.~~

12 ~~(e)]~~ (d) Notwithstanding any other provision of this
13 article, an applicant licensed as a limited line credit
14 insurance producer or other type of limited lines producer in
15 the person's home state shall receive a nonresident limited
16 lines producer license, pursuant to subsection (a), granting the
17 same scope of authority as granted under the license issued by
18 the producer's home state. Limited lines insurance authority is
19 any authority granted by the home state, that restricts the
20 authority of the license to less than the total authority
21 prescribed in the associated major lines pursuant to section
22 431:9A-107(a) (1) through (5)."

1 SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:9A-124 Prerequisites for license renewal. (a) To
4 qualify for a license renewal, a licensee shall:

5 (1) During the twenty-four months preceding a license
6 renewal, complete the required number of credit hours
7 as set forth in subsection (b) in approved continuing
8 education courses; and

9 (2) Pay the fees as required under section 431:7-101.

10 (b) The required number of credit hours shall be as
11 follows:

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

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

15 (B) Property, marine and transportation, vehicle,
16 general casualty, or surety;

17 the requisite number of credit hours shall be twenty-
18 four credit hours, consisting of twenty-one credit
19 hours relating to the line of authority for which the
20 license is held and three credit hours relating to
21 ethics training or relating to the insurance laws and
22 the insurance rules;

1 (2) For a licensee with a license to sell lines of
2 insurance in both groups in paragraph (1), the total
3 requisite number of credit hours shall be twenty-four
4 credit hours, consisting of:

5 (A) Ten credit hours relating to paragraph (1) (A);

6 (B) Eleven credit hours relating to paragraph (1) (B);

7 and

8 (C) Three credit hours relating to ethics training or
9 to insurance laws and rules.

10 For purposes of this section, ethics training shall include but
11 shall not be limited to the study of fiduciary responsibility,
12 commingling of funds, payment and acceptance of commissions,
13 unfair claims practices, policy replacement considerations, and
14 conflicts of interest.

15 (c) Continuing education equivalents, as determined and
16 approved by the commissioner, may include the teaching of
17 continuing education courses and holding certain professional
18 designations, but shall not include the use of carryover credit
19 hours earned in excess of the required hours in any two-year
20 renewal cycle.

21 (d) Unless an extension of time has been granted in
22 advance by the commissioner, a licensee's failure to satisfy all

1 of the continuing education requirements by the renewal date
2 shall result in that licensee's license being automatically
3 placed on an inactive status. To reactivate a license, the
4 licensee shall submit proof to the insurance division that the
5 requisite number of credit hours has been completed and the
6 licensee shall pay any required fees and penalties.

7 (e) After a licensee completes an approved continuing
8 education course, the approved course provider shall issue to
9 the licensee a certificate of completion in a form approved by
10 the commissioner that certifies that the licensee has
11 successfully completed the course. Both the licensee and a
12 person authorized to sign on behalf of the approved course
13 provider shall sign the certificate of completion. The approved
14 course provider shall electronically submit the certificate of
15 completion to the insurance division within fifteen days of
16 course completion.

17 (f) This section shall not apply to a licensee granted an
18 exemption by the commissioner from this section pursuant to
19 section 431:9A-116.

20 (g) The commissioner may grant an extension of time to
21 meet the requirements of this section to a licensee on extended

S.B. NO. 2768

1 active military duty for a period of time equal to the number of
2 days the licensee was on active military duty.

3 (h) A licensee need not retake the producer license
4 examination provided that renewal requirements in this section
5 are met or reactivation occurs within two years of the date of
6 inactivation."

7 SECTION 10. Section 431:9B-101, Hawaii Revised Statutes,
8 is amended as follows:

9 (1) By amending the definition of "reinsurance
10 intermediary" to read as follows:

11 "Reinsurance intermediary" or "producer" means a
12 reinsurance intermediary-broker or a reinsurance intermediary-
13 manager [as these terms are defined in this section.] licensed
14 pursuant to this article and article 9A."

