
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to part II of article 9 a new section to be
3 appropriately designated and to read as follows:

4 "§431:9- Contract between public adjuster and insured.

5 (a) Public adjusters shall ensure that all contracts for their
6 services are in writing and contain the following terms:

7 (1) Legible full name of the adjuster signing the
8 contract;

9 (2) Permanent home state, business address, and phone
10 number;

11 (3) License number on record with the insurance division;

12 (4) Title of "Public Adjuster Contract";

13 (5) Insured's full name, street address, insurance company
14 name, and policy number, if known or upon
15 notification;

16 (6) Description of the loss and its location, if
17 applicable;

18 (7) Description of services to be provided to the insured;

- 1 (8) Signatures of both the public adjuster and the
2 insured;
- 3 (9) Date the contract was signed by the public adjuster
4 and date the contract was signed by the insured;
- 5 (10) Attestation language stating that the public adjuster
6 is fully bonded pursuant to section 431:9-223;
- 7 (11) Full salary, fee, compensation, or other consideration
8 the public adjuster is to receive for services; and
- 9 (12) Initial expenses to be reimbursed to the public
10 adjuster from the proceeds of the claim payment shall
11 be specified by type, with dollar estimates set forth
12 in the contract, and with any additional expenses
13 first approved by the insured.
- 14 (b) No public adjuster shall charge, agree to, or accept
15 as compensation or reimbursement any payment, commission, fee,
16 or other thing of value equal to more than eight per cent of any
17 insurance settlement or proceeds. If the compensation is based
18 on a share of the insurance settlement or proceeds, the exact
19 percentage shall be specified in the contract.
- 20 (c) If the insurer, not later than seventy-two hours after
21 the date on which the loss is reported to the insurer, either
22 pays or commits in writing to pay to the insured the policy
23 limit of the insurance policy, the public adjuster shall:

- 1 (1) Not receive a commission consisting of a percentage of
2 the total amount paid by an insurer to resolve a
3 claim;
- 4 (2) Inform the insured that loss recovery amount might not
5 be increased by insurer; and
- 6 (3) Be entitled only to reasonable compensation from the
7 insured for services provided by the public adjuster
8 on behalf of the insured, based on the time spent on a
9 claim and expenses incurred by the public adjuster,
10 until the claim is paid or the insured receives a
11 written commitment to pay from the insurer.
- 12 (d) A public adjuster shall provide the insured a written
13 disclosure concerning any direct or indirect financial interest
14 that the public adjuster has with any other party who is
15 involved in any aspect of the claim, other than the salary, fee,
16 commission, or other consideration established in the written
17 contract with the insured, including, but not limited to, any
18 ownership of, other than as a minority stockholder, or any
19 compensation expected to be received from, any construction
20 firm, salvage firm, building appraisal firm, motor vehicle
21 repair shop, or any other firm that provides estimates for work,
22 or that performs any work, in conjunction with damages caused by
23 the insured loss on which the public adjuster is engaged. The

1 word "firm" shall include any corporation, partnership,
2 association, joint-stock company, or person.

3 (e) A public adjuster contract shall not contain any
4 contract term that:

5 (1) Requires the insured to authorize an insurance company
6 to issue a check only in the name of the public
7 adjuster;

8 (2) Imposes collection costs or late fees; or

9 (3) Precludes a public adjuster from pursuing civil
10 remedies.

11 (f) The insured has the right to rescind the contract
12 within three business days after the date the contract was
13 signed. The rescission shall be in writing and mailed or
14 delivered to the public adjuster at the address in the contract
15 within the three business-day period.

16 (g) If the insured exercises the right to rescind the
17 contract, anything of value given by the insured under the
18 contract will be returned to the insured within fifteen business
19 days following the receipt by the public adjuster of the
20 cancellation notice.

21 (h) Compensation provisions in a public adjusting contract
22 shall be made available to the commissioner upon request."

1 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to part II of article 9A a new section to be
3 appropriately designated and to read as follows:

4 "§431:9A- Standard of conduct. A person issued a
5 limited lines motor vehicle rental company producer's license
6 shall act in good faith, abstain from deception, and practice
7 honesty and equity in all insurance matters."

8 SECTION 3. Chapter 431, Hawaii Revised Statutes, is
9 amended by adding to part IV of article 9A a new section to be
10 appropriately designated and to read as follows:

11 "§431:9A- Standard of conduct. An owner holding a self-
12 service storage limited lines license authorizing its employees
13 or authorized representative to sell, solicit, and offer
14 coverage under a policy of stored property insurance to an
15 occupant at each location at which the owner engages in self-
16 service storage transactions shall act in good faith, abstain
17 from deception, and practice honesty and equity in all insurance
18 matters."

19 SECTION 4. Chapter 431, Hawaii Revised Statutes, is
20 amended by adding to article 31 a new section to be
21 appropriately designated and to read as follows:

22 "§431:31- Standard of conduct. A vendor holding a
23 limited lines license authorizing its employees or authorized

1 representatives to sell or offer portable electronics insurance
2 shall act in good faith, abstain from deception, and practice
3 honesty and equity in all insurance matters."

4 SECTION 5. Section 431:2-201, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) The commissioner may:

- 7 (1) Make reasonable rules for effectuating any provision
8 of this code, except those relating to the
9 commissioner's appointment, qualifications, or
10 compensation. The commissioner shall adopt rules to
11 effectuate article 10C of chapter 431, subject to the
12 approval of the governor's office and the requirements
13 of chapter 91;
- 14 (2) Conduct examinations and investigations to determine
15 whether any person has violated any provision of this
16 code or to secure information useful in the lawful
17 administration of any provision;
- 18 (3) Require applicants to provide fingerprints and pay a
19 fee to allow the commissioner to make a determination
20 of license eligibility after obtaining state and
21 national criminal history record checks from the
22 Hawaii criminal justice data center and the Federal
23 Bureau of Investigation; [~~and~~]

- 1 (4) Require, upon reasonable notice, that insurers report
2 any claims information the commissioner may deem
3 necessary to protect the public interest[-]; and
4 (5) Upon showing of good cause, waive or modify, in whole
5 or part, any or all fees by order."

