

ACT 216

S.B. NO. 1068

A Bill for an Act Relating to Producer Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform Hawaii's licensing laws with the requirements of the Financial Services Modernization Act of 1999 (more commonly known as the Gramm-Leach-Bliley Act ("GLBA"), P.L. 106-102). The GLBA establishes November 12, 2002, as the date when a majority of the states must have producer licensing laws, which are either uniform or reciprocal to each other, in place. Failure to accomplish this by a majority of the states would trigger the creation and implementation of the National Association of Registered Agents and Brokers ("NARAB") licensing authority. The NARAB would remove direct agent and broker licensing oversight from the states and place it under the federally created NARAB, until NARAB is dissolved by Congress.

This bill adopts the National Association of Insurance Commissioners ("NAIC") Producer Licensing Model Act that was created and approved by that organization in response to the GLBA mandates. This Act simplifies and organizes statutory language to improve efficiency and reduce costs associated with issuing and renewing insurance licenses.

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

**“CHAPTER 431
ARTICLE
PRODUCER LICENSING**

§431: -101 Scope. This article governs qualifications and procedures for the licensing of insurance producers. It simplifies and organizes statutory language to improve efficiency, to permit the use of new technology, and to reduce costs associated with issuing and renewing insurance licenses.

This article does not apply to excess and surplus lines agents and brokers licensed through article 8, except as provided in section 431: -108 and section 431: -116 of this article.

§431: -102 Definitions. As used in this article, the following definitions apply:

“Approved continuing education course” means a course approved by the commissioner following receipt of recommendations from insurance professionals.

“Approved course provider” means an organization or person that has been approved by the commissioner.

“Business entity” means an association, corporation, individual, limited liability company, limited liability partnership, partnership, person, or other legal entity.

“Commissioner” means the insurance commissioner.

“Credit hour” means the value assigned to an hour of instruction in an approved continuing education course.

“Home state” means the District of Columbia or any state or territory of the United States in which an insurance producer maintains the producer’s principal place of residence or principal place of business and is licensed to act as an insurance producer.

“Inactive” means that the authority of a license issued by the commissioner is not in effect.

“Individual” means a natural person or a business entity.

“Insurance” is defined in section 431:1-201.

“Insurance producer” or “producer” means a person required to be licensed under the laws of this State to sell, solicit, or negotiate insurance.

“Insurer” is defined in section 431:1-202.

“License” means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

“Licensee” means any type of insurance producer or producer.

“Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (“gap”) insurance, and any other form of insurance offered in connection with an extension of credit, that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line of credit insurance.

“Limited line credit insurance producer” means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

“Limited lines insurance” means those lines of insurance defined in section 431: -108(e) or any other line of insurance coverage to individuals through a master, corporate, group, or individual policy.

“Limited lines producer” means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

“NAIC” means the National Association of Insurance Commissioners.

“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract; provided that the person engaged in the act either sells insurance or obtains insurance from insurers for producers.

“Person” means a natural person or a business entity.

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Terminate” means the cancellation of the relationship between the insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

“Uniform business entity application” means the current version of NAIC’s uniform business entity application for resident and nonresident business entities.

“Uniform application” means the current version of NAIC’s uniform application for resident and nonresident producer licensing.

§431: -103 License required. A person shall not sell, solicit, or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

§431: -104 Exceptions to licensing. (a) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(b) A license as an insurance producer shall not be required of the following:

- (1) A officer or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission or remuneration on policies written or sold to insure risks residing, located, or to be performed in this State and:
 - (A) The officer, director, or employee’s activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance;
 - (B) The officer, director, or employee’s functions relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, for the purpose of enrolling individuals under such plans, issuing certificates under plans, or otherwise assists in administering the plans, performs administrative services related to mass marketed property and casualty insurance, or where no commission is paid to the person for the service;
- (3) An employer or association or its officers, directors, employees, or the trustee of any employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, so long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
- (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision or the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;
- (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media, whose distribution is not limited to residents of this State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;
- (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty

risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

- (7) A salaried, full-time employee who counsels or advises the person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive commissions.

§431: -105 Insurance producer license examination. (a) A resident applicant applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 431: -109. The examination shall test the knowledge of the applicant concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this State. Examinations required by this section shall be developed and conducted under rules adopted by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section 431:7-701. The fees collected shall be nonrefundable.

