

**ACT 72**

S.B. NO. 1212

A Bill for an Act Relating to Regulatory Authority of the Insurance Commissioner.

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

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

**“ARTICLE  
THIRD PARTY ADMINISTRATORS**

**§431: -101 Definitions.** For purposes of this article:

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

- (1) An employer on behalf of its employees or the employees of a subsidiary or an affiliated corporation of the employer;
- (2) A union on behalf of its members;
- (3) An insurer authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state;
- (4) A producer licensed to sell life insurance coverage or accident and health or sickness insurance coverage in this State, whose activities are limited exclusively to the sale of insurance;
- (5) A managing general agent licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;

- (6) An individual adjuster licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;
- (7) An individual who adjusts or settles claims in the normal course of practice or employment as an attorney at law and who does not collect charges or premiums in connection with life insurance coverage or accident and health or sickness insurance coverage;
- (8) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (9) A trust established in conformity with title 29 United States Code section 186 and trustees, agents, and employees acting under that trust;
- (10) A trust exempt from taxation under title 26 United States Code section 501(a) and trustees and employees acting under that trust, or a custodian and the custodian's agents and employees acting under a custodian account that meets the requirements of title 26 United States Code section 401(f);
- (11) A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender that collects and remits premiums to licensed producers or authorized insurers in connection with loan payments;
- (12) A credit card issuing company advancing for and collecting premiums or charges from its credit card holders who have authorized collection; provided that the company does not adjust or settle claims; and
- (13) A person who acts solely as an administrator of one or more employee benefit plans established by an employer or an employee organization.

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

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

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

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

**§431: -102 License required; application.** (a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

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

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

governing board or committee, the principal officers in the case of a corporation, or the partners in the case of a partnership;

- (5) Annual financial statements for the two most recent years that prove the applicant has a positive net worth and information the commissioner may require to review the current financial condition of the applicant; and
- (6) Any other pertinent information the commissioner may require.

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

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

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

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

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

**§431: -103 Surety bond required.** Prior to the issuance of the administrator license, the administrator shall file with the commissioner, and maintain in force while so licensed, a surety bond of at least \$100,000, in the form and penal sum acceptable to the commissioner, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii".

**§431: -104 Written agreement required.** (a) An administrator shall have a written agreement between the administrator and insurer that contains all requirements of this article, except those that do not apply to administrator functions.

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

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

(d) When an insurance policy is issued to a trustee, the administrator shall furnish the insurer a copy of the trust agreement and any amendments to

it. The trust agreement shall be retained as part of the official records of the administrator and the insurer for the duration of the insurance policy and five years thereafter.

**§431: -105 Effect of payments to administrator.** (a) Payment to the administrator of any insurance premiums or charges by or on behalf of the insured shall be deemed received by the insurer.

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

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

**§431: -106 Recordkeeping required; commissioner's access to records.**

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

(b) The commissioner shall have access to the books and records for examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the commissioner that are furnished by an administrator, payor, or insurance producer or an employee or agent thereof acting on behalf of the administrator, payor, or insurance producer, or obtained by the commissioner in an investigation shall be confidential by law and privileged and shall not be subject to chapters 92 and 92F, subpoena, and discovery or admissible in evidence in any private civil action.

The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(c) An administrator shall retain the right to continuing access to the books and records to fulfill its contractual obligations to the insurer and insureds, subject to any restrictions in the written agreement.

**§431: -107 Advertising by administrator.** An administrator shall use only the advertising pertaining to the business an insurer has underwritten and approved in advance of its use.

**§431: -108 Fiduciary duties of administrator; payment of claims by administrator.** (a) The administrator shall hold in a fiduciary capacity all charges, claim payments, or premiums that the administrator collects for or on behalf of an insurer and all return premiums that the administrator receives from the insurer. These funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally insured financial institution.

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

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

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

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

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

**§431: -109 Compensation of administrator.** Compensation to an administrator for adjusting or settling claims shall not be increased contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

**§431: -110 Written notice to insureds required.** (a) When the services of an administrator are used, the administrator shall provide written notice approved by the insurer to insureds, advising the insureds of the identity of and relationship between the administrator, insurer, and insured.

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

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

**§431: -111 Delivery of written information to insured.** Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to the insured, shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

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

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

**§431: -113 License denial, nonrenewal, suspension, or revocation; fines.** (a) After notice and hearing, the commissioner shall impose a fine pursuant to section 431:2-203 and issue a cease and desist order against any person who acts or holds out as an administrator without a license.

