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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 431:2-403, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) Violation of subsection (a) is a criminal offense and  
4 shall constitute:

5 (1) A class B felony if the value of the benefits,  
6 recovery, or compensation obtained or attempted to be  
7 obtained [~~is more than~~] exceeds \$20,000;

8 (2) A class C felony if the value of the benefits,  
9 recovery, or compensation obtained or attempted to be  
10 obtained [~~is more than \$300,~~] exceeds \$750; or

11 (3) A misdemeanor if the value of the benefits, recovery,  
12 or compensation obtained or attempted to be obtained  
13 is [~~\$300 or less,~~] not in excess of \$750."

14 SECTION 2. Section 431:3-212, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§431:3-212 Application for authority.** To apply for an  
17 original certificate of authority, an insurer shall[+] file with  
18 the commissioner a Uniform Certificate of Authority Application

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1 from the National Association of Insurance Commissioners that  
2 shall set forth or be accompanied by all of the following:

3 (1) [~~File with the commissioner its~~] The insurer's request  
4 showing:

5 (A) Its name, in compliance with sections 431:3-  
6 202(b) and 431:4-104(d)(1), home office location,  
7 type of insurer, organization date, [~~and~~] state  
8 or country of its domicile, and name and location  
9 of the principal office of its attorney-in-fact,  
10 if a reciprocal insurer;

11 (B) The classes of insurance it proposes to transact;  
12 and

13 (C) Additional information as the commissioner may  
14 reasonably require [~~+~~].

15 (2) [~~File with the commissioner:~~] Documents including the  
16 following:

17 (A) A copy of its charter as amended or [~~such copy~~]  
18 certified by the proper public officer of the  
19 state or country of domicile, if a foreign or  
20 alien insurer;

21 (B) A copy of its bylaws as amended, certified by its  
22 proper officer;

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- 1 (C) A copy of its annual statement as of December 31  
2 last preceding;
- 3 (D) An appointment of the commissioner as its  
4 attorney to receive service of legal process, if  
5 a foreign or alien insurer[7] or a domestic  
6 reciprocal insurer;
- 7 (E) The name and business address of its authorized  
8 resident agent upon whom process may be served in  
9 all cases, if a foreign or alien insurer;
- 10 (F) A copy of the appointment and authority of its  
11 United States manager, certified by its proper  
12 officer, if an alien insurer;
- 13 (G) A certificate from the proper public official of  
14 its state or country of domicile showing that it  
15 is duly organized and [~~is~~] authorized to transact  
16 the classes of insurance proposed to be  
17 transacted, if a foreign or alien insurer;
- 18 (H) The declaration required by section 431:4-409, if  
19 a domestic reciprocal insurer;
- 20 (I) [~~Certificate~~] A certificate of the proper public  
21 official as to any deposit made or held in  
22 compliance with this code;

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1 (J) [~~Copy~~] A copy of the report of the last  
2 examination made of the insurer certified by the  
3 insurance supervisory official of its state of  
4 domicile or entry into the United States, if a  
5 foreign or alien insurer; and

6 (K) Other documents or stipulations as the  
7 commissioner may reasonably require to evidence  
8 compliance with this code [~~, and~~].

9 (3) [~~Deposit~~] A deposit with the commissioner of the  
10 appropriate fees required by this code."

11 SECTION 3. Section 431:3-212.5, Hawaii Revised Statutes,  
12 is amended by amending subsection (b) to read as follows:

13 "(b) Each transferring insurer shall file new policy forms  
14 on or before the effective date of the transfer, if such forms  
15 are required to be approved by the commissioner. The insurer  
16 may use existing policy forms with appropriate endorsements if  
17 permitted by [~~, and under such conditions as approved by,~~] the  
18 commissioner. Every [~~such~~] transferring insurer shall notify  
19 the commissioner of the details of the proposed transfer and  
20 shall file promptly a Uniform Certificate of Authority  
21 Application for any resulting amendments to corporate documents  
22 filed or required to be filed with the commissioner."

