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# A BILL FOR AN ACT

RELATING TO REGULATORY AUTHORITY OF THE INSURANCE COMMISSIONER.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding a new article to be appropriately designated  
3 and to read as follows:

4 **"ARTICLE**

5 **THIRD PARTY ADMINISTRATORS**

6 **§431: -101 Definitions.** For purposes of this article:

7 "Administrator" or "third party administrator" means a  
8 person who collects charges or premiums from, or who adjusts or  
9 settles claims on, residents of this State in connection with  
10 self-insurance, stop-loss, or life insurance coverage, accident  
11 and health or sickness insurance coverage, or article 1 of  
12 chapter 432, except the following:

13 (1) An employer on behalf of its employees or the  
14 employees of a subsidiary or an affiliated corporation  
15 of the employer;

16 (2) A union on behalf of its members;



- 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: -102 License required; application.** (a) No  
14 person shall act as or hold out to be an administrator in this  
15 State 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: -103 Surety bond required.** Prior to the issuance  
18 of the administrator license, the administrator shall file with  
19 the commissioner, and maintain in force while so licensed, a  
20 surety bond of at least \$100,000, in the form and penal sum  
21 acceptable to the commissioner, and shall provide that the bond



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

6 **§431: -104 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: -105 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: -106 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: -107 Advertising by administrator.** An  
18 administrator shall use only the advertising pertaining to the  
19 business an insurer has underwritten and approved in advance of  
20 its use.



1           **§431: -108 Fiduciary duties of administrator; payment of**  
2 **claims by administrator.** (a) The administrator shall hold in a  
3 fiduciary capacity all charges, claim payments, or premiums that  
4 the administrator collects for or on behalf of an insurer and  
5 all return premiums that the administrator receives from the  
6 insurer. These funds shall be immediately remitted to the  
7 person entitled to them or shall be deposited promptly in a  
8 fiduciary account established and maintained by the  
9 administrator in a federally insured financial institution.

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

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



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

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

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

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

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

10 (5) Payment to the administrator of its commission, fees,  
11 or charges; and

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

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

17 **§431: -109 Compensation of administrator.** Compensation  
18 to an administrator for adjusting or settling claims shall not  
19 be increased contingent on claim experience. This section shall  
20 not prevent the compensation of an administrator from being



1 based on premiums or charges collected or number of claims paid  
2 or processed.

3 **§431: -110 Written notice to insureds required. (a)**

4 When the services of an administrator are used, the  
5 administrator shall provide written notice approved by the  
6 insurer to insureds, advising the insureds of the identity of  
7 and relationship between the administrator, insurer, and  
8 insured.

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

14 (c) The administrator shall disclose to the insurer all  
15 charges, fees, and commissions the administrator receives from  
16 services the administrator provides the insurer, including any  
17 fees or commissions paid by insurers providing reinsurance.

18 **§431: -111 Delivery of written information to insured.**

19 Any policies, certificates, booklets, termination notices, or  
20 other written communications delivered by the insurer to the  
21 administrator for delivery to the insured, shall be delivered by



1 the administrator promptly after receipt of instructions from  
2 the insurer to deliver them.

3       **§431: -112 Annual report required.** (a) An  
4 administrator shall file an annual report for the preceding  
5 calendar year with the commissioner on or before March 1 of each  
6 year, in a form and manner prescribed by the commissioner.

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

10       **§431: -113 License denial, nonrenewal, suspension, or**  
11 **revocation; fines.** (a) After notice and hearing, the  
12 commissioner shall impose a fine pursuant to section 431:2-203  
13 and issue a cease and desist order against any person who acts  
14 or holds out as an administrator without a license.

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

- 18       (1) Is in an unsound financial condition;  
19       (2) Is using methods or practices in the conduct of  
20       business that renders the administrator's further



1 transaction of business in this State hazardous or  
2 injurious to insureds or the public; or

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

6 (c) The commissioner may deny, refuse to renew, suspend,  
7 or revoke the license of an administrator if the commissioner  
8 finds the administrator:

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

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

19 (3) Has, without just cause:

20 (A) Refused to pay proper claims or perform services  
21 arising under the administrator's contracts;



- 1 (B) Caused insureds to accept less than the amount
- 2 due to the insureds; or
- 3 (C) Caused insureds to employ attorneys or bring suit
- 4 against the administrator to secure full payment
- 5 or settlement of claims;
- 6 (4) Has failed at any time to meet any qualification for
- 7 which issuance of the license could have been refused,
- 8 had the failure then existed and been known to the
- 9 commissioner;
- 10 (5) Has been convicted of, or has entered a plea of guilty
- 11 or nolo contendere to, a felony without regard to
- 12 whether adjudication was withheld;
- 13 (6) Is under suspension or has a license revoked in
- 14 another state; or
- 15 (7) Has failed to timely file the annual report pursuant
- 16 to section 431: -112.
- 17 (d) The commissioner may immediately suspend the license
- 18 of an administrator, without advance notice or hearing, if the
- 19 commissioner finds the following:
- 20 (1) The administrator is insolvent or impaired;





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

5 (3) The financial condition or business practices of the  
6 administrator otherwise are an imminent threat to the  
7 public health, safety, or welfare of the residents of  
8 this State.

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

13 **§431: -114 Rules.** The commissioner may adopt rules to  
14 implement and enforce this article."