15 (2) By repealing the definition of "licensed producer" or
16 "producer".

17 [~~"Licensed producer" or "producer" means a producer or~~
18 ~~reinsurance intermediary licensed pursuant to this chapter."~~]

19 SECTION 11. Section 431:9B-102, Hawaii Revised Statutes,
20 is amended to read as follows:

21 ~~"§431:9B-102 Licensure. (a) [No person, firm,~~
22 ~~association, or corporation shall act as a reinsurance~~

1 ~~intermediary broker in this State if the reinsurance~~
2 ~~intermediary broker maintains an office either directly or as a~~
3 ~~member or employee of a firm or association or as an officer,~~
4 ~~director, or employee of a corporation:~~

5 ~~(1) In this State, unless the reinsurance intermediary~~
6 ~~broker is a licensed producer in this State, or~~

7 ~~(2) In another state, unless the reinsurance intermediary~~
8 ~~broker is a licensed producer in this State or another~~
9 ~~state having a law substantially similar to this law,~~
10 ~~or such reinsurance intermediary broker is licensed in~~
11 ~~this State as a nonresident reinsurance intermediary.]~~

12 Persons, firms, associations, and corporations acting as a
13 reinsurance intermediary-broker in this State shall maintain a
14 license as a reinsurance intermediary-broker in this State. The
15 reinsurance intermediary-broker shall maintain a license in
16 every state where it maintains an office, either directly, as a
17 member or employee of a firm or association, or as an officer,
18 director, or employee of a corporation.

19 ~~[(b) No person, firm, association, or corporation shall~~
20 ~~act as a reinsurance intermediary manager:~~

S.B. NO. 2768

- 1 ~~(1) For a reinsurer domiciled in this State, unless the~~
2 ~~reinsurance intermediary manager is a licensed~~
3 ~~producer in this State;~~
- 4 ~~(2) In this State, if the reinsurance intermediary manager~~
5 ~~maintains an office either directly or as a member or~~
6 ~~employee of a firm or association, or an officer,~~
7 ~~director, or employee of a corporation in this State,~~
8 ~~unless the reinsurance intermediary manager is [a]~~
9 ~~licensed producer in this State; or~~
- 10 ~~(3) In another state for a nondomestic insurer, unless the~~
11 ~~reinsurance intermediary manager is a licensed~~
12 ~~producer in this State or another state having a law~~
13 ~~substantially similar to this law, or the person is~~
14 ~~licensed in this State as a nonresident reinsurance~~
15 ~~intermediary.]~~

16 (b) Persons, firms, associations, and corporations acting
17 as a reinsurance intermediary-manager for a reinsurer domiciled
18 in this State shall maintain a license as a reinsurance
19 intermediary-manager in this State. A license is required to
20 act as a reinsurance intermediary-manager in this State for a
21 nondomestic reinsurer.

1 (c) The commissioner [~~shall~~] may require a reinsurance
2 intermediary-manager subject to subsection (b) to:

3 (1) File a bond from an insurance company licensed to do
4 business within the State or with an insurance company
5 approved by the commissioner in an amount equal to
6 \$500,000 or ten per cent of the annual reinsurance
7 premiums managed by the reinsurance intermediary-
8 manager, whichever is greater, except that the bond
9 amount under this paragraph shall not exceed
10 \$10,000,000, for the protection of the reinsurer;

11 (2) Maintain an errors and omissions policy, with an
12 insurance company licensed to do business within the
13 State or with an insurance company approved by the
14 commissioner, in an amount equal to \$250,000 or
15 twenty-five per cent of the annual reinsurance
16 premiums managed by the reinsurance intermediary-
17 manager, whichever is greater, except that the policy
18 limits under this paragraph shall not exceed
19 \$10,000,000; and

20 (3) Provide any other report required by the commissioner.