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1 SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

- 5 (1) Certificate of authority:
  - 6 (A) Application for [a] certificate of authority . \$900
  - 7 (B) Issuance of certificate of authority ..... \$600
  - 8 (C) Application for motor vehicle self-insurance . \$300
- 9 (2) Organization of domestic insurers and affiliated  
10 corporations:
  - 11 (A) Application for [a] solicitation permit .... \$1,500
  - 12 (B) Issuance of solicitation permit ..... \$150
- 13 (3) Producer's license:
  - 14 (A) Issuance [7] of regular license ..... \$50
  - 15 (B) Issuance [7] of temporary license ..... \$50
- 16 (4) Nonresident producer's license: Issuance ..... \$75
- 17 (5) Independent adjuster's license: Issuance ..... \$75
- 18 (6) Public adjuster's license: Issuance ..... \$75
- 19 (7) Claims adjuster's limited license: Issuance ..... \$75
- 20 (8) Independent bill reviewer's license: Issuance ..... \$80
- 21 (9) Limited producer's license: Issuance ..... \$60
- 22 (10) Managing general agent's license: Issuance ..... \$75

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- 1       (11) Reinsurance intermediary's license: Issuance..... \$75
- 2       (12) Surplus lines broker's license: Issuance ..... \$150
- 3       (13) Service contract provider's registration: Issuance . \$75
- 4       (14) Approved course provider certificate: Issuance .... \$100
- 5       (15) Approved continuing education course certificate:
- 6             Issuance ..... \$30
- 7       (16) Vehicle protection product warrantor's registration:
- 8             Issuance ..... \$75
- 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 ..... \$1,000
- 14       (19) Legal service plan certificate of authority:
- 15            Issuance before July 1, 2014 ..... \$1,000
- 16            Issuance on or after July 1, 2014 ..... \$500
- 17       (20) Life settlement provider's license:
- 18            Issuance before July 1, 2014 ..... \$150
- 19            Issuance on or after July 1, 2014 ..... \$75
- 20       (21) Life settlement broker's license:
- 21            Issuance before July 1, 2014 ..... \$150
- 22            Issuance on or after July 1, 2014 ..... \$75

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1           (22) Examination for license: For each examination, a fee  
2           to be established by the commissioner."

3           SECTION 5. Section 431:9-201, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5           "(b) Notwithstanding subsection (a), following a  
6 ~~[catastrophe in this State,]~~ declaration by the commissioner  
7 authorizing assistance of nonresident adjusters, a Hawaii  
8 license shall not be required of a nonresident adjuster for the  
9 adjustment of losses; provided that:

10           (1) The common losses suffered that are to be adjusted are  
11 a direct result of ~~[the catastrophe]~~ an event and  
12 ~~[shall be]~~ are so severe that licensed adjusters and  
13 licensed independent adjusters who are residents of  
14 this State will be unable to adjust the losses within  
15 a reasonable time as determined by the commissioner;

16           (2) The nonresident adjuster provides ~~[to]~~ the  
17 commissioner a certified copy of the adjuster's  
18 current license in another state. The other state  
19 shall have substantially similar licensing  
20 requirements to section 431:9-222; and

21           (3) Within three working days of the commencement of work  
22 by the nonresident adjuster, the insurance company,

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1 independent adjusting company, or producer that is  
2 using the adjuster shall provide on its letterhead to  
3 the commissioner:

- 4 (A) The name of the nonresident adjuster;  
5 (B) The nonresident adjuster's Hawaii mailing and  
6 business addresses and phone numbers; and  
7 (C) The nonresident adjuster's permanent home and  
8 business addresses and phone numbers.

9 Upon satisfaction of all of these requirements, the  
10 nonresident adjuster may be registered with the commissioner and  
11 adjust ~~[catastrophe]~~ the event's losses in this State for up to  
12 one hundred twenty days from the date of registration or for a  
13 period of time determined by the commissioner, whichever is  
14 less.

15 As used in this subsection, [~~"catastrophe"~~] "event" means  
16 insured property losses in Hawaii that result from a sudden,  
17 specific, and natural or manmade disaster or phenomenon, as  
18 determined by the commissioner."

