

JAN 24 2024

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# 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 ten new sections to part II of article 2 to be  
3 appropriately designated and to read as follows:

4 "§431:2-A Program to investigate complaints, respond to  
5 inquiries, and bring enforcement actions against insurers or  
6 producers. (a) The commissioner shall establish a program on  
7 or before July 1, 2025, to investigate complaints and respond to  
8 inquiries received pursuant to section 431:2-B, to comply with  
9 section 431:2-C, and, when warranted, to bring enforcement  
10 actions against insurers producers pursuant to section  
11 431:2-203. The program shall include but not be limited to the  
12 following:

13 (1) A toll-free telephone number published in telephone  
14 books throughout the State, dedicated to the handling  
15 of complaints and inquiries;

16 (2) Public service announcements to inform consumers of  
17 the toll-free telephone number and how to register a



- 1           complaint or make an inquiry into the insurance  
2           division;
- 3       (3)   A simple, standardized complaint form designed to  
4           assure that complaints are properly registered and  
5           tracked;
- 6       (4)   Retention of records on complaints for at least three  
7           years after the complaint has been closed;
- 8       (5)   Guidelines to disseminate complaint and enforcement  
9           information on individual insurers to the public that  
10          shall include but not be limited to the following:
- 11       (A)   License status;
- 12       (B)   Number and type of complaints closed within the  
13           last full calendar year, with analogous  
14           statistics from the prior two years for  
15           comparison. The proportion of those complaints  
16           determined by the commissioner to require that  
17           corrective action be taken against the insurer,  
18           or leading to insurer compromise, or other remedy  
19           for the complaint, as compared to those that are  
20           found to be without merit. This information  
21           shall be disseminated in a fashion that shall



1           facilitate identification of meritless complaints  
2           and discourage their consideration by consumers  
3           and others interested in the records of insurers;  
4           (C) Number and type of violations found, by reference  
5           to the line of insurance and the new law  
6           violated; provided that the commissioner shall  
7           separately report this information for health  
8           insurers;  
9           (D) Number and type of enforcement actions taken;  
10          (E) Ratio of complaints received to total policies in  
11          force, or premium dollars paid in a given time,  
12          or both; provided that private passenger  
13          automobile insurance ratios shall be calculated  
14          as the number of complaints received to total car  
15          years earned in the period studies; and  
16          (F) Any other information the commissioner deems is  
17          appropriate public information regarding the  
18          complaint record of the insurer that will assist  
19          the public in selecting an insurer; provided that  
20          nothing in this section shall be construed to  
21          permit disclosure of information or documents in



1           the possession of the commissioner to the extent  
2           that the information and those documents are  
3           protected from disclosure under any other  
4           provision of law;

5       (6) Procedures and average processing times for each step  
6           of complaint mediation, investigation, and  
7           enforcement, that shall be consistent with any other  
8           law requiring procedures to be followed by the  
9           insurance division in investigating or prosecuting  
10          complaints against insurers or producers;

11       (7) A list of criteria to determine which violations  
12           should be pursued through enforcement action, and  
13           enforcement guidelines of appropriate penalties for  
14           violations based on the nature, severity, and  
15           frequency of the violations;

16       (8) Referral of complaints outside the insurance  
17           division's jurisdiction to appropriate public and  
18           private agencies;

19       (9) Complaint handling goals that can be tested against  
20           evaluations carried out pursuant to section  
21           431:2-C(b); and



1       (10) Inclusion in its annual report to the legislature  
2       required by section 431:2-211, detailed information  
3       regarding the program that shall include but not be  
4       limited to:

5       (A) A description of the operation of the complaint  
6       handling process, listing civil, criminal, and  
7       administrative actions taken pursuant to  
8       complaints received;

9       (B) The percentage of the insurance division's  
10       personnel years devoted to the handling and  
11       resolution of complaints; and

12       (C) Suggestions for legislation to improve the  
13       complaint handling apparatus and to increase the  
14       amount of enforcement action taken by the  
15       commissioner pursuant to complaints if further  
16       enforcement is deemed necessary to ensure proper  
17       compliance by insurers or producers within the  
18       law.