6 SECTION 6. Section 431:7-101, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The commissioner shall notify the holder of a
9 certificate of authority issued under article 3 by written
10 notice at least thirty days prior to the extension date of the
11 certificate of authority, license, or other certificate. The
12 annual fee for all services shall be due and payable by
13 electronic payment via the National Association of Insurance
14 Commissioners' Online Premium Tax for Insurance or an equivalent
15 service approved by the commissioner. If the fee is not paid
16 before or on the extension date, the fee shall be increased by a
17 penalty in the amount of fifty per cent of the fee. The
18 commissioner shall provide notice in writing of the delinquency
19 of extension and the imposition of the authorized penalty. If
20 the fee and the penalty are not paid within thirty days
21 immediately following the date of notice of delinquency, the
22 commissioner may revoke, suspend, or inactivate the certificate
23 of authority, license, or other certificate, and may not

1 reissue, remove the suspension of, or reactivate the certificate
2 of authority, license, or other certificate until the fee and
3 penalty have been paid."

4 SECTION 7. Section 431:7-202, Hawaii Revised Statutes, is
5 amended by amending subsection (f) to read as follows:

6 "(f) The taxes imposed by subsections (a), (b), (c), and
7 (d) shall be paid monthly. The monthly tax shall be due and
8 payable by electronic payment via the [~~Automated Clearing House~~
9 ~~debit or credit payment system~~] National Association of
10 Insurance Commissioners' Online Premium Tax for Insurance or an
11 equivalent service approved by the commissioner on or before the
12 twentieth day of the calendar month following the month in which
13 it accrues, coinciding with the filing of the statement provided
14 for in section 431:7-201.

15 In addition to the monthly tax and monthly tax statement,
16 the annual tax shall be due and payable by electronic payment
17 via the [~~Automated Clearing House debit or credit payment~~
18 ~~system~~] National Association of Insurance Commissioners' Online
19 Premium Tax for Insurance or an equivalent service approved by
20 the commissioner on or before March 1 coinciding with the filing
21 of the statement provided for in section 431:7-201.

1 All amounts paid under this subsection, other than fines,
2 shall be allowed as a credit on the annual tax imposed by
3 subsections (a), (b), (c), and (d).

4 If the total amount of installment payments for any
5 calendar year exceeds the amount of annual tax for that year,
6 the excess shall be treated as an overpayment of the annual tax
7 and be allowed as a refund under section 431:7-203.

8 Any insurer failing or refusing to pay the required taxes
9 above stated when due and payable shall be liable for a fine of
10 \$500 or ten per cent of the tax due, whichever is greater; plus
11 interest at a rate of twelve per cent per annum on the
12 delinquent taxes. The taxes may be collected by distraint, or
13 the taxes, fine, and interest may be recovered by an action to
14 be instituted by the commissioner in the name of this State, in
15 any court of competent jurisdiction. The commissioner may
16 suspend the certificate of authority of the delinquent insurer
17 until the taxes, fine, and interest, should any be imposed, are
18 fully paid.

19 ~~[As used in this subsection, "Automated Clearing House~~
20 ~~debit or credit payment system" means the network for the~~
21 ~~interbank clearing of electronic payments for participating~~
22 ~~depository financial institutions.]"~~

1 SECTION 8. Section 431:8-313, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Each surplus lines broker shall file with the
4 commissioner on or before March 15, 2011, a verified statement
5 of all surplus lines insurance transacted during 2010. Each
6 surplus lines broker shall file with the commissioner on or
7 before September 15, 2011, a verified statement of all surplus
8 lines insurance transacted after December 31, 2010, and before
9 July 1, 2011. After June 30, 2011, each surplus lines broker
10 shall file electronically with the commissioner within forty-
11 five days of the end of each calendar quarter a verified
12 statement of all surplus lines insurance transacted during the
13 calendar quarter as follows:

- 14 (1) The statement for the quarter ending March 31 shall be
15 filed on or before May 15;
- 16 (2) The statement for the quarter ending June 30 shall be
17 filed on or before August 15;
- 18 (3) The statement for the quarter ending September 30
19 shall be filed on or before November 15; and
- 20 (4) The statement for the quarter ending December 31 shall
21 be filed on or before February 15."

22 SECTION 9. Section 431:8-315, Hawaii Revised Statutes, is
23 amended by amending subsection (a) to read as follows:

1 "(a) On or before March 15, 2011, each surplus lines
2 broker shall pay to the director of finance, through the
3 commissioner, a premium tax on surplus lines insurance
4 transacted by the broker during 2010. On or before
5 September 15, 2011, each surplus lines broker shall pay to the
6 director of finance, through the commissioner, a premium tax on
7 surplus lines insurance transacted by the broker after
8 December 31, 2010, and before July 1, 2011. After June 30,
9 2011, within forty-five days after the end of each calendar
10 quarter, each surplus lines broker shall pay to the director of
11 finance, through the commissioner[7] via the National
12 Association of Insurance Commissioners' Online Premium Tax for
13 Insurance or an equivalent service approved by the commissioner,
14 a premium tax on surplus lines insurance transacted by the
15 broker during the calendar quarter for insurance for which this
16 State is the home state of the insured. The tax rate shall be
17 in the amount of 4.68 per cent of gross premiums, less return
18 premiums, on surplus lines insurance for which the home state is
19 this State.

20 As used in this subsection, "gross premiums" means the
21 amount of the policy or coverage premium charged by the insurer
22 in consideration for the insurance contract. Any charges for
23 policy, survey, inspection, service, or similar fees or other

1 charges added by the broker shall not be considered part of
2 gross premiums."