19 SECTION 6. Section 431:9A-102, Hawaii Revised Statutes, is  
20 amended by amending the definition of "terminate" to read as  
21 follows:

22 ""Terminate" means:



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- 1 (1) To cancel the relationship between an insurance  
2 producer and an insurer; or  
3 ~~[-(2) To cancel the relationship between an appointing-~~  
4 ~~producer and another producer; or~~  
5 ~~-(3)]~~ (2) To terminate a producer's authority to transact  
6 insurance."

7 SECTION 7. Section 431:9A-114, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§431:9A-114 **Appointments.** (a) An insurance producer  
10 shall not act as an agent of an insurer unless the [insurance]  
11 producer becomes an appointed agent of that insurer [~~or is~~  
12 ~~contracted with and appointed by an insurance producer so~~  
13 ~~appointed]~~.

14 (b) To appoint a producer as its agent, the [appointing]  
15 insurer [~~or producer]~~ shall file, in a format approved by the  
16 commissioner, a notice of appointment within fifteen days from  
17 the date the agency or business entity contract is executed or  
18 the first insurance application is submitted to the insurer [~~or~~  
19 ~~producer]~~. If the appointment form is not received by the  
20 commissioner within the fifteen-day period, the appointment  
21 shall become effective on the date on which the commissioner  
22 receives the appointment form. A producer shall disclose to a

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1 client if the conditions of subsection (a) have not been met.

2 An insurer [~~or producer~~] may also elect to appoint a producer to  
3 all or some insurers within the insurer's [~~or producer's~~]  
4 holding company system or group by filing with the commissioner  
5 a single appointment notice.

6 (c) Upon receipt of the notice of appointment and within a  
7 reasonable time not to exceed thirty days, the commissioner  
8 shall verify that the [~~insurance~~] producer is eligible for  
9 appointment. If the [~~insurance~~] producer is determined to be  
10 ineligible for appointment, the commissioner shall notify the  
11 appointing insurer [~~or producer~~] within five days of its  
12 determination.

13 (d) An appointing insurer [~~or producer~~] shall pay an  
14 appointment fee, in the amount and method of payment set forth  
15 in article 7, for each [~~insurance~~] producer appointed by the  
16 appointing insurer [~~or producer~~].

17 (e) An appointing insurer [~~or producer~~] shall remit, in a  
18 manner prescribed by the commissioner, a renewal appointment fee  
19 in the amount set forth in article 7."

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1 SECTION 8. Section 431:9A-115, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§431:9A-115 Notification to commissioner of termination.

4 (a) A producer who terminates the appointment, employment,  
5 contract, or other insurance business relationship with an  
6 insurer shall notify the commissioner within thirty days  
7 following the effective date of the termination, using the  
8 applicable format prescribed by the commissioner. An insurer~~[,]~~  
9 or its authorized representative ~~[of the insurer, or a producer]~~  
10 that terminates the appointment, employment, contract, or other  
11 insurance business relationship with a producer shall notify the  
12 commissioner within thirty days following the effective date of  
13 the termination, using the applicable format prescribed by the  
14 commissioner. An insurer~~[, an]~~ or its authorized representative  
15 ~~[of the insurer, or a producer who]~~ that terminates a producer  
16 for one of the reasons set forth in section 431:9A-112, or ~~[who]~~  
17 that has knowledge the producer was found by a court,  
18 governmental body, or self-regulatory organization to have  
19 engaged in any of the activities in section 431:9A-112, shall  
20 use the particular format for that situation as prescribed by  
21 the commissioner. Upon the written request of the commissioner,  
22 the insurer shall provide additional information, documents,

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1 records, or other data pertaining to the termination or activity  
2 of the producer.

3 (b) The insurer~~[, an]~~ or its authorized representative [of  
4 ~~the insurer, or a producer~~] shall promptly notify the  
5 commissioner in a format acceptable to the commissioner if, upon  
6 further review or investigation, the insurer~~[, an]~~ or its  
7 authorized representative [~~of the insurer, or a producer~~]  
8 discovers additional information that would have been reportable  
9 to the commissioner in accordance with subsection (a), had the  
10 insurer~~[,]~~ or its authorized representative [~~of the insurer, or~~  
11 ~~producer then~~] known of its existence.