21 At the [~~time of application for licensure and each renewal,~~
22 ~~each~~] commissioner's request, the reinsurance intermediary-

1 manager shall provide the commissioner with proof of the bond
2 and the policy, and appropriate documentation to show that the
3 bond and the policy continue to be in effect or that a new bond
4 and a new policy have been secured.

5 (d) (1) The commissioner may issue a reinsurance intermediary
6 license to any person, firm, association, or
7 corporation that has complied with the requirements of
8 this article. Any such license issued to a firm or
9 association [~~will~~] shall authorize all the members of
10 that firm or association and any designated employees
11 to act as reinsurance intermediaries under the
12 license, and all those persons shall be named in the
13 application and any supplements thereto. Any such
14 license issued to a corporation shall authorize all of
15 the officers, and any designated employees and
16 directors thereof to act as reinsurance intermediaries
17 on behalf of the corporation, and all those persons
18 shall be named in the application and any supplements
19 thereto.

20 (2) If the applicant for a reinsurance intermediary
21 license is a nonresident, the applicant, as a
22 condition precedent to receiving or holding a license,

1 shall designate the commissioner as agent for service
2 of process in the manner, and with the same legal
3 effect, provided for by this article for service of
4 process upon unauthorized insurers; and also shall
5 furnish the commissioner with the name and address of
6 a resident of this State upon whom notices or orders
7 of the commissioner or process affecting the
8 nonresident reinsurance intermediary may be served.
9 The licensee shall promptly notify the commissioner in
10 writing of every change in its designated agent for
11 service of process, and such change shall not become
12 effective until acknowledged by the commissioner.

13 (3) The commissioner shall issue a nonresident reinsurance
14 intermediary license if:

15 (A) The applicant is currently licensed as a resident
16 reinsurance intermediary or insurance producer
17 pursuant to article 9A and in good standing in
18 the applicant's home state;

19 (B) The applicant has submitted the proper request
20 for licensure and paid the fees required by
21 section 431:7-101;

1 (C) The applicant has submitted or transmitted to the
2 commissioner the application for licensure that
3 the applicant submitted to the applicant's home
4 state, or in lieu of the same, a completed
5 uniform application; and

6 (D) The person's home state awards nonresident
7 license to residents of this State on the same
8 basis.

9 (e) The commissioner may refuse to issue a reinsurance
10 intermediary license if, in the commissioner's judgment, the
11 applicant, anyone named on the application, or any member,
12 principal, officer, or director of the applicant, is not
13 trustworthy, or that any controlling person of the applicant is
14 not trustworthy to act as a reinsurance intermediary, or that
15 any of the foregoing has given cause for revocation or
16 suspension of such license, or has failed to comply with any
17 prerequisite for the issuance of the license. Upon written
18 request therefor, the commissioner shall furnish a summary of
19 the basis for refusal to issue a license, which document shall
20 be privileged and not subject to disclosure pursuant to chapter
21 92F.

1 (f) Licensed attorneys at law of this State when acting in
2 their professional capacity as such shall be exempt from this
3 section.

4 (g) Licensing procedure, duration, and related matters
5 affecting reinsurance intermediaries shall be governed by
6 articles 7 and 9A."

7 SECTION 12. Section 431:9B-106, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "§431:9B-106 Required contract provisions; reinsurance
10 intermediary-managers. Transactions between a reinsurance
11 intermediary-manager and the reinsurer it represents in that
12 capacity shall only be entered into pursuant to a written
13 contract, specifying the responsibilities of each party that
14 shall be approved by the reinsurer's board of directors. [~~At~~
15 ~~least thirty days before the reinsurer assumes or cedes business~~
16 ~~through the reinsurance intermediary manager, a true copy of the~~
17 ~~approved contract shall be filed with the commissioner for~~
18 ~~approval.] The contract, at a minimum, shall provide that:~~

19 (1) The reinsurer may terminate the contract for cause
20 upon written notice to the reinsurance intermediary-
21 manager. The reinsurer may immediately suspend the
22 authority of the reinsurance intermediary-manager to

