
A BILL FOR AN ACT

RELATING TO THIRD PARTY ADMINISTRATORS.

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

1 SECTION 1. The purposes of this Act are to better protect
2 Hawaii consumers and promote the transparency of third party
3 administrators operating in Hawaii by:

4 (1) Promoting the financial responsibility of third party
5 administrators;

6 (2) Regulating the professional practices of third party
7 administrators; and

8 (3) Establishing the qualifications and procedures for the
9 licensing of third party administrators.

10 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
11 amended by adding a new article to be appropriately designated
12 and to read as follows:

13 "ARTICLE

14 THIRD PARTY ADMINISTRATORS

15 §431- Definitions. As used in this article:

16 "Administrator" or "third party administrator" means a
17 person who collects charges or premiums from, or who adjusts or



1 settles claims on, residents of this State in connection with
2 life, annuity, accident and health or sickness, stop-loss, or
3 workers' compensation insurance coverage, or article 1 of
4 chapter 432, except the following:

- 5 (1) An employer on behalf of its employees, or the
6 employees of a subsidiary or an affiliated corporation
7 of the employer;
- 8 (2) A union on behalf of its members;
- 9 (3) An insurer authorized to transact insurance in this
10 State with respect to a policy lawfully issued and
11 delivered in and pursuant to the laws of this State or
12 another state;
- 13 (4) A producer licensed to sell life insurance coverage or
14 accident and health or sickness insurance coverage in
15 this State, whose activities are limited exclusively
16 to the sale of insurance;
- 17 (5) A managing general agent licensed in this State whose
18 activities are limited exclusively to the scope of
19 activities conveyed under that license;
- 20 (6) An individual adjuster licensed in this State whose
21 activities are limited to adjustment of claims;



- 1 (7) An individual who adjusts or settles claims in the
2 normal course of practice or employment as an attorney
3 at law and who does not collect charges or premiums in
4 connection with life insurance coverage or accident
5 and health or sickness insurance coverage;
- 6 (8) A creditor on behalf of its debtors with respect to
7 insurance covering a debt between the creditor and its
8 debtors;
- 9 (9) A trust established in conformity with 29 U.S.C.
10 section 186 and trustees, agents, and employees acting
11 under that trust;
- 12 (10) A trust exempt from taxation under 26 U.S.C. section
13 501(a) and trustees and employees acting under that
14 trust, or a custodian and the custodian's agents and
15 employees acting under a custodian account that meets
16 the requirements of 26 U.S.C. section 401(f);
- 17 (11) A financial institution subject to supervision or
18 examination by federal or state banking authorities,
19 or a mortgage lender that collects and remits premiums
20 to licensed producers or authorized insurers in
21 connection with loan payments;



(12) A credit card issuing company advancing for and collecting premiums or charges from its credit card holders who have authorized collection, provided the company does not adjust or settle claims; and

(13) A person who acts solely as an administrator of one or more employee benefit plans established by an employer or an employee organization.

"Commissioner" means the insurance commissioner.

"Insurance producer" or "producer" shall have the same meaning as in section 431:9A-102.

"Insurer" shall have the same meaning as in section 431:1-202.

"Person" shall have the same meaning as in section 431:1-212.

§431- License required; application. (a) No person shall act as or hold the person out as an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner. The application shall include the following:



- 1 (1) A nonrefundable fee as set forth in section 431:7-101;
- 2 (2) All basic organizational documents of the
- 3 administrator, including any articles of
- 4 incorporation, articles of association, partnership
- 5 agreement, trade name certificate, trust agreement,
- 6 shareholder agreement, and other applicable documents
- 7 and all amendments to the documents;
- 8 (3) The bylaws, rules, regulations, or similar documents
- 9 regulating the internal affairs of the administrator;
- 10 (4) The names, addresses, official positions, and
- 11 professional qualifications of the individuals
- 12 responsible for the conduct of affairs of the
- 13 administrator, including all members of the board of
- 14 directors, board of trustees, executive committee, or
- 15 other governing board or committee, the principal
- 16 officers in the case of a corporation, or the partners
- 17 in the case of a partnership;
- 18 (5) Annual audited financial statements for the two most
- 19 recent years that prove the applicant is solvent and
- 20 information the commissioner may require to review the
- 21 current financial condition of the applicant; and



1 (6) Any other pertinent information the commissioner may
2 require.