(c) Each person applying for an examination shall remit a fee as set forth in section 431:7-101. The fee shall be nonrefundable.

(d) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

§431: -106 Application for license. (a) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431: -112;
- (3) Has paid the applicable fee set forth in section 431:7-101; and
- (4) Has successfully passed the applicable examination for each line of authority for which the applicant has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the applicable fee set forth in chapter 431 or 432; and
- (2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this State.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each person whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

§431: -107 License. (a) Except as provided in section 431: -112, a person who has met the requirements of sections 431: -105 and 431: -106 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

- (1) Life insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income.
- (2) Accident and health or sickness insurance coverage for sickness, bodily injury, or accidental death and benefits for disability income.
- (3) Property insurance coverage for the direct or consequential loss or damage to property of every kind.
- (4) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
- (5) Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities.
- (6) Credit limited line credit insurance.
- (7) Any other line of insurance permitted under state law or rule.

(b) Except as provided in section 431: -112, an insurance producer license shall remain in effect so long as the fee set forth in section 431:7-101 is paid and the educational requirements for resident individual producers are timely met.

(c) An insurance producer who allows the producer's license to lapse may, within twelve months from the due date of the renewal fee, reinstate that license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or an extenuating circumstance as determined by the commissioner may request a waiver of those procedures. The producer also may request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(e) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

(f) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty pursuant to section 431:2-203.

(g) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing as agreed upon by the commissioner and the nongovernmental entity.

§431: -108 Nonresident licensing. (a) Except as provided in section 431: -112, a nonresident applicant shall receive a nonresident producer license if:

- (1) The applicant is currently licensed as a resident and is in good standing in the applicant's home state;
- (2) The applicant has submitted the proper request for licensure and has paid the fees required by section 431:7-101;
- (3) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (4) The applicant's home state awards a non-resident producer license to a resident of this State on the same basis.

(b) The commissioner may verify the producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) A nonresident producer who moves from one state to another state or a resident producer who moves from this State to another state shall file a change of address with the commissioner and shall provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application shall be required. Failure to timely inform the commissioner of a change in address shall result in a penalty pursuant to section 431:2-203.

(d) Notwithstanding any other provision of this article, an applicant licensed as a surplus lines producer in the applicant's home state shall receive a nonresident surplus lines producer license if the applicant complies with subsection (a). Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of article 8.

(e) Notwithstanding any other provision of this article, an applicant licensed as a limited line credit insurance producer or other type of limited lines producer in the person's home state shall receive a nonresident limited lines producer license, pursuant to subsection (a), granting the same scope of authority as granted under the license issued by the producer's home state. Limited lines insurance authority is any authority granted by the home state, that restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 431: -107(a)(1) through (5).

§431: -109 Exemption from examination. (a) An individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any preclicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was licensed in good standing in that state, or the state's producer database records, maintained by the NAIC, its affiliates, or its subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) A person licensed as an insurance producer in another state who moves to this State shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 431: -106. No preclicensing educational component or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule.

§431: -110 Assumed names. An insurance producer doing business under any name other than the producer's legal name shall be required to notify the commissioner prior to using the assumed name.

§431: -111 Temporary licensing. (a) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

- (1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned or controlled by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

- (2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;
- (3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or
- (4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this temporary license.

(b) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee. The commissioner may impose other similar requirements designed to protect insureds and the public. The commissioner may by order suspend or revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner, the personal representative, or the person controlling the business disposes of the business.

§431: -112 License denial, nonrenewal, suspension, or revocation. (a)

The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state's commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name to an application or to any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes.

(b) In the event that the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for

that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within twenty days of receipt of the written demand and shall be held pursuant to chapter 91.

(c) The license of a business entity may be sanctioned pursuant to subsection (a) if the commissioner finds, after hearing, that any other licensee of the business entity has engaged in misconduct under subsection (a) that was known or should have been known by one or more of the entity's partners, officers, or managers acting on behalf of the entity and the violation was neither reported to the commissioner by the entity nor corrective action taken by the entity.

