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

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

21           "Commissioner" means the insurance commissioner.

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

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

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

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

10 **§431- License required; application.** (a) No person  
11 shall act as or hold out to be an administrator in this State  
12 without a license as an administrator issued by the  
13 commissioner.

14 (b) An administrator shall apply to the commissioner on a  
15 form prescribed by the commissioner and shall include the  
16 following:

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

18 (2) All basic organizational documents of the  
19 administrator, including any articles of  
20 incorporation, articles of association, partnership  
21 agreement, trade name certificate, trust agreement,

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- 1           shareholder agreement, and other applicable documents  
2           and all amendments to the documents;
- 3           (3) The bylaws, rules, regulations, or similar documents  
4           regulating the internal affairs of the administrator;
- 5           (4) The names, addresses, official positions, and  
6           professional qualifications of the individuals  
7           responsible for the conduct of affairs of the  
8           administrator, including, but not limited to, all  
9           members of the board of directors, board of trustees,  
10          executive committee, or other governing board or  
11          committee, the principal officers in the case of a  
12          corporation, or the partners in the case of a  
13          partnership;
- 14          (5) Annual audited financial statements for the two most  
15          recent years that prove the applicant is solvent and  
16          information the commissioner may require to review the  
17          current financial condition of the applicant; and
- 18          (6) Any other pertinent information the commissioner may  
19          require.
- 20          (c) An administrator licensee or applicant for licensure  
21          shall notify the commissioner within thirty days of any material  
22          change in its ownership, control, contact person for the

1 administrator, or any other fact or circumstance affecting the  
2 licensee's or applicant's qualification for licensure.

3 (d) If an administrator employs or has contracted  
4 individuals to adjust claims for the administrator, the  
5 employees or contracted individuals shall first be licensed as  
6 individual adjusters.

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

13 (f) The commissioner may refuse to issue a license if the  
14 commissioner determines, after notice and hearing pursuant to  
15 section 431:2-308 and chapter 91, that the administrator is not  
16 competent, trustworthy, financially responsible, or of good  
17 personal and business reputation, or has had an application for  
18 an insurance license denied or revoked for cause within the past  
19 five years.

20 (g) The license shall be renewable or extendable  
21 biennially. The renewal or extension date for a license issued  
22 to a natural person shall be the sixteenth day of the licensee's

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1 birth month. The renewal or extension date for a license issued  
2 to an artificial person shall be the sixteenth day of April for  
3 a nonresident licensee, and the sixteenth day of July for a  
4 resident licensee. The license shall remain in effect so long  
5 as the fees set forth in section 431:7-101 are paid.

6 (h) The commissioner may contract with nongovernmental  
7 entities, including the National Association of Insurance  
8 Commissioners or any affiliations or subsidiaries that the  
9 National Association of Insurance Commissioners oversees, to  
10 perform any ministerial functions relating to the licensure of  
11 administrators.

12 **§431- Surety bond required.** Prior to the issuance of  
13 the administrator license, the administrator shall file with the  
14 commissioner, and maintain in force while so licensed, a surety  
15 bond of at least \$300,000, in the form and penal sum acceptable  
16 to the commissioner, and shall provide that the bond may not be  
17 canceled or otherwise terminated until two years have elapsed  
18 from the last day the applicant was an administrator, unless the  
19 commissioner has given prior written consent. The surety bond  
20 shall be undertaken and may be enforced in the name of  
21 "Commissioner of Insurance, State of Hawaii."



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1           **§431-       Written agreement required.** (a) An administrator  
2 shall have a written agreement between the administrator and  
3 insurer that contains all requirements of this article, except  
4 those that do not apply to administrator functions.

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

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

11          (d) When an insurance policy is issued to a trustee, the  
12 administrator shall furnish the insurer a copy of the trust  
13 agreement and any amendments to it. The trust agreement shall  
14 be retained as part of the official records of the administrator  
15 and the insurer for the duration of the insurance policy and  
16 five years thereafter.

17          **§431-       Effect of payments to administrator.** (a) Payment  
18 to the administrator of any insurance premiums or charges by or  
19 on behalf of the insured shall be deemed received by the  
20 insurer.

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1 (b) Payment of return premiums or claims by the insurer to  
2 the administrator shall not be deemed payment to the insured  
3 until the insured receives the payment.

4 (c) This section does not limit any right of the insurer  
5 against the administrator resulting from failure of the  
6 administrator to make payments to the insurer or insured.

7 **§431- Recordkeeping required; commissioner's access to**

8 **records.** (a) An administrator shall maintain and make  
9 available to the insurer complete books and records of all  
10 transactions between the administrator, insurers, and insureds.  
11 The books and records shall be maintained in accordance with  
12 prudent standards of insurance recordkeeping and for the  
13 duration of the written agreement and five years thereafter.

14 (b) The commissioner shall have access to the books and  
15 records for examination, audit, and inspection. Trade secrets  
16 in the books and records, including the identity and addresses  
17 of insureds, shall be confidential and privileged. However, the  
18 commissioner may use the information in proceedings brought  
19 against the administrator.

20 (c) An administrator shall retain the right to continuing  
21 access to the books and records to fulfill its contractual

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1 obligations to the insurer and insureds, subject to any  
2 restrictions in the written agreement.

3       **§431- Advertising by administrator.** An administrator  
4 shall use only the advertising pertaining to the business an  
5 insurer has underwritten and approved in advance of its use.

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

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

1 (c) An administrator shall not pay claims by withdrawals  
2 from the fiduciary account in which premiums or charges are  
3 deposited.

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

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

7 (2) Deposit in an account maintained in the name of the  
8 insurer;

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

11 (4) Payment to a group policyholder for remittance to the  
12 insurer entitled to remittance;

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

15 (6) Remittance of return premiums to the person entitled  
16 to return premiums.

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

20 **§431- Compensation of administrator.** Compensation to an  
21 administrator for adjusting or settling claims shall not be  
22 contingent on claim experience. This section shall not prevent

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1 the compensation of an administrator from being based on  
2 premiums or charges collected or number of claims paid or  
3 processed.

4       **§431- Written notice to insureds required.** (a) When the  
5 services of an administrator are used, the administrator shall  
6 provide written notice approved by the insurer to insureds,  
7 advising the insureds of the identity of and relationship  
8 between the administrator, insurer, and insured.

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

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

18       **§431- Delivery of written information to insured.** Any  
19 policies, certificates, booklets, termination notices, or other  
20 written communications delivered by the insurer to the  
21 administrator for delivery to the insured, shall be delivered by

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

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

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

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

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

- 18       (1) Is in an unsound financial condition;
- 19       (2) Is using methods or practices in the conduct of  
20 business that renders the administrator's further  
21 transaction of business in this State hazardous or  
22 injurious to insureds or the public; or

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

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

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

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

17          (3) Has, without just cause:

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

20               (ii) Caused insureds to accept less than the amount due  
21               to the insureds; or

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



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1           (3) The financial condition or business practices of the  
2           administrator otherwise are an imminent threat to the  
3           public health, safety, or welfare of the residents of  
4           this State.