12 (c) The insurer~~[,]~~ and its authorized representative [of  
13 ~~the insurer, and the producer~~] are subject to the following:

14 (1) Within fifteen days after making the notification  
15 required by subsections (a) and (b), the insurer~~[,]~~ or  
16 its authorized representative [~~of the insurer, or the~~  
17 ~~producer~~] shall mail a copy of the notification to the  
18 producer at the producer's last known address. If the  
19 producer is terminated for any of the causes listed in  
20 section 431:9A-112, the insurer~~[,]~~ or its authorized  
21 representative [~~of the insurer, or the producer~~] shall  
22 provide a copy of the notification to the producer at

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1 the producer's last known address by certified mail,  
2 return receipt requested, postage prepaid or by  
3 overnight delivery using a nationally recognized  
4 carrier.

5 (2) Within thirty days after the producer has received the  
6 original or additional notification, the producer may  
7 file written comments concerning the substance of the  
8 notification with the commissioner. The producer, by  
9 the same means, shall simultaneously send a copy of  
10 the comments to the reporting insurer~~[,]~~ or its  
11 authorized representative [~~of the insurer, or the~~  
12 ~~producer~~], and the comments shall become [a] part of  
13 the commissioner's file and shall accompany every copy  
14 of a report distributed or disclosed for any reason  
15 about the producer as permitted under subsection  
16 [~~(e)~~] (f).

17 (d) The producer initiating the termination is subject to  
18 the following:

19 (1) Within fifteen days after making the notification  
20 required by subsection (a), the producer shall mail a  
21 copy of the notification to the insurer at the  
22 insurer's last known address.

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1        (2) Within thirty days after the insurer has received the  
2        original or additional notification, the insurer may  
3        file written comments concerning the substance of the  
4        notification with the commissioner. The insurer, by  
5        the same means, shall simultaneously send a copy of  
6        the comments to the producer, and the comments shall  
7        become part of the commissioner's file and shall  
8        accompany every copy of a report distributed or  
9        disclosed for any reason about the insurer as  
10       permitted under subsection (f).

11       ~~[(d)]~~ (e) Immunity from civil liability for notification  
12 applies as follows:

13       (1) In the absence of actual malice, an insurer, the  
14 insurer's authorized representative, a producer, the  
15 commissioner, or an organization of which the  
16 commissioner is a member and that compiles the  
17 information and makes it available to other  
18 commissioners or regulatory or law enforcement  
19 agencies shall not be subject to civil liability~~[, and~~  
20 a]. A civil cause of action of any nature shall not  
21 arise against these entities or their respective  
22 agents or employees~~[,]~~ as a result of [any]:

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- 1            (A) Any statement or information required by or  
2                            provided pursuant to this section [~~or any~~];
- 3            (B) Any information relating to any statement that  
4                            may be requested in writing by the  
5                            commissioner[~~r~~] from an insurer or producer; or  
6                            [a]
- 7            (C) A statement by a terminating insurer or producer  
8                            to an insurer or producer limited solely [~~and~~  
9                            ~~exclusively~~] to whether a termination under  
10                            subsection (a) was reported to the commissioner,  
11                            provided that the propriety of any termination  
12                            under subsection (a) is certified in writing by  
13                            an officer or authorized representative of the  
14                            insurer or producer terminating the relationship.
- 15            (2) In any action brought against a person that may have  
16                            immunity under paragraph (1) for making any statement  
17                            required by this section or for providing any  
18                            information relating to any statement that may be  
19                            requested by the commissioner, the party bringing the  
20                            action shall plead specifically in any allegation that  
21                            paragraph (1) does not apply because the person making

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1 the statement or providing the information did so with  
2 actual malice.

3 (3) [~~Paragraphs~~] Paragraph (1) or (2) shall not abrogate  
4 or modify any existing statutory or common law  
5 privileges or immunities.