(d) In addition to or in lieu of any applicable sanction under subsection (a), a licensee may, after hearing, be subject to a civil fine according to article 2.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article, chapter 431, chapter 432, or chapter 432D, against any person who is under investigation for or charged with a violation of this article, chapter 431, chapter 432, or chapter 432D, even if that person's license or registration has been surrendered or has lapsed by operation of law.

§431: -113 Commissions. (a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if that person was required to be licensed under this article at the time of the sale, solicitation, or negotiation and was so licensed.

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerage fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this State, unless the payment would violate section 431:13-103.

§431: -114 Appointments. (a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted with an insurance producer so appointed.

(b) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing with the commissioner of a single appointment notice.

(c) Upon receipt of the notice of appointment and within a reasonable time not to exceed thirty days, the commissioner shall verify that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within five days of its determination.

(d) An insurer shall pay an appointment fee, in the amount and method of payment set forth in article 7, for each insurance producer appointed by the insurer.

(e) An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in article 7.

§431: -115 Notification to commissioner of termination. (a) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using the applicable format prescribed by the commissioner. An insurer or insurer representative who terminates a producer for one of the reasons set forth in section 431: -112 or who has knowledge the producer was found by a court, governmental body, or self-regulatory organization to have engaged in any of the activities in section 431: -112, shall use the particular format for that situation as prescribed by the commissioner. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer or representative discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) had the insurer then known of its existence.

(c) The insurer and producer are subject to the following:

- (1) Within fifteen days after making the notification required by subsections (a) and (b), the insurer shall mail a copy of the notification to the producer at the producer's last known address. If the producer is terminated for any of the causes listed in section 431: -112, the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
- (2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (e).

(d) Immunity from civil liability for notification applies as follows:

- (1) In the absence of actual malice, an insurer, the insurer's authorized representative, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination under subsection (a) was reported to the commissioner, provided that the propriety of any termination under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.
- (2) In any action brought against a person that may have immunity under paragraph (1) for making any statement required by this section or for providing any information relating to any statement that may be re-

requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

- (3) Paragraphs (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (e) Confidentiality and privilege from disclosure is established as follows:
 - (1) Any documents, materials, or other information in the control or possession of the commissioner or any agent of the commissioner that is furnished by an insurer, producer, or an employee or agent thereof who is acting on behalf of the insurer or producer, or is obtained by the commissioner, any agent of the commissioner, the insurance division, or any employee of the insurance division, in an investigation pursuant to this section shall be confidential and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any civil action; provided that the commissioner or the commissioner's designee is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.
 - (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be required to testify in any civil action concerning any confidential documents, materials, or information subject to paragraph (1).
 - (3) Any provision to the contrary notwithstanding, the commissioner may:
 - (A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (1), with other state, federal, and international regulatory and law enforcement agencies and authorities, the NAIC, and their affiliates or subsidiaries; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
 - (B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates or subsidiaries and from state, federal, and international regulatory and law enforcement agencies and authorities and shall maintain as confidential or privileged any document, material, or information received with the notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
 - (C) Enter into agreements governing sharing and use of information consistent with this subsection.
 - (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing, receiving, or using the information as authorized in paragraph (3).
 - (5) Nothing in this article shall prohibit the commissioner from releasing final, adjudicated actions including terminations that are open to public inspection pursuant to section 431:2-209 to a database or other clearinghouse service maintained by the NAIC or its affiliates or subsidiaries.

(f) An insurer, the authorized representative of the insurer, or a producer who fails to report as required under the provisions of this section or who is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with article 2.

§431: -116 Reciprocity. (a) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by section 431: -108, so long as the applicant's home state awards nonresident licenses to residents of this State on the same basis.

(b) A nonresident producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements so long as the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this State on the same basis.

§431: -117 Reporting of actions. (a) A producer shall report to the commissioner any civil or administrative action taken against the producer in any jurisdiction or by a governmental agency in any state within thirty days of the final disposition of the matter.

(b) Within thirty days of arraignment, a producer shall report to the commissioner any criminal prosecution of the producer being taken in any jurisdiction.

(c) The report shall include a copy of the initial complaint or indictment filed and any and all other relevant legal documents.

§431: -118 Rules. The commissioner may, in accordance with chapter 91, adopt reasonable rules as are necessary or proper to carry out the purposes of this article.

