

JAN 26 2009

S.B. NO. 892

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 26-9, Hawaii Revised Statutes, is
2 amended by amending subsection (o) to read as follows:

3 "(o) Every person licensed under any chapter within the
4 jurisdiction of the department of commerce and consumer affairs
5 and every person licensed subject to chapter 485A or registered
6 under chapter 467B shall pay upon issuance of a license, permit,
7 certificate, or registration a fee and a subsequent annual fee
8 to be determined by the director and adjusted from time to time
9 to ensure that the proceeds, together with all other fines,
10 income, and penalties collected under this section, do not
11 surpass the annual operating costs of conducting compliance
12 resolution activities required under this section. The fees may
13 be collected biennially or pursuant to rules adopted under
14 chapter 91, and shall be deposited into the special fund
15 established under this subsection. Every filing pursuant to
16 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
17 initial filing and at each renewal period in which a renewal is
18 required, a fee that shall be prescribed by rules adopted under

1 chapter 91, and that shall be deposited into the special fund
2 established under this subsection. Any unpaid fee shall be paid
3 by the licensed person, upon application for renewal,
4 restoration, reactivation, or reinstatement of a license, and by
5 the person responsible for the renewal, restoration,
6 reactivation, or reinstatement of a license, upon the
7 application for renewal, restoration, reactivation, or
8 reinstatement of the license. If the fees are not paid, the
9 director may deny renewal, restoration, reactivation, or
10 reinstatement of the license. The director may establish,
11 increase, decrease, or repeal the fees when necessary pursuant
12 to rules adopted under chapter 91. The director may also
13 increase or decrease the fees pursuant to section 92-28.

14 There is created in the state treasury a special fund to be
15 known as the compliance resolution fund to be expended by the
16 director's designated representatives as provided by this
17 subsection. Notwithstanding any law to the contrary, all
18 revenues, fees, and fines collected by the department shall be
19 deposited into the compliance resolution fund. Unencumbered
20 balances existing on June 30, 1999, in the cable television fund
21 under chapter 440G, the division of consumer advocacy fund under
22 chapter 269, the financial institution examiners' revolving

1 fund, section 412:2-109, the special handling fund, section
2 414-13, and unencumbered balances existing on June 30, 2002, in
3 the insurance regulation fund, section 431:2-215, shall be
4 deposited into the compliance resolution fund. This provision
5 shall not apply to the drivers education fund underwriters fee,
6 ~~[section]~~ sections 431:10C-115~~[7]~~ and 431:10G-107, insurance
7 premium taxes and revenues, revenues of the workers'
8 compensation special compensation fund, section 386-151, the
9 captive insurance administrative fund, section 431:19-101.8, the
10 insurance commissioner's education and training fund, section
11 431:2-214, the medical malpractice patients' compensation fund
12 as administered under section 5 of Act 232, Session Laws of
13 Hawaii 1984, and fees collected for deposit in the office of
14 consumer protection restitution fund, section 487-14, the real
15 estate appraisers fund, section 466K-1, the real estate recovery
16 fund, section 467-16, the real estate education fund, section
17 467-19, the contractors recovery fund, section 444-26, the
18 contractors education fund, section 444-29, the condominium
19 management education fund, section 514A-131, and the condominium
20 education trust fund, section 514B-71. Any law to the contrary
21 notwithstanding, the director may use the moneys in the fund to
22 employ, without regard to chapter 76, hearings officers and

1 attorneys. All other employees may be employed in accordance
2 with chapter 76. Any law to the contrary notwithstanding, the
3 moneys in the fund shall be used to fund the operations of the
4 department. The moneys in the fund may be used to train
5 personnel as the director deems necessary and for any other
6 activity related to compliance resolution.