1 assume or cede business during the pendency of any
2 dispute regarding the cause for termination;

3 (2) The reinsurance intermediary-manager [~~will~~] shall
4 render accounts to the reinsurer accurately detailing
5 all material transactions, including information
6 necessary to support all commissions, charges, and
7 other fees received by or owing to the reinsurance
8 intermediary-manager, and remit all funds due under
9 the contract to the reinsurer on not less than a
10 monthly basis;

11 (3) All funds collected for the reinsurer's account [~~will~~]
12 shall be held by the reinsurance intermediary-manager
13 in a fiduciary capacity and deposited in a bank that
14 is a qualified United States financial institution.
15 The reinsurance intermediary-manager may retain no
16 more than three months estimated claims payments and
17 allocated loss adjustment expenses. The reinsurance
18 intermediary-manager shall maintain a separate bank
19 account for each reinsurer that it represents;

20 (4) For at least ten years after expiration of each
21 contract of reinsurance transacted by the reinsurance
22 intermediary-manager, the reinsurance intermediary-

1 manager [~~will~~] shall keep a complete record for each
2 transaction showing:

- 3 (A) The type of contract, limits, underwriting
4 restrictions, classes or risks, and territory;
- 5 (B) Period of coverage, including effective and
6 expiration dates, cancellation provisions and
7 notice required for cancellation, and disposition
8 of outstanding reserves on covered risks;
- 9 (C) Reporting and settlement requirements of
10 balances;
- 11 (D) Rate used to compute the reinsurance premium;
- 12 (E) Names and addresses of reinsurers;
- 13 (F) Rates of all reinsurance commissions, including
14 the commissions on any retrocessions handled by
15 the reinsurance intermediary-manager;
- 16 (G) Related correspondence and memoranda;
- 17 (H) Proof of placement;
- 18 (I) Details regarding retrocessions handled by the
19 reinsurance intermediary-manager, as permitted by
20 section 431:9B-108(d), including the identity of
21 retrocessionaires and percentage of each contract
22 assumed or ceded;

S.B. NO. 2768

- 1 (J) Financial records, including but not limited to,
2 premium and loss accounts; and
- 3 (K) When the reinsurance intermediary-manager places
4 a reinsurance contract on behalf of a ceding
5 insurer:
- 6 (i) Directly from any assuming reinsurer,
7 written evidence that the assuming reinsurer
8 has agreed to assume the risk; or
- 9 (ii) If placed through a representative of the
10 assuming reinsurer, other than an employee,
11 written evidence that the reinsurer has
12 delegated binding authority to the
13 representative;
- 14 (5) The reinsurer [~~will~~] shall have access and the right
15 to copy all accounts and records maintained by the
16 reinsurance intermediary-manager related to its
17 business in a form usable by the reinsurer;
- 18 (6) The contract [~~cannot~~] shall not be assigned in whole
19 or in part by the reinsurance intermediary-manager;
- 20 (7) The reinsurance intermediary-manager [~~will~~] shall
21 comply with the written underwriting and rating

- 1 standards established by the insurer for the
2 acceptance, rejection, or cession of all risks;
- 3 (8) [~~Sets~~] The contract sets forth the rates, terms, and
4 purposes of commissions, charges, and other fees that
5 the reinsurance intermediary-manager may levy against
6 the reinsurer;
- 7 (9) If the contract permits the reinsurance intermediary-
8 manager to settle claims on behalf of the reinsurer:
- 9 (A) All claims shall be reported to the reinsurer in
10 a timely manner;
- 11 (B) A copy of the claim file shall be sent to the
12 reinsurer at its request or as soon as it becomes
13 known that the claim:
- 14 (i) Has the potential to exceed the lesser of an
15 amount determined by the commissioner or the
16 limit set by the reinsurer;
- 17 (ii) Involves a coverage dispute;
- 18 (iii) May exceed the reinsurance intermediary-
19 manager's claims settlement authority;
- 20 (iv) Is open for more than six months; or