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

9           **§431- Rules and regulations.** The commissioner may adopt  
10          rules to implement and enforce this article."

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

14          "§431:2- Variances, waivers, or no-action letters.

15          (a) Subject to the limitations specified in subsection (b):

16          (1) The commissioner may issue a variance, waiver, or no-  
17          action letter relating to a requirement of title 24 if  
18          a person or entity subject to title 24 demonstrates  
19          that the public policy goals of title 24 may be  
20          achieved by other means and that the application of  
21          the requirement may inhibit or discourage the

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- 1           introduction of new, innovative, or more efficient  
2           insurance products, services, or technologies;
- 3           (2) "Innovative" means the use or incorporation of new or  
4           emerging technology or the reimagination of uses for  
5           existing technology to address a problem, provide a  
6           benefit, or otherwise offer a product, service,  
7           business model, or delivery mechanism that is not  
8           known by the commissioner to have a comparable  
9           widespread offering in this State;
- 10          (3) A variance, waiver, or no-action letter issued  
11          pursuant to this section shall be of a duration deemed  
12          appropriate by the commissioner; and
- 13          (3) The commissioner may issue variances, waivers, or no-  
14          action letters of differing or limited durations and  
15          scope.
- 16          (b) The commissioner shall not issue a variance, waiver,  
17          or no-action letter related to any provision of title 24  
18          governing:
- 19           (1) Assets, deposits, investments, capital, surplus, or  
20           other solvency requirements applicable to insurance  
21           companies;

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- 1        (2) Licensing and certificate of authority requirements  
2            applicable to any person or entity required to hold a  
3            license under this chapter;
- 4        (3) Required participation in any assigned risk plan,  
5            residual market, or guaranty fund;
- 6        (4) Requirements that the insurance division maintain its  
7            accreditation by the National Association of Insurance  
8            Commissioners, unless the issuance of a permit,  
9            variance, waiver, or no-action letter is permitted;
- 10       (5) The application of any tax or fee;
- 11       (6) The privacy of consumer financial information,  
12            including required consumer notices and the right of  
13            consumers to opt out of disclosure as specified in  
14            article 3A of chapter 431;
- 15       (7) The minimum required contents of motor vehicle  
16            policies and any required offers of additional  
17            coverage under those policies as specified in article  
18            10C of chapter 431;
- 19       (8) Extended reporting period requirements for commercial  
20            general liability coverage as specified in section  
21            431:10-211.3;

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- 1        (9) The rights of insurance applicants or policyholders  
2        who are victims of domestic abuse as specified in  
3        section 431:10-217.5;
- 4        (10) Prohibited policy provisions as specified in section  
5        431:10-221;
- 6        (11) Restrictions on retroactive annulments of policies as  
7        specified in section 431:10-227;
- 8        (12) Restrictions on insurability of punitive damages as  
9        specified in section 431:10-240;
- 10       (13) Restrictions on insurers with respect to the use of  
11       insurance inquiries as specified in section 431:10E-  
12       124;
- 13       (14) The right of a policyholder or person who has acquired  
14       the rights of the policyholder or beneficiary under  
15       the policy to be awarded reasonable attorney's fees  
16       and the costs of suit, in addition to the benefits  
17       under the policy, as specified in section 431:10-242;  
18       and
- 19       (15) Any other requirement that the commissioner deems  
20       ineligible for the issuance of a variance, waiver, or  
21       no-action letter.

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1        (c) When an application for a variance, waiver, or no-  
2 action letter is granted, the commissioner shall provide public  
3 notice of the application for or grant of a variance, waiver, or  
4 no-action letter. The notice shall include:

5        (1) The specific statute to which the variance, waiver, or  
6 no-action letter applies;

7        (2) The name of the applicant for the variance, waiver, or  
8 no-action letter; and

9        (3) The duration of the variance, waiver, or no-action  
10 letter.

11        The requirements of this subsection may be satisfied by the  
12 publication of a notice on the insurance division's website.

13        (d) The commissioner shall adopt rules pursuant to chapter  
14 91 that establish a procedure for the submission, granting, or  
15 denying of an application petition for a variance, waiver, or  
16 no-action letter; provided that the rules shall:

17        (1) Include procedures for granting or denying a variance,  
18 waiver, or no-action letter within sixty days of the  
19 receipt of the application;

20        (2) Authorize the commissioner to revoke a variance,  
21 waiver, or no-action letter issued pursuant to this  
22 section if the commissioner has reasonable cause to

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1 believe that a recipient of a variance, waiver, or no-  
2 action letter has:

3 (A) Engaged in a violation of title 24 that was not  
4 waived by the granting of the variance, waiver,  
5 or no-action letter;

6 (B) Not produced and will not likely produce  
7 identifiable benefits to consumers; or

8 (C) Failed to abide by the terms, conditions, or  
9 limitations of any variance, waiver, or no-action  
10 letter;

11 (3) Authorize the commissioner to require reasonable  
12 terms, conditions, or limitations on the conduct or  
13 activity permitted under a variance, waiver, or no-  
14 action letter; provided that the terms, conditions, or  
15 limitations may include a requirement that the  
16 recipient of a variance, waiver, or no-action letter  
17 shall take reasonable steps to protect consumers,  
18 mitigate risks, or submit data or analysis to the  
19 commissioner on the market impact of the variance,  
20 waiver, or no-action letter;

21 (4) Authorize the commissioner to collect an application  
22 fee of \$500 per application. A separate application

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- 1           shall be submitted for each new, innovative, or more  
2           efficient insurance product, service, or technology;
- 3       (5) Authorize the commissioner to require a recipient of a  
4           waiver, variance, or no-action letter to provide each  
5           consumer with a disclosure stating that:
- 6           (A) The innovative insurance product or service is  
7                 authorized pursuant to a waiver, variance, or no-  
8                 action letter;
- 9           (B) The State of Hawaii does not endorse or recommend  
10                 the innovative insurance product or service;
- 11          (C) The innovative insurance product or service is  
12                 temporary for a limited duration and may end  
13                 unless the waiver, variance, or no-action letter  
14                 is extended by the commissioner, including the  
15                 expected end date; and
- 16          (D) Consumers may contact the commissioner to file  
17                 complaints regarding the innovative insurance  
18                 product or service and provide the commissioner's  
19                 telephone number and website address where  
20                 complaints may be filed;
- 21       (6) Authorize the commissioner to have regularly scheduled  
22           communications with the recipient of a variance,

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1 waiver, or no-action letter; provided that the  
2 communication shall be, at a minimum, once per quarter  
3 each calendar year;

4 (7) Authorize the commissioner to establish periodic  
5 reporting requirements for the recipient of a  
6 variance, waiver, or no-action letter; provided that  
7 the periodic reporting requirements shall be, at a  
8 minimum, once per quarter each calendar year; and

9 (8) Authorize the commissioner to seek records, documents,  
10 and data as requested from the recipient of a  
11 variance, waiver, or no-action letter.