7 As used in this subsection, unless otherwise required by
8 the context, "compliance resolution" means a determination of
9 whether:

- 10 (1) Any licensee or applicant under any chapter subject to
11 the jurisdiction of the department of commerce and
12 consumer affairs has complied with that chapter;
- 13 (2) Any person subject to chapter 485A has complied with
14 that chapter;
- 15 (3) Any person submitting any filing required by chapter
16 514E or section 485A-202(a)(26) has complied with
17 chapter 514E or section 485A-202(a)(26);
- 18 (4) Any person has complied with the prohibitions against
19 unfair and deceptive acts or practices in trade or
20 commerce; or
- 21 (5) Any person subject to chapter 467B has complied with
22 that chapter;

1 and includes work involved in or supporting the above functions,
2 licensing, or registration of individuals or companies regulated
3 by the department, consumer protection, and other activities of
4 the department.

5 The director shall prepare and submit an annual report to
6 the governor and the legislature on the use of the compliance
7 resolution fund. The report shall describe expenditures made
8 from the fund including non-payroll operating expenses."

9 SECTION 2. Section 431:2-215, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) All assessments, fees, fines, penalties, and
12 reimbursements collected by or on behalf of the insurance
13 division under title 24, except for the commissioner's education
14 and training fund (section 431:2-214), the patients'
15 compensation fund (Act 232, Session Laws of Hawaii 1984), the
16 drivers education fund underwriters fee [~~section~~] (sections
17 431:10C-115[+] and 431:10G-107), and the captive insurance
18 administrative fund (section 431:19-101.8) to the extent
19 provided by section 431:19-101.8(b), shall be deposited into the
20 compliance resolution fund under section 26-9(o). All sums
21 transferred from the insurance division into the compliance

1 resolution fund may be expended by the commissioner to carry out
2 the commissioner's duties and obligations under title 24."

3 SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes,
4 is amended by amending subsection (c) to read as follows:

5 "(c) The audit required in subsection (a) and the audited,
6 consolidated, or combined financial statements as may be
7 approved under subsection (b) shall be prepared in accordance
8 with either the National Association of Insurance Commissioners'
9 annual statement instructions, following the practices and
10 procedures prescribed by the National Association of Insurance
11 Commissioners' accounting practices and procedure manuals~~[-]~~, or
12 rules adopted by the commissioner."

13 SECTION 4. Section 431:6-317, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§431:6-317 Common stocks.** (a) To meet the requirements
16 under section 431:6-201, an ~~[An]~~ insurer may invest any of its
17 funds in common shares of stock that are filed with the SVO or
18 are considered "filing exempt" by the Purposes and Procedures
19 Manual of the SVO, or its successor publication, provided that
20 ~~[In aggregate,]~~ an insurer's amount of investment in common
21 stocks~~[-]~~ and in non-dividend paying stocks made pursuant to
22 this section and in common trust funds, mutual funds, and

1 exchange traded funds [~~including investments~~] made pursuant to
2 section 431:6-322[, ~~and non-dividend paying stocks,~~] shall not
3 exceed the greater of twenty-five per cent of its admitted
4 assets or one hundred per cent of its surplus as regards to
5 policyholders as defined in section 431:6-101.

6 (b) An insurer may invest any of its funds in common
7 shares of stock in solvent United States corporations after
8 satisfying the requirements under section 431:6-201.

9 (c) An insurer's aggregate amount of investment in non-
10 dividend paying stocks [~~is~~] shall be subject to the limitations
11 [~~of~~] in section 431:6-104."

12 SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§431:6-322 Common trust funds; mutual funds; and exchange**
15 **traded funds.** [~~(a) Subject to the limitations in subsections~~
16 ~~(b) and (c), an insurer may invest in:~~

17 ~~(1) A bank's common trust fund as defined in Section 584~~
18 ~~of the United States Internal Revenue Code of 1986, as~~
19 ~~amended;~~

20 ~~(2) The securities of any open end management type~~
21 ~~investment company or investment trust registered with~~
22 ~~the federal Securities and Exchange Commission under~~

1 ~~the Investment Company Act of 1940, as amended, if the~~
2 ~~investment company or trust, other than one of which~~
3 ~~as a subsidiary of the insurer is investment adviser~~
4 ~~or principal underwriter, has a net value of not less~~
5 ~~than \$25,000,000 as of the date of investment by the~~
6 ~~insurer; and~~

