

A BILL FOR AN ACT

RELATING TO THIRD PARTY ADMINISTRATORS.

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

SECTION 1. The purposes of this Act are to:

(1) Encourage disclosure of contracts between insurers and third party administrators ("administrators") to potential insureds and the insurance commissioner;

(2) Promote the financial responsibility of administrators;

(3) Regulate administrators' practices in conformity with the general purposes of this Act; and

(4) Govern the qualifications and procedures for the licensing of administrators.

SECTION 2. 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:



1 "Administrator" or "third party administrator" means a
2 person who collects charges or premiums from, or who adjusts or
3 settles claims on, residents of this State in connection with
4 self-insurance, stop loss, workers' compensation, or life
5 insurance coverage; accident and health or sickness insurance
6 coverage; or article 1 of chapter 432, except the following:

7 (1) An employer, on behalf of its employees or the
8 employees of a subsidiary or an affiliated corporation
9 of the employer;

10 (2) A union, on behalf of its members;

11 (3) An insurer authorized to transact insurance in this
12 State with respect to a policy lawfully issued and
13 delivered in, and pursuant to, the laws of this State
14 or another state;

15 (4) A producer licensed to sell life insurance coverage or
16 accident and health or sickness insurance coverage in
17 this State, whose activities are limited exclusively
18 to the sale of insurance;

19 (5) A managing general agent licensed in this State whose
20 activities are limited exclusively to the scope of
21 activities conveyed under that license;



- 1 (6) An individual adjuster licensed in this State whose
2 activities are limited to adjustment of claims;
- 3 (7) An individual who adjusts or settles claims in the
4 normal course of practice or employment as an attorney
5 at law and who does not collect charges or premiums in
6 connection with life insurance coverage or accident
7 and health or sickness insurance coverage;
- 8 (8) A creditor, on behalf of its debtors with respect to
9 insurance covering a debt between the creditor and its
10 debtors;
- 11 (9) A trust established in conformity with title 29 United
12 States Code section 186 and trustees, agents, and
13 employees acting under that trust;
- 14 (10) A trust exempt from taxation under title 26 United
15 States Code section 501(a) and trustees and employees
16 acting under that trust, or a custodian and the
17 custodian's agents and employees acting under a
18 custodian account that meets the requirements of title
19 26 United States Code section 401(f);
- 20 (11) A financial institution subject to supervision or
21 examination by federal or state banking authorities,



1 or a mortgage lender that collects and remits premiums
2 to licensed producers or authorized insurers in
3 connection with loan payments;

4 (12) A credit card issuing company advancing for and
5 collecting premiums or charges from its credit card
6 holders who have authorized collection; provided that
7 the company does not adjust or settle claims; and

8 (13) A person who acts solely as an administrator of one or
9 more employee benefit plans established by an employer
10 or an employee organization.

11 "Commissioner" means the insurance commissioner.

12 "Insurance producer" or "producer" shall have the same
13 meaning as in section 431:9A-102.

14 "Insurer" shall have the same meaning as in section
15 431:1-202.

16 "Person" shall have the same meaning as in section
17 431:1-212.

18 **§431: -102 License required; application.** (a) No person
19 shall act as or hold out to be an administrator in this State
20 without a license as an administrator issued by the
21 commissioner.



1 (b) An administrator shall apply to the commissioner on a
2 form prescribed by the commissioner. The application shall
3 include the following:

4 (1) A nonrefundable fee as set forth in section 431:7-101;

5 (2) All basic organizational documents of the
6 administrator, including any articles of
7 incorporation, articles of association, partnership
8 agreement, trade name certificate, trust agreement,
9 shareholder agreement, and other applicable documents
10 and all amendments to the documents;

11 (3) The bylaws, rules, regulations, or similar documents
12 regulating the internal affairs of the administrator;

13 (4) The names, addresses, official positions, and
14 professional qualifications of the individuals
15 responsible for the conduct of affairs of the
16 administrator, including but not limited to all
17 members of the board of directors, board of trustees,
18 executive committee, or other governing board or
19 committee; the principal officers in the case of a
20 corporation; or the partners in the case of a
21 partnership;



1 (5) Annual audited financial statements for the two most
2 recent years that prove the applicant is solvent and
3 any information the commissioner may require to review
4 the current financial condition of the applicant; and

5 (6) Any other pertinent information the commissioner may
6 require.