§431: -119 Scope of examination. (a) The commissioner shall prescribe each examination, and each examination shall be of reasonably sufficient scope to test the applicant's knowledge relative to the classes of insurance that may be dealt with under the license applied for, the duties and responsibilities relating thereto, and the laws of this State that are applicable to the licensee.

(b) The commissioner is required to prepare and make available to insurance producers a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license.

§431: -120 Time of examinations. (a) The commissioner shall give examinations within this State at such times and places as may reasonably serve the convenience of both the commissioner and applicants.

(b) The commissioner may require a waiting period of not more than six months before giving a new examination to an applicant who has failed to pass two previous, similar examinations.

§431: -121 Advisory board. The commissioner may, in the commissioner's discretion, appoint a group of individuals, to be known as the advisory board, to make recommendations to the commissioner concerning any matter relating to the examinations provided for by this article. Any individual appointed to the advisory board shall not be entitled to any compensation for the individual's services. The commissioner shall select a group that fairly represents the insurance industry in this State. The commissioner shall decide how long each individual is to

serve on the advisory board. This section shall not be subject to the requirements of chapter 92.

§431: -122 Place of business. (a) Every licensed insurance producer shall have and maintain in this State, or, if a nonresident insurance producer, in the nonresident's home state, a place of business accessible to the public.

(b) The place of business shall be where the licensee principally conducts transactions under the licensee's licenses.

(c) The licensee shall promptly notify the commissioner of any change of business address.

§431: -123 Records of insurance producer. (a) Every insurance producer shall keep a record of all transactions consummated under the producer's license. This record shall be in a form organized according to class of insurance and shall include:

(1) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and

(2) Other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(b) All the records as to any particular transaction shall be kept in the licensee's office and shall be available and open to the inspection of the commissioner during business hours during the five years immediately after the date of the completion of the transaction.

(c) This section shall not apply to life or disability insurance if the records required of such insurance are customarily maintained in the offices of the insurer.

§431: -124 Prerequisites for license renewal. (a) In addition to payment of fees required in section 431:7-101, to qualify for a license renewal a licensee shall:

(1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and

(2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours shall be as follows:

(1) For a licensee authorized to sell classes of insurance in only one of the following groups:

(A) Life or disability; or

(B) Property, marine and transportation, vehicle general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the class of insurance for which the license is held, including three credit hours relating to the insurance laws and the insurance rules;

(2) For a licensee with a license to sell classes of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:

(A) Twelve hours shall relate to paragraph (1)(A) of which three hours shall relate to the insurance laws and the rules relating to the class of insurance for which the license is held; and

(B) Eighteen hours shall relate to paragraph (1)(B) of which three hours shall relate to the insurance laws and the rules relating to the class of insurance for which the license is held.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carryover credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements one month prior to the renewal date shall result in that licensee's license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours have been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431: -116.

§431: -125 Continuing education recordkeeping. (a) Licensees shall maintain their own continuing education records and shall keep these records for four years after completion of an approved continuing education course.

(b) Approved course providers shall maintain attendance records for five years to permit the commissioner to verify the attendance and course completion of all licensees enrolled in an approved course. These course providers shall make the records available at all times to the commissioner.

§431: -126 Power to fine. (a) The order levying the fine through section 431: -112 shall specify the period within which the fine shall be fully paid, and that period shall be not less than thirty nor more than forty-five days from the date of the order.

(b) Upon the licensee's failure to pay any fine when due, the commissioner shall revoke the license of the licensee if not already revoked, and the fine may be recovered in a civil action brought on behalf of the commissioner by the attorney general.

(c) Any fine collected shall be paid by the commissioner to the director of finance for the account of the insurance regulation fund.

§431: -127 Fine in lieu. (a) Upon the hearing of an appeal from an order imposing any sanction upon a licensee in accordance with section 431: -112, the court may impose a fine of not more than \$10,000 in lieu of the commissioner's action, and payment of that fine within ten days of the court's order shall result in the acceptance of the licensee's application or the reinstatement, restoration, or extension of that license if:

- (1) The court finds that the licensee violated the law; and
- (2) The court deems the sanction imposed too severe a penalty under the facts as found.