3 (c) An administrator licensed or applying for licensure
4 shall notify the commissioner within thirty days of any material
5 change in its ownership, control, contact person for the
6 administrator, or any other fact or circumstance affecting its
7 qualification for licensure.

8 (d) If an administrator employs or contracts with
9 individuals to adjust claims for the administrator, the
10 employees or contracted individuals shall first be licensed as
11 individual adjusters.

12 (e) If an administrator employs or contracts with
13 individuals to sell, solicit, or negotiate insurance business,
14 the employees or contracted individuals shall first be licensed
15 as producers. An administrator who intends to directly solicit
16 insurance contracts or otherwise act as a producer shall first
17 be licensed as an insurance producer.

18 (f) The commissioner may refuse to issue a license if the
19 commissioner determines, after notice and hearing pursuant to
20 section 431:2-308 and chapter 91, that the administrator is not
21 competent, trustworthy, financially responsible, or of good



1 personal and business reputation, or has had an application for
2 an insurance license denied or revoked for cause within the past
3 five years.

4 (g) The license is renewable or extendable biennially.
5 The renewal or extension date for a license issued to a natural
6 person shall be the sixteenth day of the licensee's birth month.
7 The renewal or extension date for a license issued to an
8 artificial person shall be the sixteenth day of April for a
9 nonresident licensee, and the sixteenth day of July for a
10 resident licensee. The license shall remain in effect so long
11 as the fees set forth in section 431:7-101 are paid.

12 (h) The commissioner may contract with nongovernmental
13 entities, including the National Association of Insurance
14 Commissioners or any affiliations or subsidiaries that the
15 National Association of Insurance Commissioners oversees, to
16 perform any ministerial functions relating to the licensure of
17 administrators.

18 §431- Surety bond required. Prior to the issuance or
19 renewal of the administrator's license, the administrator shall
20 file and maintain with the commissioner a surety bond in the
21 form and penal sum acceptable to the commissioner, but in no



1 event shall the amount be less than \$300,000, and shall provide
2 that the bond may not be canceled or otherwise terminated until
3 two years have elapsed from the last day the applicant was an
4 administrator, unless the commissioner has given prior written
5 consent. The surety bond shall be undertaken and may be
6 enforced in the name of "Commissioner of Insurance, State of
7 Hawaii."

8 **§431- Written agreement required.** (a) An administrator
9 shall have a written agreement between the administrator and
10 insurer that contains all requirements of this article, except
11 those that do not apply to administrator functions.

12 (b) The written agreement shall make provision with
13 respect to underwriting or other standards pertaining to the
14 business underwritten by the insurer.

15 (c) The written agreement shall be retained as part of the
16 official records of the administrator and the insurer for the
17 duration of their agreement and for five years thereafter.

18 (d) When an insurance policy is issued to a trustee, the
19 administrator shall furnish the insurer a copy of the trust
20 agreement and any amendments to it. The trust agreement shall
21 be retained as part of the official records of the administrator



1 and the insurer for the duration of the insurance policy and for
2 five years thereafter.

3 **§431- Effect of payments to administrator.** (a) Payment
4 to the administrator of any insurance premiums or charges by or
5 on behalf of the insured shall be deemed received by the
6 insurer.

7 (b) Payment of return premiums or claims by the insurer to
8 the administrator shall not be deemed payment to the insured
9 until the insured receives the payment.

10 (c) This section shall not limit any right of the insurer
11 against the administrator resulting from failure of the
12 administrator to make payments to the insurer or insured.

13 **§431- Recordkeeping required; commissioner's access to**
14 **records.** (a) An administrator shall maintain and make
15 available to the insurer complete books and records of all
16 transactions between the administrator, insurers, and insureds.
17 The books and records shall be maintained in accordance with
18 prudent standards of insurance recordkeeping and for the
19 duration of the written agreement and for five years thereafter.

