

- 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 United
5 States Code section 186 and trustees, agents, and
6 employees acting under that trust;
- 7 (10) A trust exempt from taxation under title 26 United
8 States Code section 501(a) and trustees and employees
9 acting under that trust, or a custodian and the
10 custodian's agents and employees acting under a
11 custodian account that meets the requirements of title
12 26 United States Code section 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 the
21 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 "Commissioner" means the insurance commissioner.

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

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

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

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

14 **§431: -102 License required; application.** (a) No person
15 shall act as or hold out to be an administrator in this State
16 without a license as an administrator issued by the
17 commissioner.

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

21 (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 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 licensee or applicant 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 the
7 licensee's or applicant's qualification for licensure.

8 (d) If an administrator employs or has contracted
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 has contracted
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 shall be renewable or extendable
5 biennially. The renewal or extension date for a license issued
6 to a natural person shall be the sixteenth day of the licensee's
7 birth month. The renewal or extension date for a license issued
8 to an artificial person shall be April 16 for a nonresident
9 licensee, and July 16 for a resident licensee. The license
10 shall remain in effect so long as the fees set forth in section
11 431:7-101 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: -103 Surety bond required.** Prior to the issuance
19 of the administrator license, the administrator shall file with
20 the commissioner, and maintain in force while so licensed, a
21 surety bond of at least \$300,000, in the form and penal sum



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

7 §431: -104 Written agreement required. (a) An
8 administrator shall have a written agreement between the
9 administrator and insurer that contains all requirements of this
10 article, except those that do not apply to administrator
11 functions.

12 (b) The written agreement shall include a 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 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
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 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: -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. Trade secrets



1 in the books and records, including the identity and addresses
2 of insureds, shall be confidential and privileged; provided that
3 the commissioner may use the information in proceedings brought
4 against the administrator.

5 (c) An administrator shall retain the right to continuing
6 access to the books and records to fulfill its contractual
7 obligations to the insurer and insureds, subject to any
8 restrictions in the written agreement.

9 **§431: -107 Advertising by administrator.** An
10 administrator shall use only the advertising pertaining to the
11 business an insurer has underwritten and approved in advance of
12 its use.

13 **§431: -108 Fiduciary duties of administrator; payment of**
14 **claims by administrator.** (a) The administrator shall hold in a
15 fiduciary capacity all charges, claim payments, or premiums that
16 the administrator collects for or on behalf of an insurer and
17 all return premiums that the administrator receives from the
18 insurer. These funds shall be immediately remitted to the
19 person entitled to them or shall be deposited promptly in a
20 fiduciary account established and maintained by the
21 administrator in a federally insured financial institution.



1 (b) If charges, claim payments, or premiums deposited in a
2 fiduciary account have been collected for or on behalf of more
3 than one insurer, the administrator shall keep records clearly
4 recording the deposits in and withdrawals from the account for
5 or on behalf of each insurer. The administrator shall keep
6 copies of the records and, upon request of an insurer, shall
7 furnish the insurer with copies of records pertaining to the
8 deposits and withdrawals.

9 (c) An administrator shall not pay claims by withdrawals
10 from the fiduciary account in which premiums or charges are
11 deposited.

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

- 14 (1) Remittance to an insurer entitled to remittance;
- 15 (2) Deposit in an account maintained in the name of the
16 insurer;
- 17 (3) Transfer to and deposit in a claims-paying account,
18 with claims to be paid as provided in subsection (e);
- 19 (4) Payment to a group policyholder for remittance to the
20 insurer entitled to remittance;



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

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

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

8 §431: -109 Compensation of administrator. Compensation
9 to an administrator for adjusting or settling claims shall not
10 be contingent on claim experience. This section shall not
11 prevent the compensation of an administrator from being based on
12 premiums or charges collected or number of claims paid or
13 processed.

14 §431: -110 Written notice to insureds required. (a)
15 When the services of an administrator are used, the
16 administrator shall provide written notice approved by the
17 insurer to insureds, advising the insureds of the identity of
18 and relationship between the administrator, insurer, and
19 insured.

20 (b) When an administrator collects funds, the
21 administrator shall identify the reason for collecting each item



1 and show each item separately from the premium. Additional
2 charges shall not be made for services to the extent the insurer
3 has already paid for those services.

