
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new section to part I of article 19 to be
3 appropriately designated and to read as follows:

4 "§431:19- Dormant captive insurance companies. (a) As
5 used in this section, unless the context requires otherwise,
6 "dormant captive insurance company" means a captive insurance
7 company that as of the filing of its application for a
8 certificate of dormancy under this section:

9 (1) Has never transacted the business of insurance; or
10 (2) Has ceased transacting the business of insurance and
11 has no remaining insurance liabilities associated with
12 any business of insurance transacted by it.

13 (b) A captive insurance company may apply to the
14 commissioner for a certificate of dormancy and the commissioner
15 may grant a certificate of dormancy. The certificate of
16 dormancy shall be subject to renewal every five years and shall
17 expire if not renewed. The application for renewal shall be



1 submitted no less than ninety days prior to the certificate
2 expiration date. The issuance of a certificate of dormancy
3 shall automatically cause the certificate of authority of the
4 captive insurance company to be placed in inactive status.

5 (c) A dormant captive insurance company that has been
6 issued a certificate of dormancy shall:

7 (1) Possess and thereafter maintain unimpaired, paid-in
8 capital and surplus of not less than \$25,000;

9 (2) Prior to March 1 of each year, submit to the
10 commissioner a report of its financial condition,
11 verified by oath of two of its executive officers, in
12 a form as may be prescribed by the commissioner; and

13 (3) Pay a certificate of dormancy renewal fee of \$300.

14 (d) A dormant captive insurance company that has been
15 issued a certificate of dormancy shall not:

16 (1) Conduct the business of insurance;

17 (2) Be subject to or liable for the payment of any tax
18 under section 431:19-116;

19 (3) Be required to file audited annual financial
20 statements and other reports required under section
21 431:19-107; and



1 (4) Be subject to examination under section 431:19-108,
2 except for non-compliance with this section.

3 (e) Prior to conducting any insurance business, a dormant
4 captive insurance company shall apply for approval from the
5 commissioner to surrender its certificate of dormancy and to
6 reactivate its certificate of authority.

7 (f) A certificate of dormancy shall be revoked if a
8 dormant captive insurance company violates any provisions of
9 subsections (a) through (d).

10 (g) The commissioner may adopt rules as necessary to carry
11 out this section."

12 SECTION 2. Section 431:2-217, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~§~~431:2-217~~§~~ **Trade name.** (a) Prior to the use or
15 change of a trade name to sell, solicit, or negotiate insurance
16 in this State, the licensee shall register the trade name with
17 the department of commerce and consumer affairs pursuant to part
18 II of chapter 482.

19 (b) Upon registration of the trade name with the
20 department of commerce and consumer affairs, the licensee may
21 apply, on a form approved by the commissioner, to add or remove



1 a trade name on a license. The applicant shall provide proof of
2 registration of a trade name to the commissioner.

3 (c) If the commissioner finds the application for use or
4 change of a trade name is substantially identical to another
5 trade name registered with the department of commerce and
6 consumer affairs, or substantially identical to a legal name or
7 trade name of a revoked license, the commissioner shall deny use
8 of the trade name on a license issued pursuant to this chapter.

9 (d) A licensee shall inform the commissioner, by any means
10 acceptable to the commissioner, of any change of status of a
11 trade name registered with the department of commerce and
12 consumer affairs within thirty days of the change.

13 (e) For purposes of this article, "trade name" shall mean
14 the name under which an individual or business entity is
15 conducting business or doing business as if the true legal name
16 of the individual or business entity cannot be used."

17 SECTION 3. Section 431:9A-154, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§431:9A-154 Self-study courses.** (a) In addition to the
20 requirements of courses generally, an approved continuing
21 education course provider shall also require for self-study



1 courses, including computer-based courses, a written or
2 computer-based examination at the conclusion of the self-study
3 course. The examination shall:

- 4 (1) Be composed of multiple choice questions, essay
5 questions, or both;
- 6 (2) Have at least three different versions of itself, used
7 on a random or rotating basis;
- 8 (3) If composed of multiple choice questions for a course
9 approved for up to four credit hours, include at least
10 twenty-five multiple choice questions;
- 11 (4) If composed of multiple choice questions for a course
12 approved for more than four credit hours, include at
13 least fifty multiple choice questions;
- 14 (5) Be graded by the continuing education course provider
15 or the continuing education course provider's agent;
- 16 (6) If the examination is computer-based, not include
17 prompts designed to aid the person taking the
18 examination; and
- 19 (7) If the course is a computer-based course with a
20 computer-based examination, be designed to prevent the



1 licensee from taking the examination without reviewing
2 the course materials.

