
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 a new section to part II of article 9 to be
3 appropriately designated and to read as follows:

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

5 (a) All contracts for services provided by a public adjuster
6 shall be in writing and contain the following terms:

7 (1) Title of "Public Adjuster Contract";

8 (2) Description of services to be provided to the insured;

9 (3) Full salary, fee, commission, or other consideration
10 the public adjuster is to receive for services;

11 (4) Initial expenses to be reimbursed to the public
12 adjuster from the proceeds of the claim payment shall
13 be specified by type, with dollar estimates set forth
14 in the contract, and with any additional expenses
15 first approved by the insured;

16 (5) Attestation language stating that the public adjuster
17 is fully bonded pursuant to section 431:9-223;



1 (6) Insured's full name, street address, insurance company
2 name, and policy number, if known or upon
3 notification;

4 (7) Description of the loss and its location, if
5 applicable;

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

8 (9) The public adjuster's permanent home state, business
9 address, and phone number;

10 (10) License number on record with the insurance division;

11 (11) Signatures of the public adjuster and the insured; and

12 (12) Date the contract was signed by the public adjuster
13 and date the contract was signed by the insured.

14 (b) A public adjuster contract shall not contain any
15 contract term that:

16 (1) Requires the insured to authorize an insurance company
17 to issue a check only in the name of the public
18 adjuster;

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

20 (3) Precludes the insured from pursuing civil remedies.



1 (c) No public adjuster shall charge, agree to, or accept
2 as compensation or reimbursement any payment, fee, commission,
3 or other thing of value that is determined to be unreasonable by
4 the commissioner. If the compensation is based on a share of
5 the insurance settlement or proceeds, the exact percentage shall
6 be specified in the contract.

7 (d) If the insurer, not later than seventy-two hours after
8 the date on which the loss is reported to the insurer, either
9 pays or commits in writing to pay to the insured the policy
10 limit of the insurance policy, the public adjuster shall:

11 (1) Inform the insured that loss recovery amount might not
12 be increased by the insurer; and

13 (2) Be entitled only to reasonable compensation from the
14 insured for services provided by the public adjuster
15 on behalf of the insured, based on the time spent on a
16 claim and expenses incurred by the public adjuster,
17 until the claim is paid or the insured receives a
18 written commitment to pay from the insurer.

19 (e) A public adjuster shall provide the insured a written
20 disclosure concerning any direct or indirect financial interest
21 that the public adjuster has with any other party who is



1 involved in any aspect of the claim, other than the salary, fee,
2 commission, or other consideration established in the written
3 contract with the insured, including but not limited to any
4 ownership of, other than as a minority stockholder, or any
5 compensation expected to be received from, any construction
6 firm, salvage firm, building appraisal firm, motor vehicle
7 repair shop, or any other firm that provides estimates for work,
8 or that performs any work, in conjunction with damages caused by
9 the insured loss on which the public adjuster is engaged. For
10 purposes of this subsection, "firm" shall include any
11 corporation, partnership, association, joint-stock company, or
12 person.

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

18 (g) If the insured exercises the right to rescind the
19 contract pursuant to subsection (f), anything of value given by
20 the insured under the contract shall be returned to the insured



1 within fifteen business days following the receipt of the
2 cancellation notice by the public adjuster.

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

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

8 "§431:9A- Standard of conduct. A person issued a
9 limited lines motor vehicle rental company producer license
10 shall act in good faith, abstain from deception, and practice
11 honesty and equity in all insurance matters."

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

15 "§431:9A- Standard of conduct. An owner holding a
16 self-service storage limited lines license shall act in good
17 faith, abstain from deception, and practice honesty and equity
18 in all insurance matters."

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



1 "§431:31- Standard of conduct. A vendor issued a
2 limited lines license shall act in good faith, abstain from
3 deception, and practice honesty and equity in all insurance
4 matters."

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

7 "(c) The commissioner may:

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



1 national criminal history record checks from the
2 Hawaii criminal justice data center and the Federal
3 Bureau of Investigation; [~~and~~]

4 (4) Require, upon reasonable notice, that insurers report
5 any claims information the commissioner may deem
6 necessary to protect the public interest[-]; and

7 (5) Upon showing of good cause, waive or modify, in whole
8 or part, any or all fees by order."