4 (c) The administrator shall disclose to the insurer all
5 charges, fees, and commissions that the administrator receives
6 from services the administrator provides to the insurer,
7 including any fees or commissions paid by insurers providing
8 reinsurance.

9 **§431: -111 Delivery of written information to insured.**
10 Any policies, certificates, booklets, termination notices, or
11 other written communications delivered by the insurer to the
12 administrator for delivery to the insured, shall be delivered by
13 the administrator promptly after receipt of instructions from
14 the insured to deliver them.

15 **§431: -112 Annual report required.** (a) An administrator
16 shall file an annual report for the preceding calendar year with
17 the commissioner on or before March 1 of each year, in a form
18 and manner prescribed by the commissioner.

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



1 §431: -113 License denial, nonrenewal, suspension, or
2 revocation; fines. (a) After notice and hearing, the
3 commissioner shall impose a fine pursuant to section 431:2-203
4 and issue a cease and desist order against any person who acts
5 or holds out as an administrator without a license.

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

9 (1) Is in an unsound financial condition;

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

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

17 (c) The commissioner may deny, refuse to renew, suspend,
18 or revoke the license of an administrator if the commissioner
19 finds that the administrator:

20 (1) Has violated any lawful rule or order of the
21 commissioner or this chapter;



- 1 (2) Has refused examination or production of the
- 2 administrator's accounts, records, and files for
- 3 examination, or if any individual responsible for or
- 4 who exercises control or influence over the affairs of
- 5 the administrator has refused to give information
- 6 about the administrator's affairs, or has refused to
- 7 perform any other legal obligation as to an
- 8 examination, when required by the commissioner;
- 9 (3) Has, without just cause:
- 10 (A) Refused to pay proper claims or perform services
- 11 arising under the administrator's contracts;
- 12 (B) Caused insureds to accept less than the amount
- 13 due to the insureds; or
- 14 (C) Caused insureds to employ attorneys or bring suit
- 15 against the administrator to secure full payment
- 16 or settlement of claims;
- 17 (4) Has failed at any time to meet any qualification for
- 18 which issuance of the license could have been refused,
- 19 had the failure then existed and been known to the
- 20 commissioner;



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

4 (6) Is under suspension or has a license revoked in
5 another state; or

6 (7) Has failed to timely file the annual report pursuant
7 to section 431: -112.

8 (d) The commissioner may immediately suspend the license
9 of an administrator, without advance notice or hearing, if the
10 commissioner finds the following:

11 (1) The administrator is insolvent or impaired;

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

16 (3) The financial condition or business practices of the
17 administrator otherwise are an imminent threat to the
18 public health, safety, or welfare of the residents of
19 this State.

20 (e) If the commissioner finds one or more grounds exist
21 for the denial, nonrenewal, suspension, or revocation of the



1 license, the commissioner may additionally impose a fine upon
2 the administrator pursuant to section 431:2-203.

3 §431: -114 Rules. The commissioner may adopt rules to
4 implement and enforce this article."

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

7 "(a) The commissioner shall collect, in advance, the
8 following fees:

9 (1) Certificate of authority:

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

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

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

13 (2) Organization of domestic insurers and affiliated
14 corporations:

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

16 (B) Issuance of solicitation permit\$150

17 (3) Producer's license:

18 (A) Issuance of regular license\$50

19 (B) Issuance of temporary license\$50

20 (4) Nonresident producer's license: Issuance\$75

21 (5) Independent adjuster's license: Issuance\$75



- 1 (6) Public adjuster's license: Issuance\$75
- 2 (7) Claims adjuster's limited license: Issuance\$75
- 3 (8) Administrator's license: Issuance\$150
- 4 ~~(8)~~ (9) Independent bill reviewer's license:
- 5 Issuance\$80
- 6 ~~(9)~~ (10) Limited producer's license: Issuance\$60
- 7 ~~(10)~~ (11) Managing general agent's license: Issuance ..\$75
- 8 ~~(11)~~ (12) Reinsurance intermediary's license: Issuance ..\$75
- 9 ~~(12)~~ (13) Surplus lines broker's license: Issuance ...\$150
- 10 ~~(13)~~ (14) Service contract provider's registration:
- 11 Issuance\$75
- 12 ~~(14)~~ (15) Approved course provider certificate:
- 13 Issuance\$100
- 14 ~~(15)~~ (16) Approved continuing education course
- 15 certificate: Issuance\$30
- 16 ~~(16)~~ (17) Vehicle protection product warrantor's
- 17 registration: Issuance\$75
- 18 ~~(17)~~ (18) Criminal history record check; fingerprinting:
- 19 For each criminal history record check and
- 20 fingerprinting check, a fee to be established by the
- 21 commissioner.