- 1 (v) Is closed by payment of the lesser of an
2 amount set by the commissioner or an amount
3 set by the reinsurer;
- 4 (C) All claim files shall be the joint property of
5 the reinsurer and reinsurance intermediary-
6 manager. However, upon an order of liquidation
7 of the reinsurer, the files shall become the sole
8 property of the reinsurer or its estate; the
9 reinsurance intermediary-manager shall have
10 reasonable access to and the right to copy the
11 files on a timely basis; and
- 12 (D) Any settlement authority granted to the
13 reinsurance intermediary-manager may be
14 terminated for cause upon the reinsurer's written
15 notice to the reinsurance intermediary-manager or
16 upon the termination of the contract. The
17 reinsurer may suspend the settlement authority
18 during the pendency of the dispute regarding the
19 cause of termination;
- 20 (10) If the contract provides for a sharing of interim
21 profits by the reinsurance intermediary-manager, [~~that~~
22 ~~such~~] interim profits shall not be paid until one year

1 after the end of each underwriting period for property
2 business and five years after the end of each
3 underwriting period for casualty business (or a later
4 period set by the commissioner for specified lines of
5 insurance) and not until the adequacy of reserves on
6 remaining claims has been verified pursuant to section
7 431:9B-108(c);

8 (11) The reinsurance intermediary-manager shall annually
9 provide the reinsurer with a statement of its
10 financial condition prepared by an independent
11 certified accountant;

12 (12) The reinsurer shall, at a minimum, semiannually
13 conduct an on-site review of the underwriting and
14 claims processing operations of the reinsurance
15 intermediary-manager;

16 (13) The reinsurance intermediary-manager shall disclose to
17 the reinsurer any relationship it has with any insurer
18 prior to ceding or assuming any business with the
19 insurer pursuant to the contract; and

20 (14) Within the scope of its actual or apparent authority
21 the acts of the reinsurance intermediary-manager shall

1 be deemed to be the acts of the reinsurer on whose
2 behalf it is acting."

3 SECTION 13. Section 431:10D-622, Hawaii Revised Statutes,
4 is amended by adding two new definitions to be appropriately
5 inserted and to read as follows:

6 "Approved continuing education course provider" means an
7 individual or entity that is approved to offer continuing
8 education courses pursuant to article 9A.

9 "Continuing education credit" means one continuing
10 education credit hour. For the purposes of this paragraph,
11 "credit hour" shall have the same meaning as set forth in
12 section 431:9A-102."

13 SECTION 14. Section 431:10D-626, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "§431:10D-626 Insurance producer training. (a) An
16 insurance producer shall not solicit the sale of an annuity
17 product unless the insurance producer has adequate knowledge of
18 the product to recommend the annuity and the insurance producer
19 is in compliance with the insurer's standards for product
20 training. An insurance producer may rely on insurer-provided
21 product-specific training standards and materials to comply with
22 this subsection.

1 (b) Any insurance producer who is authorized to sell [~~life~~
2 ~~or accident and health or sickness insurance and who engages in~~
3 ~~the sale of~~] annuity products on or before January 31, 2012,
4 shall complete by January 31, 2012, a one-time training course
5 on annuity products [~~that is approved by the commissioner and is~~
6 ~~conducted by an approved continuing education course provider.~~]
7 meeting the requirements of subsection (d).

8 (c) An insurance producer who obtains a life [~~insurance~~]
9 or variable life and variable annuity products line of authority
10 after January 31, 2012, shall not engage in the sale of
11 annuities until the insurance [~~provider~~] producer has completed
12 training [~~that meets the following~~] meeting the requirements[+]
13 of subsection (d).