3 (b) To pass a multiple-choice self-study course, the
4 licensee shall answer at least seventy per cent of the
5 examination questions correctly.

6 (c) A self-study course examination shall not be
7 administered by a person who:

8 (1) Is related to, or is a business associate of, the
9 licensee taking the examination; or

10 (2) Has a financial interest in the success or failure of
11 a licensee taking the examination.

12 (d) The effective date of a completed examination pursuant
13 to this section shall be the date the continuing education
14 course provider receives the completed examination. Upon
15 receipt of the completed examination, the continuing education
16 course provider or the continuing education course provider's
17 agent shall grade the examination and mail the results to the
18 licensee within fifteen days.

19 (e) The written or computer-based examination and contents
20 shall be made available by the continuing education course



1 provider, upon request, to the commissioner, and shall not be
2 required to be submitted for filing."

3 SECTION 4. Section 431:9B-102, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The commissioner may require a reinsurance
6 intermediary-manager subject to subsection (b) to[+]

7 ~~(1) File a bond from an insurance company licensed to do~~
8 ~~business within the State or with an insurance company~~
9 ~~approved by the commissioner, in an amount equal to~~
10 ~~\$500,000 or ten per cent of the annual reinsurance~~
11 ~~premiums managed by the reinsurance~~
12 ~~intermediary manager, whichever is greater, except~~
13 ~~that the bond amount under this paragraph shall not~~
14 ~~exceed \$10,000,000, for the protection of the~~
15 ~~reinsurer;~~

16 ~~(2) Maintain an errors and omissions policy with an~~
17 ~~insurance company licensed to do business within the~~
18 ~~State or with an insurance company approved by the~~
19 ~~commissioner, in an amount equal to \$250,000 or~~
20 ~~twenty five per cent of the annual reinsurance~~
21 ~~premiums managed by the reinsurance~~



1 intermediary manager, whichever is greater, except
2 that the policy limits under this paragraph shall not
3 exceed \$10,000,000; and

4 (3) Provide] provide any [other] report required by the
5 commissioner.

6 ~~[At the commissioner's request, the reinsurance~~
7 ~~intermediary manager shall provide the commissioner with proof~~
8 ~~of the bond and policy and appropriate documentation to show~~
9 ~~that the bond and policy continue to be in effect, or that a new~~
10 ~~bond and new policy have been secured.] "~~

11 SECTION 5. Section 431:9B-108, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~{~~§431:9B-108~~}~~ Duties of reinsurers utilizing the
14 services of a reinsurance intermediary-manager. (a) A
15 reinsurer shall not engage the services of any person, firm,
16 association, or corporation to act as a reinsurance
17 intermediary-manager on its behalf unless the person, firm,
18 association, or corporation is licensed as required by section
19 431:9B-102(b).

20 (b) The reinsurer shall annually obtain a copy of
21 statements of the financial condition of each reinsurance



1 intermediary-manager which the reinsurer has engaged prepared by
2 an independent certified accountant in a form acceptable to the
3 commissioner.

4 (c) If a reinsurance intermediary-manager establishes loss
5 reserves, the reinsurer shall annually obtain the opinion of an
6 actuary attesting to the adequacy of loss reserves established
7 for losses incurred and outstanding on business produced by the
8 reinsurance intermediary-manager. This opinion shall be in
9 addition to any other required loss reserve certification.