12 (e) Notwithstanding the provisions of subsection (c), the  
13 following shall be considered trade secrets and confidential  
14 information and shall not be subject to public disclosure:

15 (1) A petition for a variance, waiver, or no-action  
16 letter;

17 (2) Information contained in an application for a  
18 variance, waiver, or no-action letter;

19 (3) All information provided to the commissioner by an  
20 applicant for or recipient of a variance, waiver, or  
21 no-action letter; and



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1       (4) Any communication between the insurance division and  
2       the recipient that is required pursuant to the terms  
3       of the variance, waiver, or no-action letter.

4       (f) The commissioner's authority to grant a variance,  
5       waiver, and no-action letter under this section shall not be  
6       construed to limit or otherwise affect the authority of the  
7       commissioner to exercise discretion to waive or enforce  
8       requirements as permitted under any other law.

9       (g) No later than twenty days prior to the convening of  
10       each regular session, the commissioner shall submit an annual  
11       report to the legislature that includes the following  
12       information for the previous year:

13       (1) The total number of applications for a variance,  
14       waiver, or no-action letter granted or denied by the  
15       commissioner;

16       (2) For each variance, waiver, or no-action letter granted  
17       by the commissioner, the information required under  
18       subsection (c);

19       (3) For each provision in title 24 to which a variance,  
20       waiver, or no-action letter applies, the  
21       commissioner's recommendation as to whether the  
22       provision should be continued, eliminated, or amended

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1           in order to promote innovation and establish a uniform  
2           regulatory system for all regulated entities; and  
3           (4) A list of variances, waivers, or no-action letters  
4           that have lapsed or been revoked and, if revoked, a  
5           description of other regulatory or disciplinary  
6           actions, if any, that resulted in, accompanied, or  
7           resulted from the revocation."

8           SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is  
9           amended by amending subsections (a) and (b) to read as follows:

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

- 12           (1) Certificate of authority:
  - 13               (A) Application for certificate of authority ..... \$900
  - 14               (B) Issuance of certificate of authority ..... \$600
  - 15               (C) Application for motor vehicle self-insurance . \$300
- 16           (2) Organization of domestic insurers and affiliated
  - 17               corporations:
    - 18                   (A) Application for solicitation permit ..... \$1,500
    - 19                   (B) Issuance of solicitation permit ..... \$150
- 20           (3) Producer's license:
  - 21               (A) Issuance of regular license ..... \$50
  - 22               (B) Issuance of temporary license ..... \$50

H.B. NO. 906

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

H.B. NO. 986

1 commissioner.

2 [~~(18)~~] (19) Limited line motor vehicle rental company

3 producer's license: Issuance ..... \$1,000

4 [~~(19)~~] (20) Legal service plan certificate of authority:

5 Issuance before July 1, 2014 ..... \$1,000

6 Issuance on or after July 1, 2014 ..... \$500

7 [~~(20)~~] (21) Life settlement provider's license:

8 Issuance before July 1, 2014 ..... \$150

9 Issuance on or after July 1, 2014 ..... \$75

10 [~~(21)~~] (22) Life settlement broker's license:

11 Issuance before July 1, 2014 ..... \$150

12 Issuance on or after July 1, 2014 ..... \$75

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

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

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

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

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

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- 1        [~~(10)~~] (11) \$75 per year for all services (including  
2                    extension of the license) for a regularly licensed  
3                    reinsurance intermediary;
- 4        [~~(11)~~] (12) \$45 per year for all services (including  
5                    extension of the license) for a licensed surplus lines  
6                    broker;
- 7        [~~(12)~~] (13) \$75 per year for all services (including  
8                    renewal of registration) for a service contract  
9                    provider;
- 10       [~~(13)~~] (14) \$65 per year for all services (including  
11                   extension of the certificate) for an approved course  
12                   provider;
- 13       [~~(14)~~] (15) \$20 per year for all services (including  
14                   extension of the certificate) for an approved  
15                   continuing education course;
- 16       [~~(15)~~] (16) \$75 per year for all services (including  
17                   renewal of registration) for a vehicle protection  
18                   product warrantor;
- 19       [~~(16)~~] (17) A fee to be established by the commissioner  
20                   for each criminal history record check and  
21                   fingerprinting;

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

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

21       SECTION 4. Section 432:1-102, Hawaii Revised Statutes, is  
22       amended to read as follows:

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

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

18           (c)   Article    of chapter 431 shall apply to mutual benefit  
19   societies.

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



H.B. NO. 986

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

3 SECTION 6. This Act, upon its approval, shall take effect  
4 on January 1, 2020.

5

6

INTRODUCED BY: \_\_\_\_\_

*pcw*

7

BY REQUEST

**JAN 22 2019**

H.B. NO. 986

**Report Title:**

Administrator; Third Party Administrator; License; Insurance Regulatory Variance; Insurance Commissioner; Insurance; Vehicle Protection Product Warrantor; Service Contract Provider.

**Description:**

Requires third party administrators to be licensed and regulated by the Insurance Commissioner. Authorizes the Insurance Commissioner to issue targeted variances, waivers, or no-action letters relating to the requirements of chapter 431, Hawaii Revised Statutes.

*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 REGULATORY AUTHORITY OF THE INSURANCE COMMISSIONER.

PURPOSE: (1) The purpose of sections 1, 3, and 4 of this bill is to require third party administrators (administrators) to be licensed and regulated by the Insurance Commissioner (Commissioner) in accordance with the National Association of Insurance Commissioners' Registration and Regulation of Third Party Administrators model guidelines.

(2) The purpose of section 2 of this bill is to authorize the Commissioner to issue targeted variances, waivers, or no-action letters relating to the requirements of title 24, Hawaii Revised Statutes (HRS), to enable the introduction of new, innovative, and more efficient insurance products, services, and technologies.

MEANS: Add a new article to chapter 431 and a new section to part II of article 2, chapter 431, HRS, and amend sections 431:7-101(a) and (b) and 432:1-102, HRS.

JUSTIFICATION: (1) Administrators collect charges or premiums from, or adjust or settle claims on, life insurance coverage or accident and health or sickness insurance coverage. Hawaii is one of nine states that do not regulate administrators. Twenty-one states require an administrator license from the department of insurance. Fourteen states require a certificate of registration, and eight states require a certificate of authority.

(2) Title 24 requirements can pose barriers to the introduction of new, innovative, and more efficient insurance products,

services, and technologies. Currently, the Commissioner is unable to issue targeted variances, waivers, or no-action letters relating to these requirements, and as a result, the introduction of these products, services, and technologies is inhibited and discouraged.

Impact on the public:

- (1) This bill will ensure adequate protection of Hawaii consumers and promote transparency of administrator practices in Hawaii by: licensing and regulating administrators; encouraging disclosure of contracts between insurers and administrators; and promoting administrators' financial responsibility.
- (2) This bill will broaden the range of insurance products, services, and technologies available to Hawaii consumers and businesses. It may also expand the State's insurance market through increased competition and innovation.

Impact on the department and other agencies:  
None.