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

12 (d) If an administrator employs or has contracted
13 individuals to adjust claims for the administrator, the
14 employees or contracted individuals shall first be licensed as
15 individual adjusters.

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



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

8 (g) The administrator license shall be renewable or
9 extendable biennially. The renewal or extension date for a
10 license issued to a natural person shall be the sixteenth day of
11 the licensee's birth month. The renewal or extension date for a
12 license issued to an artificial person shall be April 16 for a
13 nonresident licensee, and July 16 for a resident licensee. The
14 license shall remain in effect so long as the fees set forth in
15 section 431:7-101 are paid.

16 (h) The commissioner may contract with nongovernmental
17 entities, including the National Association of Insurance
18 Commissioners or any affiliations or subsidiaries that the
19 National Association of Insurance Commissioners oversees, to
20 perform any ministerial functions relating to the licensure of
21 administrators.



1 **§431: -103 Surety bond required.** Prior to the issuance
2 of the administrator license, the administrator shall file with
3 the commissioner, and shall maintain in force while so licensed,
4 a surety bond of at least \$300,000, in the form and penal sum
5 acceptable to the commissioner, and shall provide that the bond
6 may not be canceled or otherwise terminated until two years have
7 elapsed from the last day the applicant was an administrator,
8 unless the commissioner has given prior written consent. The
9 surety bond shall be undertaken and may be enforced in the name
10 of "Commissioner of Insurance, State of Hawaii".

11 **§431: -104 Written agreement required.** (a) An
12 administrator shall have a written agreement between the
13 administrator and insurer that contains all requirements of this
14 article, except those that do not apply to administrator
15 functions.

16 (b) The written agreement shall make provision with
17 respect to underwriting or other standards pertaining to the
18 business underwritten by the insurer.

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



1 (d) When an insurance policy is issued to a trustee, the
2 administrator shall furnish the insurer with a copy of the trust
3 agreement and any amendments to it. The trust agreement shall
4 be retained as part of the official records of the administrator
5 and the insurer for the duration of the insurance policy and
6 five years thereafter.

7 **§431: -105 Effect of payments to administrator. (a)**
8 Payment to the administrator of any insurance premiums or
9 charges by or on behalf of the insured shall be deemed received
10 by the insurer.

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

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

17 **§431: -106 Recordkeeping required; commissioner's access**
18 **to records. (a)** An administrator shall maintain and make
19 available to the insurer complete books and records of all
20 transactions between the administrator, insurers, and insureds.
21 The books and records shall be maintained in accordance with



1 prudent standards of insurance recordkeeping and for the
2 duration of the written agreement and five years thereafter.

3 (b) The commissioner shall have access to the books and
4 records for examination, audit, and inspection. Trade secrets
5 in the books and records, including the identity and addresses
6 of insureds, shall be confidential and privileged; provided that
7 the commissioner may use the information in proceedings brought
8 against the administrator.

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

13 **§431: -107 Advertising by administrator.** An
14 administrator shall use only the advertising pertaining to the
15 business an insurer has underwritten and approved in advance of
16 its use.

17 **§431: -108 Fiduciary duties of administrator; payment of**
18 **claims by administrator.** (a) The administrator shall hold in a
19 fiduciary capacity all charges or premiums that the
20 administrator collects for or on behalf of an insurer and all
21 return premiums that the administrator receives from the



1 insurer. These funds shall be remitted immediately to the
2 person entitled to them or shall be deposited promptly in a
3 fiduciary account established and maintained by the
4 administrator in a federally-insured financial institution.

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

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

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

18 (1) Remittance to an insurer entitled to remittance;

19 (2) Deposit in an account maintained in the name of the
20 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 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



1 and relationship between the administrator, insurer, and
2 insured.

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

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

13 **§431: -111 Delivery of written information to insured.**
14 Upon request by an insurer, an administrator shall deliver
15 promptly to the insured all policies, certificates, booklets,
16 termination notices, or other written communications.

17 **§431: -112 Annual report required.** (a) An administrator
18 shall file with the commissioner an annual report for the
19 preceding calendar year on or before March 1 of each year, in a
20 form and manner prescribed by the commissioner.