3 SECTION 10. Section 431:9-230, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:9-230 Reporting and accounting for [~~premiums-~~**

6 **funds.** (a) Every licensed adjuster shall have the
7 responsibilities of a trustee for all [~~premium~~] funds and return
8 [~~premium~~] funds received or collected under this article.

9 (b) The licensee, upon receipt of the funds, shall either:

- 10 (1) Remit the [~~premiums (less commissions)~~] funds and
11 return [~~premiums~~] funds received or held by the
12 licensee to the [~~insurers or the~~] persons entitled to
13 such funds; or
- 14 (2) Maintain the funds at all times in a federally insured
15 account with a bank, savings and loan association, or
16 financial services loan company situated in Hawaii,
17 separate from the licensee's own funds or funds held
18 by the licensee in any other capacity, [~~in an amount~~
19 ~~at least equal to the premiums (net of commissions)~~]
20 and return [~~premiums~~] funds received by [~~such~~] the
21 licensee and unpaid to the insurers or persons
22 entitled to [~~such~~] the funds. Return [~~premiums~~] funds
23 shall be returned within thirty days, unless directed

1 otherwise in writing by the person entitled to the
2 funds.

3 The licensee shall not be required to maintain a separate bank
4 account or other account for the funds of each [~~insurer or~~
5 person entitled to [~~such~~] the funds, [~~if and~~] so long as the
6 funds held for the [~~insurer or~~] person entitled to [~~such~~] the
7 funds are reasonably ascertainable from the books of account and
8 records of the licensee. Only [~~such~~] additional funds [~~as may~~
9 ~~be~~] reasonably necessary to pay bank, savings and loan
10 association, or financial services loan company charges may be
11 commingled with the [~~premium~~] funds. In the event the bank,
12 savings and loan association, or financial services loan company
13 account is an interest earning account, [~~such~~] the licensee may
14 not retain the interest earned on [~~such~~] funds to the licensee's
15 own use or benefit without the prior written consent of the
16 [~~insurers or~~] person entitled to [~~such~~] the funds. A [~~premium~~]
17 trustee account shall be designated on the records of the bank,
18 savings and loan association, or financial services loan company
19 as a "trustee account established pursuant to section 431:9-230,
20 Hawaii Revised Statutes", or words of similar import.

21 (c) Any [~~such~~] licensee who, not being lawfully entitled
22 to [~~such~~] the funds, diverts or appropriates [~~such~~] the funds or
23 any portion of them [~~to~~] for the licensee's own use, shall be

1 guilty of embezzlement[7] and shall be punished as provided in
2 the criminal statutes of this State."

3 SECTION 11. Section 431:9-235, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:9-235 Denial, suspension, revocation of**
6 **licenses.** (a) The commissioner may suspend, revoke, or refuse
7 to extend any license issued under this article for any cause
8 specified in any other provision of this article, or for any of
9 the following causes:

10 (1) For any cause for which issuance of the license could
11 have been refused had it then existed and been known
12 to the commissioner;

13 (2) If the licensee wilfully violates or knowingly
14 participates in the violation of any provision of this
15 code;

16 (3) If the licensee has obtained or attempted to obtain
17 any license issued under this article through wilful
18 misrepresentation or fraud, or has failed to pass any
19 examination required by section 431:9-206;

20 (4) If the licensee has misappropriated, converted to the
21 licensee's own use, or illegally withheld moneys
22 required to be held in a fiduciary capacity;

1 (5) If the licensee, with intent to deceive, has
2 materially misrepresented the terms or effect of any
3 insurance contract; or has engaged or is about to
4 engage in any fraudulent transaction;

5 (6) If the licensee has been guilty of any unfair practice
6 or fraud as defined in article 13;

7 (7) If in the conduct of the licensee's affairs under the
8 license, the licensee has shown oneself to be a source
9 of injury and loss to the public; or

10 (8) If the licensee has dealt with, or attempted to deal
11 with, insurance or to exercise powers relative to
12 insurance outside the scope of the licensee's
13 licenses.

14 (b) The license of any partnership or corporation may be
15 so suspended, revoked, or refused for any of the causes that
16 relate to any individual designated in the license to exercise
17 its powers.

18 (c) The holder of any license, which has been revoked or
19 suspended, shall surrender the license certificate to the
20 commissioner at the commissioner's request.

21 (d) The commissioner may suspend, revoke, or refuse to
22 extend any license for any cause specified in this article by an
23 order:

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1 (1) Given to the licensee at least fifteen days prior to
2 the order's effective date, subject to the right of
3 the licensee to have a hearing as provided in section
4 431:2-308, and pending that hearing, the license shall
5 be suspended; or

6 (2) Made after a hearing, conducted as provided in section
7 431:2-308, effective ten days after the date the order
8 is given to the licensee, and subject to the right of
9 the licensee to appeal to the circuit court of the
10 first judicial circuit of this State as provided in
11 chapter 91."

12 SECTION 12. Section 431:9A-107.5, Hawaii Revised Statutes,
13 is amended to read as follows:

14 "**§431:9A-107.5 Limited license.** (a) Notwithstanding any
15 other provision of this article, the commissioner may issue:

16 (1) A limited license to persons selling travel tickets of
17 a common carrier of persons or property who shall act
18 only as to travel ticket policies of accident and
19 health or sickness insurance or baggage insurance on
20 personal effects;

21 (2) A limited license to each individual who has charge of
22 vending machines used in this State for the
23 effectuation of travel insurance;

1 (3) A limited license to any individual who sells policies
2 of accident and health or sickness insurance as a
3 promotional device to improve the circulation of a
4 newspaper in this State;

5 (4) A limited line credit insurance producer license to
6 any individual who sells, solicits, or negotiates
7 limited line credit insurance; or

8 (5) A limited license to any owner of a self-service
9 storage facility, as defined in section 507-61, to
10 sell stored property insurance, as defined in section
11 431:9A-A.