14 (d) The training required by this section shall be
15 approved by the commissioner, be conducted by an approved
16 continuing education course provider, and meet the following
17 requirements:

- 18 (1) The minimum length of the training shall be sufficient
19 to qualify for at least four continuing education
20 credits;
- 21 (2) The training shall include information on the
22 following topics:

S.B. NO. 2768

- 1 (A) The types and various classifications of
2 annuities available on the market;
- 3 (B) Identification of the parties to an annuity;
- 4 (C) How fixed, variable, and indexed annuity contract
5 provisions affect consumers;
- 6 (D) The application of income taxation to qualified
7 and non-qualified annuities;
- 8 (E) The primary uses of annuities; and
- 9 (F) Appropriate sales practices, replacement, and
10 disclosure requirements; and
- 11 (3) The training shall not include any marketing
12 information for products of any particular insurer or
13 training on sales techniques.
- 14 (e) A provider of an annuity training course intending to
15 comply with this section shall register as an approved
16 continuing education course provider in this State and comply
17 with the rules and guidelines applicable to insurance producer
18 continuing education courses as set forth in article 9A.
- 19 (f) Annuity training courses may be conducted and
20 completed by classroom or self-study methods in accordance with
21 article 9A.

1 (g) Providers of annuity training shall comply with the
2 reporting requirements and shall issue certificates of
3 completion in accordance with article 9A.

4 (h) The satisfaction of the training requirements of
5 another state that are substantially similar to the provisions
6 of this section shall be deemed to satisfy the training
7 requirements of this section in this State.

8 [~~e~~] (i) An insurer shall verify that an insurance
9 producer has completed the annuity training course required by
10 this section before allowing the producer to sell an annuity
11 product for the insurer. An insurer may satisfy its
12 responsibility under this subsection by obtaining certificates
13 of completion [~~from the training course provider, or by~~
14 ~~obtaining reports from the commissioner, from training course~~
15 ~~providers,~~] of the training course or from a reasonably reliable
16 commercial database vendor that has a reporting arrangement with
17 approved [~~insuranc~~] continuing education course providers."

18 SECTION 15. In codifying the new sections added to part
19 III of article 8 of chapter 431, Hawaii Revised Statutes, by
20 section 1 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 and referring to the new sections in this Act.

S.B. NO. 2768

1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect on July 1, 2012;
4 provided that sections 6, 13, and 14 shall take effect
5 retroactive to January 1, 2012.

6
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8

INTRODUCED BY: 

BY REQUEST

S.B. NO. 2768

Report Title:

Insurance; Licensing Requirements

Description:

Eliminates underlying producer license requirement for applying and obtaining surplus lines broker license; provides greater clarity and consistency in licensing insurance producers selling annuity products; clarifies reinsurance intermediary licensing requirements and removes unnecessary licensing conditions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: Comply with the uniform standards of the National Association of Insurance Commissioners (NAIC) by having a stand alone surplus lines broker license and eliminating the producer license as a prerequisite to obtaining a surplus lines broker license.

Provide greater clarity and consistency in the licensing of insurance producers selling annuity products in Hawaii.

Clarify the licensing requirements for reinsurance intermediaries and remove unnecessary conditions for licensing.

Enhance the Insurance Commissioner's (Commissioner) enforcement authority by allowing the Commissioner to order restitution for violations of the insurance code.

MEANS: Add nine new sections to part III of article 8 of chapter 431 and amend sections 431:2-203(d) and (g), 431:8-102, 431:8-310, 431:8-317, 431:9A-102, 431:9A-105(d), 431:9A-108, 431:9A-124, 431:9B-101, 431:9B-102, 431:9B-106, 431:10D-622, and 431:10D-626, Hawaii Revised Statutes (HRS).

Add new definitions of "approved continuing education course provider" and "continuing education credit" to section 431:10D-622, HRS; amend definition of "credit hour" in section 431:9A-102, HRS; and amend section 431:10D-626, HRS.

Amend definition of "reinsurance intermediary" and repeal definition of "licensed producer" or "producer" in section

431:9B-101, HRS; and amend sections 431:9B-102 and 431:9B-106, HRS.