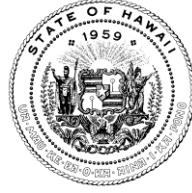
GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: January 1, 2020.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Friday, February 1, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
H.B. 986, RELATING TO REGULATORY AUTHORITY  
OF THE INSURANCE COMMISSIONER**

Chair Takumi and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports this administration bill.

The purposes of this bill are twofold: (1) to license and regulate third-party administrators (TPAs) in accordance with the National Association of Insurance Commissioners' (NAIC) Registration and Regulation of Third Party Administrators guidelines; and (2) to authorize the Insurance Commissioner to issue targeted variances of Hawaii Revised Statutes (HRS) title 24 requirements that would enable the introduction of new, innovative, and more efficient insurance products, services, and technologies to Hawaii's consumers.

## **1. Third-Party Administrators**

Section 1 provides for regulation of third-party administrators who collect charges or premiums from, or adjust or settle claims on, residents of this state in connection with: self-insurance; stop loss or life insurance coverage; or accident and health or sickness insurance coverage. This bill is based on the NAIC's Registration and Regulation of Third-Party Administrators Guideline.

NAIC guidelines, in general, differ from NAIC model acts and model rules in that NAIC accreditation for a state is not dependent on the state's adoption of guidelines. Rather, NAIC guidelines offer states opportunities to tailor bright lines of insurance law to guide states when they are adopting measures particular to their own needs and purposes.

Hawaii is one of eight states and jurisdictions that do not regulate TPAs. Currently, 19 states require TPA licenses from their respective departments of insurance, 16 states require certificates of registration, eight states require certificates of authority, and two states require either licenses or registrations. The differences in states' approaches reflect the flexibility of NAIC guidelines and the deference they give to states in knowing their own required needs. Regulation of TPAs, as proposed in this bill, will ensure adequate consumer protection and promote transparency of TPAs operating in Hawaii by: licensing and regulating TPAs; encouraging disclosure of contracts between insurers and TPAs; and promoting the financial responsibilities of TPAs.

## **2. Targeted Variances of HRS Title 24**

Section 2 proposes to foster technology and innovation in the area of insurance by authorizing the Insurance Commissioner to grant variances with respect to the enforcement or application of certain requirements of insurance laws. Applicants for these variances must justify that the variances do not have negative economic impacts, are warranted, and are beneficial to the public.

Technology and consumer expectations are rapidly transforming the regulated insurance industry. Insurers are making substantial investments in innovative insurance products, services, and technologies that hold great promise in mitigating risks,

improving efficiencies, reducing transaction costs, speeding claims' payments, and improving overall customer understanding of and satisfaction with this essential form of financial protection.

Without altering current statutory and rule requirements that regulate the financial viability and duties and obligations of insurers, providing narrowly tailored variances for insurers would promote expanded competition and innovation for the benefit of consumers. At the same time, this bill does not allow a variance to be granted for certain essential insurance requirements, such as licensing and certification obligations, privacy of consumer financial information, prohibited policy provisions, and restrictions on retroactive annulments of policies.

By encouraging the piloting and testing of new and innovative products, pricing, and ways to deliver insurance to businesses and consumers, the State can increase mitigation of risks. This, in turn, will reduce insurance costs and expand insurance markets by making insurance transactions more accessible for first-time insurance buyers. Notably, Arizona and Illinois passed legislation in 2018 creating regulatory sandbox programs that allow businesses, both established and startup, to test innovative financial products and services.

The Department supports this administration bill and requests that it pass out of this committee. Thank you for the opportunity to testify.

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE  
THIRTIETH LEGISLATURE  
Regular Session of 2019  
Friday, February 1, 2019, 2:00 p.m.,  
Room 329

**TESTIMONY ON HOUSE BILL NO. 986, RELATING TO THE REGULATORY AUTHORITY  
OF THE INSURANCE COMMISSIONER**

To the Honorable Representative Roy M. Takumi, Chair, Honorable Representative Linda Ichiyama, Vice Chair, and Members of the House Committee on Consumer Protection and Commerce

TESTIMONY IN SUPPORT WITH COMMENTS ON SECTION 1 OF THE MEASURE RELATED TO THE REGULATION OF THIRD PARTY ADMINISTRATORS.

NO POSITION ON SECTION 2 OF THE MEASURE, RELATING TO WAIVER AND VARIANCES.

MDX Hawaii, Inc. recognizes the importance of and supports Section 1 of this measure relating to the regulation of third party administrators; we, however, respectfully offer the following comments and suggestions for the committee's consideration with respect to Section 1 of the measure.

MDX Hawaii, Inc., however, takes no position on Section 2 of this measure, relating to variances and waivers.

Thus, our comments below are limited to Section 1 of the measure.

1. **§431: License required; application (Page 5, Lines 14-19, Page 6, Lines 3-6).** We offer three comments on this section of the bill:

A. The term, "solvent", is not defined. Clarity in the solvency standards will help to ensure compliance with the solvency standards. Third-party administrators should know what financial standards they will be held accountable to. The National Association of Insurance Commissioners guidelines use a "positive net worth" concept. We suggest the adoption of such a standard or allow the applicant to meet the solvency requirement through a letter of credit in a form and amount reasonably determined by the commissioner.

B. Since the bill proposes new licensing requirements that will apply to current third party administrators, we suggest that the bill's effective date be established as a future date to allow current third-party administrators sufficient time to meet the audited financial statement requirement. Some of the current third-party administrators may not have two years of audited financial statements. We suggest an effective date of January 1, 2022 which will allow third party administrators adequate time to meet the audited financial statement requirement.

C. On Page 6, Lines 3-6 (Section (d)), we request clarification of the requirement that individuals who adjust claims for the third-party administrator be licensed as



claims adjusters. The broad language of this section could encompass MDX Hawaii, Inc. personnel who process medical claims submitted by medical providers. We do not think the bill intended to require licensing of staff who process such medical claims submitted by medical providers. Requiring such personnel to be licensed as adjusters will be unduly burdensome and unnecessary since the licensed third-party administrator, as the employer or contractor, should be accountable for their actions.

2. **§Section 431: Surety bond required (Page 7, Lines 12-21)**. We suggest that the amount of the surety bond be reduced to \$100,000 to align with the NAIC guidelines.

Thank you for considering our comments and suggestions to Section 1 of this measure.

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

March 14, 2018

House Bill 986 Relating to Regulatory Authority of the Insurance Commissioner

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee on Consumer Protection and Commerce:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers the following comments regarding House Bill 986.

State Farm has no comments on the Third Party Administrator portion in Section 1 of the measure.

State Farm does have concerns with Section 2 which has proposed new language with regards to variances, waivers, or no-action letters.

