

- 1 (3) An insurer authorized to transact insurance in this
2 State with respect to a policy lawfully issued and
3 delivered in and pursuant to the laws of this State or
4 another state;
- 5 (4) A producer licensed to sell life insurance coverage or
6 accident and health or sickness insurance coverage in
7 this State, whose activities are limited exclusively
8 to the sale of insurance;
- 9 (5) A managing general agent licensed in this State whose
10 activities are limited exclusively to the scope of
11 activities conveyed under that license;
- 12 (6) An individual adjuster licensed in this State whose
13 activities are limited exclusively to the scope of
14 activities conveyed under that license;
- 15 (7) An individual who adjusts or settles claims in the
16 normal course of practice or employment as an attorney
17 at law and who does not collect charges or premiums in
18 connection with life insurance coverage or accident
19 and health or sickness insurance coverage;



- 1 (8) A creditor on behalf of its debtors with respect to
2 insurance covering a debt between the creditor and its
3 debtors;
- 4 (9) A trust established in conformity with title 29 U.S.C.
5 section 186 and trustees, agents, and employees acting
6 under that trust;
- 7 (10) A trust exempt from taxation under title 26 U.S.C.
8 section 501(a) and trustees and employees acting under
9 that trust, or a custodian and the custodian's agents
10 and employees acting under a custodian account that
11 meets the requirements of title 26 U.S.C. section
12 401(f);
- 13 (11) A financial institution subject to supervision or
14 examination by federal or state banking authorities,
15 or a mortgage lender that collects and remits premiums
16 to licensed producers or authorized insurers in
17 connection with loan payments;
- 18 (12) A credit card issuing company advancing for and
19 collecting premiums or charges from its credit card
20 holders who have authorized collection; provided that
21 the company does not adjust or settle claims; and



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

4 "Insurance producer" or "producer" has the same meaning as
5 in section 431:9A-102.

6 "Insurer" has the same meaning as in section 431:1-202.

7 "Person" has the same meaning as in section 431:1-212.

8 "Stop-loss insurance" means an insurance protecting an
9 employer or other person responsible for an otherwise self-
10 insured health or life benefit plan against obligations under
11 the plan, but does not include reinsurance written for an
12 insurance company.

13 **§431: -2 License required; application.** (a) No person
14 shall act as or hold out to be an administrator in this State
15 without a license as an administrator issued by the
16 commissioner.

17 (b) An administrator shall apply to the commissioner on a
18 form prescribed by the commissioner and shall include the
19 following:

20 (1) A nonrefundable fee as set forth in section 431:7-101;



- 1 (2) All basic organizational documents of the
2 administrator, including any articles of
3 incorporation, articles of association, partnership
4 agreement, trade name certificate, trust agreement,
5 shareholder agreement, and other applicable documents
6 and all amendments to the documents;
- 7 (3) The bylaws, rules, regulations, or similar documents
8 regulating the internal affairs of the administrator;
- 9 (4) The names, addresses, official positions, and
10 professional qualifications of the individuals
11 responsible for the conduct of affairs of the
12 administrator, including but not limited to all
13 members of the board of directors, board of trustees,
14 executive committee, or other governing board or
15 committee, the principal officers in the case of a
16 corporation, or the partners in the case of a
17 partnership;
- 18 (5) Annual financial statements for the two most recent
19 years that prove the applicant has a positive net
20 worth and information the commissioner may require to



1 review the current financial condition of the
2 applicant; and

3 (6) Any other pertinent information the commissioner may
4 require.

5 (c) An administrator licensee or applicant for licensure
6 shall notify the commissioner within thirty days of any material
7 change in its ownership, control, contact person for the
8 administrator, or any other fact or circumstance affecting the
9 licensee's or applicant's qualification for licensure.

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

16 (e) The commissioner may refuse to issue a license if the
17 commissioner determines, after notice and hearing pursuant to
18 section 431:2-308 and chapter 91, that the administrator is not
19 competent, trustworthy, financially responsible, or of good
20 personal and business reputation, or has had an application for



1 an insurance license denied or revoked for cause within the past
2 five years.