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

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



1 of extension and the imposition of the authorized penalty. If
2 the fee and the penalty are not paid within thirty days
3 immediately following the date of notice of delinquency, the
4 commissioner may revoke, suspend, or inactivate the certificate
5 of authority, license, or other certificate, and may not
6 reissue, remove the suspension of, or reactivate the certificate
7 of authority, license, or other certificate until the fee and
8 penalty have been paid."

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

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

20 In addition to the monthly tax and monthly tax statement,
21 the annual tax shall be due and payable by electronic payment



1 via the [~~Automated Clearing House debit or credit payment~~
2 ~~system~~] National Association of Insurance Commissioners' Online
3 Premium Tax for Insurance or an equivalent service approved by
4 the commissioner on or before March 1 coinciding with the filing
5 of the statement provided for in section 431:7-201.

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

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

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



1 until the taxes, fine, and interest, should any be imposed, are
2 fully paid.

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

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

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

20 (1) The statement for the quarter ending March 31 shall be
21 filed on or before May 15;



1 (2) The statement for the quarter ending June 30 shall be
2 filed on or before August 15;

3 (3) The statement for the quarter ending September 30
4 shall be filed on or before November 15; and

5 (4) The statement for the quarter ending December 31 shall
6 be filed on or before February 15."

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

9 "(a) On or before March 15, 2011, each surplus lines
10 broker shall pay to the director of finance, through the
11 commissioner, a premium tax on surplus lines insurance
12 transacted by the broker during 2010. On or before
13 September 15, 2011, each surplus lines broker shall pay to the
14 director of finance, through the commissioner, a premium tax on
15 surplus lines insurance transacted by the broker after
16 December 31, 2010, and before July 1, 2011. After June 30,
17 2011, within forty-five days after the end of each calendar
18 quarter, each surplus lines broker shall pay to the director of
19 finance, through the commissioner[7] via the National
20 Association of Insurance Commissioners' Online Premium Tax for
21 Insurance or an equivalent service approved by the commissioner,



1 a premium tax on surplus lines insurance transacted by the
2 broker during the calendar quarter for insurance for which this
3 State is the home state of the insured. The tax rate shall be
4 in the amount of 4.68 per cent of gross premiums, less return
5 premiums, on surplus lines insurance for which the home state is
6 this State.

7 As used in this subsection, "gross premiums" means the
8 amount of the policy or coverage premium charged by the insurer
9 in consideration for the insurance contract. Any charges for
10 policy, survey, inspection, service, or similar fees or other
11 charges added by the broker shall not be considered part of
12 gross premiums."

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

15 "**§431:9-230 Reporting and accounting for [~~premiums~~]**
16 **funds**. (a) Every licensed adjuster shall have the
17 responsibilities of a trustee for all [~~premium~~] funds and return
18 [~~premium~~] funds received or collected under this article.

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

20 (1) Remit the [~~premiums (less commissions)~~] funds and
21 return [~~premiums~~] funds received or held by the



1 licensee to the [~~insurers or the~~] persons entitled to
2 [~~such~~] the funds; or

3 (2) Maintain the funds at all times in a federally insured
4 account with a bank, savings and loan association, or
5 financial services loan company situated in Hawaii,
6 separate from the licensee's own funds or funds held
7 by the licensee in any other capacity, [~~in an amount~~
8 ~~at least equal to the premiums (net of commissions)]~~
9 and return [~~premiums~~] funds received by [~~such~~] the
10 licensee and unpaid to the insurers or persons
11 entitled to [~~such~~] the funds. Return [~~premiums~~] funds
12 shall be returned within thirty days, unless directed
13 otherwise in writing by the person entitled to the
14 funds.

15 The licensee shall not be required to maintain a separate bank
16 account or other account for the funds of each [~~insurer or~~]
17 person entitled to [~~such~~] the funds, [~~if and~~] so long as the
18 funds held for the [~~insurer or~~] person entitled to [~~such~~] the
19 funds are reasonably ascertainable from the books of account and
20 records of the licensee. Only [~~such~~] additional funds [~~as may~~
21 ~~be~~] reasonably necessary to pay bank, savings and loan



1 association, or financial services loan company charges may be
2 commingled with the [~~premium~~] funds. In the event the bank,
3 savings and loan association, or financial services loan company
4 account is an interest earning account, [~~such~~] the licensee may
5 not retain the interest earned on [~~such~~] the funds to the
6 licensee's own use or benefit without the prior written consent
7 of the [~~insurers or~~] person entitled to [~~such~~] the funds. A
8 [~~premium~~] trustee account shall be designated on the records of
9 the bank, savings and loan association, or financial services
10 loan company as a "trustee account established pursuant to
11 section 431:9-230, Hawaii Revised Statutes", or words of similar
12 import.