12 (b) The commissioner may prescribe and furnish forms
13 calling for any information that the commissioner deems proper
14 in connection with the application for or extension of these
15 limited licenses.

16 (c) The limited license shall not be issued until the
17 license fee has been paid.

18 (d) A person issued a limited license shall act in good
19 faith, abstain from deception, and practice honesty and equity
20 in all insurance matters."

21 SECTION 13. Section 431:10C-405, Hawaii Revised Statutes,
22 is amended by amending subsection (a) to read as follows:

1 "(a) The commissioner shall establish within the bureau[7]
2 a board of governors [~~for the purpose of providing~~] to provide
3 expertise and consultation on all matters pertaining to the
4 operation of the bureau and the joint underwriting plan. The
5 board shall be composed of:

6 (1) [~~Five~~] Six persons from, and members or
7 representatives of, nationally organized insurers or
8 their domestic insurer affiliates; and

9 (2) One person to represent insurance [~~producers;~~
10 producers.

11 [~~(3) Two members, each a self-insurer under this article,~~
12 ~~and nominated by all the certified self-insurers in~~
13 ~~the State;~~

14 [~~(4) Two members, not affiliated with the foregoing~~
15 ~~organizations, nominated by such nonaffiliated~~
16 ~~insurers; and~~

17 [~~(5) Two members each, to be selected by the commissioner~~
18 ~~or nominated by each of the classifications provided~~
19 ~~for in section 431:10C-407(b).]~~

20 SECTION 14. Section 431:13-103, Hawaii Revised Statutes,
21 is amended by amending subsection (a) to read as follows:

1 "(a) The following are defined as unfair methods of
2 competition and unfair or deceptive acts or practices in the
3 business of insurance:

4 (1) Misrepresentations and false advertising of insurance
5 policies. Making, issuing, circulating, or causing to
6 be made, issued, or circulated, any estimate,
7 illustration, circular, statement, sales presentation,
8 omission, or comparison which:

- 9 (A) Misrepresents the benefits, advantages,
10 conditions, or terms of any insurance policy;
- 11 (B) Misrepresents the dividends or share of the
12 surplus to be received on any insurance policy;
- 13 (C) Makes any false or misleading statement as to the
14 dividends or share of surplus previously paid on
15 any insurance policy;
- 16 (D) Is misleading or is a misrepresentation as to the
17 financial condition of any insurer, or as to the
18 legal reserve system upon which any life insurer
19 operates;
- 20 (E) Uses any name or title of any insurance policy or
21 class of insurance policies misrepresenting the
22 true nature thereof;

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- 1 (F) Is a misrepresentation for the purpose of
2 inducing or tending to induce the lapse,
3 forfeiture, exchange, conversion, or surrender of
4 any insurance policy;
- 5 (G) Is a misrepresentation for the purpose of
6 effecting a pledge or assignment of or effecting
7 a loan against any insurance policy;
- 8 (H) Misrepresents any insurance policy as being
9 shares of stock;
- 10 (I) Publishes or advertises the assets of any insurer
11 without publishing or advertising with equal
12 conspicuousness the liabilities of the insurer,
13 both as shown by its last annual statement; or
- 14 (J) Publishes or advertises the capital of any
15 insurer without stating specifically the amount
16 of paid-in and subscribed capital;
- 17 (2) False information and advertising generally. Making,
18 publishing, disseminating, circulating, or placing
19 before the public, or causing, directly or indirectly,
20 to be made, published, disseminated, circulated, or
21 placed before the public, in a newspaper, magazine, or
22 other publication, or in the form of a notice,
23 circular, pamphlet, letter, or poster, or over any

1 radio or television station, or in any other way, an
2 advertisement, announcement, or statement containing
3 any assertion, representation, or statement with
4 respect to the business of insurance or with respect
5 to any person in the conduct of the person's insurance
6 business, which is untrue, deceptive, or misleading;

7 (3) Defamation. Making, publishing, disseminating, or
8 circulating, directly or indirectly, or aiding,
9 abetting, or encouraging the making, publishing,
10 disseminating, or circulating of any oral or written
11 statement or any pamphlet, circular, article, or
12 literature which is false, or maliciously critical of
13 or derogatory to the financial condition of an
14 insurer, and which is calculated to injure any person
15 engaged in the business of insurance;

16 (4) Boycott, coercion, and intimidation.

17 (A) Entering into any agreement to commit, or by any
18 action committing, any act of boycott, coercion,
19 or intimidation resulting in or tending to result
20 in unreasonable restraint of, or monopoly in, the
21 business of insurance; or

22 (B) Entering into any agreement on the condition,
23 agreement, or understanding that a policy will

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1 not be issued or renewed unless the prospective
2 insured contracts for another class or an
3 additional policy of the same class of insurance
4 with the same insurer;

5 (5) False financial statements.

6 (A) Knowingly filing with any supervisory or other
7 public official, or knowingly making, publishing,
8 disseminating, circulating, or delivering to any
9 person, or placing before the public, or
10 knowingly causing, directly or indirectly, to be
11 made, published, disseminated, circulated,
12 delivered to any person, or placed before the
13 public, any false statement of a material fact as
14 to the financial condition of an insurer; or

15 (B) Knowingly making any false entry of a material
16 fact in any book, report, or statement of any
17 insurer with intent to deceive any agent or
18 examiner lawfully appointed to examine into its
19 condition or into any of its affairs, or any
20 public official to whom the insurer is required
21 by law to report, or who has authority by law to
22 examine into its condition or into any of its
23 affairs, or, with like intent, knowingly omitting

1 to make a true entry of any material fact
2 pertaining to the business of the insurer in any
3 book, report, or statement of the insurer;

4 (6) Stock operations and advisory board contracts.

5 Issuing or delivering or permitting agents, officers,
6 or employees to issue or deliver, agency company stock
7 or other capital stock, or benefit certificates or
8 shares in any common-law corporation, or securities or
9 any special or advisory board contracts or other
10 contracts of any kind promising returns and profits as
11 an inducement to insurance;

12 (7) Unfair discrimination.