20 (b) The commissioner shall have access to the books and
21 records for examination, audit, and inspection. Any documents,



1 materials, or other information in the possession or control of
2 the commissioner that are furnished by the administrator, payor,
3 insurance producer, or any employee or agent thereof, or
4 obtained by the commissioner in an investigation, shall:

- 5 (1) Be confidential and privileged;
- 6 (2) Not be subject to requests under chapter 92F;
- 7 (3) Not be subject to subpoena; and
- 8 (4) Not be subject to discovery or admissible in evidence
9 in any private civil action.

10 The commissioner may use such documents, materials, or
11 other information in the furtherance of any regulatory or legal
12 action brought as a part of the commissioner's official duties.

13 (c) An administrator shall retain the right to continuing
14 access to the books and records to fulfill its contractual
15 obligations to the insurer and insureds, subject to any
16 restrictions in the written agreement.

17 **§431- Advertising by administrator.** An administrator
18 shall use only the advertising pertaining to the business an
19 insurer has underwritten and approved in advance.

20 **§431- Fiduciary duties of administrator; payment of**
21 **claims by administrator.** (a) The administrator shall hold in a



1 fiduciary capacity all charges or premiums it collects for or on
2 behalf of an insurer and all return premiums it receives from
3 the insurer. These funds shall be immediately remitted to the
4 person entitled to them or shall be deposited promptly in a
5 fiduciary account established and maintained by the
6 administrator in a federally insured financial institution.

7 (b) If charges or premiums deposited in a fiduciary
8 account have been collected for or on behalf of more than one
9 insurer, the administrator shall keep records clearly recording
10 the deposits in and withdrawals from the account for or on
11 behalf of each insurer. The administrator shall keep copies of
12 the records and, upon request of an insurer, shall furnish the
13 insurer with copies of records pertaining to the deposits and
14 withdrawals.

15 (c) An administrator shall not pay claims by withdrawals
16 from the fiduciary account in which premiums or charges are
17 deposited.

18 (d) The written agreement shall provide that withdrawals
19 from the fiduciary account shall be made only for:

20 (1) Remittance to an insurer entitled to remittance;



(2) Deposit in an account maintained in the name of the insurer;

(3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (e);

(4) Payment to a group policyholder for remittance to the insurer entitled to remittance;

(5) Payment to the administrator of the administrator's commission, fees, or charges; and

(6) Remittance of return premiums to the person entitled to return premiums.

(e) All claims the administrator pays from funds collected for or on behalf of an insurer shall be paid only as authorized by the insurer.

§431- Compensation of administrator. Compensation to an administrator for adjusting or settling claims shall not be contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

§431- Written notice to insureds required. (a) When the services of an administrator are used, the administrator



1 shall provide written notice approved by the insurer to
2 insureds, advising them of the identity of and relationship
3 between the administrator, insurer, and insured.

4 (b) When an administrator collects funds, the
5 administrator shall identify the reason for collecting each item
6 and show each item separately from the premium. Additional
7 charges shall not be made for services to the extent the insurer
8 has already paid for those services.

9 (c) The administrator shall disclose to the insurer all
10 charges, fees, and commissions the administrator receives from
11 services the administrator provides the insurer, including any
12 fees or commissions paid by insurers providing reinsurance.

13 **§431- Delivery of written information to insured.** An
14 administrator shall deliver promptly to the insured all
15 policies, certificates, booklets, termination notices, or other
16 written communications after receiving instructions from the
17 insurer for delivery.

18 **§431- Annual report required.** (a) An administrator
19 shall file an annual report for the preceding calendar year with
20 the commissioner on or before March 1 of each year, in a form
21 and manner prescribed by the commissioner.



(b) The annual report shall include the names and addresses of all insurers with which the administrator had an agreement during the preceding calendar year.

§431- License denial, nonrenewal, suspension, or revocation; fines. (a) After notice and hearing, the commissioner shall impose a fine pursuant to section 431:2-203 and issue a cease and desist order against any person who acts or holds the person out as an administrator without a license.