We support the intent of this bill: to promote current, and encourage future innovation in insurance products and services. There are however three areas where State Farm would like further consideration, all dealing with the procedural aspects of the proposal:

- **Consistent Application of the Process.** There should be some guarantees that this process is applied consistently to all meritorious applications submitted, regardless of the size of the company, or whether it is a domestic or foreign carrier. Perhaps there should be a provision stating that the commissioner must give equal consideration of all applications meeting the public policy goals outlined in the statute.
- **Transparency.** State Farm recognizes and appreciates that innovation, particularly technological innovation, will generally involve efforts that are entitled to Trade Secret protection. Companies often invest considerable time, resources, and money in the development of new technologies, and they should be entitled to benefit from those investments. This is essential to creative development. Notwithstanding, State Farm believes that the posted notice of the waiver request should have some general description of the applicant's legal and business need for the waiver, and that this can be done without compromising trade secrets.
- **Public Comment.** State Farm believes that there should be an opportunity for comment on a request prior to approval of a variation. This could be accomplished by building in 30-day comment period.

With the rapid changes in technology and application of these changes to the insurance business, there are huge possibilities for improvements in delivering insurance products and services to consumers. This is particularly important for Hawaii which has geographical barriers not faced by other states: modern technology is and will continue to reduce these barriers. This bill can help to facilitate these innovations, however, there should be a level playing ground for all insurers with regards to consistency, transparency, and public comment.

Thank you for the opportunity to present this testimony.



**BEFORE THE**

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair

**HB986 RELATING TO REGULATORY AUTHORITY OF THE INSURANCE  
COMMISSIONER**

**TESTIMONY OF  
PAUL KAISER  
Chief Operating Officer,  
Hawaii-Western Management Group**

February 1, 2019, 2:00 p.m.  
State Capitol Conference Room 329

Chair Takumi, Vice Chair Ichiyama, and Committee Members:

My name is Paul Kaiser, the Chief Operating Officer of Hawaii-Western Management Group (HWMG). HWMG supports the intent of HB986, as amended by the attached proposed HB986, HD1 (with proposed amendments highlighted in yellow). These amendments seek to conform the language of the bill to model acts promulgated by the National Association of Insurance Commissioners (NAIC).

By way of background, HWMG is a small, kama'aina third-party administrator providing health insurance management services for a wide range of organizations including Hawaii Medical Assurance Association (HMAA), Charter Communications, Hawaii Electricians Local Union 1186, and labor unions. HWMG is proud to be 100% employee-owned through its Employee Stock Ownership Plan (ESOP).

The purpose of HB986 is twofold: (1) to allow the Insurance Commissioner to issue targeted variances, waivers, or no-action letters; and (2) to encourage disclosure of contracts between insurers and third-party administrators, promote financial responsibility of such administrators, and govern the qualifications and procedures for the licensing of such administrators.

The first purpose of HB986 provides the Insurance Commissioner unbound flexibility to make exceptions to promulgated law outside the legislative process, thereby creating the potential for disparate treatment and enforcement from one insurance carrier to another. The ability to make exceptions to law should rest with the Legislature. Therefore, these sections should be deleted.

HWMG fully supports the second purpose with certain modifications as set forth below to address inconsistencies with the bill when compared with the NAIC model bill. As drafted, HB986 departs in several respects from the NAIC model bill and these departures present challenges to administrators.

First, the proposed HB986 does not protect any books and records examined by the Insurance Commissioner. For instance, under HB986, documents in the administrator's possession that may be protected by the attorney-client privilege will no longer be privileged if in the Commissioner's possession. To ensure that privileged documents remain privileged and confidential, the Committee should adopt the NAIC model act's language as to the following provision of HB986:

**§431- Recordkeeping required; commissioner's access to records.**

\* \* \*

(b) The commissioner shall have access to the books and records for examination, audit, and inspection. ~~[Trade secrets in the books and records, including the identity and addresses of insureds, shall be confidential and privileged. However, the commissioner may use the information in proceedings brought against the administrator.]~~ **Any documents, materials or other information in the possession or control of the commissioner that are furnished by the administrator, payor, insurance producer or an employee or agent thereof acting on behalf of the administrator, payor or insurance producer, or obtained by the commissioner in an investigation shall be confidential by law and privileged, shall not be subject to freedom of information or sunshine requests, shall not be not subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.**

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Second, HB986 does not set forth ascertainable standards as to when an administrator is considered "solvent" or "insolvent." As drafted, HB986 requires prospective administrators to show annual audited financial statements for the two most recent years to prove solvency. The NAIC model act, however, sets forth a specific, qualitative standard to prove "solvency" by requiring financial statements showing the applicant had a positive net worth. The licensing requirements in HB986 should

conform to the NAIC model act and account for HWMG's structure as an ESOP where audited financial statements currently do not exist:

**§431- License required; application.**

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

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

\* \* \*

(5) Annual ~~audited~~ financial statements for the two most recent years that prove the applicant ~~[is solvent]~~ **has a positive net worth** and information the commissioner may require to review the current financial condition of the applicant; and

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Third, HB986 places licensing requirements on individuals who adjust claims for the administrator, even though the NAIC model act imposes no such requirement. Requiring licensure for such adjusters is unnecessary and will be administratively and financially burdensome. In addition, it may be discriminatory to focus solely on adjusters employed by administrators, when adjusters that are not employed by administrators would not be subject to a similar licensing requirement. Therefore, this requirement should be deleted as follows:

**§431- License required; application.**

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

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

\* \* \*

~~[(d) If an administrator employs or has contracted individuals to adjust claims for the administrator, the employees or contracted individuals shall first be licensed as individual adjusters.]~~

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Fourth, HB986 includes a surety bond requirement for administrators of up to \$300,000, which is threefold the amount recommended by the NAIC. The surety bond requirements should be consistent with the NAIC model act as follows:

**§431- Surety bond required.** Prior to the issuance or renewal of the administrator license, the administrator shall file and maintain with the commissioner a surety bond of at least [~~\$300,000~~] **\$100,000**, in the form and penal sum acceptable to the commissioner, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii."

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Fifth, HB986 addresses the compensation of an administrator and the following clarification should be made to reflect the intent that an administrator should not benefit by reducing the amount of claims paid:

**§431- Compensation of administrator.** Compensation to an administrator for adjusting or settling claims shall not be **increased** contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

The foregoing amendments as proposed in HB986, HD1 would conform HB986 to the model act promulgated by the NAIC, thereby balancing the State's need for licensure but also reducing unnecessary burden to administrators. In addition, the Insurance Commissioner would continue to enforce and apply approved law in line with the intent of legislators and consistently amongst all carriers. HWMG respectfully urges the passage of this measure as amended. Thank you for the opportunity to testify on this matter of critical importance.

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# A BILL FOR AN ACT

RELATING TO REGULATORY AUTHORITY OF THE INSURANCE COMMISSIONER.