13 (A) Making or permitting any unfair discrimination
14 between individuals of the same class and equal
15 expectation of life in the rates charged for any
16 policy of life insurance or annuity contract or
17 in the dividends or other benefits payable
18 thereon, or in any other of the terms and
19 conditions of the contract;

20 (B) Making or permitting any unfair discrimination in
21 favor of particular individuals or persons, or
22 between insureds or subjects of insurance having
23 substantially like insuring, risk, and exposure

1 factors, or expense elements, in the terms or
2 conditions of any insurance contract, or in the
3 rate or amount of premium charge therefor, or in
4 the benefits payable or in any other rights or
5 privilege accruing thereunder;

6 (C) Making or permitting any unfair discrimination
7 between individuals or risks of the same class
8 and of essentially the same hazards by refusing
9 to issue, refusing to renew, canceling, or
10 limiting the amount of insurance coverage on a
11 property or casualty risk because of the
12 geographic location of the risk, unless:

13 (i) The refusal, cancellation, or limitation is
14 for a business purpose which is not a mere
15 pretext for unfair discrimination; or

16 (ii) The refusal, cancellation, or limitation is
17 required by law or regulatory mandate;

18 (D) Making or permitting any unfair discrimination
19 between individuals or risks of the same class
20 and of essentially the same hazards by refusing
21 to issue, refusing to renew, canceling, or
22 limiting the amount of insurance coverage on a
23 residential property risk, or the personal

1 property contained therein, because of the age of
2 the residential property, unless:

3 (i) The refusal, cancellation, or limitation is
4 for a business purpose which is not a mere
5 pretext for unfair discrimination; or

6 (ii) The refusal, cancellation, or limitation is
7 required by law or regulatory mandate;

8 (E) Refusing to insure, refusing to continue to
9 insure, or limiting the amount of coverage
10 available to an individual because of the sex or
11 marital status of the individual; however,
12 nothing in this subsection shall prohibit an
13 insurer from taking marital status into account
14 for the purpose of defining persons eligible for
15 dependent benefits;

16 (F) Terminating or modifying coverage, or refusing to
17 issue or renew any property or casualty policy or
18 contract of insurance solely because the
19 applicant or insured or any employee of either is
20 mentally or physically impaired; provided that
21 this subparagraph shall not apply to accident and
22 health or sickness insurance sold by a casualty
23 insurer; provided further that this subparagraph

1 shall not be interpreted to modify any other
2 provision of law relating to the termination,
3 modification, issuance, or renewal of any
4 insurance policy or contract;

5 (G) Refusing to insure, refusing to continue to
6 insure, or limiting the amount of coverage
7 available to an individual based solely upon the
8 individual's having taken a human
9 immunodeficiency virus (HIV) test prior to
10 applying for insurance; or

11 (H) Refusing to insure, refusing to continue to
12 insure, or limiting the amount of coverage
13 available to an individual because the individual
14 refuses to consent to the release of information
15 which is confidential as provided in section 325-
16 101; provided that nothing in this subparagraph
17 shall prohibit an insurer from obtaining and
18 using the results of a test satisfying the
19 requirements of the commissioner, which was taken
20 with the consent of an applicant for insurance;
21 provided further that any applicant for insurance
22 who is tested for HIV infection shall be afforded
23 the opportunity to obtain the test results,

1 within a reasonable time after being tested, and
2 that the confidentiality of the test results
3 shall be maintained as provided by section
4 325-101;

5 (8) Rebates. Except as otherwise expressly provided by
6 law:

7 (A) Knowingly permitting or offering to make or
8 making any contract of insurance, or agreement as
9 to the contract other than as plainly expressed
10 in the contract, or paying or allowing, or giving
11 or offering to pay, allow, or give, directly or
12 indirectly, as inducement to the insurance, any
13 rebate of premiums payable on the contract, or
14 any special favor or advantage in the dividends
15 or other benefits, or any valuable consideration
16 or inducement not specified in the contract; or

17 (B) Giving, selling, or purchasing, or offering to
18 give, sell, or purchase as inducement to the
19 insurance or in connection therewith, any stocks,
20 bonds, or other securities of any insurance
21 company or other corporation, association, or
22 partnership, or any dividends or profits accrued

1 thereon, or anything of value not specified in
2 the contract;

3 (9) Nothing in paragraph (7) or (8) shall be construed as
4 including within the definition of discrimination or
5 rebates any of the following practices:

6 (A) In the case of any life insurance policy or
7 annuity contract, paying bonuses to policyholders
8 or otherwise abating their premiums in whole or
9 in part out of surplus accumulated from
10 nonparticipating insurance; provided that any
11 bonus or abatement of premiums shall be fair and
12 equitable to policyholders and in the best
13 interests of the insurer and its policyholders;

14 (B) In the case of life insurance policies issued on
15 the industrial debit plan, making allowance to
16 policyholders who have continuously for a
17 specified period made premium payments directly
18 to an office of the insurer in an amount which
19 fairly represents the saving in collection
20 expense;

21 (C) Readjustment of the rate of premium for a group
22 insurance policy based on the loss or expense
23 experience thereunder, at the end of the first or

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1 any subsequent policy year of insurance
2 thereunder, which may be made retroactive only
3 for the policy year; ~~and~~

4 (D) In the case of any contract of insurance, the
5 distribution of savings, earnings, or surplus
6 equitably among a class of policyholders, all in
7 accordance with this article; and

8 (E) A reward under a wellness program established
9 under a health care plan that favors an
10 individual if the wellness program meets the
11 following requirements:

12 (i) The wellness program is reasonably designed
13 to promote health or prevent disease;

14 (ii) An individual has an opportunity to qualify
15 for the reward at least once a year;

16 (iii) The reward is available for all similarly
17 situated individuals;

18 (iv) The wellness program has alternative
19 standards for individuals who are unable to
20 obtain the reward because of a health
21 factor;