7 ~~(3) An exchange traded fund that is registered with the~~
8 ~~federal Securities and Exchange Commission under the~~
9 ~~Investment Company Act of 1940, as amended, and is~~
10 ~~traded on a public exchange.]~~

11 (a) For purposes of this section:

12 "Common trust funds" means a fund maintained by a bank
13 exclusively for the collective investment and reinvestment of
14 moneys contributed by the bank in its capacity as a trustee,
15 executor, administrator, guardian, or custodian of accounts as
16 defined in Section 584 of the United States Internal Revenue
17 Code of 1986, as amended.

18 "Mutual funds" means an investment company that is
19 registered with the federal Securities and Exchange Commission
20 under the Investment Company Act of 1940 (15 United States Code
21 Section 80a-1, et seq.), as amended.

1 "Exchange traded fund" means a security that tracks an
2 index, commodity, or basket of assets similar to an index fund,
3 is registered with the federal Securities and Exchange
4 Commission under the Investment Company Act of 1940, as amended,
5 and is traded on a public exchange.

6 (b) ~~[In aggregate, an insurer's amount of investment]~~ To
7 meet the requirements under section 431:6-201, an insurer may
8 invest in common trust funds, mutual funds, and exchange traded
9 funds, provided that an insurer's amount of investment made
10 pursuant to this section and in common stocks ~~[including~~
11 ~~investments]~~ made pursuant to section 431:6-317(a) ~~[7]~~ shall not
12 exceed the greater of twenty-five per cent of its admitted
13 assets or one hundred per cent of its surplus as regards to
14 policyholders as defined in section 431:6-101. This limitation
15 shall not apply to investments approved on the "Mutual Funds
16 List" from the Purposes and Procedures Manual of the SVO, or its
17 successor publication.

18 (c) An insurer may invest any of its funds in common trust
19 funds, mutual funds, and exchange traded funds after satisfying
20 the requirements of section 431:6-201."

21 SECTION 6. Section 431:7-206, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "**§431:7-206 Domestic company credit for retaliatory taxes**
2 **paid other states.** If by the laws of any state other than this
3 State, or by the action of any public official of another state,
4 any insurer or company, as defined in section 431:1-202,
5 organized or domiciled in this State, shall be required to pay
6 taxes for the privilege of doing business in the other state,
7 and the amounts are imposed or assessed so that the taxes which
8 are or would be imposed against Hawaii domestic insurance
9 companies are greater than those taxes required of insurers
10 organized or domiciled in the other state, to the extent the
11 amounts are legally due to the other states, an insurer or
12 company organized or domiciled in this State may claim a credit
13 against the tax payable pursuant to this article of a sum not to
14 exceed one hundred per cent of the amount. The credit shall not
15 be greater than the tax payable pursuant to this article during
16 the taxable year. All claims for the tax credit under this
17 section, including any amended claims, shall be filed on or
18 before the end of the twelfth month following the close of the
19 taxable year for which the credit may be claimed. Failure to
20 comply with the foregoing provision shall constitute a waiver of
21 the right to claim the credit."

SECTION 7. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall issue a surplus lines broker license to any producer licensed under article 9A, except producers licensed under section 431:9A-107(a)(1), (2), or (5), when the producer has:

(1) Remitted the annual license fee to the commissioner as provided in article 7; and

(2) Submitted a completed license application on a form furnished by the commissioner."

SECTION 8. Section 431:9-222.5, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-222.5 [~~Workers' compensation claims~~] Claims adjusters; limited license. (a) The commissioner may issue a limited license to an adjuster who only adjusts either workers' compensation or crop insurance claims; provided that the adjuster:

(1) Is domiciled in the State of Hawaii, or in a state that permits residents of the State of Hawaii to act as adjusters in that other state;

(2) Has had experience, special education, or training in handling loss claims under workers' compensation or

1 crop insurance contracts of sufficiently reasonable
2 duration and extent to enable an individual to fulfill
3 the responsibilities of an adjuster;

4 (3) Has a passing grade on the workers' compensation or
5 crop insurance examination pursuant to section 431:9-
6 206; and

7 (4) Pays the applicable fees.