10 (d) The reinsurer shall require the reinsurance
11 intermediary-manager to:

12 (1) File a bond for the protection of the reinsurer from
13 an insurance company licensed to do business within
14 the State or with an insurance company approved by the
15 commissioner, in an amount equal to \$500,000 or ten
16 per cent of the annual reinsurance premiums managed by
17 the reinsurance intermediary-manager, whichever is
18 greater, except that the bond amount under this
19 paragraph shall not exceed \$10,000,000; and

20 (2) Maintain an errors and omissions policy with an
21 insurance company licensed to do business within the



1 State or with an insurance company approved by the
2 commissioner, in an amount equal to \$250,000 or
3 twenty-five per cent of the annual reinsurance
4 premiums managed by the reinsurance
5 intermediary-manager, whichever is greater, except
6 that the policy limits under this paragraph shall not
7 exceed \$10,000,000.

8 At the commissioner's request, the reinsurance
9 intermediary-manager shall provide the commissioner with proof
10 of the bond and policy required, and appropriate documentation
11 to show that the bond and policy continue to be in effect, or
12 that a new bond and new policy have been secured.

13 ~~[(d)]~~ (e) Binding authority for all retrocessional
14 contracts or participation in reinsurance syndicates shall rest
15 with an officer of the reinsurer who shall not be affiliated
16 with the reinsurance intermediary-manager.

17 ~~[(e)]~~ (f) Within thirty days of termination of a contract
18 with a reinsurance intermediary-manager, the reinsurer shall
19 provide written notification of the termination to the
20 commissioner.



1 [~~f~~] (g) A reinsurer shall not appoint to its board of
2 directors any officer, director, employee, controlling
3 shareholder, or subagent of its reinsurance intermediary-
4 manager; provided that this subsection shall not apply to
5 relationships governed by article 11."

6 SECTION 6. Section 431:9J-103, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§431:9J-103 Surety bond required.** (a) Before the
9 issuance of the administrator license, the administrator shall
10 file with the commissioner, and maintain in force while so
11 licensed, a surety bond of at least \$100,000 [~~7~~] for the first
12 two years, and at least \$300,000 from the third year, in the
13 form and penal sum acceptable to the commissioner, and shall
14 provide that the bond may not be canceled or otherwise
15 terminated until two years have elapsed from the last day the
16 applicant was an administrator, unless the commissioner has
17 given prior written consent. The surety bond shall be
18 undertaken and may be enforced in the name of "Commissioner of
19 Insurance, State of Hawaii".

20 (b) [~~F~~] At the first renewal, and each subsequent
21 [annual report filing,] year, the surety bond amount shall be at



1 least [~~\$100,000~~] \$300,000 and filed in accordance with
2 §431:9J-112."

3 SECTION 7. Section 431:9J-112, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:9J-112 Annual report required.** (a) An
6 administrator shall file an annual report for the preceding
7 calendar year with the commissioner on or before March 1 of each
8 year, in a form and manner prescribed by the commissioner.

9 (b) The annual report shall include:

10 (1) The names and addresses of all insurers with which the
11 administrator had an agreement during the preceding
12 calendar year;

13 (2) A renewal certificate for the surety bond required in
14 section 431:9J-103 and an updated surety bond form, if
15 needed; and

16 (3) An audited financial statement prepared by an
17 independent certified public accountant.

18 (c) An audited financial statement and annual report
19 prepared on a consolidated basis shall include a columnar
20 consolidating or combining worksheet filed with the report and
21 shall include the following:



- 1 (1) Worksheet showing the amounts shown on the
- 2 consolidated audited financial report;
- 3 (2) Amounts for each entity that shall be stated
- 4 separately; and
- 5 (3) Explanations of consolidating and eliminating entries.
- 6 (d) The annual report shall be in the form, and contain
- 7 such matters, as the commissioner prescribes and shall be
- 8 verified by at least two officers of the administrator."