(b) After notice and hearing, the commissioner shall deny, refuse to renew, suspend, or revoke the license of an administrator if the commissioner finds the administrator:

(1) Is in an unsound financial condition;

(2) Is using methods or practices in the conduct of business that renders the administrator's further transaction of business in this State hazardous or injurious to insureds or the public; or

(3) Has failed to pay a judgment rendered against the administrator in this State within sixty days after the judgment has become final.



1 (c) The commissioner may deny, refuse to renew, suspend,
2 or revoke the license of an administrator if the commissioner
3 finds the administrator:

4 (1) Has violated any lawful rule or order of the
5 commissioner or this code;

6 (2) Has refused examination or production of the
7 administrator's accounts, records, and files for
8 examination, or if any individual responsible for or
9 who exercises control or influence over the affairs of
10 the administrator has refused to give information
11 about the administrator's affairs, or has refused to
12 perform any other legal obligation as to an
13 examination, when required by the commissioner;

14 (3) Has, without just cause, refused to pay proper claims
15 or perform services arising under the administrator's
16 contracts or has, without just cause, caused insureds
17 to accept less than the amount due them or caused
18 insureds to employ attorneys or bring suit against the
19 administrator to secure full payment or settlement of
20 claims;



(4) Fails at any time to meet any qualification for which issuance of the license could have been refused, had the failure then existed and been known to the commissioner;

(5) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file the annual report pursuant to section 431- .

(d) Without advance notice or hearing, the commissioner may immediately suspend the license of an administrator if the commissioner finds the following:

(1) The administrator is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the administrator has been commenced in any state; or

(3) The financial condition or business practices of the administrator otherwise pose an imminent threat to the



1 public health, safety, or welfare of the residents of
2 this State.

3 (e) If the commissioner finds one or more grounds exist
4 for the denial, nonrenewal, suspension, or revocation of the
5 license, the commissioner may additionally impose a fine upon
6 the administrator pursuant to section 431:2-203.

7 **§431- Rules.** The commissioner may adopt rules to
8 implement and enforce this article."

9 SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

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

13 (1) Certificate of authority:

14 (A) Application for certificate of authority\$900

15 (B) Issuance of certificate of authority\$600

16 (C) Application for motor vehicle self-insurance . \$300

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

19 (A) Application for solicitation permit\$1,500

20 (B) Issuance of solicitation permit\$150

21 (3) Producer's license:



1	(A)	Issuance of regular license	\$50
2	(B)	Issuance of temporary license	\$50
3	(4)	Nonresident producer's license: Issuance	\$75
4	(5)	Independent adjuster's license: Issuance	\$75
5	(6)	Public adjuster's license: Issuance	\$75
6	(7)	Claims adjuster's limited license: Issuance	\$75
7	<u>(8)</u>	<u>Administrator's license: Issuance</u>	<u>\$150</u>
8	[(8)] <u>(9)</u>	<u>Independent bill reviewer's license: Issuance .</u>	<u>\$80</u>
9	[(9)] <u>(10)</u>	<u>Limited producer's license: Issuance</u>	<u>\$60</u>
10	[(10)] <u>(11)</u>	<u>Managing general agent's license: Issuance ...</u>	<u>\$75</u>
11	[(11)] <u>(12)</u>	<u>Reinsurance intermediary's license: Issuance .</u>	<u>\$75</u>
12	[(12)] <u>(13)</u>	<u>Surplus lines broker's license: Issuance</u>	<u>\$150</u>
13	[(13)] <u>(14)</u>	<u>Service contract provider's registration:</u>	
14		Issuance	\$75
15	[(14)] <u>(15)</u>	<u>Approved course provider certificate:</u>	
16		Issuance	\$100
17	[(15)] <u>(16)</u>	<u>Approved continuing education course</u>	
18		certificate:	
19		Issuance	\$30
20	[(16)] <u>(17)</u>	<u>Vehicle protection product warrantor's</u>	
21		registration: Issuance	\$75



~~[(17)]~~ (18) Criminal history record check; fingerprinting:

For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.