6 [~~(e)~~] (f) Confidentiality and privilege from disclosure  
7 [~~is~~] are established as follows:

8 (1) Any documents, materials, or other information in the  
9 control or possession of the commissioner or [~~any~~] the  
10 commissioner's agent [~~of the commissioner~~] that is  
11 furnished by an insurer, a producer, or an employee or  
12 agent [~~thereof who is~~] acting on behalf of the insurer  
13 or producer, or is obtained by the commissioner, [~~any~~]  
14 the commissioner's agent [~~of the commissioner~~], the  
15 insurance division, or any employee of the insurance  
16 division, in an investigation pursuant to this section  
17 shall be confidential and privileged, shall not be  
18 subject to chapter 92F, [~~shall not be subject to~~]  
19 subpoena, [~~shall not be subject to~~] or discovery, and  
20 shall not be admissible in evidence in any civil  
21 action; provided that the commissioner or the  
22 commissioner's designee is authorized to use the



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1 documents, materials, or other information in the  
2 furtherance of any regulatory or legal action brought  
3 as a part of the commissioner's duties.

4 (2) Neither the commissioner nor any person who received  
5 documents, materials, or other information while  
6 acting under the authority of the commissioner shall  
7 be required to testify in any civil action concerning  
8 any confidential documents, materials, or information  
9 subject to paragraph (1).

10 (3) Any provision to the contrary notwithstanding, the  
11 commissioner may:

12 (A) Share documents, materials, or other information,  
13 including the confidential and privileged  
14 documents, materials, or information subject to  
15 paragraph (1), with other state, federal, and  
16 international regulatory and law enforcement  
17 agencies and authorities, the National  
18 Association of Insurance Commissioners, and  
19 their affiliates or subsidiaries; provided that  
20 the recipient agrees to maintain the  
21 confidentiality and privileged status of the  
22 document, material, or other information;

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1 (B) Receive documents, materials, or information,  
2 including otherwise confidential and privileged  
3 documents, materials, or information, from the  
4 National Association of Insurance Commissioners,  
5 its affiliates or subsidiaries, and ~~from~~ state,  
6 federal, and international regulatory and law  
7 enforcement agencies and authorities and shall  
8 maintain as confidential or privileged any  
9 document, material, or information received with  
10 the notice or ~~the~~ understanding that it is  
11 confidential or privileged under the laws of the  
12 jurisdiction that is the source of the document,  
13 material, or information; and  
14 (C) Enter into agreements governing sharing and use  
15 of information consistent with this subsection.

16 (4) No waiver of any applicable privilege or claim of  
17 confidentiality in the documents, materials, or  
18 information shall occur as a result of disclosure to  
19 the commissioner under this section or ~~as a result~~  
20 ~~of~~ sharing, receiving, or using the information as  
21 authorized in paragraph (3).

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1           (5) Nothing in this article shall prohibit the  
2           commissioner from releasing final~~[7]~~ adjudicated  
3           actions, including terminations that are open to  
4           public inspection pursuant to section 431:2-209 to a  
5           database or other clearinghouse service maintained by  
6           the National Association of Insurance Commissioners or  
7           its affiliates or subsidiaries.

8           ~~[(f)]~~ (g) An insurer, ~~[the]~~ its authorized representative  
9           ~~[of the insurer]~~, or a producer who fails to report as required  
10          ~~[under the provisions of]~~ by this section or who is found to  
11          have reported with actual malice by a court of competent  
12          jurisdiction may, after notice and hearing, have its license or  
13          certificate of authority suspended or revoked and may be fined  
14          in accordance with article 2."

15          SECTION 9. Section 431:10C-312, Hawaii Revised Statutes,  
16          is amended to read as follows:

17          "**§431:10C-312 Payment of general excise tax and**  
18          **certificate of ownership fee.** (a) When a replacement vehicle  
19          is provided under section 431:10C-310 or section 431:10C-311,  
20          the insurer shall pay the applicable general excise tax and  
21          ownership fee as follows:

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1 (1) If a cash settlement is provided~~[,]~~ and [~~if~~] the  
2 insured or third-party claimant has purchased a  
3 vehicle within thirty days of the receipt of the  
4 settlement by the insured~~[, the insured has purchased~~  
5 ~~a vehicle,~~] or third-party claimant, the insurer shall  
6 reimburse the insured or third-party claimant for the  
7 applicable general excise tax and certificate of  
8 ownership fee incurred on account of the purchase of  
9 the vehicle, [~~but not exceeding~~] in an amount not to  
10 exceed the amount payable on account of the value of  
11 the total loss vehicle.