19       (b) The commissioner shall adopt rules pursuant to chapter  
20       91 that set forth the criteria that the insurance division shall  
21       apply to determine if a complaint is deemed to be justified



1 before the public release of a complaint against a specifically  
2 named insurer or producer.

3 (c) The commissioner shall provide to the insurer or  
4 producer a description of any complaint against the insurer or  
5 producer that the commissioner has received and has deemed to be  
6 justified at least thirty days before public release of a report  
7 summarizing the information required by this section. The  
8 description shall include all of the following:

- 9 (1) The name of the complainant;  
10 (2) The date the complaint was filed;  
11 (3) A succinct description of the facts of the complaint;  
12 and  
13 (4) A statement of the commissioner's rationale for  
14 determining that the complaint was justified, which  
15 applies the commissioner's criteria to the facts of  
16 the complaint.

17 (d) An insurer shall provide to the commissioner the name,  
18 mailing address, telephone number, and facsimile number of a  
19 person whom the insurer designates as the recipient of all  
20 notices, correspondence, and other contacts from the insurance  
21 division concerning complaints described in this section. The



1 insurer may change the designation at any time by providing  
2 written notice to the commissioner.

3 (e) The commissioner may establish an internet-accessible  
4 complaints response system to distribute and receive complaint  
5 information as described in subsections (a) and (c). Insurers  
6 shall submit and receive complaint information, including but  
7 not limited to requested claim files, underwriting files,  
8 correspondence, and other supporting documents, using any system  
9 established by the commissioner pursuant to this subsection.

10 (f) For the purposes of this section, notices,  
11 correspondence, and other contacts with the designated person  
12 shall be deemed contact with the insurer.

13 §431:2-B Complaints and inquiries; investigation and  
14 prosecution; public education and dissemination of information.

15 (a) The commissioner shall receive complaints and inquiries,  
16 investigate complaints, prosecute insurers or producers pursuant  
17 to section 431:2-203, and respond to complaints and inquiries by  
18 members of the public concerning the handling of insurance  
19 claims and alleged misconduct by insurers or producers.

20 (b) The commissioner shall not decline to investigate  
21 complaints for any of the following reasons:



1       (1) The insured is represented by an attorney in a dispute  
2           with the insurer, or is in mediation or arbitration;

3       (2) The insured has a civil action against the insurer; or

4       (3) The complaint is from an attorney, if the complaint is  
5           based upon evidence or reasonable beliefs about  
6           violations of law known to an attorney because of a  
7           civil action.

8       (c) The commissioner may defer the investigation until the  
9       finality of a dispute, mediation, arbitration, or civil action  
10       involving the claim is known.

11       (d) As the commissioner deems appropriate, and pursuant to  
12       section 431:2-A, the commissioner shall provide for the  
13       education of, and dissemination of information to, members of  
14       the general public or licensees of the insurance division  
15       concerning insurance matters.

16       §431:2-C Complaints; notification to complainant and  
17       others; evaluation of complaint patterns. (a) The commissioner  
18       shall, upon receipt of a written complaint with respect to the  
19       handling of an insurance claim or other obligation under a  
20       policy by an insurer or producer, or alleged misconduct by an  
21       insurer or producer, notify the complainant of the receipt of





1 the complaint within ten working days of receipt. Thereafter,  
2 the commissioner shall notify the complainant of the final  
3 action taken on that complaint within thirty days of the final  
4 action.