22 (v) Alternative standards are available for an
23 individual who is unable to participate in a

1 reward program because of a health
2 condition;

3 (vi) The insurer provides information explaining
4 the standard for achieving the reward and
5 discloses the alternative standards; and

6 (vii) The total rewards for all wellness programs
7 under the health insurance policy do not
8 exceed twenty per cent of the cost of
9 coverage;

10 (10) Refusing to provide or limiting coverage available to
11 an individual because the individual may have a third-
12 party claim for recovery of damages; provided that:

13 (A) Where damages are recovered by judgment or
14 settlement of a third-party claim, reimbursement
15 of past benefits paid shall be allowed pursuant
16 to section 663-10;

17 (B) This paragraph shall not apply to entities
18 licensed under chapter 386 or 431:10C; and

19 (C) For entities licensed under chapter 432 or 432D:
20 (i) It shall not be a violation of this section
21 to refuse to provide or limit coverage
22 available to an individual because the
23 entity determines that the individual

1 reasonably appears to have coverage
2 available under chapter 386 or 431:10C; and
3 (ii) Payment of claims to an individual who may
4 have a third-party claim for recovery of
5 damages may be conditioned upon the
6 individual first signing and submitting to
7 the entity documents to secure the lien and
8 reimbursement rights of the entity and
9 providing information reasonably related to
10 the entity's investigation of its liability
11 for coverage.

12 Any individual who knows or reasonably should
13 know that the individual may have a third-party
14 claim for recovery of damages and who fails to
15 provide timely notice of the potential claim to
16 the entity, shall be deemed to have waived the
17 prohibition of this paragraph against refusal or
18 limitation of coverage. "Third-party claim" for
19 purposes of this paragraph means any tort claim
20 for monetary recovery or damages that the
21 individual has against any person, entity, or
22 insurer, other than the entity licensed under
23 chapter 432 or 432D;

- 1 (11) Unfair claim settlement practices. Committing or
2 performing with such frequency as to indicate a
3 general business practice any of the following:
- 4 (A) Misrepresenting pertinent facts or insurance
5 policy provisions relating to coverages at issue;
 - 6 (B) With respect to claims arising under its
7 policies, failing to respond with reasonable
8 promptness, in no case more than fifteen working
9 days, to communications received from:
 - 10 (i) The insurer's policyholder;
 - 11 (ii) Any other persons, including the
12 commissioner; or
 - 13 (iii) The insurer of a person involved in an
14 incident in which the insurer's policyholder
15 is also involved.
- 16 The response shall be more than an acknowledgment
17 that such person's communication has been
18 received[7] and shall adequately address the
19 concerns stated in the communication;
- 20 (C) Failing to adopt and implement reasonable
21 standards for the prompt investigation of claims
22 arising under insurance policies;

- 1 (D) Refusing to pay claims without conducting a
2 reasonable investigation based upon all available
3 information;
- 4 (E) Failing to affirm or deny coverage of claims
5 within a reasonable time after proof of loss
6 statements have been completed;
- 7 (F) Failing to offer payment within thirty calendar
8 days of affirmation of liability, if the amount
9 of the claim has been determined and is not in
10 dispute;
- 11 (G) Failing to provide the insured, or when
12 applicable the insured's beneficiary, with a
13 reasonable written explanation for any delay, on
14 every claim remaining unresolved for thirty
15 calendar days from the date it was reported;
- 16 (H) Not attempting in good faith to effectuate
17 prompt, fair, and equitable settlements of claims
18 in which liability has become reasonably clear;
- 19 (I) Compelling insureds to institute litigation to
20 recover amounts due under an insurance policy by
21 offering substantially less than the amounts
22 ultimately recovered in actions brought by the
23 insureds;

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- 1 (J) Attempting to settle a claim for less than the
2 amount to which a reasonable person would have
3 believed the person was entitled by reference to
4 written or printed advertising material
5 accompanying or made part of an application;
- 6 (K) Attempting to settle claims on the basis of an
7 application [~~which~~] that was altered without
8 notice, knowledge, or consent of the insured;
- 9 (L) Making claims payments to insureds or
10 beneficiaries not accompanied by a statement
11 setting forth the coverage under which the
12 payments are being made;
- 13 (M) Making known to insureds or claimants a policy of
14 appealing from arbitration awards in favor of
15 insureds or claimants for the purpose of
16 compelling them to accept settlements or
17 compromises less than the amount awarded in
18 arbitration;
- 19 (N) Delaying the investigation or payment of claims
20 by requiring an insured, claimant, or the
21 physician or advanced practice registered nurse
22 of either to submit a preliminary claim report
23 and then requiring the subsequent submission of

- 1 formal proof of loss forms, both of which
2 submissions contain substantially the same
3 information;
- 4 (O) Failing to promptly settle claims, where
5 liability has become reasonably clear, under one
6 portion of the insurance policy coverage to
7 influence settlements under other portions of the
8 insurance policy coverage;
- 9 (P) Failing to promptly provide a reasonable
10 explanation of the basis in the insurance policy
11 in relation to the facts or applicable law for
12 denial of a claim or for the offer of a
13 compromise settlement; and
- 14 (Q) Indicating to the insured on any payment draft,
15 check, or in any accompanying letter that the
16 payment is "final" or is "a release" of any claim
17 if additional benefits relating to the claim are
18 probable under coverages afforded by the policy;
19 unless the policy limit has been paid or there is
20 a bona fide dispute over either the coverage or
21 the amount payable under the policy;
- 22 (12) Failure to maintain complaint handling procedures.
23 Failure of any insurer to maintain a complete record

1 of all the complaints [~~which~~] that it has received
2 since the date of its last examination under section
3 431:2-302. This record shall indicate the total
4 number of complaints, their classification by line of
5 insurance, the nature of each complaint, the
6 disposition of these complaints, and the time it took
7 to process each complaint. For purposes of this
8 section, "complaint" means any written communication
9 primarily expressing a grievance;

10 (13) Misrepresentation in insurance applications. Making
11 false or fraudulent statements or representations on
12 or relative to an application for an insurance policy,
13 for the purpose of obtaining a fee, commission, money,
14 or other benefit from any insurer, producer, or
15 individual; and

16 (14) Failure to obtain information. Failure of any
17 insurance producer, or an insurer where no producer is
18 involved, to comply with section 431:10D-623(a), (b),
19 or (c) by making reasonable efforts to obtain
20 information about a consumer before making a
21 recommendation to the consumer to purchase or exchange
22 an annuity."