12 (2) If the insured or third-party claimant purchases a  
13 vehicle with a market value less than the amount of  
14 the settlement, [~~then~~] the insurer shall reimburse  
15 only the [~~amount of the~~] applicable general excise tax  
16 and certificate of ownership fee incurred by the  
17 insured~~[,]~~ or third-party claimant.

18 (b) If the insured or third-party claimant cannot  
19 substantiate the purchase and the payment of the [~~taxes~~] general  
20 excise tax and certificate of ownership fee~~[,]~~ by [~~submission~~]  
21 submitting to the insurer [~~of~~] appropriate documentation within  
22 thirty-three days after the receipt of settlement, the insurer

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1 shall not be required to reimburse the insured or third-party  
2 claimant for the [~~taxes~~] tax or fee.

3 (c) In lieu of the reimbursement procedure [~~set-out~~] in  
4 subsection (a), the insurer may directly pay the required  
5 [~~amounts-of~~] general excise [~~taxes~~] tax and certificate of  
6 ownership fee to the insured or third-party claimant at the time  
7 of settlement.

8 (d) Written notice of the payment procedure outlined in  
9 this section shall be communicated to the insured or third-party  
10 claimant at the time of settlement, together with any form  
11 required by the insurer for applying for the reimbursement."

12 SECTION 10. Section 431:15-201, Hawaii Revised Statutes,  
13 is amended to read as follows:

14 "**§431:15-201 Commissioner's summary orders and supervision**

15 **proceedings.** (a) If, upon examination or at any other time,  
16 the commissioner finds that any domestic insurer requires  
17 supervision because it is in [~~such~~] a condition [~~as to~~] that  
18 would render the continuance of its business hazardous to the  
19 public or to holders of its policies or certificates of  
20 insurance, or if the domestic insurer gives its consent, then  
21 the commissioner shall issue a supervision order and shall:

22 (1) Notify the insurer of the commissioner's order; and

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1           (2)   Furnish to the insurer a written list of the  
2                   commissioner's requirements to abate the  
3                   commissioner's order.  The commissioner shall also  
4                   proceed, if necessary, against the insurer pursuant to  
5                   section 431:2-203.

6           (b)   During the period of supervision, the commissioner may  
7   appoint a supervisor to supervise the insurer[-], and the  
8   commissioner may employ counsel, clerks, and assistants as  
9   necessary.  The supervisor shall have all the powers and  
10   responsibilities granted under this section.  Any persons  
11   appointed under this section shall serve at the pleasure of the  
12   commissioner.

13           (c)   The compensation of the supervisor, counsel, clerks,  
14   and assistants and all expenses of the supervision shall be  
15   approved by the commissioner and paid out of the funds or assets  
16   of the insurer upon presentation of a detailed account of the  
17   expenses filed by the supervisor or other persons employed or  
18   appointed by the commissioner.  The commissioner may in whole or  
19   in part defer payment of expenses due from the insurer pursuant  
20   to this section upon a showing that payment would adversely  
21   impact the financial condition of the insurer and jeopardize its  
22   recovery during supervision.  Deferred payments shall be made by

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1 the insurer when payment no longer adversely impacts its  
2 financial condition.

3       (d) The order appointing a supervisor shall direct the  
4 supervisor to enforce orders issued under subsection (a) and  
5 ~~[also] may [require that]~~ prohibit the insurer ~~[shall not do]~~  
6 from doing any of the following ~~[things]~~ during the period of  
7 supervision without ~~[the]~~ prior written approval of the  
8 commissioner or ~~[the]~~ supervisor:

9           (1) Dispose of, convey, or encumber any of its assets or  
10           ~~[its]~~ business in force;

11           (2) Withdraw from any of its bank accounts;

12           (3) Lend any of its funds;

13           (4) Invest any of its funds;

14           (5) Transfer any of its property;

15           (6) Incur any debt, obligation, or liability;

16           (7) Merge or consolidate with another company;

17           (8) Enter into any new reinsurance contract or treaty; or

18           (9) Write any new or renewal business.