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

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

**"ARTICLE**

**THIRD PARTY ADMINISTRATORS**

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

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

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

(2) A union on behalf of its members;

(3) An insurer authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state;

(4) A producer licensed to sell life insurance coverage or accident and health or sickness insurance coverage in this State, whose activities are limited exclusively to the sale of insurance;

(5) A managing general agent licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;

(6) An individual adjuster licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;

(7) An individual who adjusts or settles claims in the normal course of practice or employment as an attorney at law and who does not collect charges or premiums in connection with life insurance coverage or accident and health or sickness insurance coverage;

(8) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(9) A trust established in conformity with 29 U.S.C. section 186 and trustees, agents, and employees acting under that trust;

(10) A trust exempt from taxation under 26 U.S.C. section 501(a) and trustees and employees acting under that trust, or a custodian and the custodian's agents and employees acting under a custodian account that meets the requirements of 26 U.S.C. section 401(f);

(11) A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender that collects and remits premiums to licensed producers or authorized insurers in connection with loan payments;

(12) A credit card issuing company advancing for and collecting premiums or charges from its credit card holders who have authorized collection, provided the company does not adjust or settle claims; and

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

"Commissioner" means the insurance commissioner.



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

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

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

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

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

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

- (1) A nonrefundable fee as set forth in section 431:7-101;
- (2) All basic organizational documents of the administrator, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to the documents;
- (3) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the administrator;
- (4) The names, addresses, official positions, and professional qualifications of the individuals responsible for the conduct of affairs of the administrator, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, or the partners in the case of a partnership;

(5) Annual ~~[audited]~~ financial statements for the two most recent years that prove the applicant ~~[is solvent]~~ **has a positive net worth** and information the commissioner may require to review the current financial condition of the applicant; and

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

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

~~[(d) If an administrator employs or has contracted individuals to adjust claims for the administrator, the employees or contracted individuals shall first be licensed as individual adjusters.]~~

~~[(e)]~~ **(d)** If an administrator employs or has contracted individuals to sell, solicit, or negotiate insurance business, the employees or contracted individuals shall first be licensed as producers. An administrator who intends to directly solicit insurance contracts or otherwise act as a producer shall first be licensed as an insurance producer.

~~[(f)]~~ **(e)** The commissioner may refuse to issue a license if the commissioner determines, after notice and hearing pursuant to section 431:2-308 and chapter 91, that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an application for an insurance license denied or revoked for cause within the past five years.

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

~~(h)~~ **(g)** The commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliations or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions relating to the licensure of administrators.

**§431- Surety bond required.** Prior to the issuance of the administrator license, the administrator shall file with the commissioner, and maintain in force while so licensed, a surety bond of at least [~~\$300,000~~] **\$100,000**, in the form and penal sum acceptable to the commissioner, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii."

**§431- Written agreement required.** (a) An administrator shall have a written agreement between the administrator and

insurer that contains all requirements of this article, except those that do not apply to administrator functions.

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

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

(d) When an insurance policy is issued to a trustee, the administrator shall furnish the insurer a copy of the trust agreement and any amendments to it. The trust agreement shall be retained as part of the official records of the administrator and the insurer for the duration of the insurance policy and five years thereafter.

**§431- Effect of payments to administrator.** (a) Payment to the administrator of any insurance premiums or charges by or on behalf of the insured shall be deemed received by the insurer.

(b) Payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured until the insured receives the payment.

(c) This section does not limit any right of the insurer against the administrator resulting from failure of the administrator to make payments to the insurer or insured.

**§431- Recordkeeping required; commissioner's access to records.** (a) An administrator shall maintain and make

available to the insurer complete books and records of all transactions between the administrator, insurers, and insureds. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and for the duration of the written agreement and five years thereafter.

(b) The commissioner shall have access to the books and records for examination, audit, and inspection. [~~Trade secrets in the books and records, including the identity and addresses of insureds, shall be confidential and privileged. However, the commissioner may use the information in proceedings brought against the administrator.~~] Any documents, materials or other information in the possession or control of the commissioner that are furnished by the administrator, payor, insurance producer or an employee or agent thereof acting on behalf of the administrator, payor or insurance producer, or obtained by the commissioner in an investigation shall be confidential by law and privileged, shall not be subject to freedom of information or sunshine requests, shall not be not subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(c) An administrator shall retain the right to continuing access to the books and records to fulfill its contractual

obligations to the insurer and insureds, subject to any restrictions in the written agreement.

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

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

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

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

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

- (1) Remittance to an insurer entitled to remittance;
- (2) Deposit in an account maintained in the name of the insurer;
- (3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (e);
- (4) Payment to a group policyholder for remittance to the insurer entitled to remittance;
- (5) Payment to the administrator of its commission, fees, or charges; and
- (6) Remittance of return premiums to the person entitled to return premiums.

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

**§431- Compensation of administrator.** Compensation to an administrator for adjusting or settling claims shall not be **increased** contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

**§431- Written notice to insureds required.** (a) When the services of an administrator are used, the administrator shall provide written notice approved by the insurer to insureds, advising the insureds of the identity of and relationship between the administrator, insurer, and insured.

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

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

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

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

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

**§431- License denial, nonrenewal, suspension, or revocation; fines.** (a) After notice and hearing, the commissioner shall impose a fine pursuant to section 431:2-203



and issue a cease and desist order against any person who acts or holds out as an administrator without a license.

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

(1) Is in an unsound financial condition;

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

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

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

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

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

(3) Has, without just cause:

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

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

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

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

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

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

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

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

(1) The administrator is insolvent or impaired;

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

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

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

**§431- Rules and regulations.** The commissioner may adopt rules to implement and enforce this article."

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

~~"§431:2— Variances, waivers, or no-action letters. (a) Subject to the limitations specified in subsection (b):~~

~~— (1) The commissioner may issue a variance, waiver, or no action letter relating to a requirement of title 24 if a person or entity subject to title 24 demonstrates that the public policy goals of title 24 may be achieved by other means and that the application of the requirement may inhibit or discourage the introduction of new, innovative, or more efficient insurance products, services, or technologies;~~

~~— (2) "Innovative" means the use or incorporation of new or emerging technology or the reimagination of uses for existing technology to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the commissioner to have a comparable widespread offering in this State;~~

~~— (3) A variance, waiver, or no action letter issued pursuant to this section shall be of a duration deemed appropriate by the commissioner; and~~

~~— (3) The commissioner may issue variances, waivers, or no action letters of differing or limited durations and scope.~~

~~— (b) The commissioner shall not issue a variance, waiver, or no-action letter related to any provision of title 24 governing:~~

~~— (1) Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurance companies;~~

~~— (2) Licensing and certificate of authority requirements applicable to any person or entity required to hold a license under this chapter;~~

~~— (3) Required participation in any assigned risk plan, residual market, or guaranty fund;~~

~~— (4) Requirements that the insurance division maintain its accreditation by the National Association of Insurance Commissioners, unless the issuance of a permit, variance, waiver, or no action letter is permitted;~~

~~— (5) The application of any tax or fee;~~

~~— (6) The privacy of consumer financial information, including required consumer notices and the right of consumers to opt out of disclosure as specified in article 3A of chapter 431;~~

~~— (7) The minimum required contents of motor vehicle policies and any required offers of additional coverage under those policies as specified in article 10C of chapter 431;~~

~~— (8) Extended reporting period requirements for commercial general liability coverage as specified in section 431:10-211.3;~~

~~— (9) The rights of insurance applicants or policyholders who are victims of domestic abuse as specified in section 431:10-217.5;~~