5 (b) The commissioner shall include with each notification  
6 of final action, or, at minimum, with a number of randomly  
7 selected notifications of final action sufficient to assure the  
8 validity of results, a complaint handling evaluation form. The  
9 form shall clearly and concisely seek an evaluation of the  
10 insurance division's performance in handling the complainant's  
11 grievance. The areas of evaluation shall include but not be  
12 limited to:

13 (1) Whether the complaint was handled in a fair and  
14 reasonable manner, evaluated thoroughly, and without  
15 bias;

16 (2) The time required for resolution of the complaint;

17 (3) Whether the complaint was referred and, if so, whether  
18 it was referred within a satisfactory time;

19 (4) Whether the staff involved in handling the complaint  
20 demonstrated adequate knowledge of the issues involved  
21 in the complaint;



1       (5) Whether the complainant was satisfied with the result  
2           of the insurance division's intervention; and

3       (6) Whether the complainant would recommend the insurance  
4           division's complaint handling services to others.

5       The commissioner shall, if deemed appropriate, notify insurers  
6       or producers against whom the complaint is made of the nature of  
7       the complaint, may request appropriate relief for the  
8       complainant, and may meet and confer with the complainant and  
9       the insurer to mediate the complaint. This section shall not be  
10       construed to give the commissioner power to adjudicate claims.

11       (c) The commissioner shall ascertain patterns of  
12       complaints by insurer, geographic area, insurance line, type of  
13       violation, and any other valid basis the commissioner may deem  
14       appropriate for further investigation, and periodically evaluate  
15       the complaint patterns to determine additional audit,  
16       investigative, or enforcement actions that may be taken by the  
17       commissioner, and report on all actions with respect to those  
18       patterns of complaints in the commissioner's annual report to  
19       the legislature pursuant to section 431:2-211, and to the  
20       public.



1        (d) For the purposes of this section, "complaint" means a  
2 written complaint received by the commissioner pursuant to  
3 subsection (a), and written complaints received by the  
4 commissioner from any other sources, alleging misconduct or  
5 unlawful acts by insurers or producers.

6        §431:2-D Meetings with persons and organizations;  
7 dissemination of information. The commissioner may in person or  
8 through employees of the division meet with persons,  
9 organizations, and associations interested in insurance for the  
10 purpose of securing cooperation in the enforcement of the  
11 insurance laws of the State and may disseminate information  
12 concerning the insurance laws of the State for the assistance  
13 and information of the public.

14        §431:2-E Emergency regulations; notice and text to be  
15 mailed to persons, groups, and associations filing requests.

16        (a) Notwithstanding the provisions of any other law, this  
17 section shall apply to the adoption by the commissioner of any  
18 rule as an emergency rule pursuant to chapter 91.

19        (b) At least five working days before the submission of  
20 the emergency regulation to the office of the lieutenant  
21 governor, the commissioner shall mail a notice of proposed



1 emergency rule to every person, group, or association who had  
2 previously filed a request for notice of regulatory actions with  
3 the commissioner.

4 (c) The notice of proposed emergency rule shall include  
5 the following:

6 (1) A description of the problem and the necessity for the  
7 rule;

8 (2) A description of the justification for adoption of the  
9 rule as an emergency rule; and

10 (3) A copy of the text of the proposed emergency  
11 regulation.

12 §431:2-F Letter opinions; legal opinions. A letter or  
13 legal opinion signed by the commissioner that was prepared in  
14 response to an inquiry from an insured or other person or entity  
15 and that discusses either generally or in connection with a  
16 specific fact situation the application of this chapter or rules  
17 adopted by the commissioner shall be made public. The  
18 department of commerce and consumer affairs may redact the name,  
19 address, policy number, and other identifying information  
20 regarding a particular insured or other person or entity from  
21 the letter or legal opinion when it is made public. A letter or



1 legal opinion made public by this section shall not be construed  
2 as adopting an order, guideline, or administrative rule pursuant  
3 to chapter 91.

4 §431:2-G Extraordinary circumstances; defined. (a) In  
5 determining noncompliance with this chapter and rules adopted  
6 pursuant to this chapter, and appropriate penalties, if any, the  
7 commissioner may consider evidence concerning the existence of  
8 extraordinary circumstances.