9 SECTION 8. Section 431:13-103, Hawaii Revised Statutes, is

10 amended by amending subsection (a) to read as follows:

11 "(a) The following are defined as unfair methods of

12 competition and unfair or deceptive acts or practices in the

13 business of insurance:

14 (1) Misrepresentations and false advertising of insurance

15 policies. Making, issuing, circulating, or causing to

16 be made, issued, or circulated, any estimate,

17 illustration, circular, statement, sales presentation,

18 omission, or comparison that:

19 (A) Misrepresents the benefits, advantages,

20 conditions, or terms of any insurance policy;



- 1 (B) Misrepresents the dividends or share of the
- 2 surplus to be received on any insurance policy;
- 3 (C) Makes any false or misleading statement as to the
- 4 dividends or share of surplus previously paid on
- 5 any insurance policy;
- 6 (D) Is misleading or is a misrepresentation as to the
- 7 financial condition of any insurer, or as to the
- 8 legal reserve system upon which any life insurer
- 9 operates;
- 10 (E) Uses any name or title of any insurance policy or
- 11 class of insurance policies misrepresenting the
- 12 true nature thereof;
- 13 (F) Is a misrepresentation for the purpose of
- 14 inducing or tending to induce the lapse,
- 15 forfeiture, exchange, conversion, or surrender of
- 16 any insurance policy;
- 17 (G) Is a misrepresentation for the purpose of
- 18 effecting a pledge or assignment of or effecting
- 19 a loan against any insurance policy;
- 20 (H) Misrepresents any insurance policy as being
- 21 shares of stock;



- 1 (I) Publishes or advertises the assets of any insurer
- 2 without publishing or advertising with equal
- 3 conspicuousness the liabilities of the insurer,
- 4 both as shown by its last annual statement; or
- 5 (J) Publishes or advertises the capital of any
- 6 insurer without stating specifically the amount
- 7 of paid-in and subscribed capital;
- 8 (2) False information and advertising generally. Making,
- 9 publishing, disseminating, circulating, or placing
- 10 before the public, or causing, directly or indirectly,
- 11 to be made, published, disseminated, circulated, or
- 12 placed before the public, in a newspaper, magazine, or
- 13 other publication, or in the form of a notice,
- 14 circular, pamphlet, letter, or poster, or over any
- 15 radio or television station, or in any other way, an
- 16 advertisement, announcement, or statement containing
- 17 any assertion, representation, or statement with
- 18 respect to the business of insurance or with respect
- 19 to any person in the conduct of the person's insurance
- 20 business, which is untrue, deceptive, or misleading;



- 1 (3) Defamation. Making, publishing, disseminating, or
2 circulating, directly or indirectly, or aiding,
3 abetting, or encouraging the making, publishing,
4 disseminating, or circulating of any oral or written
5 statement or any pamphlet, circular, article, or
6 literature which is false, or maliciously critical of
7 or derogatory to the financial condition of an
8 insurer, and which is calculated to injure any person
9 engaged in the business of insurance;
- 10 (4) Boycott, coercion, and intimidation.
- 11 (A) Entering into any agreement to commit, or by any
12 action committing, any act of boycott, coercion,
13 or intimidation resulting in or tending to result
14 in unreasonable restraint of, or monopoly in, the
15 business of insurance; or
- 16 (B) Entering into any agreement on the condition,
17 agreement, or understanding that a policy will
18 not be issued or renewed unless the prospective
19 insured contracts for another class or an
20 additional policy of the same class of insurance
21 with the same insurer;



- 1 (5) False financial statements.
- 2 (A) Knowingly filing with any supervisory or other
- 3 public official, or knowingly making, publishing,
- 4 disseminating, circulating, or delivering to any
- 5 person, or placing before the public, or
- 6 knowingly causing, directly or indirectly, to be
- 7 made, published, disseminated, circulated,
- 8 delivered to any person, or placed before the
- 9 public, any false statement of a material fact as
- 10 to the financial condition of an insurer; or
- 11 (B) Knowingly making any false entry of a material
- 12 fact in any book, report, or statement of any
- 13 insurer with intent to deceive any agent or
- 14 examiner lawfully appointed to examine into its
- 15 condition or into any of its affairs, or any
- 16 public official to whom the insurer is required
- 17 by law to report, or who has authority by law to
- 18 examine into its condition or into any of its
- 19 affairs, or, with like intent, knowingly omitting
- 20 to make a true entry of any material fact