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

- (1) Is in an unsound financial condition;
  - (2) Is using methods or practices in the conduct of business that renders the administrator's further transaction of business in this State hazardous or injurious to insureds or the public; or
  - (3) Has failed to pay a judgment rendered against the administrator in this State within sixty days after the judgment has become final.
- (c) The commissioner may deny, refuse to renew, suspend, or revoke the license of an administrator if the commissioner finds the administrator:
- (1) Has violated any lawful rule or order of the commissioner or this code;
  - (2) Has refused examination or production of the administrator's accounts, records, and files for examination, or if any individual responsible for or who exercises control or influence over the affairs of the administrator has refused to give information about the administrator's affairs, or has refused to perform any other legal obligation as to an examination, when required by the commissioner;
  - (3) Has, without just cause:
    - (A) Refused to pay proper claims or perform services arising under the administrator's contracts;
    - (B) Caused insureds to accept less than the amount due to the insureds; or
    - (C) Caused insureds to employ attorneys or bring suit against the administrator to secure full payment or settlement of claims;
  - (4) Has failed at any time to meet any qualification for which issuance of the license could have been refused, had the failure then existed and been known to the commissioner;
  - (5) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld;
  - (6) Is under suspension or has a license revoked in another state; or
  - (7) Has failed to timely file the annual report pursuant to section 431: -112.
- (d) The commissioner may immediately suspend the license of an administrator, without advance notice or hearing, if the commissioner finds the following:
- (1) The administrator is insolvent or impaired;
  - (2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the administrator has been commenced in any state; or
  - (3) The financial condition or business practices of the administrator otherwise are an imminent threat to the public health, safety, or welfare of the residents of this State.
- (e) If the commissioner finds one or more grounds exist for the denial, nonrenewal, suspension, or revocation of the license, the commissioner may additionally impose a fine upon the administrator pursuant to section 431:2-203.

**§431: -114 Rules.** The commissioner may adopt rules to implement and enforce this article."

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

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

- (1) Certificate of authority:
  - (A) Application for certificate of authority ..... \$900

	(B) Issuance of certificate of authority .....	\$600
	(C) Application for motor vehicle self-insurance.....	\$300
(2)	Organization of domestic insurers and affiliated corporations:	
	(A) Application for solicitation permit.....	\$1,500
	(B) Issuance of solicitation permit.....	\$150
(3)	Producer's license:	
	(A) Issuance of regular license .....	\$50
	(B) Issuance of temporary license.....	\$50
(4)	Nonresident producer's license: Issuance .....	\$75
(5)	Independent adjuster's license: Issuance .....	\$75
(6)	Public adjuster's license: Issuance .....	\$75
(7)	Claims adjuster's limited license: Issuance .....	\$75
(8)	<u>Administrator's license: Issuance .....</u>	<u>\$150</u>
[ <del>(8)</del> ]	(9) Independent bill reviewer's license: Issuance .....	\$80
[ <del>(9)</del> ]	(10) Limited producer's license: Issuance .....	\$60
[ <del>(10)</del> ]	(11) Managing general agent's license: Issuance .....	\$75
[ <del>(11)</del> ]	(12) Reinsurance intermediary's license: Issuance .....	\$75
[ <del>(12)</del> ]	(13) Surplus lines broker's license: Issuance .....	\$150
[ <del>(13)</del> ]	(14) Service contract provider's registration: Issuance .....	\$75
[ <del>(14)</del> ]	(15) Approved course provider certificate: Issuance .....	\$100
[ <del>(15)</del> ]	(16) Approved continuing education course certificate: Issuance .....	\$30
[ <del>(16)</del> ]	(17) Vehicle protection product warrantor's registration: Issuance.....	\$75
[ <del>(17)</del> ]	(18) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.	
[ <del>(18)</del> ]	(19) Limited line motor vehicle rental company producer's license: Issuance .....	\$1,000
[ <del>(19)</del> ]	(20) Legal service plan certificate of authority: Issuance before July 1, 2014 .....	\$1,000
	Issuance on or after July 1, 2014.....	\$500
[ <del>(20)</del> ]	(21) Life settlement provider's license: Issuance before July 1, 2014 .....	\$150
	Issuance on or after July 1, 2014.....	\$75
[ <del>(21)</del> ]	(22) Life settlement broker's license: Issuance before July 1, 2014 .....	\$150
	Issuance on or after July 1, 2014.....	\$75
[ <del>(22)</del> ]	(23) Examination for license: For each examination, a fee to be established by the commissioner.	

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

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;



- (6) \$45 per year for all services (including extension of the license) for a claims adjuster's limited license;
- (7) \$150 per year for all services (including extension of the license) for an administrator's license;
- [~~(7)~~] (8) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- [~~(8)~~] (9) \$45 per year for all services (including extension of the license) for a producer's limited license;
- [~~(9)~~] (10) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- [~~(10)~~] (11) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- [~~(11)~~] (12) \$45 per year for all services (including extension of the license) for a licensed surplus lines broker;
- [~~(12)~~] (13) \$75 per year for all services (including renewal of registration) for a service contract provider;
- [~~(13)~~] (14) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- [~~(14)~~] (15) \$20 per year for all services (including extension of the certificate) for an approved continuing education course;
- [~~(15)~~] (16) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- [~~(16)~~] (17) A fee to be established by the commissioner for each criminal history record check and fingerprinting;
- [~~(17)~~] (18) \$600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;
- [~~(18)~~] (19) \$1,000 per year for all services provided before July 1, 2014, (including extension of the certificate) for an authorized legal service plan;
- [~~(19)~~] (20) \$500 per year for all services provided on or after July 1, 2014, (including extension of the certificate) for an authorized legal service plan;
- [~~(20)~~] (21) \$1,200 per year for all services (including extension of the license) for a regularly licensed life settlement provider; and
- [~~(21)~~] (22) \$150 per year for all services (including extension of the license) for a regularly licensed life settlement broker.

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

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

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

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



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nance organizations, or medical indemnity or hospital service associations that are owned or controlled by mutual benefit societies so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.

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

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

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

SECTION 5. This Act shall take effect on January 1, 2020.

(Approved June 7, 2019.)