19       ~~[-e)]~~ (e) Any insurer subject to an order under this  
20 section shall comply with the requirements of the commissioner  
21 within sixty days from the date the supervision order is  
22 served. If the insurer fails to comply within the time

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1 specified, the commissioner may institute proceedings under  
2 section 431:15-301 or section 431:15-306 to have a rehabilitator  
3 or liquidator appointed~~[,]~~ or seek to enforce the order pursuant  
4 to section 431:2-203.

5 ~~[(d)]~~ (f) Any insurer subject to an order under this  
6 section may request a hearing to review the order. The hearing  
7 shall be held as provided in chapter 91, but the request for a  
8 hearing shall not stay the effect of the order. The insurer, at  
9 any time, may waive said hearing and apply for immediate  
10 judicial relief by means of any remedy afforded by law without  
11 first exhausting administrative remedies.

12 ~~[(e)]~~ (g) During the period of supervision, the insurer  
13 may request that the commissioner ~~[tø]~~ review an action taken or  
14 proposed to be taken by the supervisor~~[, specifying where the~~  
15 ~~action complained of is believed not to be]~~ that the insurer  
16 believes is not in the best interest of the insurer.

17 ~~[(f)]~~ (h) If any person has violated any supervision order  
18 issued under this section ~~[which as to the person was then still~~  
19 ~~in effect]~~, the person shall pay a penalty imposed by the  
20 circuit court of the first judicial circuit of this State, which  
21 shall not ~~[tø]~~ exceed \$10,000 for each violation.



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1           ~~[(g)]~~ (i) The commissioner may apply for, and the court  
2 may grant, ~~[such]~~ restraining orders, preliminary ~~[and]~~ or  
3 permanent injunctions, ~~[and]~~ or other orders ~~[as may be deemed~~  
4 ~~necessary and proper]~~ to enforce a supervision order.

5           ~~[(h)]~~ (j) If any person:

6           (1) With authority over or in charge of any segment of the  
7 insurer's affairs; or

8           (2) Who exercises control directly or indirectly over  
9 activities of the insurer through any holding company  
10 or other affiliate of the insurer;

11 knowingly violates any valid order of the commissioner issued  
12 under this section and, as a result of the violation, the net  
13 worth of the insurer is reduced or the insurer suffers loss it  
14 would not otherwise have suffered, the person shall become  
15 personally liable to the insurer for the amount of the reduction  
16 or loss. The commissioner or supervisor may bring an action on  
17 behalf of the insurer in the circuit court of the first judicial  
18 circuit of this State to recover the amount of the reduction or  
19 loss together with any costs."

20           SECTION 11. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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1 SECTION 12. This Act shall take effect upon its approval;  
2 provided that sections 6 and 7 shall take effect on January 1,  
3 2018.

4  
5 INTRODUCED BY: \_\_\_\_\_



6 BY REQUEST

JAN 23 2017

# H .B. NO. 1087

**Report Title:**

Insurance Fraud Violations; Insurer; Certificate of Authority; Uniform Certificate of Authority Application; Fees; Motor Vehicle Self-Insurance; Declaration by the Commissioner; Nonresident Adjusters; Insurance Producer License; Producer Licensing Model Act; Appointments; Notification of Termination; Motor Vehicle Insurance; Third-Party Claimant; General Excise Tax; Certificate of Ownership Fee; Supervision of Insurers

**Description:**

Updates Hawaii Revised Statutes title 24 by: changing the dollar amount of the benefits, recovery, or compensation obtained or attempted to be obtained for a class C felony, and misdemeanor; requiring insurers seeking a certificate of authority to submit a Uniform Certificate of Authority Application to the Insurance Division and to clarify that the insurer's name must comply with sections 431:3-202(b) and 431:4-104(d) (1); including application and service fees charged to motor vehicle self-insurers; allowing the Insurance Commissioner to issue a declaration before an event that may require the use of nonresident adjusters; complying with the National Association of Insurance Commissioners' Producer Licensing Model Act; allowing third-party claimants to claim the general excise tax and certificate of ownership fee in total loss claims; requiring that certain costs and expenses incurred by the Insurance Commissioner during supervisory proceedings be paid or reimbursed by the assets of the insurer; and making technical, nonsubstantive amendments for clarity and consistency.