8 (b) An adjuster with a limited license in workers'
9 compensation issued under this section may extend the license
10 biennially upon successfully passing a reexamination on workers'
11 compensation."

12 SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

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

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

18 (A) Life or accident and health or sickness; or

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

21 the requisite number of credit hours shall be [~~twenty~~]

22 twenty-four credit hours, consisting of eighteen credit

1 hours relating to the line of authority for which the
2 license is held, [~~including~~] three credit hours
3 relating to ethics training, and three credit hours
4 relating to the insurance laws and the insurance rules;

5 (2) For a licensee with a license to sell lines of
6 insurance in both groups in paragraph (1), the total
7 requisite number of credit hours shall be [~~thirty~~]
8 twenty-four credit hours, [~~of which-~~] consisting of:

9 (A) [~~Twelve~~] Ten credit hours [~~shall relate~~] relating
10 to paragraph (1)(A), of which two credit hours
11 shall relate to the insurance laws and [~~the~~] rules
12 relating to the line of authority for which the
13 license is held; [~~and~~]

14 (B) [~~Eighteen~~] Eleven credit hours [~~shall relate~~]
15 relating to paragraph (1)(B), of which two credit
16 hours shall relate to the insurance laws and [~~the~~]
17 rules relating to the line of authority for which
18 the license is held[~~-~~]; and

19 (C) Three credit hours relating to ethics training.

20 For purposes of this section, ethics training shall include, but
21 shall not be limited to, the study of fiduciary responsibility,
22 commingling of funds, payment and acceptance of commissions,

1 unfair claims practices, policy replacement considerations, and
2 conflicts of interest."

3 SECTION 10. Section 431:10C-408, Hawaii Revised Statutes,
4 is amended by amending subsection (a) to read as follows:

5 "(a) Each person sustaining accidental harm, or such
6 person's legal representative, may, except as provided in
7 subsection (b), obtain the motor vehicle insurance benefits
8 through the plan whenever:

- 9 (1) No [~~liability or uninsured motorist~~] insurance
10 benefits under motor vehicle insurance policies are
11 applicable to the accidental harm;
12 (2) No such insurance benefits applicable to the
13 accidental harm can be identified; or
14 (3) The only identifiable insurance benefits under motor
15 vehicle insurance policies applicable to the
16 accidental harm will not be paid in full because of
17 financial inability of one or more self-insurers or
18 insurers to fulfill their obligations. "

19 SECTION 11. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 12. This Act shall take effect on July 1, 2009,
2 provided that section 3 shall take effect on January 1, 2010.

3

4

INTRODUCED BY: _____

5

BY REQUEST

Report Title:

Insurance Producers; Surplus Lines Brokers; Retaliatory Tax
Credit; Limited Lines Adjuster License; Continuing Education
Credits; Assigned Claims

Description:

Updates references in Insurance Code.

SB 892

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update the Insurance Code, chapter 431, Hawaii Revised Statutes (HRS), by:

- (1) Including in sections 26-9(o) and 431:2-215(a) an express reference to the drivers education fund underwriters fee in section 431:10G-107;
- (2) Adding in section 431:3-302.5(c) the reference to rules governing audited financial statements;
- (3) Amending sections 431:6-317 and 431:6-322 to clarify the allowable investments in common stocks, common trust funds, mutual funds, and exchange traded funds;
- (4) Including in section 431:7-206 a time limit for claiming the retaliatory tax credit;
- (5) Clarifying in section 431:8-310(b) that surplus lines brokers licenses are issued to licensed producers with property or casualty lines of authority or to property and casualty coverages sold for personal use;
- (6) Allowing under section 431:9-222.5 a limited adjuster license for crop insurance claims;
- (7) Amending section 431:9A-124(b) regarding the number of continuing education credit hours required for insurance producer license renewal; and
- (8) Clarifying in section 431:10C-408(a) that the assigned claims program

applies to those with no applicable motor vehicle insurance.