(b) If the licensee has previously been sanctioned for a similar offense, the court shall not have jurisdiction to impose a fine in lieu of the commissioner's action.

§431: -128 Nondiscrimination. Continuing education courses provided by insurers to insurance producers shall be subject to the same standards, reviews,

and credits as other continuing education courses. Nothing in this article is intended to preclude the provision of continuing education courses by insurers to insurance producers; provided that no credit shall be given for any course unless it is a continuing education course approved by the commissioner.

§431: -129 Penalty. (a) The commissioner shall sanction the license of any licensee who has submitted an invalid, false, or fraudulent certificate of completion, subject to the right of a licensee to have a hearing as provided in chapter 91.

(b) The commissioner shall revoke the approval of an approved course provider who has issued a certificate of completion to a licensee who has not attended the continuing education course to a licensee who has not met the course requirements, subject to the right of an approved course provider to have a hearing as provided in section 431:2-308.

§431: -130 Commissioner’s authority to grant waiver. Upon the receiving of a written request and a showing of good cause, the commissioner shall have the authority to grant a waiver of any requirement of an insurance law or insurance rule as applied to an applicant or a producer.”

SECTION 3. Section 431:2-303, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-303 Examination of [~~agents, solicitors,~~] producers, adjusters, promoters, and independent bill reviewers.** For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as the commissioner deems advisable examine the insurance accounts, records, documents, and transactions of:

- (1) Any insurance [~~general agent, subagent, solicitor,~~] producer, adjuster, or independent bill reviewer, including insurance agencies and surplus lines agencies; or
- (2) Any person engaged in, proposing to be engaged in, or assisting in the promotion or formation of a domestic insurer, a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer.”

SECTION 4. Section 431:2-305, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the insurer, its [~~agents,~~] producers, or other persons examined, or as ascertained from the testimony of its officers [~~or agents,~~] producers, or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.”

2. By amending subsection (d) to read:

“(d) Orders shall be issued and hearings conducted as follows:

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner’s consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Any order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating

under oath that they have received a copy of the adopted report and related orders, except that for examinations of [~~general agents, subagents, solicitors,~~] producers, adjusters, independent bill reviewers, or surplus lines brokers, serving the copy of the adopted report and related orders by certified-return receipt requested mail will satisfy the service requirement and no affidavits shall be required; and

- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer or person. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subsection (c)(1):
 - (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;
 - (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and
 - (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency."

SECTION 5. Section 431:3-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements in subsection (a), to qualify for and hold a certificate of authority, foreign and alien insurers must[:

- (1) ~~Have appointed a general agent who is qualified according to the standards set forth in article 9; provided that this paragraph shall not apply to foreign and alien reinsurers licensed to transact business in Hawaii that assume any portion of the risk of another insurer; and~~
- (2) ~~Have]~~ have continuously, actively, and successfully transacted the business of insurance for at least five years immediately prior thereto; provided that in the case of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary) of a capital stock or mutual insurer, the five-year period shall be computed from the date of the organization of the original or parent insurer or insurers if substantially the same management continues."

SECTION 6. Section 431:3-218, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-218 Procedure upon revocation; suspension of certificate of authority. Upon revoking, suspending, or refusing to extend an insurer’s authority to transact insurance, the commissioner shall forthwith:

- (1) Give notice thereof to the insurer not less than ten days in advance of the effective date of the revocation or suspension[-];
- (2) Likewise revoke or suspend all [~~agents²~~] producers’ authority to represent the insurer in this State and give notice thereof to the [~~agents-~~] producers; and
- (3) Give notice thereof to the insurance supervisory official of each other state in which the insurer is authorized to transact insurance.”

SECTION 7. Section 431:9-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-101 Scope. This article shall govern the qualifications and procedures for granting licenses to all insurance [~~agents, brokers, surplus lines brokers, nonresident agents or brokers, subagents, solicitors,~~] adjusters, independent bill reviewers, and limited service representatives.”

SECTION 8. Section 431:9-201, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-201 License required. (a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be [~~a general agent, subagent, solicitor,~~] an adjuster[-] or independent bill reviewer unless so licensed by this State.