9 (b) A settlement agreement between the commissioner and an  
10 insurer may not contain a provision referencing the existence of  
11 extraordinary circumstances relative to the subject matter at  
12 issue, unless the agreement specifies the precise period of time  
13 during which extraordinary circumstances were in existence.  
14 Extraordinary circumstances shall not be stated to exist for a  
15 duration of more than six months, unless all of the following  
16 conditions are met:

17 (1) The commissioner makes a finding in the agreement that  
18 extraordinary circumstances existed for more than six  
19 months, and documents facts supporting that  
20 conclusion;



1       (2) The finding identifies the public purpose justifying  
2           the extension of extraordinary circumstances beyond  
3           the six-month period; and

4       (3) The beginning and ending date, by month and year, of  
5           the commencement and termination of the extraordinary  
6           circumstances are identified.

7       (c) For purposes of this section, "extraordinary  
8           circumstances" means circumstances outside the control of a  
9           licensee that severely and materially affect the licensee's  
10          ability to conduct normal business operations.

11       §431:2-H Cancellation of insurance contracts; order  
12       prohibiting insurance on risk under contract; violation of  
13       order. Whenever facts exist by reason of which, under this  
14       chapter, or other laws the commissioner may suspend, revoke, or  
15       deny any license or certificate of authority granted under this  
16       chapter, if the making or maintenance in force of a contract of  
17       insurance is one of the circumstances out of which facts arise,  
18       or, if, by reason of the existence of those facts, or in  
19       connection therewith a contract of insurance is made or  
20       maintained in force, the commissioner may, in lieu of or in  
21       addition to, the suspension, revocation, or denial of license or



1 certificate, by order require the immediate cancellation of the  
2 contract; provided that the contract, by its terms, is not  
3 subject to cancellation by the insurer and the insured did not  
4 knowingly participate in the wrongful acts. The commissioner  
5 may also notify the insured, stating the reason why the  
6 cancellation was required.

7 In such a case, whether or not the particular contract is  
8 required to be canceled or is subject to cancellation, the  
9 commissioner may order the insurer, insurance agent, broker,  
10 solicitor, surplus line broker, or life agent soliciting,  
11 negotiating, or effecting the insurance to refrain from  
12 effecting insurance upon the property, risk, or insured under  
13 the contract for not exceeding five years from the date of the  
14 order.

15 The commissioner may suspend or revoke, or deny an  
16 application for, any license or certificate of authority granted  
17 under any provision of this code to any applicant or licensee  
18 violating any order issued by the commissioner pursuant to this  
19 section.

20 §431:2-I Availability of information on department of  
21 commerce and consumer affair's website. (a) Notwithstanding



1 any other law, the department of commerce and consumer affairs  
2 shall make available for public inspection and publish on its  
3 website the following:

4 (1) All fully executed stipulations, orders, decisions,  
5 settlements, or other forms of agreement resolving  
6 market conduct examinations, whether the examinations  
7 were finalized, terminated, or suspended, that pertain  
8 to unfair or deceptive practices in the business of  
9 insurance as defined in article 13 of this chapter;  
10 and

11 (2) Every adopted report of a market conduct examination  
12 of unfair or deceptive practices in the business of  
13 insurance that is adopted as filed, or as modified or  
14 corrected, by the commissioner; provided that the  
15 commissioner, upon adopting the report, shall transmit  
16 a copy of the report, either electronically or by  
17 certified mail, to a representative that the examined  
18 insurer designated by that insurer to receive the  
19 report, or in the case of an examination of more than  
20 one insurer in an insurer group, to a single  
21 representative of the group designated to receive the





1 report on behalf of all examined insurers; provided  
2 further that, within twenty business days after the  
3 transmittal, the examined insurer may submit comments  
4 to the commissioner relating to the adopted report.  
5 The comments shall be in a form and length as provided  
6 by regulation; provided that twenty business days  
7 after the transmittal, the commissioner shall publish  
8 on the department's website the adopted report and any  
9 comments submitted by the examined insurer unless a  
10 court of competent jurisdiction has stayed the  
11 publication of the report.