1 pertaining to the business of the insurer in any
2 book, report, or statement of the insurer;
3 (6) Stock operations and advisory board contracts:
4 Issuing or delivering or permitting agents, officers,
5 or employees to issue or deliver, agency company stock
6 or other capital stock, or benefit certificates or
7 shares in any common-law corporation, or securities or
8 any special or advisory board contracts or other
9 contracts of any kind promising returns and profits as
10 an inducement to insurance;
11 (7) Unfair discrimination.
12 (A) Making or permitting any unfair discrimination
13 between individuals of the same class and equal
14 expectation of life in the rates charged for any
15 policy of life insurance or annuity contract or
16 in the dividends or other benefits payable
17 thereon, or in any other of the terms and
18 conditions of the contract;
19 (B) Making or permitting any unfair discrimination in
20 favor of particular individuals or persons, or
21 between insureds or subjects of insurance having



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

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

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

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

19 (D) Making or permitting any unfair discrimination
20 between individuals or risks of the same class
21 and of essentially the same hazards by refusing



1 to issue, refusing to renew, canceling, or
2 limiting the amount of insurance coverage on a
3 residential property risk, or the personal
4 property contained therein, because of the age of
5 the residential property, unless:
6 (i) The refusal, cancellation, or limitation is
7 for a business purpose which is not a mere
8 pretext for unfair discrimination; or
9 (ii) The refusal, cancellation, or limitation is
10 required by law or regulatory mandate;
11 (E) Refusing to insure, refusing to continue to
12 insure, or limiting the amount of coverage
13 available to an individual because of the sex or
14 marital status of the individual; however,
15 nothing in this subsection shall prohibit an
16 insurer from taking marital status into account
17 for the purpose of defining persons eligible for
18 dependent benefits;
19 (F) Terminating or modifying coverage, or refusing to
20 issue or renew any property or casualty policy or
21 contract of insurance solely because the



1 applicant or insured or any employee of either is
2 mentally or physically impaired; provided that
3 this subparagraph shall not apply to accident and
4 health or sickness insurance sold by a casualty
5 insurer; provided further that this subparagraph
6 shall not be interpreted to modify any other
7 provision of law relating to the termination,
8 modification, issuance, or renewal of any
9 insurance policy or contract;

10 (G) Refusing to insure, refusing to continue to
11 insure, or limiting the amount of coverage
12 available to an individual based solely upon the
13 individual's having taken a human
14 immunodeficiency virus (HIV) test prior to
15 applying for insurance; or

16 (H) Refusing to insure, refusing to continue to
17 insure, or limiting the amount of coverage
18 available to an individual because the individual
19 refuses to consent to the release of information
20 which is confidential as provided in section
21 325-101; provided that nothing in this



1 subparagraph shall prohibit an insurer from
 2 obtaining and using the results of a test
 3 satisfying the requirements of the commissioner,
 4 which was taken with the consent of an applicant
 5 for insurance; provided further that any
 6 applicant for insurance who is tested for HIV
 7 infection shall be afforded the opportunity to
 8 obtain the test results, within a reasonable time
 9 after being tested, and that the confidentiality
 10 of the test results shall be maintained as
 11 provided by section 325-101;

12 (8) Rebates. Except as otherwise expressly provided by
 13 law:

14 (A) Knowingly permitting or offering to make or
 15 making any contract of insurance, or agreement as
 16 to the contract other than as plainly expressed
 17 in the contract, or paying or allowing, or giving
 18 or offering to pay, allow, or give, directly or
 19 indirectly, as inducement to the insurance, any
 20 rebate of premiums payable on the contract, or
 21 any special favor or advantage in the dividends



- 1 or other benefits, or any valuable consideration
2 or inducement not specified in the contract; or
3 (B) Giving, selling, or purchasing, or offering to
4 give, sell, or purchase as inducement to the
5 insurance or in connection therewith, any stocks,
6 bonds, or other securities of any insurance
7 company or other corporation, association, or
8 partnership, or any dividends or profits accrued
9 thereon, or anything of value not specified in
10 the contract;
- 11 (9) Nothing in paragraph (7) or (8) shall be construed as
12 including within the definition of discrimination or
13 rebates any of the following practices:
- 14 (A) In the case of any life insurance policy or
15 annuity contract, paying bonuses to policyholders
16 or otherwise abating their premiums in whole or
17 in part out of surplus accumulated from
18 nonparticipating insurance; provided that any
19 bonus or abatement of premiums shall be fair and
20 equitable to policyholders and in the best
21 interests of the insurer and its policyholders;