~~[(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any class of insurance for which the general agent, subagent, or solicitor is not licensed and does not hold an appointment from the insurer in this State for that class of insurance.~~

~~[(e) A regular salaried officer or employee of an authorized insurer shall not be required to be licensed by reason of rendering assistance to, or on behalf of a licensed general agent, subagent, or solicitor, provided that the salaried officer or employee devotes substantially all of the officer’s or employee’s time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.]~~

~~[(d)]~~ (b) Any person violating this section shall be assessed a civil penalty not to exceed \$5,000 for each factually different violation.

~~[(e)]~~ (c) Any person who knowingly violates this section shall be assessed a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

~~[(f)]~~ (d) Each repetition of an act that constitutes a violation subject to subsection (d) or (e) shall constitute a separate violation.”

SECTION 9. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each applicant for license as [~~general agent, subagent, solicitor,~~] an adjuster[-] or independent bill reviewer shall prior to the issuance of any such license, personally take and pass to the satisfaction of the commissioner an examination given by the commissioner as a test of the applicant’s qualifications and competence.

(b) This requirement shall not apply to[-]

- (1) ~~Applicants for limited licenses, as travel insurance subagents or solicitors only, under section 431:9-214;~~

- (2) Applicants] applicants who at any time within the three-year period next preceding date of application held a license in this State which conferred powers comparable to those being applied for[;
- (3) Applicants for a general agent's, subagent's, or solicitor's license for life insurance or life disability insurance who hold the designation chartered life underwriter (C.L.U.) from The American College; or
- (4) Applicants for a general agent's, subagent's, or solicitor's license for any class of insurance, except life insurance, who hold the designation chartered property and casualty underwriter (C.P.C.U.) from the American Institute for Property and Liability Underwriters, Incorporated].''

SECTION 10. Section 431:9-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner is required to prepare and make available to insurers[, general agents, subagents,] and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license.”

SECTION 11. Section 431:9-220, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-220 Process against nonresident licensees.** (a) Each licensed nonresident [~~agent or broker~~] producer shall appoint the commissioner as the [~~agent's or broker's~~] producer's attorney to receive service of legal process issued against the [~~agent or broker~~] producer in this State upon causes of action arising within this State. Service upon the commissioner as attorney shall constitute effective legal service upon the [~~agent or broker.~~] producer.

(b) The appointment shall be irrevocable for as long as there could be any cause of action against the [~~agent or broker~~] producer arising out of the [~~agent's or broker's~~] producer's insurance transactions in this State.

(c) Service of process on the commissioner shall be made in accordance with [~~the provisions of~~] section 431:2-206.”

SECTION 12. Section 431:9-227, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-227 [General agent or subagent] Producer may adjust without a license.**

- (a) [(1) On behalf of and as authorized by an insurer, a general agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster; and
- (2) On behalf of and as authorized by the general agent, with respect to whom a subagent is licensed as subagent, a subagent]

A producer may from time to time, and whether or not on behalf of and as authorized by an insurer, act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(b) An adjuster who is a [~~general agent or a subagent~~] producer is not permitted to adjust or cause the adjustment of any loss where the adjuster's remuneration for the sale of insurance is primarily dependent upon the adjustment of the loss. This subsection shall not be applicable to any [~~general agent or subagent~~] producer whose remuneration for the sale of insurance, on December 31, 1955, was primarily dependent upon the adjustment of losses, or to any [~~general agent, subagent,~~] producer or an insurer who, on December 31, 1955, was transacting

insurance where the ~~[general agent's or subagent's]~~ producer's remuneration for the sale of such insurance was primarily dependent upon the adjustment of losses."

SECTION 13. Section 431:9-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensed ~~[general agent, subagent,]~~ adjuster, and independent bill reviewer shall have and maintain in this State~~[, or, if a nonresident agent or broker, in the state of the agent's or broker's domicile,]~~ a place of business accessible to the public."

SECTION 14. Section 431:9-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every ~~[general agent, subagent,]~~ adjuster~~[,]~~ or independent bill reviewer shall keep a record of all transactions consummated under their license. This record shall be in organized form according to class of insurance and shall include:

~~[(1) If a general agent or subagent:~~

~~(A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and~~

~~(B) The names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid;~~

~~(2) (1) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment;~~

~~[(3) (2) If an independent bill reviewer, a record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and~~

~~[(4) (3) Any additional information as shall be customary, or as may reasonably be required by the commissioner."~~

SECTION 15. Section 431:9-230, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensed ~~[general agent, subagent, solicitor, and]~~ adjuster shall have the responsibilities of a trustee for all premium and return premium funds received or collected under this article."