15 SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is  
16 amended by amending subsections (a) and (b) to read as follows:

17 "(a) The commissioner shall collect, in advance, the  
18 following fees:

- 19 (1) Certificate of authority:
  - 20 (A) Application for certificate of authority .....\$900
  - 21 (B) Issuance of certificate of authority .....\$600



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



- 1        [~~(14)~~] (15)    Approved course provider certificate:
- 2                    Issuance ..... \$100
- 3        [~~(15)~~] (16)    Approved continuing education course
- 4                    certificate: Issuance ..... \$30
- 5        [~~(16)~~] (17)    Vehicle protection product warrantor's
- 6                    registration: Issuance ..... \$75
- 7        [~~(17)~~] (18)    Criminal history record check; fingerprinting:
- 8                    For each criminal history record check and
- 9                    fingerprinting check, a fee to be established by the
- 10                   commissioner.
- 11        [~~(18)~~] (19)    Limited line motor vehicle rental company
- 12                    producer's license: Issuance ..... \$1,000
- 13        [~~(19)~~] (20)    Legal service plan certificate of authority:
- 14                    Issuance before July 1, 2014 ..... \$1,000
- 15                    Issuance on or after July 1, 2014 ..... \$500
- 16        [~~(20)~~] (21)    Life settlement provider's license:
- 17                    Issuance before July 1, 2014 ..... \$150
- 18                    Issuance on or after July 1, 2014 ..... \$75
- 19        [~~(21)~~] (22)    Life settlement broker's license:
- 20                    Issuance before July 1, 2014 ..... \$150
- 21                    Issuance on or after July 1, 2014 ..... \$75



1        [~~22~~] (23) Examination for license: For each examination,  
2                    a fee to be established by the commissioner.

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

6            (1) \$600 per year for all services (including extension of  
7                    the certificate of authority) for an authorized  
8                    insurer;

9            (2) \$50 per year for all services (including extension of  
10                   the license) for a regularly licensed producer;

11           (3) \$75 per year for all services (including extension of  
12                   the license) for a regularly licensed nonresident  
13                   producer;

14           (4) \$45 per year for all services (including extension of  
15                   the license) for a regularly licensed independent  
16                   adjuster;

17           (5) \$45 per year for all services (including extension of  
18                   the license) for a regularly licensed public adjuster;

19           (6) \$45 per year for all services (including extension of  
20                   the license) for a claims adjuster's limited license;



- 1        (7)    \$150 per year for all services (including extension of  
2        the license) for an administrator's license;
- 3        [~~(7)~~] (8)    \$60 per year for all services (including  
4        extension of the license) for a regularly licensed  
5        independent bill reviewer;
- 6        [~~(8)~~] (9)    \$45 per year for all services (including  
7        extension of the license) for a producer's limited  
8        license;
- 9        [~~(9)~~] (10)    \$75 per year for all services (including  
10       extension of the license) for a regularly licensed  
11       managing general agent;
- 12       [~~(10)~~] (11)    \$75 per year for all services (including  
13       extension of the license) for a regularly licensed  
14       reinsurance intermediary;
- 15       [~~(11)~~] (12)    \$45 per year for all services (including  
16       extension of the license) for a licensed surplus lines  
17       broker;
- 18       [~~(12)~~] (13)    \$75 per year for all services (including renewal  
19       of registration) for a service contract provider;



- 1        [~~(13)~~] (14) \$65 per year for all services (including
- 2                    extension of the certificate) for an approved course
- 3                    provider;
- 4        [~~(14)~~] (15) \$20 per year for all services (including
- 5                    extension of the certificate) for an approved
- 6                    continuing education course;
- 7        [~~(15)~~] (16) \$75 per year for all services (including renewal
- 8                    of registration) for a vehicle protection product
- 9                    warrantor;
- 10       [~~(16)~~] (17) A fee to be established by the commissioner for
- 11                    each criminal history record check and fingerprinting;
- 12       [~~(17)~~] (18) \$600 per year for all services (including
- 13                    extension of the license) for a regularly licensed
- 14                    limited line motor vehicle rental company producer;
- 15       [~~(18)~~] (19) \$1,000 per year for all services provided before
- 16                    July 1, 2014, (including extension of the certificate)
- 17                    for an authorized legal service plan;
- 18       [~~(19)~~] (20) \$500 per year for all services provided on or
- 19                    after July 1, 2014, (including extension of the
- 20                    certificate) for an authorized legal service plan;



1        [~~(20)~~] (21) \$1,200 per year for all services (including  
2                    extension of the license) for a regularly licensed  
3                    life settlement provider; and

4        [~~(21)~~] (22) \$150 per year for all services (including  
5                    extension of the license) for a regularly licensed  
6                    life settlement broker.

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

12        SECTION 3. Section 432:1-102, Hawaii Revised Statutes, is  
13        amended to read as follows:

14        "**§432:1-102 Applicability of other laws.** (a) Part III of  
15        article 10A, and article 10H of chapter 431 shall apply to  
16        nonprofit medical indemnity or hospital service associations.  
17        Such associations shall be exempt from the provisions of part I  
18        of article 10A; provided that such exemption is in compliance  
19        with applicable federal statutes and regulations.

20        (b) Article 2, article 2D, parts II and IV of article 3,  
21        article 6, part III of article 7, article 9A, article 13,



1 article 14G, and article 15 of chapter 431, sections 431:3-301,  
 2 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102, 431:10-  
 3 225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers  
 4 granted by those provisions to the commissioner, shall apply to  
 5 managed care plans, health maintenance organizations, or medical  
 6 indemnity or hospital service associations that are owned or  
 7 controlled by mutual benefit societies so long as the  
 8 application in any particular case is in compliance with and is  
 9 not preempted by applicable federal statutes and regulations.

10 (c) Article of chapter 431 shall apply to mutual  
 11 benefit societies.

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

15 SECTION 4. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 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. (SB1212 HD1)

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