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

4 §431: -113 License denial, nonrenewal, suspension, or
5 revocation; fines. (a) After notice and hearing, the
6 commissioner shall impose a fine pursuant to section 431:2-203
7 and issue a cease and desist order against any person who acts
8 or holds the person's self out as an administrator without a
9 license.

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

13 (1) Is in an unsound financial condition;

14 (2) Is using methods or practices in the conduct of
15 business that render the administrator's further
16 transaction of business in this State hazardous or
17 injurious to insureds or the public; or

18 (3) Has failed to pay a judgment rendered against the
19 administrator in this State within sixty days after
20 the judgment has become final.



1 (c) The commissioner may deny, refuse to renew, suspend,
2 or revoke the license of an administrator if the commissioner
3 finds that the administrator:

4 (1) Has violated any lawful rule or order of the
5 commissioner or this chapter;

6 (2) Has refused examination or production of the
7 administrator's accounts, records, and files for
8 examination, or that any individual responsible for,
9 or who exercises control or influence over the affairs
10 of, the administrator has refused to give information
11 about the administrator's affairs or refused to
12 perform any other legal obligation as to an
13 examination, when required by the commissioner;

14 (3) Has, without just cause, refused to pay proper claims
15 or perform services arising under the administrator's
16 contracts or has, without just cause, caused insureds
17 to accept less than the amount due to the insureds or
18 caused insureds to employ attorneys or bring suit
19 against the administrator to secure full payment or
20 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 revocation 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 that:

(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



1 public health, safety, or welfare of the residents of
2 this State.

3 (e) If the commissioner finds one or more grounds exist
4 for the denial, nonrenewal, suspension, or revocation of the
5 license, the commissioner additionally may impose a fine upon
6 the administrator pursuant to section 431:2-203.

7 **§431: -114 Rules.** The commissioner may adopt rules to
8 implement and enforce this article."

9 SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

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

13 (1) Certificate of authority:

14 (A) Application for certificate of authority\$900

15 (B) Issuance of certificate of authority\$600

16 (C) Application for motor vehicle self-insurance . \$300

17 (2) Organization of domestic insurers and affiliated
18 corporations:

19 (A) Application for solicitation permit\$1,500

20 (B) Issuance of solicitation permit\$150

21 (3) Producer's license:



1	(A)	Issuance of regular license	\$50
2	(B)	Issuance of temporary license	\$50
3	(4)	Nonresident producer's license: Issuance	\$75
4	(5)	Independent adjuster's license: Issuance	\$75
5	(6)	Public adjuster's license: Issuance	\$75
6	(7)	Claims adjuster's limited license: Issuance	\$75
7	<u>(8)</u>	<u>Administrator's license: Issuance</u>	<u>\$150</u>
8	[-(8)-] <u>(9)</u>	Independent bill reviewer's license: Issuance .	\$80
9	[-(9)-] <u>(10)</u>	Limited producer's license: Issuance	\$60
10	[-(10)-] <u>(11)</u>	Managing general agent's license: Issuance ...	\$75
11	[-(11)-] <u>(12)</u>	Reinsurance intermediary's license: Issuance .	\$75
12	[-(12)-] <u>(13)</u>	Surplus lines broker's license: Issuance	\$150
13	[-(13)-] <u>(14)</u>	Service contract provider's registration:	
14		Issuance	\$75
15	[-(14)-] <u>(15)</u>	Approved course provider certificate:	
16		Issuance	\$100
17	[-(15)-] <u>(16)</u>	Approved continuing education course	
18		certificate: Issuance	\$30
19	[-(16)-] <u>(17)</u>	Vehicle protection product warrantor's	
20		registration: Issuance	\$75
21	[-(17)-] <u>(18)</u>	Criminal history record check; fingerprinting:	



1 For each criminal history record check and
2 fingerprinting check, a fee to be established by the
3 commissioner.

4 ~~[(18)]~~ (19) Limited line motor vehicle rental company
5 producer's license: Issuance \$1,000

6 ~~[(19)]~~ (20) Legal service plan certificate of authority:
7 Issuance before July 1, 2014 \$1,000
8 Issuance on or after July 1, 2014 \$500

9 ~~[(20)]~~ (21) Life settlement provider's license:
10 Issuance before July 1, 2014 \$150
11 Issuance on or after July 1, 2014 \$75

12 ~~[(21)]~~ (22) Life settlement broker's license:
13 Issuance before July 1, 2014 \$150
14 Issuance on or after July 1, 2014 \$75

15 ~~[(22)]~~ (23) Examination for license: For each examination, a
16 fee to be established by the commissioner.