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

3 ~~[(19)]~~ (20) Legal service plan certificate of authority:
4 Issuance before July 1, 2014\$1,000
5 Issuance on or after July 1, 2014\$500

6 ~~[(20)]~~ (21) Life settlement provider's license:
7 Issuance before July 1, 2014\$150
8 Issuance on or after July 1, 2014\$75

9 ~~[(21)]~~ (22) Life settlement broker's license:
10 Issuance before July 1, 2014\$150
11 Issuance on or after July 1, 2014\$75

12 ~~[(22)]~~ (23) Examination for license: For each examination,
13 a fee to be established by the commissioner.

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

17 (1) \$600 per year for all services (including extension of
18 the certificate of authority) for an authorized
19 insurer;

20 (2) \$50 per year for all services (including extension of
21 the license) for a regularly licensed producer;



- 1 (3) \$75 per year for all services (including extension of
- 2 the license) for a regularly licensed nonresident
- 3 producer;
- 4 (4) \$45 per year for all services (including extension of
- 5 the license) for a regularly licensed independent
- 6 adjuster;
- 7 (5) \$45 per year for all services (including extension of
- 8 the license) for a regularly licensed public adjuster;
- 9 (6) \$45 per year for all services (including extension of
- 10 the license) for a claims adjuster's limited license;
- 11 (7) \$150 per year for all services (including extension of
- 12 the license) for an administrator's license;
- 13 ~~(7)~~ (8) \$60 per year for all services (including
- 14 extension of the license) for a regularly licensed
- 15 independent bill reviewer;
- 16 ~~(8)~~ (9) \$45 per year for all services (including
- 17 extension of the license) for a producer's limited
- 18 license;
- 19 ~~(9)~~ (10) \$75 per year for all services (including
- 20 extension of the license) for a regularly licensed
- 21 managing general agent;



- 1 [~~17~~] (18) \$600 per year for all services (including
- 2 extension of the license) for a regularly licensed
- 3 limited line motor vehicle rental company producer;
- 4 [~~18~~] (19) \$1,000 per year for all services provided before
- 5 July 1, 2014, (including extension of the certificate)
- 6 for an authorized legal service plan;
- 7 [~~19~~] (20) \$500 per year for all services provided on or
- 8 after July 1, 2014, (including extension of the
- 9 certificate) for an authorized legal service plan;
- 10 [~~20~~] (21) \$1,200 per year for all services (including
- 11 extension of the license) for a regularly licensed
- 12 life settlement provider; and
- 13 [~~21~~] (22) \$150 per year for all services (including
- 14 extension of the license) for a regularly licensed
- 15 life settlement broker.

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



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

3 "§432:1-102 Applicability of other laws. (a) Part III of
4 article 10A, and article 10H of chapter 431 shall apply to
5 nonprofit medical indemnity or hospital service associations.
6 Such associations shall be exempt from the provisions of part I
7 of article 10A; provided that such exemption is in compliance
8 with applicable federal statutes and regulations.

9 (b) Article 2, article 2D, parts II and IV of article 3,
10 article 6, part III of article 7, article 9A, article 13,
11 article 14G, and article 15 of chapter 431, sections 431:3-301,
12 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102, 431:10-
13 225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers
14 granted by those provisions to the commissioner, shall apply to
15 managed care plans, health maintenance organizations, or medical
16 indemnity or hospital service associations that are owned or
17 controlled by mutual benefit societies so long as the
18 application in any particular case is in compliance with and is
19 not preempted by applicable federal statutes and regulations.

20 (c) Article of chapter 431 shall apply to mutual
21 benefit societies.



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

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

6 SECTION 5. This Act shall take effect on January 1, 2020.



S.B. NO. 1212
S.D. 1

Report Title:

Administrator; Third Party Administrator; License; Insurance

Description:

Requires third party administrators to be licensed and regulated by the Insurance Commissioner. Effective 1/1/2020. (SD1)

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