~~— (10) Prohibited policy provisions as specified in section 431:10-221;~~

~~— (11) Restrictions on retroactive annulments of policies as specified in section 431:10-227;~~

~~— (12) Restrictions on insurability of punitive damages as specified in section 431:10-240;~~

~~— (13) Restrictions on insurers with respect to the use of insurance inquiries as specified in section 431:10E-124;~~

~~— (14) The right of a policyholder or person who has acquired the rights of the policyholder or beneficiary under the policy to be awarded reasonable attorney's fees and the costs of suit, in addition to the benefits under the policy, as specified in section 431:10-242; and~~

~~— (15) Any other requirement that the commissioner deems ineligible for the issuance of a variance, waiver, or no action letter.~~

~~— (c) When an application for a variance, waiver, or no action letter is granted, the commissioner shall provide public~~

~~notice of the application for or grant of a variance, waiver, or no action letter. The notice shall include:~~

- ~~(1) The specific statute to which the variance, waiver, or no action letter applies;~~
- ~~(2) The name of the applicant for the variance, waiver, or no action letter; and~~
- ~~(3) The duration of the variance, waiver, or no action letter.~~

~~The requirements of this subsection may be satisfied by the publication of a notice on the insurance division's website.~~

~~(d) The commissioner shall adopt rules pursuant to chapter 91 that establish a procedure for the submission, granting, or denying of an application petition for a variance, waiver, or no action letter; provided that the rules shall:~~

~~(1) Include procedures for granting or denying a variance, waiver, or no action letter within sixty days of the receipt of the application;~~

~~(2) Authorize the commissioner to revoke a variance, waiver, or no action letter issued pursuant to this section if the commissioner has reasonable cause to believe that a recipient of a variance, waiver, or no action letter has:~~

~~(A) Engaged in a violation of title 24 that was not waived by the granting of the variance, waiver, or no action letter;~~

~~(B) Not produced and will not likely produce identifiable benefits to consumers; or~~

~~(C) Failed to abide by the terms, conditions, or limitations of any variance, waiver, or no action letter;~~

~~(3) Authorize the commissioner to require reasonable terms, conditions, or limitations on the conduct or activity permitted under a variance, waiver, or no-action letter; provided that the terms, conditions, or limitations may include a requirement that the recipient of a variance, waiver, or no-action letter shall take reasonable steps to protect consumers, mitigate risks, or submit data or analysis to the commissioner on the market impact of the variance, waiver, or no-action letter;~~

~~(4) Authorize the commissioner to collect an application fee of \$500 per application. A separate application shall be submitted for each new, innovative, or more efficient insurance product, service, or technology;~~

~~(5) Authorize the commissioner to require a recipient of a waiver, variance, or no-action letter to provide each consumer with a disclosure stating that:~~

~~(A) The innovative insurance product or service is authorized pursuant to a waiver, variance, or no-action letter;~~

~~(B) The State of Hawaii does not endorse or recommend the innovative insurance product or service;~~

~~(C) The innovative insurance product or service is temporary for a limited duration and may end unless the waiver, variance, or no-action letter is extended by the commissioner, including the expected end date; and~~

~~(D) Consumers may contact the commissioner to file complaints regarding the innovative insurance product or service and provide the commissioner's telephone number and website address where complaints may be filed;~~

~~(6) Authorize the commissioner to have regularly scheduled communications with the recipient of a variance, waiver, or no-action letter; provided that the communication shall be, at a minimum, once per quarter each calendar year;~~

~~— (7) Authorize the commissioner to establish periodic reporting requirements for the recipient of a variance, waiver, or no-action letter; provided that the periodic reporting requirements shall be, at a minimum, once per quarter each calendar year; and~~

~~— (8) Authorize the commissioner to seek records, documents, and data as requested from the recipient of a variance, waiver, or no-action letter.~~

~~— (e) Notwithstanding the provisions of subsection (c), the following shall be considered trade secrets and confidential information and shall not be subject to public disclosure:~~

~~— (1) A petition for a variance, waiver, or no-action letter;~~

~~— (2) Information contained in an application for a variance, waiver, or no-action letter;~~

~~— (3) All information provided to the commissioner by an applicant for or recipient of a variance, waiver, or no-action letter; and~~

~~— (4) Any communication between the insurance division and the recipient that is required pursuant to the terms of the variance, waiver, or no-action letter.~~

~~— (f) The commissioner's authority to grant a variance, waiver, and no-action letter under this section shall not be construed to limit or otherwise affect the authority of the commissioner to exercise discretion to waive or enforce requirements as permitted under any other law.~~

~~— (g) No later than twenty days prior to the convening of each regular session, the commissioner shall submit an annual report to the legislature that includes the following information for the previous year:~~

~~— (1) The total number of applications for a variance, waiver, or no-action letter granted or denied by the commissioner;~~

~~—(2) For each variance, waiver, or no action letter granted by the commissioner, the information required under subsection (c):~~

~~—(3) For each provision in title 24 to which a variance, waiver, or no action letter applies, the commissioner's recommendation as to whether the provision should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and~~

~~—(4) A list of variances, waivers, or no action letters that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from the revocation." ]~~

SECTION ~~2~~<sup>3</sup>. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

(1) Certificate of authority:

- (A) Application for certificate of authority..... \$900
- (B) Issuance of certificate of authority..... \$600
- (C) Application for motor vehicle self-insurance. \$300

(2) Organization of domestic insurers and affiliated corporations:

- (A) Application for solicitation permit..... \$1,500
- (B) Issuance of solicitation permit..... \$150

(3) Producer's license:



(A) Issuance of regular license..... \$50

(B) Issuance of temporary license..... \$50

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

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

(6) Public adjuster's license: Issuance..... \$75

(7) Claims adjuster's limited license: Issuance..... \$75

(8) Administrator's license: Issuance ..... \$150

~~[(8)]~~ (9) Independent bill reviewer's license:

Issuance..... \$80

~~[(9)]~~ (10) Limited producer's license: Issuance..... \$60

~~[(10)]~~ (11) Managing general agent's license: Issuance.. \$75

~~[(11)]~~ (12) Reinsurance intermediary's license: Issuance. \$75

~~[(12)]~~ (13) Surplus lines broker's license: Issuance... \$150

~~[(13)]~~ (14) Service contract provider's registration:

Issuance..... \$75

~~[(14)]~~ (15) Approved course provider certificate:

Issuance..... \$100

~~[(15)]~~ (16) Approved continuing education course certificate: Issuance \$30

~~[(16)]~~ (17) Vehicle protection product warrantor's registration: Issuance \$75

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

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

~~[(19)]~~ (20) Legal service plan certificate of authority:

Issuance before July 1, 2014..... \$1,000

Issuance on or after July 1, 2014..... \$500

~~[(20)]~~ (21) Life settlement provider's license:

Issuance before July 1, 2014..... \$150

Issuance on or after July 1, 2014..... \$75

~~[(21)]~~ (22) Life settlement broker's license:

Issuance before July 1, 2014..... \$150

Issuance on or after July 1, 2014..... \$75

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

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

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

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

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

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

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

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

(7) \$150 per year for all services (including extension of the license) for an administrator's license;