- 1 (B) In the case of life insurance policies issued on
- 2 the industrial debit plan, making allowance to
- 3 policyholders who have continuously for a
- 4 specified period made premium payments directly
- 5 to an office of the insurer in an amount which
- 6 fairly represents the saving in collection
- 7 expense;
- 8 (C) Readjustment of the rate of premium for a group
- 9 insurance policy based on the loss or expense
- 10 experience thereunder, at the end of the first or
- 11 any subsequent policy year of insurance
- 12 thereunder, which may be made retroactive only
- 13 for the policy year;
- 14 (D) In the case of any contract of insurance, the
- 15 distribution of savings, earnings, or surplus
- 16 equitably among a class of policyholders, all in
- 17 accordance with this article; and
- 18 (E) ~~[A reward under a wellness program established~~
- 19 ~~under a health care plan that favors an~~
- 20 ~~individual if the wellness program meets the~~
- 21 ~~following requirements:~~



- 1 ~~(i) The wellness program is reasonably designed~~
- 2 ~~to promote health or prevent disease;~~
- 3 ~~(ii) An individual has an opportunity to qualify~~
- 4 ~~for the reward at least once a year;~~
- 5 ~~(iii) The reward is available for all similarly~~
- 6 ~~situated individuals;~~
- 7 ~~(iv) The wellness program has alternative~~
- 8 ~~standards for individuals who are unable to~~
- 9 ~~obtain the reward because of a health~~
- 10 ~~factor;~~
- 11 ~~(v) Alternative standards are available for an~~
- 12 ~~individual who is unable to participate in a~~
- 13 ~~reward program because of a health~~
- 14 ~~condition;~~
- 15 ~~(vi) The insurer provides information explaining~~
- 16 ~~the standard for achieving the reward and~~
- 17 ~~discloses the alternative standards; and~~
- 18 ~~(vii) The total rewards for all wellness programs~~
- 19 ~~under the health care plan do not exceed~~
- 20 ~~twenty per cent of the cost of coverage;]~~



1 The offer or provision by insurers or producers,
2 by or through employees, affiliates, or third-
3 party representatives, of value-added products or
4 services at no or reduced cost when the products
5 or services are not specified in the policy of
6 insurance if the product or service:

7 (i) Relates to the insurance coverage; and
8 (ii) Is primarily designed to satisfy one or more
9 of the following:

10 (I) Provide loss mitigation or loss
11 control;

12 (II) Reduce claim costs or claim settlement
13 costs;

14 (III) Provide education about liability risks
15 or risk of loss to persons or property;

16 (IV) Monitor or assess risk, identify
17 sources of risk, or develop strategies
18 for eliminating or reducing risk;

19 (V) Enhance health;



- 1 (VI) Enhance financial wellness through
- 2 items such as education and financial
- 3 planning services;
- 4 (VII) Provide post-loss services;
- 5 (VIII) Incentivize behavioral changes to
- 6 improve the health or reduce the risk
- 7 of death or disability of a customer;
- 8 or
- 9 (IX) Assist in the administration of the
- 10 employee or retiree benefit insurance
- 11 coverage.

- 12 (iii) The cost to the insurer or producer offering
- 13 the product or service to any given customer
- 14 shall be reasonable in comparison to that
- 15 customer's premiums or insurance coverage
- 16 for the policy class.

- 17 (iv) If the insurer or producer is providing the
- 18 product or service offered, the insurer or
- 19 producer shall ensure that the customer is
- 20 provided with contact information to assist



1 the customer with questions regarding the
2 product or service.

3 (v) The commissioner may adopt rules when
4 implementing the permitted practices set
5 forth in this paragraph to ensure consumer
6 protection. Such rules, consistent with
7 applicable law, may address, among other
8 issues, consumer data protections and
9 privacy, consumer disclosure and unfair
10 discrimination.