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



1 (1) \$600 per year for all services (including extension of
2 the certificate of authority) for an authorized
3 insurer;

4 (2) \$50 per year for all services (including extension of
5 the license) for a regularly licensed producer;

6 (3) \$75 per year for all services (including extension of
7 the license) for a regularly licensed nonresident
8 producer;

9 (4) \$45 per year for all services (including extension of
10 the license) for a regularly licensed independent
11 adjuster;

12 (5) \$45 per year for all services (including extension of
13 the license) for a regularly licensed public adjuster;

14 (6) \$45 per year for all services (including extension of
15 the license) for a claims adjuster's limited license;

16 (7) \$150 per year for all services (including extension of
17 the license) for an administrator's license;

18 ~~[(7)]~~ (8) \$60 per year for all services (including
19 extension of the license) for a regularly licensed
20 independent bill reviewer;



1 [~~(8)~~] (9) \$45 per year for all services (including
2 extension of the license) for a producer's limited
3 license;
4 [~~(9)~~] (10). \$75 per year for all services (including
5 extension of the license) for a regularly licensed
6 managing general agent;
7 [~~(10)~~] (11) \$75 per year for all services (including
8 extension of the license) for a regularly licensed
9 reinsurance intermediary;
10 [~~(11)~~] (12) \$45 per year for all services (including
11 extension of the license) for a licensed surplus lines
12 broker;
13 [~~(12)~~] (13) \$75 per year for all services (including renewal
14 of registration) for a service contract provider;
15 [~~(13)~~] (14) \$65 per year for all services (including
16 extension of the certificate) for an approved course
17 provider;
18 [~~(14)~~] (15) \$20 per year for all services (including
19 extension of the certificate) for an approved
20 continuing education course;



1 [~~(15)~~] (16) \$75 per year for all services (including renewal
2 of registration) for a vehicle protection product
3 warrantor;

4 [~~(16)~~] (17) A fee to be established by the commissioner for
5 each criminal history record check and fingerprinting;

6 [~~(17)~~] (18) \$600 per year for all services (including
7 extension of the license) for a regularly licensed
8 limited line motor vehicle rental company producer;

9 [~~(18)~~] (19) \$1,000 per year for all services provided before
10 July 1, 2014, (including extension of the certificate)
11 for an authorized legal service plan;

12 [~~(19)~~] (20) \$500 per year for all services provided on or
13 after July 1, 2014, (including extension of the
14 certificate) for an authorized legal service plan;

15 [~~(20)~~] (21) \$1,200 per year for all services (including
16 extension of the license) for a regularly licensed
17 life settlement provider; and

18 ~~[(21)]~~ (22) \$150 per year for all services (including
19 extension of the license) for a regularly licensed
20 life settlement broker.



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

6 SECTION 4. Section 432:1-102, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§432:1-102 Applicability of other laws.** (a) Part III of
9 article 10A, and article 10H of chapter 431 shall apply to
10 nonprofit medical indemnity or hospital service associations.
11 Such associations shall be exempt from the provisions of part I
12 of article 10A; provided that such exemption is in compliance
13 with applicable federal statutes and regulations.

14 (b) Article 2, article 2D, parts II and IV of article 3,
15 article 6, part III of article 7, article 9A, article 13,
16 article 14G, and article 15 of chapter 431, sections 431:3-301,
17 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102,
18 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2), and the
19 powers granted by those provisions to the commissioner, shall
20 apply to managed care plans, health maintenance organizations,
21 or medical indemnity or hospital service associations that are



1 owned or controlled by mutual benefit societies so long as the
2 application in any particular case is in compliance with and is
3 not preempted by applicable federal statutes and regulations.

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

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

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Insurance; Third Party Administrators; Contracts; Licenses

Description:

Specifies the qualifications and procedures for the licensing and regulation of third party administrators, with the aim of encouraging the disclosure of contracts between insurers and administrators and promoting financial responsibility of administrators. (SB2773 HD2)

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