JUSTIFICATION:

Currently, a producer license is required to apply and obtain a surplus lines broker license. By eliminating the additional requirement of a producer's license, applicants may choose to only be licensed as surplus lines brokers. Article 8, chapter 431, HRS, will remain unchanged in allowing licensed insurance producers to obtain a surplus lines broker's license without undergoing a separate licensing examination provided that certain requirements are met.

Act 108, Session Laws of Hawaii 2011, adopted the NAIC Suitability in Annuity Transactions Model Regulation (NAIC Model) to comply with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act required states to adopt the NAIC Model, which includes the annuity training requirement in section 431:10D-626, to protect senior investors and enable states and eligible entities to qualify for federal grants.

The proposed amendments would provide greater clarity and consistency and would better align section 431:10D-626 with the NAIC Model by:

1. Including new definitions for "approved continuing education course provider" and "continuing education credit";
2. Amending the definition of "credit hour" to meet NAIC guidelines for acceptable procedures to determine the appropriate number of continuing education credit hours;
3. Clarifying that insurance producers authorized to sell annuity products must complete a one-time training

course on annuity products by
January 31, 2012;

4. Clarifying that insurance producers who obtain a life insurance or variable life and variable annuities line of authority after January 31, 2012, cannot sell annuities until the insurance producer has completed the one-time training course on annuity products;
5. Inserting provisions of the NAIC Model that should have been included in section 431:10D-626, which:
 - A. Require the provider of an annuity training course to register as an approved continuing education provider and comply with applicable rules and guidelines as required under article 9A, chapter 431, HRS ("article 9A");
 - B. Allow annuity training courses to be conducted and completed by classroom or self-study methods in accordance with article 9A;
 - C. Require providers of annuity training to comply with reporting requirements and issue certificates of completion in accordance with article 9A; and
 - D. Allow for the satisfaction of annuity sales training requirements of another state that are substantially similar to provisions that are deemed to satisfy the training requirements in Hawaii;
6. Providing that an insurer may verify completion of annuity training by obtaining certificates of completion of the training course or from a

reasonably reliable commercial database vendor that has a reporting arrangement with approved continuing education course providers; and

7. Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

The bill has retroactive application back to January 1, 2012, to reduce confusion in the application of annuity training requirements for insurance producers and approved continuing education course providers.

The bill eliminates ambiguity in the licensing requirements for reinsurance intermediaries by requiring reinsurance intermediaries to be licensed under article 9B, chapter 431, HRS. The bill follows the NAIC Reinsurance Intermediary Model Act and eliminates the submission of unnecessary documents.

Section 431:2-203 currently allows the Commissioner to impose monetary fines in addition to revocation, suspension, or denial of a license or certificate of authority. The commissioner does not have the statutory authority to require restitution from violators.

Impact on the public: Enables the State to better protect Hawaii consumers by:

1. Eliminating additional requirements to obtain a producer's license prior to applying and obtaining a surplus lines broker's license;
2. Continuing to allow licensed insurance producers to obtain a surplus lines broker's license without undergoing a separate licensing examination provided that certain requirements are met;

3. Protecting Hawaii's senior citizens by strengthening insurance producer licensing requirements;
4. Clarifying that reinsurance intermediaries are required to be licensed as such and setting forth a streamlined and unambiguous licensing process for reinsurance intermediary applicants; and
5. Allowing the Commissioner to order restitution for consumers harmed by insurance licensees.

Impact on the department and other agencies:
These amendments would enable the department to more efficiently license surplus lines brokers, insurance producers, and reinsurance intermediaries and to protect the interests of Hawaii's citizens.

GENERAL FUND:

None.

OTHER FUNDS:

None.

PPBS PROGRAM
DESIGNATION:

CCA-106.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

July 1, 2012; January 1, 2012 for sections 431:9A-102, 431:10D-622, and 431:10D-626, HRS.