11 (vi) The availability of the value-added product
12 or service shall be based on documented
13 objective criteria and offered in a manner
14 that is not unfairly discriminatory. The
15 documented criteria shall be maintained by
16 the insurer or producer and produced upon
17 request by the commissioner.

18 (vii) If an insurer or producer does not have
19 sufficient evidence but has a good-faith
20 belief that the product or service meets the
21 criteria in subparagraph (E) (ii), the



1 insurer or producer may provide the product
2 or service in a manner that is not unfairly
3 discriminatory as part of a pilot or testing
4 program for no more than one year. An
5 insurer or producer shall notify the
6 commissioner of such a pilot or testing
7 program offered to consumers in the State
8 prior to launching and may proceed with the
9 program unless the commissioner objects
10 within twenty-one days of notice.

11 (F) An insurer or a producer may:

12 (i) Offer or give non-cash gifts, items, or
13 services, including meals to or charitable
14 donations on behalf of a customer, to
15 commercial or institutional customers in
16 connection with the marketing, sale,
17 purchase, or retention of contracts of
18 insurance, as long as the cost is reasonable
19 in comparison to the premium or proposed
20 premium and the cost of the gift or service
21 is not included in any amounts charged to



1 another person or entity. The offer must be
2 made in a manner that is not unfairly
3 discriminatory. The customer may not be
4 required to purchase, continue to purchase
5 or renew a policy in exchange for the gift,
6 item or service.

7 (ii) Conduct raffles or drawings to the extent
8 permitted by state law, as long as there is
9 no financial cost to entrants to
10 participate, the drawing or raffle does not
11 obligate participants to purchase insurance,
12 the prizes are not valued in excess of a
13 reasonable amount determined by the
14 commissioner and the drawing or raffle is
15 open to the public. The raffle or drawing
16 shall be offered in a manner that is not
17 unfairly discriminatory. The customer may
18 not be required to purchase, continue to
19 purchase or renew a policy in exchange for
20 the gift, item or service.



1 An insurer, producer or representative of either may
2 not offer or provide insurance as an inducement to the
3 purchase of another policy or otherwise use the words
4 "free", "no cost" or words of similar import, in an
5 advertisement.

6 For purposes of this paragraph, "customer" means a policyholder,
7 potential policyholder, certificate holder, potential
8 certificate holder, insured, potential insured or applicant.

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

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

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

18 (C) For entities licensed under chapter 432 or 432D:

19 (i) It shall not be a violation of this section
20 to refuse to provide or limit coverage
21 available to an individual because the



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

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



1 individual has against any person, entity, or
2 insurer, other than the entity licensed under
3 chapter 432 or 432D;

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

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

9 (B) With respect to claims arising under its
10 policies, failing to respond with reasonable
11 promptness, in no case more than fifteen working
12 days, to communications received from:

13 (i) The insurer's policyholder;

14 (ii) Any other persons, including the
15 commissioner; or

16 (iii) The insurer of a person involved in an
17 incident in which the insurer's policyholder
18 is also involved.

19 The response shall be more than an acknowledgment
20 that such person's communication has been



- 1 received and shall adequately address the
2 concerns stated in the communication;
- 3 (C) Failing to adopt and implement reasonable
4 standards for the prompt investigation of claims
5 arising under insurance policies;
- 6 (D) Refusing to pay claims without conducting a
7 reasonable investigation based upon all available
8 information;
- 9 (E) Failing to affirm or deny coverage of claims
10 within a reasonable time after proof of loss
11 statements have been completed;
- 12 (F) Failing to offer payment within thirty calendar
13 days of affirmation of liability, if the amount
14 of the claim has been determined and is not in
15 dispute;
- 16 (G) Failing to provide the insured, or when
17 applicable the insured's beneficiary, with a
18 reasonable written explanation for any delay, on
19 every claim remaining unresolved for thirty
20 calendar days from the date it was reported;