1 SECTION 15. Section 431K-3.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A risk retention group chartered in states other than
4 this State and seeking to do business as a risk retention group
5 in this State shall pay an initial registration fee of \$300 to
6 the commissioner and shall thereafter pay annually a service fee
7 of \$150 on or before August 16 of each year in which the risk
8 retention group intends to do business in this State. The
9 commissioner may, upon showing of good cause, waive or modify,
10 in whole or part, all fees in this subsection by order."

11 SECTION 16. Section 431K-7.1, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A purchasing group that intends to do business in
14 this State shall pay an initial registration fee of \$300 to the
15 commissioner and shall thereafter pay annually a service fee of
16 \$150 on or before August 16 of each year in which the purchasing
17 group intends to do business in this State. The commissioner
18 may by order, upon showing of good cause, waive or modify, in
19 whole or part, all fees in this subsection."

20 SECTION 17. Section 431S-3, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

22 "(b) Each person seeking to register as a pharmacy benefit
23 manager shall file with the commissioner an application on a

1 form prescribed by the commissioner. The application shall
2 include:

- 3 (1) The name, address, official position, and professional
4 qualifications of each individual who is responsible
5 for the conduct of the affairs of the pharmacy benefit
6 manager, including all members of the board of
7 directors; board of trustees; executive commission;
8 other governing board or committee; principal
9 officers, as applicable; partners or members, as
10 applicable; and any other person who exercises control
11 or influence over the affairs of the pharmacy benefit
12 manager;
- 13 (2) The name and address of the applicant's agent for
14 service of process in the State; and
- 15 (3) A nonrefundable application fee of \$140.

16 The commissioner may by order, upon showing of good cause, waive
17 or modify, in whole or part, the fee in this subsection."

18 SECTION 18. Section 431S-4, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) When renewing its registration, a pharmacy benefit
21 manager shall submit to the commissioner the following:

- 22 (1) An application for renewal on a form prescribed by the
23 commissioner; and

1 (2) A renewal fee of \$140.

2 The commissioner may by order, upon showing of good cause, waive
3 or modify, in whole or part, the fee in this subsection."

4 SECTION 19. Section 432:1-108, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

8 (1) Certificate of authority:

9 (A) Application for a certificate of authority:
10 \$900; and

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

12 (2) Organization of domestic mutual benefit societies:

13 (A) Application for a certificate of registration:
14 \$1,500; and

15 (B) Issuance of certificate of registration: \$150;
16 and

17 (3) For all services subsequent to the issuance of a
18 certificate of authority, including extension of the
19 certificate of authority: \$600 per year.

20 The commissioner may by order, upon showing of good cause, waive
21 or modify, in whole or part, all fees in this subsection."

22 SECTION 20. Section 432:2-108, Hawaii Revised Statutes, is
23 amended by amending subsection (a) to read as follows:

1 "(a) The commissioner shall collect, in advance, the
2 following fees:

3 (1) Certificate of authority:

4 (A) Application for a certificate of authority:
5 \$900;

6 (B) Issuance of certificate of authority: \$600;

7 (2) Organization of domestic fraternal benefit societies:

8 (A) Application for a preliminary certificate of
9 authority: \$1,500;

10 (B) Issuance of preliminary certificate of
11 authority: \$150; and

12 (3) For all services subsequent to the issuance of a
13 certificate of authority, including extension of the
14 certificate of authority: \$600 per year.

15 The commissioner may by order, upon showing of good cause, waive
16 or modify, in whole or part, all fees in this subsection."

17 SECTION 21. Section 432D-17, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The commissioner shall collect, in advance, the
20 following fees:

21 (1) Certificate of authority:

22 (A) Application for a certificate of authority:
23 \$900; and

- 1 (B) Issuance of certificate of authority: \$600; and
2 (2) For all services subsequent to the issuance of
3 certificate of authority, including extension of the
4 certificate of authority: \$600 per year.

5 The commissioner may by order, upon showing of good cause, waive
6 or modify, in whole or part, all fees in this subsection."

7 SECTION 22. Section 432G-12, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The commissioner shall collect, in advance, the
10 following fees:

11 (1) Certificate of authority:

12 (A) Application for a certificate of authority:
13 \$900; and

14 (B) Issuance of certificate of authority: \$600; and
15 (2) For all services subsequent to the issuance of a
16 certificate of authority, including extension of the
17 certificate of authority: \$600 per year.

18 The commissioner may by order, upon showing of good cause, waive
19 or modify, in whole or part, all fees in this subsection."

20 SECTION 23. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22

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1 SECTION 24. This Act shall take effect upon its approval.