12 (b) The information in subsection (a) shall be maintained  
13 in a current, up-to-date condition. All identifying and  
14 privileged information regarding individual policyholders shall  
15 be redacted from documents available for public inspection.

16 (c) This section shall not be construed to require the  
17 disclosure of company workpapers or other company documents  
18 discovered during the course of an examination or any  
19 preliminary report of the examination, except as otherwise  
20 permitted by law.



1        §431:2-J Working group to identify, assess, and recommend  
2 risk transfer market mechanisms to promote investment in natural  
3 infrastructure to reduce risks of climate change related to  
4 catastrophic events. (a) The commissioner shall convene a  
5 working group to identify, assess, and recommend risk transfer  
6 market mechanisms that:

- 7        (1) Promote investment in natural infrastructure to reduce  
8        the risks of climate change related to catastrophic  
9        events;
- 10       (2) Create incentives for investment in natural  
11       infrastructure to reduce risks to communities; and
- 12       (3) Provide mitigation incentives for private investment  
13       in natural lands to lessen exposure and reduce climate  
14       risks to public safety, property, utilities, and  
15       infrastructure.

16       (b) To the extent that the working group recommends risk  
17 transfer market mechanisms that would be provided by insurance  
18 and reinsurance companies, the working group shall recommend  
19 mechanisms that:

- 20       (1) Are profitable to insurance and reinsurance companies;  
21       and



1        (2) If appropriate, apply to communities or regions,  
2                rather than individual land parcels.

3        (c) The policies recommended pursuant to subsections (a)  
4 and (b) shall include all of the following considerations:

5        (1) Hawaii analogies to examples in other countries for  
6                creating incentives for investment in natural  
7                infrastructure as part of insurance policies that  
8                mitigate elemental risks;

9        (2) Use of insurance to create incentives for wetland  
10               restoration to help defend the coast against storm  
11               surge;

12       (3) Creation of incentives for forests to be managed to  
13               reduce the risk of major fires;

14       (4) Reducing the exposure of insurance companies to  
15               climate change related losses through innovated state  
16               policies or insurance pricing mechanisms that reward  
17               good behavior and charge premiums for actions that  
18               increase public safety risks or losses of property or  
19               environmental attributes; and



1        (5) Development of rating systems based on community risk  
2                    factors to climate events, and the use of insurance  
3                    incentives to make communities more resilient.

4        (d) The commissioner shall include in the annual report  
5 required under section 431:2-211 a report of the working group's  
6 findings and recommendations, including any proposed  
7 legislation."

8            SECTION 2. In codifying the new sections added by section  
9 2 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12            SECTION 3. New statutory material is underscored.

13            SECTION 4. This Act shall take effect upon its approval.

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



# S.B. NO. 3229

**Report Title:**

Insurance Commissioner; Insurance Division; Insurance Providers; Complaints; Inquiries; Enforcement

**Description:**

Requires the Insurance Commissioner to establish a program to investigate complaints, respond to inquiries, and bring enforcement actions against insurers. Requires the Insurance Commissioner to provide to an insurer a description of any complaint against the insurer that the Commissioner has received and has deemed to be justified. Authorizes the Insurance Commissioner to receive complaints and inquiries, investigate complaints, prosecute insurers, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims and alleged misconduct by insurers. Requires the Insurance Commissioner to notify a complainant of the receipt of the complaint within ten working days of receipt, notify the complainant of the final action taken on that complaint within thirty days of the final action, and include a complaint handling evaluation form that clearly and concisely seeks an evaluation of the Insurance Division's performance in handling the complainant's grievance. Requires the Insurance Commissioner to disseminate certain information and provide certain notices, and make letter and legal opinions public. Defines extraordinary circumstances. Requires the Department of Commerce and Consumer Protection to post certain information on its website. Establishes a working group to identify, assess, and recommend certain risk transfer market mechanisms.

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