~~[(7)]~~ (8) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;

~~[(8)]~~ (9) \$45 per year for all services (including extension of the license) for a producer's limited license;

~~[(9)]~~ (10) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;

~~[(10)]~~ (11) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;

~~[(11)]~~ (12) \$45 per year for all services (including extension of the license) for a licensed surplus lines broker;

~~[(12)]~~ (13) \$75 per year for all services (including renewal of registration) for a service contract provider;

~~[(13)]~~ (14) \$65 per year for all services (including extension of the certificate) for an approved course provider;

~~[(14)]~~ (15) \$20 per year for all services (including extension of the certificate) for an approved continuing education course;

~~[(15)]~~ (16) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;

~~[(16)]~~ (17) A fee to be established by the commissioner for each criminal history record check and fingerprinting;

~~[(17)]~~ (18) \$600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;

~~[(18)]~~ (19) \$1,000 per year for all services provided before July 1, 2014, (including extension of the certificate) for an authorized legal service plan;

~~[(19)]~~ (20) \$500 per year for all services provided on or after July 1, 2014, (including extension of the certificate) for an authorized legal service plan;

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

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

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

SECTION **3[4]**. Section 432:1-102, Hawaii Revised Statutes, is amended to read as follows:

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

(b) Article 2, article 2D, parts II and IV of article 3, article 6, part III of article 7, article 9A, article 13, article 14G, and article 15 of chapter 431, sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102, 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers granted by those provisions to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations that are owned or

controlled by mutual benefit societies so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.

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

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

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

SECTION 5[6]. This Act, upon its approval, shall take effect on January 1, 2020.



January 31, 2019

The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce

Re: HB 986 – Relating to Regulatory Authority of the Insurance Commissioner

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 986, which requires third party administrators to be licensed and regulated by the Insurance Commissioner. Authorizes the Insurance Commissioner to issue targeted variances, waivers, or no-action letters relating to the requirements of chapter 431, Hawaii Revised Statutes.

HMSA supports the intent of this bill, but we would like to offer a comment for consideration.

In looking at the portion of this measure that addresses variances, waivers, or no-action letters, additional clarification is needed around protections from any potential liability that an insurer may be exposed to for conduct that is the subject of the variance, waiver, or no-action letter.

Thank you for allowing us to testify on HB 986. Your consideration of our comment is appreciated.

Sincerely,

Jennifer Diesman  
Senior Vice-President, Market & Product Development

Testimony of  
Jonathan Ching  
Government Relations Specialist

Before:  
House Committee on Consumer Protection & Commerce  
The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair

February 1, 2019  
2:00 p.m.  
Conference Room 329

**Re: HB986, Relating to Regulatory Authority of the Insurance Commissioner.**

Chair Takumi, Vice-Chair Ichiyama, and committee members, thank you for this opportunity to provide testimony on HB986, which requires third party administrators to be licensed and regulated by the Insurance Commissioner. HB986 also authorizes the Insurance Commissioner to issue targeted variances, waivers, or no-action letters relating to the requirements of the Insurance Code.

**Kaiser Permanente offers COMMENTS on HB986 and requests an AMENDMENT**

Kaiser Permanente takes no position on Section 1.

With regards to Section 2, we support the intent of HB986 to promote new, innovative, or more efficient insurance products, services, or technologies to the state's consumers that can promote and incentive a healthy behavior. However, we have concerns that Section 2 of HB986 is too broad given that it allows for the possible pilot of products, pricing, and ways of delivering *all* types of insurance.

Bearing this in mind, we respectfully offer the following comments on HB986:

1. While we are receptive to the piloting and testing of new and innovative products and ways of delivering insurance to businesses and consumers, we note that HB986 does not specify a panel of experts that may be able to assist the Insurance Commissioner review potential applications for a no action letter, waiver, or variance from Section 431:2, Hawai'i Revised Statutes (HRS), especially if it is to demonstrate that the public policy purpose of the underlying law or rule may be achieved by alternative means;

2. Who would assess the risks and/or success of a pilot or test of such products? Furthermore, would it require applicants to self-report on the success of the pilot? Finally, how would the Department of Commerce and Consumer Affairs, Insurance Division show that the public policy goals of Section 431:2, HRS is being “achieved by other means” as sought via HB986?

Therefore, we believe Section 2 of HB986 is premature given that the National Association of Insurance Commissioners has not developed or adopted a Model Act related to technology-enabled innovations in the insurance industry, or "InsurTechs." As such, Kaiser Permanente requests the committee to delete Section 2 of the HB986 in its entirety.

We respectfully request consideration of our amendment. Thank you for the opportunity to testify on HB986.



**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE  
HAWAII ASSOCIATION FOR JUSTICE (HAJ)  
OPPOSING H.B. 986**

**LATE**

Date: Friday, February 1, 2019  
Time: 2 p.m.  
Room: 329

To: Chair Roy M. Takumi and Members of the House Committee on Consumer Protection and Commerce.

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) opposing H.B. 986, Relating to Regulatory Authority of the Insurance Commissioner.

The bill grants the insurance commissioner unlimited power to alter the current insurance laws and established procedures. As currently drafted, the bill is extremely broad, and its operation would be detrimental to consumers in all facets of everyday life.

The amendments in this bill would allow a person or entity to apply to the commissioner to deviate from almost every insurance law in the insurance code for any amount of time and in any scope. The few exceptions listed under section (b) beginning at page 17, have to do with such corporate issues like investments and solvency, licensing of an insurance agent, national accreditations and taxes. However, it does not limit the commissioner from approving an application for all other areas of the insurance code. In addition, the application process and all information and communication related to the exemption would be kept secret from the public even after it is approved.

For example, Insurance Company A could apply for a waiver from having to provide Personal Injury Protection to its insureds and if the Commissioner approves it, the public would learn about this only after the approval. The other insurance companies

and insureds never had a chance to weigh in and there would be no uniformity in the insurance industry.

Although the bill states that the person or entity must “demonstrate that the public policy goals of title 24 may be achieved by other means and that the application of the requirement may inhibit or discourage the introduction of new, innovative, or more efficient insurance products, services, or technologies,” that demonstration only lies with the commissioner and not in a public forum with the opportunity for fair transparency, subject to public scrutiny or legislative approval.

Requirements that are important enough to merit legislative action to codify in our insurance code are important enough to require legislative oversight for any modifications. HAJ does not oppose improvements in efficiencies. If proponents desire modifications to existing law such proposals should be more narrowly crafted to address the specific areas of concern, provide transparency in the process, and opportunity to review by those aggrieved by agency action in accordance with ordinary principles of administrative agency procedures. To allow almost limitless exercise of governmental power in almost total secrecy is unacceptable and contrary to sound public policy.

As you can see, this bill provides unlimited authority for the commissioner to alter the operation and purpose of the insurance code without the consumers’ opportunity to have any say in the process.

Thank you for the opportunity to testify regarding this measure. Please contact me if there are any questions or concerns.