MEANS: Amend sections 26-9(o), 431:2-215(a), 431:3-302.5(c), 431:6-317, 431:6-322, 431:7-206, 431:8-310(b), 431:9-222.5, 431:9A-124(b), and 431:10C-408(a), HRS.

JUSTIFICATION: Sections 26-9(o) and 431:2-215(a) currently refer to the drivers education fund underwriters fee in section 431:10C-115 for motor vehicle insurance policies, but do not refer to the drivers education fund underwriters fee in section 431:10G-107 for motorcycle and motor scooter insurance policies. Both fees should be referenced in these sections.

Section 431:3-302.5(c) currently requires insurers to prepare annual audited financial statements according to annual statement instructions and accounting practices and procedures manuals of the National Association of Insurance Commissioners (NAIC). The NAIC will be removing these provisions from the annual statement instructions and require state insurance regulators to expressly adopt these provisions by January 1, 2010, either by statute or rule, as a condition for NAIC accreditation. The Commissioner is currently proceeding to adopt these provisions in the administrative rules. Thus, the statutory reference to NAIC annual statement instructions will be outdated upon adoption of the rules.

Sections 431:6-317 and 431:6-322 allow insurers to meet its capital and reserve requirements in section 431:6-201 with investments in common stocks, common trust funds, mutual funds, and exchange traded funds, subject to certain limitations. After meeting the requirements in section 431:6-201, insurers may invest any of its funds in these securities. The investment statutes in article 6 were amended last year

to provide greater flexibility to insurers. These amendments are made for clarification purposes.

Section 431:7-206 allows a domestic insurer to claim credit for retaliatory taxes against the premium tax. This amendment provides a deadline for claiming the credit similar to that imposed for the regulatory oversight tax credit in section 431:7-207(d).

Section 431:8-310(b) provides for the issuance of a surplus lines broker license.

Section 431:9-222.5 currently provides for the issuance of a workers' compensation limited lines adjuster's license, but does not provide for other types of limited licenses. There is a certain need for adjusters to assess crop insurance losses. This section expands limited lines adjuster's licenses to include crop adjusters.

Section 431:9A-124(b) addresses the number of credit hours required for insurance producer license renewal. These provisions of the bill adopt the recommendations of the Uniformity Subgroup of the NAIC Producer Licensing Working Group to attain uniformity and reciprocity with other states to:

- (1) Expressly limit the issuance of the surplus lines broker license to property and casualty insurance producers;
- (2) Revise the number of continuing education credit hours required as a prerequisite for license renewal for insurance producers; and
- (3) Include ethics training in the continuing education requirement.

All states have agreed to reciprocity in insurance producer licensing. Accordingly, many states already have adopted the NAIC's recommendations. Achieving nationwide uniformity in insurance licensing will make insurance regulation less burdensome and complicated for insurers, producers, and regulators, and this in turn will benefit the public. This proposal is an important step in achieving that goal.

Section 431:10C-408 provides for the assigned claims program to cover claims where no other applicable motor vehicle insurance coverage applies. Act 14, Session Laws of Hawaii 2001, added language to section 431:10C-408(a) that broadened the scope and cost of the assigned claims program beyond its original intent. The motor vehicle insurance law in section 431:10C-301(b) mandates that all drivers obtain minimum levels of coverage, including liability insurance for bodily injury, property damage, and personal injury protection. At the insured's option, an insured may decline uninsured motorist (UM) coverage. Since liability insurance is mandated, including a reference to liability insurance in section 431:10C-408(a) is redundant. Public policy is not served by allowing insureds who have declined UM coverage to file claims through the assigned claims program because it provides a disincentive for insureds to add this optional coverage, despite its relatively low cost.

Impact on the public: This bill will make provisions of the Insurance Code more understandable, technically correct, and consistent.

Impact on the department and other agencies: These amendments reduce confusion and inefficiency in implementing Hawaii insurance laws and will contribute to the

Insurance Division retaining NAIC
accreditation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2009, except for section 3 of the
bill which shall take effect on January 1,
2010.