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

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

17 **§431: -3 Surety bond required.** Prior to the issuance of
18 the administrator license, the administrator shall file with the
19 commissioner, and maintain in force while so licensed, a surety
20 bond of at least \$100,000, in the form and penal sum acceptable
21 to the commissioner, and shall provide that the bond may not be



1 canceled or otherwise terminated until two years have elapsed
 2 from the last day the applicant was an administrator, unless the
 3 commissioner has given prior written consent. The surety bond
 4 shall be undertaken and may be enforced in the name of
 5 "Commissioner of Insurance, State of Hawaii."

6 §431: -4 Written agreement required. (a) An
 7 administrator shall have a written agreement between the
 8 administrator and insurer that contains all requirements of this
 9 article, except those that do not apply to administrator
 10 functions.

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

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

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



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

3 **§431: -5 Effect of payments to administrator. (a)**

4 Payment to the administrator of any insurance premiums or
5 charges by or on behalf of the insured shall be deemed received
6 by the 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 does 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: -6 Recordkeeping required; commissioner's access**

14 **to 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 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 an administrator, payor,
 3 or insurance producer or an employee or agent thereof acting on
 4 behalf of the administrator, payor, or insurance producer, or
 5 obtained by the commissioner in an investigation shall be
 6 confidential by law and privileged and shall not be subject to
 7 chapters 92 and 92F, subpoena, and discovery or admissible in
 8 evidence in any private civil action.

9 The commissioner is authorized to use such documents,
 10 materials, or other information in the furtherance of any
 11 regulatory or legal action brought as a part of the
 12 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: -7 Advertising by administrator. An administrator
 18 shall use only the advertising pertaining to the business an
 19 insurer has underwritten and approved in advance of its use.

20 §431: -8 Fiduciary duties of administrator; payment of
 21 claims by administrator. (a) The administrator shall hold in a



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

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

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

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

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



- 1 (2) Deposit in an account maintained in the name of the
2 insurer;
- 3 (3) Transfer to and deposit in a claims-paying account,
4 with claims to be paid as provided in subsection (e);
- 5 (4) Payment to a group policyholder for remittance to the
6 insurer entitled to remittance;
- 7 (5) Payment to the administrator of its commission, fees,
8 or charges; and
- 9 (6) Remittance of return premiums to the person entitled
10 to return premiums.
- 11 (e) All claims the administrator pays from funds collected
12 for or on behalf of an insurer shall be paid only as authorized
13 by the insurer.
- 14 **§431: -9 Compensation of administrator.** Compensation to
15 an administrator for adjusting or settling claims shall not be
16 increased contingent on claim experience. This section shall
17 not prevent the compensation of an administrator from being
18 based on premiums or charges collected or number of claims paid
19 or processed.
- 20 **§431: -10 Written notice to insureds required.** (a)
21 When the services of an administrator are used, the



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

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

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

14 **§431: -11 Delivery of written information to insured.**
15 Any policies, certificates, booklets, termination notices, or
16 other written communications delivered by the insurer to the
17 administrator for delivery to the insured, shall be delivered by
18 the administrator promptly after receipt of instructions from
19 the insurer to deliver them.

20 **§431: -12 Annual report required.** (a) An administrator
21 shall file an annual report for the preceding calendar year with



1 the commissioner on or before March 1 of each year, in a form
2 and manner prescribed by the commissioner.

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

6 §431: -13 License denial, nonrenewal, suspension, or
7 revocation; fines. (a) After notice and hearing, the
8 commissioner shall impose a fine pursuant to section 431:2-203
9 and issue a cease and desist order against any person who acts
10 or holds out as an administrator without a license.