~~[(18)]~~ (19) Limited line motor vehicle rental company

producer's license: Issuance \$1,000

~~[(19)]~~ (20) Legal service plan certificate of authority:

Issuance before July 1, 2014 \$1,000

Issuance on or after July 1, 2014 \$500

~~[(20)]~~ (21) Life settlement provider's license:

Issuance before July 1, 2014 \$150

Issuance on or after July 1, 2014 \$75

~~[(21)]~~ (22) Life settlement broker's license:

Issuance before July 1, 2014 \$150

Issuance on or after July 1, 2014 \$75

~~[(22)]~~ (23) Examination for license: For each examination, a

fee to be established by the commissioner.

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



1 (1) \$600 per year for all services (including extension of
2 the certificate of authority) for an authorized
3 insurer;

4 (2) \$50 per year for all services (including extension of
5 the license) for a regularly licensed producer;

6 (3) \$75 per year for all services (including extension of
7 the license) for a regularly licensed nonresident
8 producer;

9 (4) \$45 per year for all services (including extension of
10 the license) for a regularly licensed independent
11 adjuster;

12 (5) \$45 per year for all services (including extension of
13 the license) for a regularly licensed public adjuster;

14 (6) \$45 per year for all services (including extension of
15 the license) for a claims adjuster's limited license;

16 (7) \$150 per year for all services (including extension of
17 the license) for an administrator's license;

18 ~~[(7)]~~ (8) \$60 per year for all services (including
19 extension of the license) for a regularly licensed
20 independent bill reviewer;



1 [~~(8)~~] (9) \$45 per year for all services (including
2 extension of the license) for a producer's limited
3 license;
4 [~~(9)~~] (10) \$75 per year for all services (including
5 extension of the license) for a regularly licensed
6 managing general agent;
7 [~~(10)~~] (11) \$75 per year for all services (including
8 extension of the license) for a regularly licensed
9 reinsurance intermediary;
10 [~~(11)~~] (12) \$45 per year for all services (including
11 extension of the license) for a licensed surplus lines
12 broker;
13 [~~(12)~~] (13) \$75 per year for all services (including renewal
14 of registration) for a service contract provider;
15 [~~(13)~~] (14) \$65 per year for all services (including
16 extension of the certificate) for an approved course
17 provider;
18 [~~(14)~~] (15) \$20 per year for all services (including
19 extension of the certificate) for an approved
20 continuing education course;



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1 The services referred to in paragraphs (1) to [~~(21)~~] (22) shall
2 not include services in connection with examinations,
3 investigations, hearings, appeals, and deposits with a
4 depository other than the department of commerce and consumer
5 affairs."

6 SECTION 4. Section 432:1-102, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§432:1-102 Applicability of other laws.** (a) Part III of
9 article 10A, and article 10H of chapter 431 shall apply to
10 nonprofit medical indemnity or hospital service associations.
11 Such associations shall be exempt from the provisions of part I
12 of article 10A; provided that such exemption is in compliance
13 with applicable federal statutes and regulations.

14 (b) Article 2, article 2D, parts II and IV of article 3,
15 article 6, part III of article 7, article 9A, article 13,
16 article 14G, and article 15 of chapter 431, sections 431:3-301,
17 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102, 431:10-
18 225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers
19 granted by those provisions to the commissioner, shall apply to
20 managed care plans, health maintenance organizations, or medical
21 indemnity or hospital service associations that are owned or



1 controlled by mutual benefit societies so long as the
2 application in any particular case is in compliance with and is
3 not preempted by applicable federal statutes and regulations.

4 (c) Article of chapter 431 shall apply to mutual benefit
5 societies.

6 [~~(e)~~] (d) The commissioner may adopt rules pursuant to
7 chapter 91 to implement and administer this chapter."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Third Party Administrator; License; Qualifications; Practices

Description:

Promotes the financial responsibility of administrators.
Regulates the professional practices of third party
administrators. Establishes the qualifications and procedures
for the licensing of administrators. (HB2346 HD1)

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