2

3

INTRODUCED BY: _____

Am

4

BY REQUEST

JAN 21 2020

H.B. NO. 2320

Report Title:

Insurance; Adjuster; Bill Reviewer; Motor Vehicle Rental Company; Portable Electronic; Self-service Storage; Limited Line; Fee; National Association of Insurance Commissioners; Surplus Line; Hawaii Joint Underwriting Plan; Wellness Program; Chapter 431; Chapter 431K; Chapter 431S; Chapter 432; Chapter 432D; Chapter 432G

Description:

Amends various portions of Hawaii Revised Statutes title 24 to update and improve existing Insurance Code provisions.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To amend various portions of Hawaii Revised Statutes (HRS) title 24 (Insurance Code) to update and improve existing Insurance Code provisions, including:

- (1) Adding a new section to HRS chapter 431, article 9 (Licensing of Adjusters and Bill Reviewers) by including mandatory contractual terms, mandatory disclosures, and a cap on commissions that adjusters may charge insureds (section 1 of bill);
- (2) Adding a new section to HRS chapter 431, article 9A, part II (Motor Vehicle Rental Company), a new section to HRS chapter 431, article 31 (Portable Electronics), and a new section to Act 284, Session Laws of Hawaii 2019, and amending HRS section 431:9A-107.5 to add a standard of conduct requirement (sections 2, 3, 4, and 12);
- (3) Amending HRS sections 431:2-201, 431K-3.5, 431K-7.1, 431S-3, 431S-4, 432:1-108, 432:2-108, 432D-17, and 432G-12 by giving the Insurance Commissioner authority to waive, in part or whole, or reduce fees deposited in the Commissioner's Education and Training Fund and the Compliance Resolution Fund (sections 5, 15, 16, 17, 18, 19, and 20);
- (4) Amending HRS section 431:7-101(c) by mandating electronic payment for all service fees related to extensions of certificates of authority (section 6);

- (5) Amending HRS section 431:7-202(f) by replacing "Automated Clearing House debit or credit payment system" with "OPTIns" (section 7);
- (6) Amending HRS sections 431:8-313(a) and 431:8-315(a) by mandating electronic filing of surplus lines reports and payment of surplus lines premium taxes (sections 8 and 9);
- (7) Amending HRS section 431:9-230 by replacing "premiums" with "client funds" (section 10);
- (8) Amending HRS section 431:9-235(e) by reinserting the right to an administrative hearing and appeal from an order suspending, revoking, or refusing to extend any license for any cause specified in HRS article 9 (section 11);
- (9) Amending the Hawaii Joint Underwriting Program (HJUP) Board of Governors' composition in HRS section 431:10C-405(a) by reducing the number of members and eliminating outdated and nonexistent criteria from which board members are selected (section 13); and
- (10) Amending HRS section 431:13-103(a)(9) by including wellness programs and related products to promote fitness and health (section 14).

MEANS:

Add a new section to: HRS chapter 431, article 9, part II; HRS chapter 431, article 9A, part II and part IV; and HRS chapter 431, article 31.

Amend HRS sections 431:2-201(c), 431:7-701(c), 431:7-202(f), 431:8-313(a), 431:8-315(a), 431:9-230, 431:9-235, 431:9A-107.5, 431:10C-405(a), 431:13-103(a), 431K-3.5(a), 431K-7.1(a), 431S-3(b), 431S-4(b), 432:1-

108(a), 432-108(a), 432D-17(a), and 432G-12(a).

JUSTIFICATION:

(1) Currently, HRS chapter 431, article 9 (Licensing of Adjusters and Bill Reviewers) does not mandate contractual terms for agreements between public adjusters and insureds, leaving an insured facing a loss in a vulnerable position. Without any regulatory oversight, this vulnerability can be exploited by exorbitant commissions and unreasonable contractual terms unfavorable to insureds. (Section 1)

(2) Niche insurance markets are increasingly seeking to obtain limited lines producer licenses from the Department of Commerce and Consumer Affairs' Insurance Division. HRS chapter 431, article 31 (Portable Electronics Insurance), HRS chapter 431, article 9A (Producer Licensing), and HRS section 431:9A-107.5 authorize the use of these licenses; however, the various limited lines licenses are not subject to uniform standards, creating potential for consumer misinformation and harm. (Sections 2, 3, 4, and 12)

(3) Fees deposited into the Commissioner's Education and Training Fund and the Compliance Resolution Fund may exceed expenditures in a given fiscal year, and the Insurance Commissioner has no authority to waive, in part or whole, the fees deposited into these funds when expenditures are not commensurate with deposits. (Sections 5, 15, 16, 17, 18, 19, and 20)

(4) Insurers may currently pay all service fees related to extensions of certificates of authority by paper check or electronic payment. While a large majority of insurers submit service fees via electronic payments, a small number of insurers continue to pay by paper check, which can create manual processing errors and delays in the

availability of funds paid to the State.
(Section 6)

(5) Insurers submit premium taxes via OPTIns, an electronic payment platform developed by the National Association of Insurance Commissioners to facilitate the submission of premium tax, surplus lines, and other state-specific filings and payments to participating states. However, HRS section 431:7-202(f) does not employ the term "OPTIns" to describe the electronic system used to facilitate insurers' electronic payment of premium taxes.
(Section 7)

(6) Insurers currently file paper statements and pay fees and surplus lines taxes via paper check. This can create inefficiency, delays, and errors in manual processing. (Sections 8 and 9)

(7) HRS section 431:9-230 inaccurately provides that adjusters and bill reviewers handle premiums, when they handle only funds from clients. (Section 10)

(8) Act 279, Session Laws of Hawaii 2019, repealed HRS section 431:9-235(e), which provides for the right to an administrative hearing and appeal from an order suspending, revoking, or refusal to extend any license for any cause specified in HRS chapter 431, article 9 (Licensing of Adjusters and Bill Reviewers). Act 279 intended to eliminate sanctioning professional and vocational licensees based on their defaulting on student loans, student loan repayment contracts, and scholarship contracts. However, Act 279 also inadvertently deleted the right to a hearing and an appeal from an order in all cases, even when the suspension, revocation, or nonrenewal does not stem from defaults involving student loans or scholarship contracts. (Section 11)

(9) HRS section 431:10C-405(a) contains outdated and nonexistent criteria for the HJUP Board of Governors and also does not accurately reflect member composition commensurate with the plan size and operations. (Section 13)

(10) Wellness programs and devices tied to monitoring health may be viewed as rebates and in violation of HRS section 431:13-103(a)(9) when offered by insurers. (Section 14)

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.