13 (c) Any [~~such~~] licensee who, not being lawfully entitled
14 to [~~such~~] the funds, diverts or appropriates [~~such~~] the funds or
15 any portion of them [~~to~~] for the licensee's own use, shall be
16 guilty of embezzlement[7] and shall be punished as provided in
17 the criminal statutes of this State."

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

20 "§431:9-235 Denial, suspension, revocation of licenses.

21 (a) The commissioner may suspend, revoke, or refuse to extend



1 any license issued under this article for any cause specified in
2 any other provision of this article, or for any of the following
3 causes:

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

7 (2) If the licensee wilfully violates or knowingly
8 participates in the violation of any provision of this
9 code;

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

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

17 (5) If the licensee, with intent to deceive, has
18 materially misrepresented the terms or effect of any
19 insurance contract; or has engaged or is about to
20 engage in any fraudulent transaction;



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

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

6 (8) If the licensee has dealt with, or attempted to deal
7 with, insurance or to exercise powers relative to
8 insurance outside the scope of the licensee's
9 licenses.

10 (b) The license of any partnership or corporation may be
11 so suspended, revoked, or refused for any of the causes that
12 relate to any individual designated in the license to exercise
13 its powers.

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

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

20 (1) Given to the licensee at least fifteen days prior to
21 the order's effective date, subject to the right of



1 the licensee to have a hearing as provided in section
2 431:2-308, and pending that hearing, the license shall
3 be suspended; or

4 (2) Made after a hearing, conducted as provided in section
5 431:2-308, effective ten days after the date the order
6 is given to the licensee, and subject to the right of
7 the licensee to appeal to the circuit court of the
8 first judicial circuit of this State as provided in
9 chapter 91."

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

12 "**§431:9A-107.5 Limited license.** (a) Notwithstanding any
13 other provision of this article, the commissioner may issue:

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

19 (2) A limited license to each individual who has charge of
20 vending machines used in this State for the
21 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-171.

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."



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

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

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

11 (2) One person to represent insurance producers~~[7]~~

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

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

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



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

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

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

11 (A) Misrepresents the benefits, advantages,
12 conditions, or terms of any insurance policy;

13 (B) Misrepresents the dividends or share of the
14 surplus to be received on any insurance policy;

15 (C) Makes any false or misleading statement as to the
16 dividends or share of surplus previously paid on
17 any insurance policy;

18 (D) Is misleading or is a misrepresentation as to the
19 financial condition of any insurer, or as to the
20 legal reserve system upon which any life insurer
21 operates;



- 1 (E) Uses any name or title of any insurance policy or
- 2 class of insurance policies misrepresenting the
- 3 true nature thereof;
- 4 (F) Is a misrepresentation for the purpose of
- 5 inducing or tending to induce the lapse,
- 6 forfeiture, exchange, conversion, or surrender of
- 7 any insurance policy;
- 8 (G) Is a misrepresentation for the purpose of
- 9 effecting a pledge or assignment of or effecting
- 10 a loan against any insurance policy;
- 11 (H) Misrepresents any insurance policy as being
- 12 shares of stock;
- 13 (I) Publishes or advertises the assets of any insurer
- 14 without publishing or advertising with equal
- 15 conspicuousness the liabilities of the insurer,
- 16 both as shown by its last annual statement; or
- 17 (J) Publishes or advertises the capital of any
- 18 insurer without stating specifically the amount
- 19 of paid-in and subscribed capital;
- 20 (2) False information and advertising generally. Making,
- 21 publishing, disseminating, circulating, or placing



1 before the public, or causing, directly or indirectly,
2 to be made, published, disseminated, circulated, or
3 placed before the public, in a newspaper, magazine, or
4 other publication, or in the form of a notice,
5 circular, pamphlet, letter, or poster, or over any
6 radio or television station, or in any other way, an
7 advertisement, announcement, or statement containing
8 any assertion, representation, or statement with
9 respect to the business of insurance or with respect
10 to any person in the conduct of the person's insurance
11 business, which is untrue, deceptive, or misleading;

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

21 (4) Boycott, coercion, and intimidation.