- 1 (H) Not attempting in good faith to effectuate
- 2 prompt, fair, and equitable settlements of claims
- 3 in which liability has become reasonably clear;
- 4 (I) Compelling insureds to institute litigation to
- 5 recover amounts due under an insurance policy by
- 6 offering substantially less than the amounts
- 7 ultimately recovered in actions brought by the
- 8 insureds;
- 9 (J) Attempting to settle a claim for less than the
- 10 amount to which a reasonable person would have
- 11 believed the person was entitled by reference to
- 12 written or printed advertising material
- 13 accompanying or made part of an application;
- 14 (K) Attempting to settle claims on the basis of an
- 15 application that was altered without notice,
- 16 knowledge, or consent of the insured;
- 17 (L) Making claims payments to insureds or
- 18 beneficiaries not accompanied by a statement
- 19 setting forth the coverage under which the
- 20 payments are being made;



- 1 (M) Making known to insureds or claimants a policy of
2 appealing from arbitration awards in favor of
3 insureds or claimants for the purpose of
4 compelling them to accept settlements or
5 compromises less than the amount awarded in
6 arbitration;
- 7 (N) Delaying the investigation or payment of claims
8 by requiring an insured, claimant, or the
9 physician or advanced practice registered nurse
10 of either to submit a preliminary claim report
11 and then requiring the subsequent submission of
12 formal proof of loss forms, both of which
13 submissions contain substantially the same
14 information;
- 15 (O) Failing to promptly settle claims, where
16 liability has become reasonably clear, under one
17 portion of the insurance policy coverage to
18 influence settlements under other portions of the
19 insurance policy coverage;
- 20 (P) Failing to promptly provide a reasonable
21 explanation of the basis in the insurance policy



1 in relation to the facts or applicable law for
 2 denial of a claim or for the offer of a
 3 compromise settlement; and

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

12 (12) Failure to maintain complaint handling procedures.
 13 Failure of any insurer to maintain a complete record
 14 of all the complaints that it has received since the
 15 date of its last examination under section 431:2-302.
 16 This record shall indicate the total number of
 17 complaints, their classification by line of insurance,
 18 the nature of each complaint; the disposition of the
 19 complaints, and the time it took to process each
 20 complaint. For purposes of this section, "complaint"



1 means any written communication primarily expressing a
2 grievance;

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

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

16 SECTION 9. Section 431:19-101, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending the definition of "controlled unaffiliated
19 business" to read:



1 "Controlled unaffiliated business" means, in the case of a
2 pure captive insurance company, any person[+], or in the case of
3 a sponsored captive insurance company, any participant:

4 (1) That is not in the corporate system of a parent or
5 sponsor and its affiliated entities;

6 (2) That has an existing contractual relationship with a
7 parent or sponsor or one of its affiliated entities;
8 and;

9 (3) Whose risks are managed by the pure captive insurance
10 company[-] or the sponsored captive insurance
11 company."

12 2. By amending the definition of "participant" to read:

13 "Participant" means an entity that meets the requirements
14 of section 431:19-305, and any affiliated or controlled
15 unaffiliated business entities thereof that are insured by a
16 sponsored captive insurance company where the losses of the
17 participant may be limited through a participant contract to the
18 participant's pro rata share of the assets of one or more
19 protected cells identified in the participant contract."

20 SECTION 10. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect on July 1, 2050;
2 provided that the amendments made to section 76-16(b), Hawaii
3 Revised Statutes, by section 3 of this Act shall not be repealed
4 when section 24 of Act 278, Session Laws of Hawaii 2022, takes
5 effect.



Report Title:

Insurance Code; Captive Insurers; Producers; Trade Name; Third Party Administrators; Surety Bond; Reinsurance Intermediary-Managers; Unfair Methods of Competition; Unfair and Deceptive Acts and Practices; Reinsurers; Non-Insurance Benefits

Description:

Amends various provisions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions. Adds the term "doing business as" to "trade name" statutory references. Clarifies continuing education provider filing requirements. Clarifies reinsurance intermediary-manager filing requirements. Amends the surety bond threshold requirement for third party administrators and clarifies the audited financial statements requirements. Adopts revised National Association of Insurance Commissioners Model #880 Unfair Trade Practices Act regarding expansion of value-added products beyond health products. Aligns section 431:13-103, HRS, with changes made to article 9 of chapter 431 by Act 110, Session Laws of Hawaii 2021. Amends the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies. Effective 7/1/2050. (SD1)

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