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

- 14 (1) Is in an unsound financial condition;
- 15 (2) Is using methods or practices in the conduct of
16 business that renders the administrator's further
17 transaction of business in this State hazardous or
18 injurious to insureds or the public; or
- 19 (3) Has failed to pay a judgment rendered against the
20 administrator in this State within sixty days after
21 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:

15 (i) Refused to pay proper claims or perform services
16 arising under the administrator's contracts;

17 (ii) Caused insureds to accept less than the amount
18 due to the insureds; or

19 (iii) Caused insureds to employ attorneys or bring suit
20 against the administrator to secure full payment
21 or settlement of claims;



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

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

8 (6) Is under suspension or has a license revoked in
9 another state; or

10 (7) Has failed to timely file the annual report pursuant
11 to section 431: -12.

12 (d) The commissioner may immediately suspend the license
13 of an administrator, without advance notice or hearing, if the
14 commissioner finds the following:

15 (1) The administrator is insolvent or impaired;

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

20 (3) The financial condition or business practices of the
21 administrator otherwise are 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: -14 Rules. The commissioner may adopt rules to
8 implement and enforce this article."

9 SECTION 2. 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 (8) Administrator's license: Issuance \$150
- 8 [~~+8~~] (9) Independent bill reviewer's license:
- 9 Issuance \$80
- 10 [~~+9~~] (10) Limited producer's license: Issuance \$60
- 11 [~~+10~~] (11) Managing general agent's license: Issuance .. \$75
- 12 [~~+11~~] (12) Reinsurance intermediary's license: Issuance . \$75
- 13 [~~+12~~] (13) Surplus lines broker's license: Issuance ... \$150
- 14 [~~+13~~] (14) Service contract provider's registration:
- 15 Issuance \$75
- 16 [~~+14~~] (15) Approved course provider certificate:
- 17 Issuance \$100
- 18 [~~+15~~] (16) Approved continuing education course
- 19 certificate: Issuance \$30
- 20 [~~+16~~] (17) Vehicle protection product warrantor's
- 21 registration: Issuance \$75



1 [~~(17)~~] (18) Criminal history record check; fingerprinting:
 2 For each criminal history record check and
 3 fingerprinting check, a fee to be established by the
 4 commissioner.

5 [~~(18)~~] (19) Limited line motor vehicle rental company
 6 producer's license: Issuance \$1,000

7 [~~(19)~~] (20) Legal service plan certificate of authority:
 8 Issuance before July 1, 2014 \$1,000
 9 Issuance on or after July 1, 2014 \$500

10 [~~(20)~~] (21) Life settlement provider's license:
 11 Issuance before July 1, 2014 \$150
 12 Issuance on or after July 1, 2014 \$75

13 [~~(21)~~] (22) Life settlement broker's license:
 14 Issuance before July 1, 2014 \$150
 15 Issuance on or after July 1, 2014 \$75

16 [~~(22)~~] (23) Examination for license: For each examination,
 17 a fee to be established by the commissioner.

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



- 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;



- 1 [~~(15)~~] (16) \$75 per year for all services (including renewal
- 2 of registration) for a vehicle protection product
- 3 warrantor;
- 4 [~~(16)~~] (17) A fee to be established by the commissioner for
- 5 each criminal history record check and fingerprinting;
- 6 [~~(17)~~] (18) \$600 per year for all services (including
- 7 extension of the license) for a regularly licensed
- 8 limited line motor vehicle rental company producer;
- 9 [~~(18)~~] (19) \$1,000 per year for all services provided before
- 10 July 1, 2014, (including extension of the certificate)
- 11 for an authorized legal service plan;
- 12 [~~(19)~~] (20) \$500 per year for all services provided on or
- 13 after July 1, 2014, (including extension of the
- 14 certificate) for an authorized legal service plan;
- 15 [~~(20)~~] (21) \$1,200 per year for all services (including
- 16 extension of the license) for a regularly licensed
- 17 life settlement provider; and
- 18 [~~(21)~~] (22) \$150 per year for all services (including
- 19 extension of the license) for a regularly licensed
- 20 life settlement broker.



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 3. 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
5 benefit societies.

6 [~~e~~] (d) The commissioner may adopt rules pursuant to
7 chapter 91 for the implementation and administration of this
8 chapter."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Third Party Administrator; Insurance

Description:

Requires third party administrators to be licensed and regulated by the Insurance Commissioner. (HB986 HD1)

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