- 1 (A) Entering into any agreement to commit, or by any
2 action committing, any act of boycott, coercion,
3 or intimidation resulting in or tending to result
4 in unreasonable restraint of, or monopoly in, the
5 business of insurance; or
- 6 (B) Entering into any agreement on the condition,
7 agreement, or understanding that a policy will
8 not be issued or renewed unless the prospective
9 insured contracts for another class or an
10 additional policy of the same class of insurance
11 with the same insurer;
- 12 (5) False financial statements.
- 13 (A) Knowingly filing with any supervisory or other
14 public official, or knowingly making, publishing,
15 disseminating, circulating, or delivering to any
16 person, or placing before the public, or
17 knowingly causing, directly or indirectly, to be
18 made, published, disseminated, circulated,
19 delivered to any person, or placed before the
20 public, any false statement of a material fact as
21 to the financial condition of an insurer; or



1 (B) Knowingly making any false entry of a material
2 fact in any book, report, or statement of any
3 insurer with intent to deceive any agent or
4 examiner lawfully appointed to examine into its
5 condition or into any of its affairs, or any
6 public official to whom the insurer is required
7 by law to report, or who has authority by law to
8 examine into its condition or into any of its
9 affairs, or, with like intent, knowingly omitting
10 to make a true entry of any material fact
11 pertaining to the business of the insurer in any
12 book, report, or statement of the insurer;

13 (6) Stock operations and advisory board contracts.
14 Issuing or delivering or permitting agents, officers,
15 or employees to issue or deliver, agency company stock
16 or other capital stock, or benefit certificates or
17 shares in any common-law corporation, or securities or
18 any special or advisory board contracts or other
19 contracts of any kind promising returns and profits as
20 an inducement to insurance;

21 (7) Unfair discrimination.



- 1 (A) Making or permitting any unfair discrimination
2 between individuals of the same class and equal
3 expectation of life in the rates charged for any
4 policy of life insurance or annuity contract or
5 in the dividends or other benefits payable
6 thereon, or in any other of the terms and
7 conditions of the contract;
- 8 (B) Making or permitting any unfair discrimination in
9 favor of particular individuals or persons, or
10 between insureds or subjects of insurance having
11 substantially like insuring, risk, and exposure
12 factors, or expense elements, in the terms or
13 conditions of any insurance contract, or in the
14 rate or amount of premium charge therefor, or in
15 the benefits payable or in any other rights or
16 privilege accruing thereunder;
- 17 (C) Making or permitting any unfair discrimination
18 between individuals or risks of the same class
19 and of essentially the same hazards by refusing
20 to issue, refusing to renew, canceling, or
21 limiting the amount of insurance coverage on a



1 property or casualty risk because of the
2 geographic location of the risk, 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 (D) Making or permitting any unfair discrimination
9 between individuals or risks of the same class
10 and of essentially the same hazards by refusing
11 to issue, refusing to renew, canceling, or
12 limiting the amount of insurance coverage on a
13 residential property risk, or the personal
14 property contained therein, because of the age of
15 the residential property, unless:
16 (i) The refusal, cancellation, or limitation is
17 for a business purpose which is not a mere
18 pretext for unfair discrimination; or
19 (ii) The refusal, cancellation, or limitation is
20 required by law or regulatory mandate;

- 1 (E) Refusing to insure, refusing to continue to
2 insure, or limiting the amount of coverage
3 available to an individual because of the sex or
4 marital status of the individual; however,
5 nothing in this subsection shall prohibit an
6 insurer from taking marital status into account
7 for the purpose of defining persons eligible for
8 dependent benefits;
- 9 (F) Terminating or modifying coverage, or refusing to
10 issue or renew any property or casualty policy or
11 contract of insurance solely because the
12 applicant or insured or any employee of either is
13 mentally or physically impaired; provided that
14 this subparagraph shall not apply to accident and
15 health or sickness insurance sold by a casualty
16 insurer; provided further that this subparagraph
17 shall not be interpreted to modify any other
18 provision of law relating to the termination,
19 modification, issuance, or renewal of any
20 insurance policy or contract;



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

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



1 shall be maintained as provided by section
2 325-101;

3 (8) Rebates. Except as otherwise expressly provided by
4 law:

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

15 (B) Giving, selling, or purchasing, or offering to
16 give, sell, or purchase as inducement to the
17 insurance or in connection therewith, any stocks,
18 bonds, or other securities of any insurance
19 company or other corporation, association, or
20 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;