*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: This measure amends various portions of the Hawaii Insurance Code under Hawaii Revised Statutes (HRS) title 24 (Code) to update and improve existing Code provisions, including:

- (1) Conforming fraud monetary amounts with the penal code by changing the dollar amount of the benefits, recovery, or compensation obtained or attempted to be obtained for a class C felony and misdemeanor by amending section 431:2-403(b);
- (2) Requiring insurers seeking a certificate of authority (COA) to submit a Uniform Certificate of Authority Application (UCAA) to the Insurance Division and to clarify that the insurer's name must comply with sections 431:3-202(b) and 431:4-104(d)(1) by amending section 431:3-212. Amending section 431:3-212.5(b) to require insurers seeking a COA to submit a UCAA to the Insurance Division;
- (3) Charging application and service fees to motor vehicle self-insurers by amending section 431:7-101(a);
- (4) Allowing the Insurance Commissioner (Commissioner) to issue a declaration prior to an event that may require the use of nonresident adjusters, and to not require a governor's proclamation before issuing the declaration, by amending section 431:9-201(b). Currently, the Commissioner must wait until a catastrophe has occurred, which

typically the Governor proclaims. This will allow the Commissioner to proactively trigger the arrival and assistance of nonresident adjusters in the State ahead of an emergency;

- (5) Conforming to the National Association of Insurance Commissioners' (NAIC) Producer Licensing Model Act by eliminating producer-to-producer appointments by amending the definition of "terminate" in section 431:9A-102 and amending sections 431:9A-114 and 431:9A-115;
- (6) Allowing third-party claimants to claim the general excise tax (GET) and certificate of ownership fee in total loss claims by amending section 431:10C-312;
- (7) Requiring that certain costs and expenses incurred by the Commissioner during supervisory proceedings be paid or reimbursed by the assets of the insurer by amending section 431:15-201. This requirement is similar to that in section 431:15-303(a) for rehabilitation proceedings; and
- (8) Making technical, nonsubstantive amendments for clarity and consistency.

## MEANS:

Amend sections 431:2-403(b), 431:3-212, 431:3-212.5(b), 431:7-101(a), 431:9-201(b), 431:9A-102, 431:9A-114, 431:9A-115, 431:10C-312, and 431:15-201, HRS.

## JUSTIFICATION:

- (1) This bill amends HRS section 431:2-403(b) to conform to recent changes to the penal code, which changed the dollar amounts of theft classifications. As insurance fraud is usually charged with theft, section 431:2-403(b) should conform to the classification amounts in the penal code.

- (2) This bill eliminates irregular and non-uniform types of applications, which require more processing time and create inefficiency, and more effectively uses NAIC's tools and services. This bill also clarifies that the names of all insurers must comply with sections 431:3-202(b) and 431:4-104(d)(1), in the same way section 431:4-409(1) requires the names of domestic reciprocal insurers to so comply.
- (3) This bill maintains consistency in fees charged on all licensing applications and recompenses the time and services the Insurance Division provides to motor vehicle self-insurers.
- (4) This bill helps nonresident adjusters assist policyholders quickly during an event by allowing the Commissioner to issue a declaration permitting nonresident adjusters to enter the State to adjust claims. Currently, only after a catastrophe occurs and the Governor issues a proclamation can the Commissioner issue such a declaration. Although insurers are able to preposition assets in anticipation of an event, they are hesitant to do so because they do not know if the Governor will issue a proclamation.
- (5) This bill complies with sections 14 and 15 of the NAIC's Producer Licensing Model Act.
- (6) This bill enables third-party claimants to claim the GET and certificate of ownership fee in total loss claims and thereby establishes parity with first-party insureds who can claim the tax and fee.
- (7) This bill allows the Commissioner to be reimbursed for certain costs and

expenses in supervisory proceedings, in the same manner as rehabilitation proceedings, as both types of proceedings are similar.

Impact on the public: This bill enhances consumer protection by making HRS title 24 provisions more understandable, technically correct, and consistent.

Impact on the department and other agencies:  
None.

GENERAL FUNDS: None.

OTHER FUNDS: Compliance resolution fund.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval, provided that sections 6 and 7 shall take effect on January 1, 2018.