SECTION 16. Section 431:10A-404, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-404 Persons authorized to transact insurance. Notwithstanding the provisions of article 9, any person licensed to transact disability insurance as a ~~[general agent, subagent or solicitor]~~ producer may transact extended health insurance and may be paid a commission in accordance with commission schedules filed with the commissioner as required by section 431:10A-406."

SECTION 17. Section 431:10B-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The enrolling of debtors under a group creditor policy and the issuance of certificates of insurance pursuant thereto or the issuing of individual policies by a

creditor shall not be considered a sale or solicitation of insurance or the transaction of an insurance business. A limited license issued under section 431:9-214 shall be required for such acts. [~~An agent's~~] A producer's or broker's license shall not be required."

SECTION 18. Section 431:10C-110, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-110 Rejection of application, joint underwriting plan placement. A [~~general agent,~~] producer, including a branch office of a foreign or alien insurer, [~~subagent, or solicitor~~] upon rejection of an application for a motor vehicle insurance policy or optional additional insurance, shall immediately offer, subject to the guidelines established by rules of the commissioner, to place the requested insurance coverages with the joint underwriting plan."

SECTION 19. Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any insurer, any [~~general agent, agent, solicitor,~~] producer, or any representative of an insurer who violates subsection (a) shall be subject to section 431:10C-117."

SECTION 20. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of "producer" to read as follows:

"'Producer' [~~means~~] includes any general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9."

SECTION 21. Section 431:10H-221, Hawaii Revised Statutes, is amended by amending subsections(a), (b), and (c) to read as follows:

"(a) Application forms shall include questions designed to elicit information as to whether, as of the date of application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and [~~agent,~~] producer, except where the coverage is sold without [~~an agent,~~] a producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by paragraph (1) under the definition of "group long-term care insurance" in section 431:10H-104, the following questions may be modified only to the extent necessary to elicit information about health and long-term care insurance policies other than the group policy being replaced; provided that the certificate holder has been notified of the replacement:

- (1) Do you have another long-term care insurance policy or certificate in force (including a health care service contract or health maintenance organization contract)?
- (2) Did you have another long-term care insurance policy or certificate in force during the last twelve months?
 - (A) If so, with which company?
 - (B) If that policy lapsed, when did it lapse?
- (3) Are you covered by medicaid?
- (4) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(b) [~~Agents~~] Producers shall list any other health insurance policies they have sold to the applicant, and the [~~agent~~] producer shall list policies sold that are still in force and list policies sold in the past five years that are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its [agent,] producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the same manner as shown in Section 12(C) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.”

SECTION 22. Section 431:10H-222, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Every insurer shall maintain records for each [agent] producer of the [agent’s] producer’s amount of replacement sales as a per cent of the [agent’s] producer’s total annual sales and the amount of lapses of long-term care insurance policies sold by the [agent] producer as a per cent of the [agent’s] producer’s total annual sales.

(b) Every insurer shall report annually by June 30 the ten per cent of its [agents] producers with the greatest percentages of lapses and replacements as measured in subsection (a).

(c) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely [agent] producer activities regarding the sale of long-term care insurance.”

SECTION 23. Section 431:10H-231, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Every insurer, health care service plan, or other entity marketing long-term care insurance (the “issuer”) shall:

- (1) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
- (2) Train its [agents] producers in the use of its suitability standards; and
- (3) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(c) To determine whether the applicant meets the standards developed by the issuer, the [agent] producer and issuer shall develop procedures that take the following into consideration:

- (1) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
- (2) The applicant’s goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
- (3) The values, benefits, and costs of the applicant’s existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

The issuer, and where [an-agent] a producer is involved, the [agent] producer shall make reasonable efforts to obtain the information set out above. The efforts shall include presentation to the applicant, at or prior to application, the “Long-Term Care Insurance Personal Worksheet”. The personal worksheet used by the issuer shall contain, at a minimum, information in the format contained in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulation in not less than twelve-point type. The issuer may request the applicant to provide additional

information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner."