- 1 (C) Readjustment of the rate of premium for a group
2 insurance policy based on the loss or expense
3 experience thereunder, at the end of the first or
4 any subsequent policy year of insurance
5 thereunder, which may be made retroactive only
6 for the policy year; [and]
- 7 (D) In the case of any contract of insurance, the
8 distribution of savings, earnings, or surplus
9 equitably among a class of policyholders, all in
10 accordance with this article; and
- 11 (E) A reward under a wellness program established
12 under a health care plan that favors an
13 individual if the wellness program meets the
14 following requirements:
- 15 (i) The wellness program is reasonably designed
16 to promote health or prevent disease;
- 17 (ii) An individual has an opportunity to qualify
18 for the reward at least once a year;
- 19 (iii) The reward is available for all similarly
20 situated individuals;



- 1 (iv) The wellness program has alternative
- 2 standards for individuals who are unable to
- 3 obtain the reward because of a health
- 4 factor;
- 5 (v) Alternative standards are available for an
- 6 individual who is unable to participate in a
- 7 reward program because of a health
- 8 condition;
- 9 (vi) The insurer provides information explaining
- 10 the standard for achieving the reward and
- 11 discloses the alternative standards; and
- 12 (vii) The total rewards for all wellness programs
- 13 under the health care plan do not exceed
- 14 twenty per cent of the cost of coverage;
- 15 (10) Refusing to provide or limiting coverage available to
- 16 an individual because the individual may have a third-
- 17 party claim for recovery of damages; provided that:
- 18 (A) Where damages are recovered by judgment or
- 19 settlement of a third-party claim, reimbursement
- 20 of past benefits paid shall be allowed pursuant
- 21 to section 663-10;

1 (B) This paragraph shall not apply to entities
2 licensed under chapter 386 or 431:10C; and
3 (C) For entities licensed under chapter 432 or 432D:
4 (i) It shall not be a violation of this section
5 to refuse to provide or limit coverage
6 available to an individual because the
7 entity determines that the individual
8 reasonably appears to have coverage
9 available under chapter 386 or 431:10C; and
10 (ii) Payment of claims to an individual who may
11 have a third-party claim for recovery of
12 damages may be conditioned upon the
13 individual first signing and submitting to
14 the entity documents to secure the lien and
15 reimbursement rights of the entity and
16 providing information reasonably related to
17 the entity's investigation of its liability
18 for coverage.
19 Any individual who knows or reasonably should
20 know that the individual may have a third-party
21 claim for recovery of damages and who fails to

1 provide timely notice of the potential claim to
2 the entity, shall be deemed to have waived the
3 prohibition of this paragraph against refusal or
4 limitation of coverage. "Third-party claim" for
5 purposes of this paragraph means any tort claim
6 for monetary recovery or damages that the
7 individual has against any person, entity, or
8 insurer, other than the entity licensed under
9 chapter 432 or 432D;

10 (11) Unfair claim settlement practices. Committing or
11 performing with such frequency as to indicate a
12 general business practice any of the following:

13 (A) Misrepresenting pertinent facts or insurance
14 policy provisions relating to coverages at issue;

15 (B) With respect to claims arising under its
16 policies, failing to respond with reasonable
17 promptness, in no case more than fifteen working
18 days, to communications received from:

19 (i) The insurer's policyholder;

20 (ii) Any other persons, including the
21 commissioner; or



1 (iii) The insurer of a person involved in an
2 incident in which the insurer's policyholder
3 is also involved.

4 The response shall be more than an acknowledgment
5 that such person's communication has been
6 received[7] and shall adequately address the
7 concerns stated in the communication;

8 (C) Failing to adopt and implement reasonable
9 standards for the prompt investigation of claims
10 arising under insurance policies;

11 (D) Refusing to pay claims without conducting a
12 reasonable investigation based upon all available
13 information;

14 (E) Failing to affirm or deny coverage of claims
15 within a reasonable time after proof of loss
16 statements have been completed;

17 (F) Failing to offer payment within thirty calendar
18 days of affirmation of liability, if the amount
19 of the claim has been determined and is not in
20 dispute;



- 1 (G) Failing to provide the insured, or when
2 applicable the insured's beneficiary, with a
3 reasonable written explanation for any delay, on
4 every claim remaining unresolved for thirty
5 calendar days from the date it was reported;
- 6 (H) Not attempting in good faith to effectuate
7 prompt, fair, and equitable settlements of claims
8 in which liability has become reasonably clear;
- 9 (I) Compelling insureds to institute litigation to
10 recover amounts due under an insurance policy by
11 offering substantially less than the amounts
12 ultimately recovered in actions brought by the
13 insureds;
- 14 (J) Attempting to settle a claim for less than the
15 amount to which a reasonable person would have
16 believed the person was entitled by reference to
17 written or printed advertising material
18 accompanying or made part of an application;
- 19 (K) Attempting to settle claims on the basis of an
20 application [~~which~~] that was altered without
21 notice, knowledge, or consent of the insured;