2. By amending subsections (e) and (f) to read:

"(e) The sale or dissemination outside the company or agency by the issuer or [agent] producer of information obtained through the personal worksheet in Appendix B of the July 1998 NAIC Long-Term Care Insurance Model Regulation is prohibited.

(f) The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to a particular applicant is appropriate. The [agents] producers shall use the suitability standards developed by the issuer in marketing long-term care insurance."

SECTION 24. Section 431:10H-236, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the case of [agent] producer solicitations, [an-agent] a producer shall deliver the shopper's guide prior to the presentation of an application or enrollment form."

SECTION 25. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

"§431:13-104 Favored [agent] producer or insurer; coercion of debtors.

(a) No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or [agent or broker] producer or group of [agents or brokers] producers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension. The requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions;
- (2) Unreasonably reject a contract of insurance furnished by the borrower where insurance is required by the loan or credit transaction. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the loan or credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, [broker,] or [agent] producer pay a separate charge, in connection with the handling of any contract of insurance required by the loan or credit transaction, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose information relative to a contract of insurance which is required by, or supplied in response to, the loan or credit transaction, for the purpose of replacing the insurance or soliciting insurance;

- (5) Require any procedures or conditions of duly licensed [~~agents, brokers,~~ producers or insurers not customarily required of those [~~agents, brokers,~~ producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or [~~agent~~] producer of the borrower's choice, subject only to the lender's right to reject a given insurer or [~~agent~~] producer as provided in subsection (b)(2). Compliance with disclosures as to insurance required by [~~Truth-In-Lending~~] truth-in-lending laws or comparable state laws shall be in compliance with this paragraph."

SECTION 26. Section 431K-11, Hawaii Revised Statutes, is amended to read as follows:

"§431K-11 Duty of [~~agents or brokers~~] producer to obtain license and to keep records. (a) Any person acting or offering to act as [~~an agent or broker~~] a producer for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State, before commencing any such activity shall obtain a license from the commissioner.

(b) Whenever a licensed insurance [~~agent~~] producer or surplus lines [~~broker~~] producer places business pursuant to subsection (a), the [~~agent or broker~~] producer shall keep a complete and separate record of each policy procured from a risk retention group and for a purchasing group. The record shall be open to examination by the commissioner. For each policy and each kind of insurance provided in the policy, the record shall include the following:

- (1) The limit of liability and peril insured;
- (2) A brief description of the property insured and its location;
- (3) The effective date of the contract and its terms;
- (4) The time period covered by the contract;
- (5) The gross premium charged;
- (6) Any return premiums paid;
- (7) The name and address of the risk retention group which issued the policy;
- (8) The name and address of the insured; and
- (9) Any additional information required by the commissioner."

SECTION 27. Section 432:2-609, Hawaii Revised Statutes, is amended to read as follows:

"§432:2-609 Licensing of [~~agents~~] producers. (a) Fraternal benefit society [~~agents~~] producers shall be licensed in accordance with the provisions governing [~~solicitors~~] producers in article [9] ____ of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society [~~agents~~] producers are not prohibited from obtaining additional licenses provided for in article 9. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988.

(b) No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes substantially all of the officer's, employee's or member's services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

(c) Any [agent,] producer, representative or member of a society who devotes, or intends to devote, less than fifty per cent of [such] that person's time to the solicitation and procurement of insurance contracts for [such] the society shall be exempt from the requirements of subsection (a). Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty per cent of the person's time to the solicitation or procurement of insurance contracts for such society."

SECTION 28. Section 431:9-102, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 431:9-103, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 431:9-104, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 431:9-202, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 431:9-205, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 431:9-210, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 431:9-211, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 431:9-211.5, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 431:9-212, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 431:9-213, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 431:9-215, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 431:9-216, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 431:9-217, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 431:9-218, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 431:9-219, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 431:9-221, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 431:9-231, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 431:9-233, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 431:9-234, Hawaii Revised Statutes, is repealed.

SECTION 47. Article 9A of chapter 431, Hawaii Revised Statutes, is repealed.

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SECTION 48. Statutory material to be repealed is bracketed and stricken.¹
New statutory material is underscored.

SECTION 49. This Act shall take effect on July 1, 2002.

(Approved June 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.