- 1 (L) Making claims payments to insureds or
2 beneficiaries not accompanied by a statement
3 setting forth the coverage under which the
4 payments are being made;
- 5 (M) Making known to insureds or claimants a policy of
6 appealing from arbitration awards in favor of
7 insureds or claimants for the purpose of
8 compelling them to accept settlements or
9 compromises less than the amount awarded in
10 arbitration;
- 11 (N) Delaying the investigation or payment of claims
12 by requiring an insured, claimant, or the
13 physician or advanced practice registered nurse
14 of either to submit a preliminary claim report
15 and then requiring the subsequent submission of
16 formal proof of loss forms, both of which
17 submissions contain substantially the same
18 information;
- 19 (O) Failing to promptly settle claims, where
20 liability has become reasonably clear, under one
21 portion of the insurance policy coverage to



1 influence settlements under other portions of the
2 insurance policy coverage;

3 (P) Failing to promptly provide a reasonable
4 explanation of the basis in the insurance policy
5 in relation to the facts or applicable law for
6 denial of a claim or for the offer of a
7 compromise settlement; and

8 (Q) Indicating to the insured on any payment draft,
9 check, or in any accompanying letter that the
10 payment is "final" or is "a release" of any claim
11 if additional benefits relating to the claim are
12 probable under coverages afforded by the policy;
13 unless the policy limit has been paid or there is
14 a bona fide dispute over either the coverage or
15 the amount payable under the policy;

16 (12) Failure to maintain complaint handling procedures.
17 Failure of any insurer to maintain a complete record
18 of all the complaints [~~which~~] that it has received
19 since the date of its last examination under section
20 431:2-302. This record shall indicate the total
21 number of complaints, their classification by line of



1 insurance, the nature of each complaint, the
2 disposition of these complaints, and the time it took
3 to process each complaint. For purposes of this
4 ~~[section 7]~~ subsection, "complaint" means any written
5 communication primarily expressing a grievance;

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

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

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

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

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

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

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

20 "(b) Each person seeking to register as a pharmacy benefit
 21 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, upon showing of good cause, waive or
17 modify, in whole or part, the fee in this subsection by order."

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:



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

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

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

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

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

10 (1) Certificate of authority:

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

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

14 (2) Organization of domestic mutual benefit societies:

15 (A) Application for a certificate of registration:
16 \$1,500; and

17 (B) Issuance of certificate of registration: \$150;
18 and

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



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

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

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

7 (1) Certificate of authority:

8 (A) Application for a certificate of authority:

9 \$900;

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

11 (2) Organization of domestic fraternal benefit societies:

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

14 (B) Issuance of preliminary certificate of authority:
15 \$150; and

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

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



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

3 "(a) The commissioner shall collect, in advance, the
4 following fees:

5 (1) Certificate of authority:

6 (A) Application for a certificate of authority:

7 \$900; and

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

9 (2) For all services subsequent to the issuance of
10 certificate of authority, including extension of the
11 certificate of authority: \$600 per year.

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

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

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

18 (1) Certificate of authority:

19 (A) Application for a certificate of authority:

20 \$900; and

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



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

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

6 SECTION 23. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 24. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 25. This Act shall take effect on July 1, 2050.



Report Title:

Insurance; Public Adjuster; Bill Reviewer; Motor Vehicle Rental Company; Portable Electronic; Self-service Storage; Limited Line License; Fee; National Association of Insurance Commissioners; Surplus Line; Hawaii Joint Underwriting Plan; Wellness Program

Description:

Institutes various consumer protections with regard to public adjusters, including requiring contractual terms and disclosures and granting a right to rescind. Imposes a standard of conduct on various entities. Authorizes the Insurance Commissioner to waive or modify certain fees by order. Reinstates the right to an administrative hearing and appeal from an order. Amends the Hawaii joint underwriting plan board of governors. Clarifies that rewards under wellness programs do not qualify as prohibited rebates. Makes various housekeeping amendments. Effective 7/1/2050. (HD1)

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

